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GRADUATE COLLEGE

REGULATION OF MULTINATIONAL CORPORATIONS AND POLITICAL INTEGRATION OF THE EUROPEAN COMMUNITY

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

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MICHAEL ALEXANDER PREDA

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1975

REGULATION OF MULTINATIONAL CORPORATIONS
AND POLITICAL INTEGRATION OF THE EUROPEAN COMMUNITY

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Chapter I

Introduction

> Fifteen years from now the world's third greatest industrial power, just after the United States and Russia, may not be Europe, but American industry in Europe.
>
> J.-J. Servan-Schreiber

This work will examine the symbiotic relationship between two exciting new developments in international relations, the European Community-- the most successful attempt at regional integration of states-- and multinational corporations-- an example of new forces of economic and political integration in the worldwide private sector. Specifically, we will be looking at the impact of the multinational corporation(MNC) in the European Community(E.C.). Is the MNC problem causing political changes to occur in the E.C.? If so, what types of changes? Is the E.C. becoming more politically integrated as a result? Do the regulatory efforts of the E.C. provide a model for regulation of the MNC? Obviously, the two phenomena are related. The creation of the E.C. has provided a fertile area of expansion for MNCs. In turn, the integrative aspects of MNC activities can help promote the goals of the E.C. Also obvious, the MNCs pose some threats to the E.C. as they do to any nation and state, such as threats to sovereignty, currency values, trade, transfer of technology, and the creation of

difficult legal questions, i.e. potential conflicts arising from applying antitrust laws. To make things more manageable, the dissertation will focus on the laws of competition (horizontal and vertical restrictive business practices) of the E.C. including the control of mergers and restrictive trade practices, control of dominant enterprises, nullity of prohibited agreements, selective distribution, and licensing agreements. In addition, state aids, antitrust and monopoly, patent laws, the "European company," and the European Cooperation grouping will be discussed.

The emergence of MNCs has been of far-reaching consequence. They are not only important in the business and industrial sector, but have affected governments in executing their functions and their relationship with other nation-states. They construct plants, sell their goods, transfer immense amounts of money and engage executives and workers from many countries. Some subsidiaries are permitted to function on their own initiative, while others can act only at the command of the home office. In any case, whatever mode of operation is currently in use, the home office is the nerve center and the subsidiaries are the limbs.[1]

It has been argued that multinational corporations have a long-standing tradition in the finance world far beyond the last two decades. Some scholars date early international trading companies as far back as the times of the Mesopotamians, while others argue that the international banking of the Middle Ages begins the era of the MNC. However, the

distinguishing characteristics of today's MNCs make them more unique. The distinguishing characteristics of modern MNCs may be seen in their systems of communication, information, and command and control. MNCs are characteristically quite prosperous also. For example, comparing gross annual corporate sales and gross national products(GNP) of nations, one finds that of the ninety-nine largest economic units in the world, forty of them are corporations. General Motor's gross annual sales are higher than the GNP's of Switzerland, Pakistan, or South Africa. Or, one can note that Ford Motor's sales are higher than Austria's GNP.[2] [See the complete list in Appendix A].

Much of the controversy that arose from the sheer existence of investment and operations in foreign countries resulted from American economic activity in western Europe. United States (U.S.) corporations have always considered Europe as an area of significant focus which led to widespread fears early in this century. In 1902, F.A. Richards, an Englishman, remarked:

> America has invaded Europe not with armed men, but with manufactured goods. Its leaders have been captains of industry and skilled financiers whose conquests are having a profound effect on the lives of the masses from Madrid to St. Petersburg.[3]

This was the first of many outcries regarding American business in foreign countries, and the forerunner of the 1967 publication of Jean-Jacques Servan-Schreiber's The American Challenge.[4]

It is an accepted fact that American investment in Europe plays a significant part in the overall economic situation between Europe and America. At the time of the formation of the Common Market the book value of American investments there was $1.9 billion. By 1970, it had risen to $11.7 billion. This includes direct investments by American MNCs, and not those made by holding companies in other nations. Annual capital expenditure in the Community is an even better guage of the growth of this investment. By 1972, annual capital expenditure was up to $3.3 billion-- a dramatic increase from the figure of $ 420 million in 1958. On the other hand, investments in the European Community to America reached a book value of $3.5 billion in 1970. This figure has been increasing steadily as European businessmen have accumulated enough capital to invest outside of their own areas.[5]

In a series of Wall Street Journal articles in 1973, Charles Stabler arrives at the following conclusion(agreeing with other analysts of the situation): "The era of the Multinational Corporation,the so-called super-company is upon us--to the point that a few hundred concerns have in recent years grown beyond the size of all but the wealthiest nations and currently dominate much of the world's production, resources and financial affairs."[6]

After about twenty years of striking growth, MNC are being attacked more each day, while their power has grown substantially. Neil H. Jacoby, for example, has said that the MNC "is, beyond doubt, the most powerful agency for regional

and global unity that our country has produced."[7] Professor Seymour Rubin, however, reminds us that the multinational corporation "is far from omnipotent, that it may as easily be the instrument of the policy of host as of home governments, and the time may not yet have arrived for universal conclusions."[8] Rubin, one of the most ardent critics of those who generalize about the omnipotent power of MNCs also argues that the MNC "has become an instrument, not a power. If it acts as a transmission belt for policy, at least where there are raw material shortages, it tends to transmit the policy of the host government."[9]

There are some restraints on foreign enterprises planning to enter European Community nations. According to one E.C. economist, "Somewhere in a desk drawer of a top official in every capital there is a list of companies that they simply won't allow to be taken over."[10] These include auto and computer companies. I.B.M., for example, controls sixty percent of the multibillion dollar European computer market. The nearest competitor is Munich-based Siemens with six percent of the European market. The German government imposed a policy of official preference of European computers. Yet, I.B.M. still has more than fifty percent of the German government business. If one nation cannot limit the marketing of one MNC's market within its territory, it is unlikely that it can slow down its operations worldwide. It appears that MNCs appear to be evolving into "a-national" companies-- "[c]ompanies without any nationality, belonging to all nationalities."[11]or so says Carl

A. Gerstacker, chairman of Dow Chemical. A Swedish ball-bearing manufacturer has realized this and changed its official company language to English. Royal-Dutch Shell and Unilever are MNCs individually run by dual holding companies in England and the Netherlands.

A nation's sovereignty demands governmental responsibility for what goes on inside its territory. Yet, the MNC demands no restrictions on capital flow and goods. Raymond Vernon sees an "assymetry" between the laws of nations. He feels that countries will only tolerate the threat to their sovereignty to a certain level. His recent book, Sovereignty at Bay, reflects this premise, while those who speak for the business world feel that there is no conflict. The Conference Board's Burton Teague has expressed the feeling that MNCs do not exercise any political power, but "make their decisions on the basis of hard, cold business facts."[12] But, economic power surely is political power.

European nations, such as France, have found a short-term solution to cope with the problem of MNCs. Under De-Gaulle it stopped the capital and goods markets in their tracks. But trouble arose in France's largest computer firm--Machines Bull-- and the French government had to allow General Electric to take it out of hot water. More recently, Honeywell took over the French operations of G.E. Financial woes often tend to put national pride aside, which occurred when France allowed Chrysler to get 77 percent interest in the Simca auto works.[13]

Most governments have been leary of passing regulations which are too strict because such actions could drastically diminish the appeal of doing business in that country. It is conceded that an active policy of stringent regulation with full implementation would be too expensive, while "killing the golden goose." A number of Community nations have attempted to attract new industries by MNCs, although such a policy is often inconsistent with some of the official viewpoints and public opinion. Programs attracting new industry have been forceful in such nations as France,[14] Belgium,[15] Italy, and Ireland.[17]

During the past five to eight years more has been written about MNCs than any other non-governmental units. A vast amount of literature has become available on the subject in books[18] and scholarly articles.[19] Articles in popular publications have also become more numerous as wintessed in Newsweek, New York Times Magazine, Wall Street Journal, and Business Week, among others. Extensive research projects have also focused on the MNC. One such project at Harvard University's Business School, headed by Professor Raymond Vernon, is sponsored by the Ford Foundation and attempts to analyze all aspects of MNC's operations and their effects on the business world.[20] Another project is that of the British North-American Committee begun in 1969, and is jointly sponsored by the British North-American Research Association, (U.K.), the National Planning Association, (U.S.), and the C.D.Howe Research Institute, (Canada). It is under the general editorship of

of Sperry Lea and Simon Webley.[21] Further continuing research is being conducted under the auspices of the International Chamber of Commerce(Paris),by Sidney E. Rolfe and W.A.P. Manser, among others.[22] Important research has also been conducted by: the New York University Graduate School of Business Administration in their program on "The Multinational Firm in the U.S. and World Economy;" Professor Howard Perlmutter and the Multinational Enterprise Unit of the Wharton School of Finance at the University of Pennsylvania, which also includes Professors Karrs and Root, in addition to research associates; the National Bureau of Economic Research(New York) with Dr. Robert E. Lipsey;[24]Business International which is a research organization in New York;[25]The Center for Multinational Studies(CMS) of the International Economic Policy Association (Washington,D.C.);[26]the U.S. Chamber of Commerce and its Multinational Enterprise Task Force;[27]the National Association of Manufacturers(New York);[28]and the Public Affairs Council.[29] Significant research units in the United Kingdom have also been active. They include: a research project by the Cambridge University Department of Applied Economics, headed by W.B. Reddaway, and sponsored by the Confederation of British Industry;[30]the multinational corporation program at the University of Reading, including a vast data collection program, under the guidance of Professor John H. Dunning;[31]similar programs are also found at the Manchester University Institute of Science and Technology, and the Fabian Society has also done some work in the area;[32] and finally the Trades Union Congress

has continuous research on MNCs.[33]

American industry overseas has come to a point where it is the world's third largest economic force, with only the U.S. and Soviet Union being larger. While foreign investment of MNCs has continuously grown, the rate of output of goods has increased at twice the rate of world GNP. It has been estimated that more than fifty percent of the world economy will be internationalized by the year 2000.[34] Howard Perlmutter has given several reasons why this will be possible.[35]Giant MNCs, such as "Unilever, Nestle, Standard Oil of New Jersey, or Phillips" can acquire capital from wherever they choose, although they are often so prosperous they can obtain capital from their own sources, or can "lend money to banks." They have such sophisticated "production and distribution systems" that they can come out with new products and be available to billions of customers. They can also afford to have their own research and development operations to achieve scientific breakthroughs. Finally, they "can diversify their vulnerability to the economic and political cycles of a given state and to takeovers or acquisition moves by other companies."[36]

This dissertation will, then, deal with the following: Chapter 2 focuses on the methodology of integration; Chapter 3 concentrates on the development of multinational corporations; Chapter 4 deals with the definition of the policy goals of the Community; Chapter 5 focuses on the substantive legal areas and proposals for future laws; and Chapter 6 is the conclusion.

NOTES

1. Christopher Tugendhat, The Multinationals (New York: Random House, 1972),pp.1,4.

2. U.S. Congress, Senate, Committee on Finance, Multinational Corporations, Hearings, before a subcommittee on International Trade and Finance, Senate, 93rd Cong., 1st sess. February 26,27,28; and March 1 and 6, 1973,p. 404. Hereafter cited as Ribicoff subcommittee hearings.

3. F.A. McKenzie, The American Invaders (London: Grant Richards, 1902).

4. Translated from the French by Ronald Steel, 1968 English translation used here exclusively, The American Challenge (New York: Avon Books,1969).

5. "The European Community and the United States,"European Community Background Information (mimeo.),no.15(June 21, 1972),pp.11-12.

6. Wall Street Journal, April 18, 1973.

7. Neil H. Jacoby, "The Multinational Corporation," in The Multinational Enterprise in Transition: Selected Readings and Essays(ed.,) by A. Kapoor and Phillip D. Grub(Princeton, N.J.: Darwin,1972),p.50.

8. Seymour Rubin, "Multinational Enterprise: The Limits of Theory," Law and Policy in International Business,VI, no.2 (Spring,1974),p.313.

9. Ibid.,p.312.

10. Wall Street Journal, April 18, 1973.

11. quoted from Harvey D. Shapiro, "The Multinationals: Giants Beyond Flag and Country," New York Times Magazine, March 18,1973,p.24.

12. Ibid.,p.32.

13. Ibid.,pp.32-35.

14. The French Industrial Development Agency (DATAR) has a program of investment incentives for American firms advising them that France has a "favorable investment climate." The agency says that the new industrial "project will be especially welcome if it: (1)creates new industrial production facilities; (2)is accompanies by substantial new investment; (3)is financed largely by foreign currency surpluses; (4)

introduces new technology; (5)exports, helping thus to strengthen the French balance of international trade." In western and southwestern areas of France and Corsica, cash grants for industrial development are available up to 25 percent for creation. In other assorted zones, tax exemptions will be granted for decentralization from the Paris area. They also emphasize the fact that:"French economic policy lays the stress on private property, personal freedom and flexible planning." DATAR, France in the 1970's: A New Investment Climate(Paris:DATAR, 1970),pp.5,31.

15. Through its laws of July 17,1959;July 18,1959; and July 14,1966, the Belgian government provided for "governmental assistance for the creation, expansion, conversion, and modernization of business enterprises in Belgium. The assistance can take one or more of the following forms: (a) A governmental guarantee of the reimbursement of principal and interest on loans guaranteed by banks and public credit institutions; (b)Reduction of the effective interest rate through governmental subsidies; (c)Capital grants covering part of the cost of investment in equipment and buildings; (d)Construction and acquisition by the Government or the local authorities of industrial buildings to be put at the disposal of the new industries on a rental or leasepurchase basis; (e) Special non-interest bearing loans for industrial research; (f)Exemptions from real estate taxes on buildings,land, and equipment; (g) Exemptions from local taxation on payroll and industrial power; (h)Depreciation at double the normal rate for the first three years of operations; (i)Loss carry-forward without limitation as to time for losses incurred during their first five fiscal years of operation for companies formed within the framework of the expansion laws." Belgian-American Trade Directory,1970 (New York: Belgian-American Chamber of Commerce in the United States,Inc.,1970),p.112.

16. In Italy, the incentives for MNC investment are concentrated in the South. As provided by Law No.853 of October 6,1971, the agency,Istituto Per L'Assistenza Allo Svillupo Del Mezzogiorno, was created. Of the major benefits, new technically organized industrial establishments are eligible for a ten year exemption from paying corporation taxes(0.86 percent on capital reserves plus 17 percent on all income exceeding 6 percent of the company's equity) and from paying an income tax (usually 30 percent) for a period of ten years beginning with the first year the plant produces an income. In addition, investments up to $2.4 million are eligible for cash grants of 35 percent of fixed investments, and such sundry provisions as reduced social security costs(by 30 percent), and reduced freight rates(up to 50 percent). Letter from Carlo Turco, an executive with Istituto Per L'Assistenza Allo Svillupo Del Mezzogiorno, Rome, Italy, January 26,1973.

17. "The Industrial Development Authority,Ireland, provides non-repayable cash grants towards the cost of fixes assets of new industrial undertakings. For grant purposes fixed assets include sites and site development,buildings, new machinery and equipment." (Grants up to 50 percent of fixed assets in the West). Also Ireland has no capital gains tax. "Industrial Ireland Today,"(Dublin: IDA,Ireland,1972).

18. In addition to Raymond Vernon, Professor Jack N. Behrman of the University of North Carolina, is one of the most prolific authors on the subject of MNCS. His works include: Jack N. Behrman, "Assessing the Foreign Investment Controls," Law and Contemporary Problems,XXXIV(Winter,1969),84-94; Jack Behrman,"Can Government Slay the Dragons of Multinational Enterprise?" European Business,XXVIII(Winter,1971),53-62; Jack N. Behrman,"Governmental Policy Alternatives and the Problem of International Sharing," in The Multinational Enterprise,ed. by John H. Dunning (new York: Praeger,1971),pp.289-302; Jack N. Behrman, "Industrial Integration and the Multinational Enterprise," The Annals,403 (September,1972),46-57; Jack N. Behrman, "Multinational Corporations and National Sovereignty" Colombia Journal of World Business(March-April,1969),15-22; Jack N. Behrman, "Multinational Enterprise: The Way to Economic Internationalism?" Journal of Canadian Studies(May,1969), 12-29; Jack N. Behrman,"Promoting Free World Economic Development through Direct Investment," American Economic Review(May, 1960),271-281; Jack N. Behrman, U.S. International Business and Government(New York: McGraw-Hill,1971).

Excellent work done by economists and business experts has resulted in a plethora of literature such as: Lee C. Nehrt,et.al.,International Business Research: Past Present and Future(Bloomington: Indiana University Bureau of Business Research,1970); Arnold D. Chandler,Jr., Strategy and Structure: Chapters in the History of American Industrial Enterprise(Cambridge: M.I.T. Press,1962); Richard D. Robinson, International Business Policy(New York: Holt, Rinehart and Winston,1964); Ray Blough, International Business: Environment and Adaptation (New York: McGraw-Hill,1966); Endel J. Kolde, International Business Enterprise(Englewood Cliffs,N.J.: Prentice-Hall,1968). One cannot also ignore the important work by Brooke and Remmers-- Michael Z. Brooke and H. Lee Remmers, The Strategy of Multinational Enterprise(London: Longman,1970). See also: William A. Dymsza, Multinational Business Strategy(New York: McGraw-Hill,1972); Werner J. Feld, Non-Governmental Forces and World Politics: A Study of Business, Labor and Political Groups (New York: Praeger,1972); Werner J. Feld, "Political Aspects of Transnational Business Collaboration in the Common Market," International Organization,XXIV(Spring,1970),209-238; Werner J. Feld, Transnational Business Collaboration Among Common Market Countries: Its Implication for Political Integration(New York: Praeger,1970).

19. Among the most noteworthy are those found in the Colombia Journal of World Business, the Atlantic Community Quarterly, and Georgetown University's James Brown Scott Society of International Law journal, Law and Policy in International Business. Even the Annals of the American Academy of Political and Social Science dedicated an entire issue to the MNC in September,1972. Some of the best articles in recent years include: Michael F. Adler and C.G. Hufbauer, "Foreign Investment Controls: Objective--Removal," Colombia Journal of World Business,IV(May-June,1969),29-37; Roy L. Ash, "The New Anatomy of World Business," Atlantic Community Quarterly,VIII, No.2(Summer,1970),278-282; George W. Ball, "COSMOCORP: The Importance of Being Stateless," Atlantic Community Quarterly,VI, No.2(Summer,1968),163-170; George W. Ball, "Multinational Corporations and Nation-States,"Atlantic Community Quarterly,V, No.4(Winter 1967-1968); Julius N. Friedlin and Leonard A.Lupo, "U.S. Direct Investments Abroad in 1971," Survey of Current Business,LII, No.11(November,1972),21-34; Jonathon F. Galloway,"Worldwide Corporations and International Integration: The Case of INTELSAT," International Organization,XXIV, No.1 (Summer,1970),503-519; Elliot R. Goodman, "The Impact of Multinational Enterprise Upon the Atlantic Community," Atlantic Community Quarterly,X,No.3(Fall,1972),357-367; and Erich Jantsch, "The World Corporation: The Total Commitment," Colombia Journal of World Business(May-June,1971),5-12.

20. Raymond Vernon, Sovereignty at Bay: The Multinational Spread of U.S. Enterprises(New York: Basic Books,1971). See also: James W. Vaupel and Joan P. Curhan, The Making of Multinational Enterprise(Boston: Division of Research: Harvard Business School,1969); Lawrence G. Franko, Joint Venture Survival in Multinational Corporations(New York: Praeger,1971); Louis T. Wells,Jr., Managing the Multinational Enterprises: Organization of the Firm and Ownership of the Subsidiaries(New York: Basic Books,1972); and Raymond Vernon, The Economic and Political Consequences of Multinational Enterprise: An Anthology(Boston: Division of Research, Harvard Business School, 1972).

21. Sperry Lea and Simon Webley, Multinational Corporations in Developed Countries: A Review of Recent Research and Policy Thinking(London: British-American Research Association, 1973).

22. See W.A.P. Manser, The Financial Role of Multinational Enterprises(Paris: International Chamber of Commerce, 1973) and Sidney E. Rolfe, The International Corporation, with an Epilogue on "Rights and Responsibilities"(Paris: International Chamber of Commerce,1969).

23. Continuing research is now being done by Rao, Shakun and Boddewyn. See A. Rao and M. Shakun, "A Normative Model for Negotiations Between the Multinational Corporation

and a Host Government." Project Working Paper, New York University Graduate School of Business Administration, October, 1972; and J. Boddewyn, "Western European Public Policies Toward American Investors," Project Working Paper. New York University Graduate School of Business Administration, January, 1973. Also at New York University, but outside the MNC project, two other works are worth mention: John Fayerweather, "Elite Attitudes Toward Multinational Firms," New York University Graduate School of Business Administration, Working Paper Series 72-50,1972.

24. A preview of the research is found in Robert E. Lipsey and Merle Yahr Weiss, "Analyzing Direct Investment and Trade at the Company Level," American Statistical Association, Business and Economic Statistics Section, Annual Proceedings for 1972.

25. See, for example, The Effects of U.S. Corporate Investment,1960-1970(New York: Business International,November, 1972).

26. Robert G. Hawkins, "U.S. Multinational Investment in Manufacturing and Domestic Economic Performance," and "Job Displacement and the Multinational Firm: A Methodological Review," Occasional Papers Nos. 1 and 3(Washington,D.C.: Center for Multinational Studies,1972); see also The Benefits and Problems of Multinational Corporations(Washington,D.C.: Center for Multinational Studies, December,1972).

27. United States Multinational Enterprise: Report on a Multinational Enterprise Survey,1960-1970(Washington,D.C.: United States Chamber of Commerce,1972).

28. U.S. Stake in World Trade and Investment: The Role of the Multinational Corporation(New York: National Association of Manufacturers,1972), and Comments on International Activities of U.S.Multinational Corporations(New York: Natio-nation Association of Manufacturers,1973).

29. "Public Affairs Problems of the Multinational Corporation"(Washington,D.C.: The Public Affairs Council,1971).

30. W.B. Reddaway, in collaboration with S.J. Potter and C.T. Taylor, U.K. Direct Investment Overseas,Vols. I and II.(Cambridge: University Press,1968).

31. A few examples of the work at Reading University include J.H. Dunning,ed., The Multinational Enterprise(London: Allen and Unwin,1971); and also J.H. Dunning, Studies in International Investment(London: Allen and Unwin,1971).

32. Wayland Kennet, Larry Witty and Stuart Holland, Sovereignty and Multinational Companies, Fabian Tract No.409 (London: The Fabian Society,July,1971).

33. See, for example, TUC Economic Review,1970 and 1971.

34. This prediction is made by Werner Feld, Non-governmental Forces and World Politics: A Study of Business, Labor, and Political Groups(New York: Praeger,1972),p.21;There has been some disagreement with these rates: See Raymond Vernon, "Future of the Multinational Enterprise," in Charles P. Kindleberger,ed.,The International Corporation: A Symposium (Cambridge: M.I.T. Press,1970),pp.373-400. Another estimate has shown that by 1980, 75 percent of the productive capacity of the world will be under the control of 300 MNCs, and employing 20 percent of the world's labor force. G.P. Spaekaert, "Multinational Business Enterprises," Yearbook of International Organizations,13th ed. 1970-1971,pp.1-28-1029.

35. Howard V. Perlmutter, "Towards Research on and Development of Nations," Address before the symposium on "International Collective Bargaining," sponsored by the International Institute of Labor Studies of the ILO, April 29,1969, Geneva, Switzerland.

36. Werner Feld, Non-governmental Forces and World Politics,p.22.

Chapter II

METHODOLOGY

The methodology to be employed in this dissertation is both legalistic and political in the study of the application of Community laws to MNCs. In the examination of the laws and policies and in the conclusion of the dissertation key elements of integrationist theories will be used in order to judge the impact of the European Community's rules upon the growth of the E.C. as an integrated governing institution.

As far as the specific methodology is concerned, key decisions and proposals of the E.C. will be studied and examined. This will be followed by a study of the E.C. rules. Finally, three integrationist concepts will be applied to see if the E.C. is emerging as a force in the harmonization of the laws or if the E.C. is taking the lead in creating new rules of law for its members.

This dissertation, then, will examine the following issues: the mutual impact of the E.C. on MNCs and vice versa; the resulting political changes occurring in the E.C.; and, if the E.C. is becoming more politically integrated as a result.

Integration and Literature

In recent years we have witnessed the output of major research on political integration. These publications include the works of many authors, among which Karl Deutsch, Ernst Haas and Amitai Etzioni are the most notable. The purpose of this section, however, is to center primarily upon regional integration methodology.

Specifically focusing on regional integration, it is inherently difficult to find a definition that is unanimously acceptable. Ernst Haas sees integration as a process

> whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdictions over pre-existing national states.[1]

Etzioni, on the other hand, regards integration as more of a condition which claims that a particular political community can be considered integrated when it holds effective control over the usage of the tools of violence.[2] It appears that this definition carries with it the notion of the political community to a point where it may be called a state. A widely accepted definition of the state designates it as a "body politic that, when viewed in the context of the world arena, possesses a high degree of formal authority and effective control."[3] Would it not seem, then, that under Etzioni's conditions an integrated political community is truly a state? In discussing the politics of regions, the goal of an integrated political community might be to form a new state, but

could it not still be integrated and not be a state? Of course. This is not purely rhetorical argument, but it does show Etzioni's notion of integration as a "condition" to be too limited, because the goal of the European Community, for example, is integration of the member nations, but not necessarily control of the tools of violence.

Karl Deutsch refers to political integration as both a process and a condition. Unlike Etzioni, Deutsch regards integration as a condition where people have

> attained within a territory a sense of community and institutions and practices strong enough and widespread enough to assure for a long time, dependable expectations of peaceful change among its population.[4]

Leon Lindberg, on the other hand, presents a much milder view of integration. He defines regional integration as a two-fold process:

> 1. the process whereby nations forego the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs.
>
> 2. the process whereby political actors in several distinct settings are persuaded to shift their expectations and political activities to a new center.[5]

Jacob and Teune see the implication of a sense of community involved in political integration. Basically, it is a "relationship of community among people within the same political entity."[6] Further, this relationship is regarded as "collective action to promote mutual interests."[7]

So far, the discussion of integrationist literature has focused only on non-structural political and social changes

could lead to integration. However, there are some structural terms which need to be examined. They are confederation, federation, and supranationalism.

A confederal system, or a confederation, is essentially comprised of: "An association of states that seek to achieve their national objectives through common political or economic institutions."[8] The central government is subordinate to the regional units, and the states have the right of secession from the union. Unanimous consent of the member nations is usually required for legislative action by the central authority. Direct action by the central authority can usually be directed only to the governments and not to the individual citizens. Any direct compulsion on individual citizens is politically awkward when the member nations want to maintain the central government in a weak position.[9] So, the dealings with individuals are handled indirectly through the governments. The laws of the confederations most often become valid in a member state if that state's government approves it. In confederations, the institutions are not strong especially in areas such as organization, personnel, budget or jurisdiction. In any case, they are weaker than the same types of institutions in the member states.[10] When the institutions are strengthened, the confederacy takes on the characteristics of a federation. In the confederation, member nations continue to maintain full sovereignty, while in the federation, "political authority is divided by a constitution between a central and a regional unit of government."[11] The European Community

embodies the supranational principle, and is part-way between a confederal arrangement, and an integrated federal system.

In the case of supranationalism, power is "exercised by international institutions to make majority-vote decisions that are binding upon all member states or their citizens."[12] It further "involves a transfer of decision-making authority in agreed areas from constituent units to a central body."[13] It has been stated that the institutions of the European Community embody the supranational principle since they have the power of making decisions binding on the Community member nations. The Commission is a political community in the sense that it possesses that supranational power which is usually characteristic of a federal system. The entire European Community is not yet an integrated federal system, although its Council of Ministers, Commission and Court make binding rules and decisions.[14] And the Community exercises jurisdiction only in certain economic and social activities while not exercising any power over other key political functions such as military policy.

Supranationalism can be possible when the member nations voluntarily give up a portion of their sovereignty to a central authority. Federalism, which has been applied only in nation-states, can be possible when there is a diffusion of power between the central governmental authority and the geographic subdivision within that nation. Both the central and regional governments share the constitutionally granted powers, and both directly affect individuals. Also, the focus of

sovereignty is on the central government.[15] The difference between federal powers and supranational powers is that an international organization can possess supranational characteristics so that majority-vote decisions are binding on the member nations, while sovereignty is maintained. Under the federal system all political power is constitutionally shared. The federal system is a form of government in which the power is divided among one central political authority and constituent political units which share the power with the central authority. In a supranational system, the national governments maintain the vast majority of their sovereignty, but delegate some authority to an international institution. The E.C., then, is a supranational organization inasmuch as there is:

> 1. Creation of a supranational area, in which there is the expression of a solidarity of will of duration,
>
> 2. A transfer of competences in the legislative, judicial, and executive sphere to Community organs, competences never before equaled by international relations,
>
> 3. The exercise of common powers attributed to common institutions enjoying an autonomy in international relations.
>
> 4. The effect of common power characterised by the obligatory force or community acts, and the immediacy of these acts on the nationals of the Member States.
>
> 5. The presentation of a unitary Community from an exterior point of view with exterior functions exercised by the common institutions in the name of the States.[16]

Of special importance in this sector is the Commission of the European Community: "the existence of the Commission and the possibility of delegating to it problems which are too delicate to be solved by inter-governmental negotiations allowed the governments to divest themselves of power and to transfer

decisions to an institution that was supranational in the Community sense."[17] To date, however, the European Community is truly supranational only in the sectors of a common agricultural policy, and a common external tariff.

A variety of definitions of political integration abound, but it is difficult to identify the "integrating" from the "integrated" political community. Integration is a relative notion, and there must be a starting point from which to gauge the progress of the integrating process. Common sense tells us that for an entity to be considered a political community, it must already be at least slightly integrated. A political entity that has no integrative qualities is "disintegrated" and cannot be effectively considered a political community. The scale of integration for a political community ranges from slight integration to complete intergration. The base of measurement, then, is the "threshold" where a group of people can be considered a political community.[18]

In order to construct a measuring device for integration, there must be a number of variables to work with to assess the degree of integration. Numerous sets of such indicators have been cited in the literature,[19] and Jacob and Teune's list of ten integrative factors also appears to be useful. Before integration will be effectuated, there should be a degree of consensus among the people involved. The following ten factors may "exert integrative influence upon people" so that such a consensus may be attained.[20]

> (1) geographical proximity; (2) homogeneity; (3) transactions, or interactions, among persons or groups; (4) knowledge of each other; (5) shared functional interests; (6) the "character" or "motive" pattern of a group; (7) the structural frame or system of power and decision-making; (8) the sovereignty-dependency status of the community; (9) governmental effectiveness; (10) previous integrative experience.[21]

Each of the integrative indicators will be discussed at length since they constitute a good measuring device for regional integration.

(1) Proximity. The authors agree with the generally accepted notion that the closer people are to one another, there is a greater likelihood that they could become politically integrated.[22] This does not preclude the fact that proximity alone may not cause quite the opposite effect as seen in Northern Ireland in recent years. Nonetheless, the notion of "region" usually includes people who live in the same contiguous area. Oran Young says that without contiguity as a pre-requisite, "the term 'region' is apt to become so inclusive that it is useless."[23]

In international politics, a region is thought of as including "a limited number of states linked by a geographical relationship and by a degree of mutual interdependence.[24] Regionalism advocates the forming of such groups as nations, based, at least in part, on proximity.[25]

(2) Homogeneity. A politically integrated group should have certain levels of social homogeneity.[26]: "Income," "education," "status," "religion," "race," "language," "ethnic identification," "attitudes," (i.e., perceptions, fears,

have used integration in reference to the notion of a "security-community,"i.e.,. "reliable expectations of nonviolent relations."[33] Members of a political community must have the knowledge and reliable expectation that there will not be any violent relations within the community.[34]Also, familiarity with the national characteristics is insufficient. There must be understanding, and if integration is to evolve from such a relationship, the understanding of other national "characters" must be sufficiently positive to cause people to seek closer association.[35]

(5) Functional interest. The hypothesis of the functional interest factor is whether "the functional interests of the bulk of a community are sufficiently similar so that they will be advanced by the development of common political ties.[36] Functional interests concern people's needs and what they find valuable. Six western European nations formed the European Coal and Steel Community, for instance,in 1951[37]to promote each of their own interests in coal and steel, but each national interest was now to complement the interests of other member nations. The advancement of policies such as peace, education, and others, as well as economics, are not only policies, but are complementary in functionalist oriented organizations.

(6) Communal character. Community behavior which aims at establishing or uniting political communities, and instilling community or social motive in them, has been known to political scientists for a long time. Forces aimed at forming a unified spirit are found in such concepts as nation-building,[38]

nationalism and patriotism, which are enjoined to stir a community spirit among the people. Motivation for regional integration, on the other hand, has been relatively scarce. There must be a "will" to integrate beyond the national lines and the desire to create a new communal and community character,[39] without which integration cannot successfully occur.[40]

(7) The Structural Frame. The major point of this factor is "whether the system makes any difference in the amenability of a community to cooperative relationships."[41] The structural framework of a political community is just as important as any of the other preceding factors in determining whether or not integration of the community is possible or feasible. The following aspects of the community's formal or informal construction should be evaluated and see if the nature of the community is :

(a) pluralistic or monolithic
(b) organized hierarchically or non-hierarchically
(c) socially stratified or socially mobile
(d) centralized or dispersed in terms of political power or authority
(e) internally integrated or not internally integrated

All these aspects of the community are determinants of the ability of such a community to cope with changes that would need to be implemented should integration take place. This ability, of course, is predicated on the fact whether the community is disposed toward integration.[42]

(8) Sovereignty-dependency status. A political community is well integrated when it has attained complete sovereignty and is autonomous, i.e., not dependent on any other

community. Sovereignty relies on political cohesion within the community and autonomy in regards to anyone outside the community. Perfect sovereignty is virtually unattainable in the modern world, but perceived sovereignty often has similar effects.[43]

(9) Governmental Effectiveness. The hypothesis there is that "governmental effectiveness is necessary to retain the loyalty of the members of the community,"[44] and this loyalty is essential if integration is to develop or at least be maintained. Governmental ineffectiveness will push people to demand changes in the present mode of integration.

(10) Previous Integrative Experience. It has been hypothesized that prior experience in integrative behavior may be helpful in developing new modes of integration. Cooperation in the past could have a spillover effect, thus speeding up the rate of integration. The chances for new attempts are usually good, even though prior attempts may have resulted in failure or were not very effective.[45]

The political integration of the European Community is a long, complex process. Its integrative purpose is primarily economic and political unification. Although the goal may be accomplished in the very distant future, the integrative process has begun.

The Model

After examining these integrationist concepts, one still is wary of utilizing some of these concepts or models described

above. The Jacob and Teune paradigm, for example, is largely static and descriptive. We need another tool of measurement to see the degrees of movement along a continuum. A number of concepts should be applied to see if the E.C. is emerging as a force in the harmonization of the national laws or if the E.C. is taking the lead in creating new rules for its members, i.e. as an impetus to European integration.

The model to be operationalized in this dissertation is a continuum of integration adapted from "a scale of the locus of decision-making,"[46] described by Leon Lindberg and Stuart Scheingold. The model-- Regulation of MNCs and Political Integration of the E.C.-- will show the impact of MNCs on E.C. integration. The impact can be slight, medium in intensity, or great. A slight impact could be seen in terms of policy recommendations. An impact of medium intensity could be exemplified by harmonization. Finally, great impact may be seen in cases where the E.C. could take the lead to develop new laws.

Lindberg and Scheingold presented the following scale of the "locus of decision-making"in order to describe the intensity of the Community's system,i.e.,in terms of "the relative importance of Community decision-making processes as compared with national processes in any given area."[47] Their model was designed for use with general policy decisions and hence, was adapted in the form shown in Figure 1 to fit the needs of this study in the specific area of regulation of MNCs and political integration of the E.C.

A SCALE OF THE LOCUS OF DECISION MAKING

LOW INTEGRATION

1. All policy decisions by national processes
2. Only the beginnings of Community decision processes
3. Policy decision in both but national activity predominates
4. Policy decisions in both but Community activity predominates
5. All policy decisions by joint Community processes

HIGH INTEGRATION

Leon Lindberg and Stuart Scheingold's purpose in designing the "scale of the locus of decision-making," was "to find a way of describing the[political] system's intensity, that is, the relative importance of Community decision-making processes in any given area."[48] Their scale has been adapted in the following model shown in Figure 1, which includes a continuum scale for measuring the regulation of MNCs and political regulation of MNCs and political integration of the E.C.(Figure 1 will be repeated at the end of this work in its completed form.)

The continuum scale will show the increase in political integration on the horizontal plane beginning with the level of most integration when the member states of the Community are most dominant, and end with the level of highest integration when the Community is dominant. The following characteristics of integration will be discussed and operationalized:

(a) No action by the Community, data collection, state regulates. In this first situation where the member states are dominant, the characteristics of the Community include no Community action on its own, and in the area of MNC regulation, it

Figure 1

Regulation of MNCs and Political Integration of the E.C.

	States Dominant----------(continuum)----------Community Dominant					
	No Action Data Collection States Regulate	Policy Recommendation by Community	Harmonization	Regulations of Community with enforcement	Community Regulation Pre-empts the field	Community Regulations Exclusive
Commercial Problem Areas						
Establishment						
Competition						
Merger						
Abuse						
State Aids						
State Monopolies						
SPILLOVER						
Social Changes						
Stockholder management						
Labor-Management						
Tax						
Transfer of technology						

KEY:
x=actual regulation
(x)=proposed regulation
a=EC rule or Directive
b=Convention between EC states
c=Court rulings

functions as a data collection agency. In addition, the states perform all the regulatory functions independently of each other.

(b) Policy recommendations by Community. As the Community evolves along the continuum toward integration, the next step is the initiation of policy recommendations by the Community. The organization recommends international conventions and also legislation by the member states. Many international organizations have the power to make recommendations to their members regarding treaties and national legislation. Although the member nations are not compelled to accept the proposals, this function cannot be considered irrelevant because such recommendations are often the products of significant technical research and also of considerable political compromise.

(c) Harmonization. Harmonization of the laws of the member states is the next logical step. This term and function generally connotes the reducing "of differences among the laws of the Member States."[49] Harmonization could lead toward uniform rule, but can "stop short of that type of a result."[50]

(d) Regulations of Community with enforcement. This next step toward a more dominant role played by the Community would include the creation of specific regulations and their application. This task can also include arbitration or adjudication of differences in interpretation of the way these regulations are to be enforced. Thus, the Community would have a semblance of some governmental authority, with the power to impose coercive sanctions, while the states would continue to

maintain some power in the area of MNC regulation.

(e) Community regulation pre-empts in the field. The regulatory power of the Community is further increased with the states having minimal regulatory ability.

(f) Community regulations are exclusive. This final step is where the Community has sole control over regulations affecting MNCs operating in the European Community area. All national laws and regulations have been either assimilated into Community law or discarded in favor of better regulations. Thus, the Community is dominant in the regulation of MNCs.

The commercial problem areas to be discussed and cross-tabulated with the six above-mentioned integration factors include: the rights of establishing enterprises in the Community, the problem of enforcing the freedom of competition, company merger questions, questions regarding abuse of dominant positions in the market, state aid to enterprises questions and problems regarding state monopolies.

Figure 1 includes a slot for spillover, because as the Community begins dealing with more commercial problem areas, there is a greater propensity for spillover. The term actually characterizes "the accretion of new powers and tasks to a central institutional structure, based on changing demands and expectations on the part of such political actors as interest groups, political parties, and bureaucracies."[51] Spillover is understood as a movement (by the organization) from one activity to another.

"Spillover," as formulated by Haas, includes "perceived linkages between problems arising out of their inherent technical characteristics and linkages deliberately created or overstated by political actors."[52] In effect, spillover is the "expansive logic of sector integration," and "if actors, on the basis of their interest-inspired perceptions, desire to adapt to integrative lessons learned in one context to a new situation, the lesson will be generalized."[53] Vital to the understanding of the notion, is the fact that spillover:

> involves the learning theory principle that frequency of association or reinforcement contributes to the strengthening of habits. Moreover, spillover includes from learning theory the process of generalization: namely that agreements in one sector are likely to be generalized to other agreements in similar sectors.[54]

One study of the European Coal and Steel Community(E.C.S.C.) showed that not many individuals directly involved with coal and steel energetically supported the organization. In the few years following its establishment, political and trade union leaders became strong supporters of the E.C.S.C. In addition, these leaders, witnessing the progress made by the E.C.S.C., became proponents of additional attempts toward European integration such as the E.E.C. So, there was a visible tendency for those individuals who saw progress from supranational organizations in one area to be generally favorable toward integration in other areas. And so, it has been suggested that decisions made by such international organizations could be integrative. "Earlier decisions spill-over into new functional contexts, involve more and more people, call for

more and more inter-bureaucratic contact and consultations, meeting the new problems which grow out of earlier compromises."[55] Therefore, an "expansive logic" contributed to "spillover" from an area to another. This is a process by which "nations 'upgrade' their common interests."[56]

As used in this study, spillover refers not only to the expansion of functions of the existing institutions because the initial goals of the organization cannot be achieved without such an expansion, but it also refers to an increase in governmental authority. This functional expansion reflects added powers to the organization which is governmental in character. Spillover occurs when there is a need to upgrade the common interests of nations, and it may also occur when the performance of existing institutions is inadequate because of a limited grant of governmental powers to the organization. Thus, the functional task expansion and consequent increase in governmental powers, designed for maximum performance, are direct outgrowths of the previous institutional programs and the reassessment of the groups's expectations.[57]

By utilizing the spillover concept, all-inclusive integrative movements can be analyzed without the need to have perfect agreement among all members of a community. Integration can simply advance through a succession of realignments of expectations as well as demands, while each member attempts to derive maximum benefits from those functions. The use of this concept allows "the projection of integrative trends without having to assume profound consensus among the states."[58]

Spillover, then can lead to the possible social changes that could occur in the Community. The following social changes also are found in Figure 1: stockholder management, labor-management, tax re-structuring, and transfer of technology. These four changes could also become new added functions to be dealt with by the Community's organizations.

When the model is operationalized, at the end of this study, the regulations (both actual and proposed) will be categorized according to the following key: x= actual regulation; (x)= proposed regulation; (a)= E.C. rule or Directive; (b)= Convention between E.C. states; and (c)= Court ruling.

The above analytical model will be used to measure the political integration within the European Community in terms of the regulation of multinational corporations in the commercial problem areas of establishment of corporations, competition, merger, abuse of dominant positions within the market, state aids and state monopolies. Spillover, if it is occurring, could result in bringing about the specific social changes listed above.

As the Community has increased activity in certain regulatory areas relating to MNCs, and then becomes more dominant in those areas, there is a greater propensity for increasing levels of integration. And, as spillover occurs, there is a greater propensity for measurable increases in the Community's governmental power, as will be illustrated in the operationalization of the analytical model in Chapter 6.

The next chapter will deal with the nature of the multinational corporations, and the need for a Community Law to regulate them.

NOTES

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2. Amitai Etzioni, Political Unification (New York: Holt, Rinehart and Winston, 1965), p. 4.

3. Harold D. Lasswell, "The Garrison-State Hypothesis Today," Changing Patterns of Military Politics, ed. by Samuel P. Huntington (New York: The Free Press of Glencoe, 1962).

4. Karl W. Deutsch, et al, Political Community and the North Atlantic Area (Princeton: Princeton University Press, 1957)

5. Leon Lindberg, The Political Dynamics of European Integration (Stanford: Stanford University Press, 1963).

6. Phillip E. Jacob and Henry Teune, "The Integrative Process: Guidelines for Analysis of the Bases of Political Communities," The Integration of Political Communities (Philadelphia: J.B. Lippincott Co., 1964), p. 4.

7. Ibid., p. 5.

8. Jack C. Plano and Roy Olton, The International Relations Dictionary (New York: Holt, Rinehart and Winston,1969), p. 277.

9. J. Roland Pennock and David G. Smith, Political Science (New York: Macmillan, 1964), p. 256.

10. Karl W. Deutsch, Politics and Government, How People Decide Their Fate, 2nd ed. (Boston: Houghton Mifflin, 1974) pp. 211-212.

11. Plano and Olton, Op: Cit., p. 277.

12. Ibid., p. 299.

13. Ibid.

14. Ibid, pp. 295-296.

15. Ibid., p. 181.

16. Dusan Sidjanski, Dimensions Europeenes de la Science Politiques (Paris: Pichon & Duran-Auzias, 1963), pp. 22-23.

17. U. W. Kitzinger, The Politics and Economics of European Integration: Britain, Europe and the United States (New York: Praeger, 1963), pp. 135-138.

18. Jacob and Teune, Op. Cit., p.8.

19. One such set was devised by Claude Ake who hypothesized that a political system's drive for integration is effective if it is authoritarian, consensual, 'identific', and paternal. For each point, he listed at least five empirical indicators which are extremely difficult to test. They could be useful, but would pose a sizeable funding problem for each individual indicator, which is beyond the scope of this paper. Claude Ake, "Political Integration and Political Stability: A Hypothesis," World Politics,XIX(April,1967),p.486. This theory is further elaborated in Claude Ake, A Theory of Political Integration(Homewood,Ill.: Dorsey Press,1967).

20. Jacob and Teune, Op. Cit., p.11.

21. Ibid.,p.12.

22. Ibid.,p.16.

23. Oran Young, "Professor Russett: Industrious Tailor to A Naked Emperor," World Politics,XXI(April,1969),p.488.

24. J.S. Nye,Jr.,"Introduction," International Regionalism: Readings,ed.,by J.S.Nye,Jr.,(Boston: Little,Brown and Co.,1968),p.vii.

25. Bowett discusses the history of regionalism in D.W. Bowett, The Law of International Institutions(New York: Praeger, 1963),pp.135-138.

26. An approach to the examination of homogeneity is looking at non-homogeneous characteristics,i.e., cleavages. Rae and Taylor propose a number of ways of measuring the depth of cleavages. Douglas W. Rae and Michael Taylor, The Analysis of Political Cleavages(New Haven: Yale University Press,1970).

27. Jacob and Teune, Op. Cit.,pp.18-19.

28. The concept of transaction analysis in integration theory is further elaborated in: Robert C. Angell, "The Growth of Transactional Participation," Social Processes in International Relations: A Reader, ed. by Louis Kriesberg(New York: John Wiley and Sons,1968),pp.226-245; Karl W. Deutsch, "The Propensity to International Transactions," in Kriesberg,pp.246-254; and Helen S. Feldstein, " A Study of Transaction and Political Integration: Transnational Labor Flow Within the European Economic Community," Journal of Common Market Studies(Oxford),VI, No.1(September,1967),pp.24-25.

29. Jacob and Teune, Op. Cit.,p.23.

30. For further discussion, see Karl W. Deutsch, "Toward an Inventory of Basic Trends and Patterns in Comparative and International Politics," International Politics and Foreign Policy, Rev. ed., ed. by James N. Rosenau (New York: The Free Press, 1969), p.503.

31. Jacob and Teune, Op. Cit., pp.26-27.

32. J.S. Nye, Peace in Parts: Integration and Conflict in Regional Organization (Boston: Little, Brown and Co., 1971), p.48.

33. Ibid., p.47.

34. See Karl Deutsch, et. al., Political Community and the North Atlantic Area: International Organization in Light of Historical Experience (Princeton: Princeton University Press, 1957).

35. Jacob and Teune, Op. Cit., p.28.

36. Ibid., p.29.

37. "Preamble and Selected Articles of the Treaty Establishing the European Coal and Steel Community, April 18, 1951," The Political Development of the European Community, ed. by Howard Bliss (Waltham, Mass.: Blaisdell, 1970), pp.43-46.

38. Karl W. Deutsch and William J. Foltz, eds., Nation-Building (New York: Atherton, 1963); see also Lucian W. Pye, Politics, Personality and Nation-Building (New Haven: Yale University Press, 1962).

39. See Ronald Inglehart, "An end to European Integration?" in Regional International Organizations/Structures and Functions ed. by Paul A. Tharp Jr. (New York: St. Martin's Press, 1971), pp.52-72.

40. Jacob and Teune, Op. Cit., p.35. Also crucial to the understanding of an analysis of a political community and its communal character is Deutsch's definition of a political community. It is "a community of persons in which common or coordinated facilities for the making of decisions and the enforcement of commands are supplemented by habits of compliance sufficiently widespread and predictable to make successful enforcement in the remaining cases of non-compliance probable at an economically and culturally feasible cost; Karl W. Deutsch, Political Community at the International Level (Garden City: Doubleday, 1954), p.40.

41. Jacob and Teune, Op. Cit., p.35.

42. Ibid.

43. Ibid.,p.38.

44. Ibid.,p.43.

45. Jacob and Teune, Op. Cit.,p.44.

46. Leon Lindberg and Stuart A. Scheingold, Europe's Would-Be Polity: Patterns of Change in the European Community (Englewood Cliffs: Prentice-Hall,1970),pp.67-68.

47. Ibid., p. 69.

48. Ibid.,p.68.

49. Eric Stein, Harmonization of European Company Laws, National Reform and Transnational Coordination(Indianapolis: Bobbs-Merrill,1971),p.11.

50. Ibid.

51. International Encyclopedia of the Social Sciences, VII,p.523.

52. Nye, Peace in Parts,Op. Cit.,p.65.

53. Ernst Haas, Beyond the Nation-State(Stanford: Stanford University Press,1964),p.48.

54. James E. Dougherty and Robert L. Pfaltzgraff Jr., Contending Theories of International Relations(Philadelphia: J.B. Lippincott Co.,1971),pp.282-283.

55. Ernst B. Haas, "International Integration: The European and the Universal Process," International Organization,XV(Autumn,1961),p.372.

56. Dougherty and Phaltzgraff, Op. Cit.,pp.294-295.

57. International Encyclopedia of the Social Sciences, p.523.

58. Ibid.

Chapter III

The Nature of Multinational Corporations and the European Community: the Need for a Common Law

> Four senior executives of the world's largest firms with extensive holdings outside the home country speak:
>
> Company A: 'We are a multinational firm. We distribute our products in about 100 countries. We manufacture in over 17 countries and do research and development in three countries. We look at all new investment projects--both domestic and overseas--using the same criteria.'
>
> Company B: 'We are a multinational firm. Only 1% of the personnel in our affiliate companies are nonnationals. Most of these are U.S. executives on temporary assignments. In all major markets, the affiliate's managing director is of the local nationality.'
>
> Company C: 'We are a multinational firm. Our product division executives have worldwide profit responsibility. As our organizational chart shows, the United States is just one region on a par with Europe, Latin America,Africa,etc.,in each product division.'
>
> Company D(non-American): 'We are a multinational firm. We have at least 18 nationalities represented at our headquarters. Most senior executives speak at least two languages. About 30% of our staff at our headquarters are foreigners.'[1]

According to the four executives, the multinational corporation can be prestigious, progressive, dynamic, and future-oriented, when compared with local companies. Perlmutter found that no matter what the measurement-- "ownership criteria, organizational structure, nationality of senior executives, percent of investment overseas,etc.,"-- such executives show pride in their firm being multinational.[2]

Such a pride may stem from the vast economic successes of MNCs. There is no doubt that the large MNCs would not have been worthy of pride if they had not brought the fruit of financial happiness with the development of new markets. Yet, as far as governments are concerned, the control of these enterprises is no simple task.[3] In any case, a MNC is a cluster of companies of various nationalities which has dispersed managerial centers and is linked by a common ownership and a common management strategy, and whose management may ideally be selected without regard to nation of origin.[4]

To understand multinational corporations and their activities, we must first examine the basic aspects of the development of MNCs,[5] through an analysis of the steps in arriving at multinational status.

To best illustrate the steps that an enterprise must pass through, the following list of steps was drawn up by Weston and Sorge. Weston and Sorge's contention in this model is that most companies progress along this pattern:

(1) Development of a strong product for domestic sales.
(2) Import of raw materials or parts.
(3) Exports through brokers.
(4) Direct export sales.
(5) Foreign branch sales office.
(6) Licensing.
(7) Licensing with partial ownership.
(8) Joint ventures.
(9) Wholly owned manufacturing branch-plants of subsidiaries.
(10) Multinational management organization.
(11) Multinational ownership of equity securities.[6]

Various estimates have been made concerning American firms, and how they rank on this scale. Estimates show that

more than 100,000 firms are at step 4. Less than that figure have arrived at steps 5 and 6. Furthermore, approximately 45,000 U.S. firms have arrived at steps 8 and 9. Finally, about 200 of the American companies have reached steps 10 and 11.

(1) Development of a Strong Product for Domestic Sales. Before a company is ready for the international market, it must have some basis for an international operation,i.e., a good reliable product on which it can base its sales. The company must be able to efficiently sell the product in the home country first, or else going multinational will not solve inefficiency at home. The international market is so much more complicated and more difficult to penetrate that major mistakes abroad no doubt will harm domestic operations.[8]

(2) Imports of Raw Materials or Parts. Importing raw materials or parts gives the enterprise its first contact with the international market, although these imports are to be used only in products for the home country.[9]

(3) Exports through Brokers. At this point, the company begins to, hopefully, better understand the international market. The company has to decide whether to use brokers or its own staff to export and sell their commodity. It is an important step because international brokers will probably benefit the firm more at the outset than personnel inexperienced in international dealings.[10]

(4) Direct Export Sales. When a company wishes to begin exporting goods and develop its own staff department for it, the most logical plan will be to export industrial items because these do not need to have a large organization. Furthermore, this is only feasible when the items are of a higher quality, and are cheaper, than products of the competitors.[11]

Any company planning to export can get a great deal of information and cooperation regarding exports from both the State Department and the U.S. Department of Commerce. For example, the Bureau of International Commerce of the U.S. Department of Commerce has an Office of Export Development which can assist U.S. firms to find representatives in almost any nation. Their Agent-Distributor Service has, since 1959, received more than 2,500 requests for contacts to sell and distribute American products overseas for a mere $10.00 filing fee with the Department of Commerce.[12]

In addition to the Agent-Distributor Service, the Department of Commerce has numerous other ways of helping U.S. businessmen sell their products abroad. These include: U.S. Trading Centers(including between-show-promotions and the J.E.E.P.--Joint Export Establishment Program); commercial exhibitions, catalog exhibitions, trade missions (including I.O.G.A.--Industry Organized Government Approved--trade missions); In-Store Promotions; World Traders Data Reports; Trade Opportunity Program; Export Mailing List Service; Target Industry Program; business counseling and through its publications.[13] These federal programs and others relating to overseas

investment incentives have helped the American business community in many ways but have not been without controversy.[14]

(5) Foreign Branch Sales Office. A sales office in a foreign nation can increase profitability once some sales are made before establishment of the office. Obviously, the enterprise will benefit because: the staff will be able to further familiarize itself with that market; the staff may realize that a change in the product is necessary to fit local needs; technical staff may be added if service is required on the product.[15]

(6) Licensing. Before the manufacture of the product in a foreign nation can take place licensing may be necessary. Often there is no choice, or the host government may not allow establishment of manufacturing operations at all. If there is a choice in licensing a local enterprise or a foreign one, companies may choose licensing because: there is a possibility of regulations imposed which may be highly restrictive and thus, the "problems of foreign conditions" can be assumed by the licensee; and, it is probable that licensing can be a very profitable investment.[16]

(7) Licensing with Partial Ownership. "Licensing a foreign-owned company with minority ownership interest on the part of the licensing firm may represent a long-term method of participating in the future profits from the licensing operation."[17]

(8) Joint Ventures. Joint ventures are often the only opportunities for a U.S. company to break into a foreign market. Table 1 illustrates this point.

(9). Wholly Owned Manufacturing Branch Plants or Subsidiaries. Wholly owned manufacturing plants in foreign countries have both specific and historical advantages, as well as some disadvantages. It has been considered as the approach which is logical for small-scale operations in areas where products or services are distributed in a fashion which is relatively the same as in the home country. This also is a pragmatic approach in cases where the host country is more than willing to allow the commencement of operations due to the type of business and amount of capital and level of technology to be brought in. In such a case, the benefit is not only to the parent company but to the host nation as well.

Great Britain has been a shining example of this type of investment. A 1965 study shows that 77 percent of American business assets there were in this category, while 14 percent were held by subsidiaries which have at least 50 percent American ownership.[19] Also, in Britain, ESSO-U.K., for example, has been wholly owned by Standard Oil of New Jersey(now EXXON) since the latter part of the 19th century.[20]

Table 2 gives a more detailed listing of advantanges and disadvantages.

(10) Multinational Management Organization. There are two basic types of organization: the "world corporation format" and "international division format." In each instance,

Table 1

Reasons for use of Joint Ventures[18]

Reasons for foreign company participation with a U.S. firm

Business considerations:

1. To obtain franchise license, or other special concessions held by the foreign partner
2. To obtain local partners whose influence or knowledge of local conditions is required
3. To take advantage of manufacturing facilities or distribution organization of an existing company
4. To obtain local capital to finance the venture
5. To receive participation in exchange for licensing process or formation of joint venture representing a pooling of know-how from two or more participants
6. To share risk with local investors because of special economic or political considerations
7. To permit small U.S. concerns to expand abroad with minimal capital outlay

Legal and Tax considerations:

8. To take advantage of tax or duty exemptions held by an existing company
9. To comply with foreign stipulations requiring local participation or reserving certain kinds of business for nationals
10. To avoid higher tax rates sometimes applied to companies which are wholly foreign owned
11. To utilize tax credits which may be available to an existing company

Political considerations:

12. To obtain official and popular goodwill where local pride or nationalism is an important factor.

Pitfalls and disadvantages to U.S. firms of foreign capital participation

1. The danger of deadlock where foreign and local control are evenly divided and closely held
2. The risk of being 'frozen out'if local interests hold majority control
3. If the U.S. company has majority control, the risk of legal action or obstructionism from dissatisfeid minority shareholders
4. Conflict of interest between local shareholders seeking high return and the usual American objective of plowback and expansion

Table 2

Appraisal of Use of Wholly Owned Foreign Subsidiaries[21]

Advantages of establishing wholly owned subsidiaries abroad:

1. Earning are not subject to U.S. tax until remitted to the U.S. as dividends
2. Effective rate of tax on profits(Dividends to the parent company) may be less than the rate under a branch form of operation
3. Subsidiary company abroad--
   a) Has same status as local company
   b) Offers possibility for a variety of functions
   c) Is particularly suited when several exporters combine in export trading or when exporter associates with an overseas concern in marke- certain goods

Disadvantages of establishing wholly owned subsidiaries abroad:

1. Dividends from foreign subsidiary operation are not included in 85 percent dividends-received deduction
2. Must obtain ruling from Internal Revenue Service that exchange of branch assets for stock subsidiary(in case of switch of the form of foreign operations) is not for tax avoidance
3. If a country imposes a dividend-witholding tax in addition to the taxes it imposes on profits (commercial and industrial) earned within the country, the total effective tax rate on distributed profits of a subsidiary may be greater than that for branch operation
4. Subsidiary may be subject to the double taxation in the absence of treaty agreement between the two countries as to double taxation, provided that the subsidiary is managed and directed by the parent
5. Subject to local laws and regulations:
   a) Labor legislation
   b) Employment of nationals
   c) Payroll rules of nationals
   d) Business or company laws, e.g. licenses
6. Possible government discrimination or nationalization

Wholly owned operations are historically favored for these reasons:

1. Ease of administration and quality control
2. Maximum security for proprietary business methods, and know-how
3. Maximum financial flexibility with respect to dividend policy, reinvestment of earnings, intercompany

Table 2
(continued)

transaction
4. No necessity to share profits with outsiders
5. U.S. tax advantage if parent company owns 95 percent or more of subsidiary-- in certain loss situations, such as expropriation
6. Absence of any problem of relationship with local owners

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policy decisions are made in the home office, while directors in the subsidiary offices are given the opportunity to use their own manner of carrying out those policies. Planning and control of the affiliates or subsidiaries is done in the home office. In the "world corporation format" one finds "the basic business functions of research and development, manufacturing, marketing, and finance are merged for domestic and foreign operations."[22] In the "international division format," it is clear that "all foreign operations are separated from their domestic counterparts in an 'international division.'"[23]

(11) Multinational Ownership of Equity Securities. It has become a practice for more and more corporations that have operations in many foreign nations to offer open participation in their ownership. This was seen as a viable plan by Frederick G. Donner in 1967, who, at that time, was chairman of the board at General Motors. He said:

> In my view, one of the greatest challenges in the years ahead is to find ways to accomplish the objective of world-wide participation in the ownership of multinational business... What we in General Motors would like

> to be able to extend the same opportunity for stock ownership participation to people overseas on the same basis as it is made available to people in the United States...Our desire to broaden our base of ownership is consistent with General Motors' world-wide business approach, as well as being aimed directly at our larger objective to help raise the level of economic opportunity wherever we operate in the world.[24]

At G.M. spreading of the ownership was encouraged in the following ways: publishing of annual reports in four languages; publishing of annual report briefs in 30 European newspapers and magazines; "stock listed in four major stock exchanges overseas," and "secondary offerings of stock were made abroad issued in the form of Bearer Depository Receipts Unit with a 'unit' representing one-twentieth of a full share of common stock to reduce the unit price for small investors." The outcome of this policy was that about 6.5 million shares were dispersed among holders in 80 nations.[25]

Weston and Sorge agree that the movement toward multinational ownership of multinational corporations is a favorable trend, and that it is a "salutory development toward achieving multinational goodwill."[26]

Thus, the number and types of MNCs change as corporations evolve into MNCs and go through the steps of development where multinational status is reached.

Historical Development

Multinational industrialists have emphasized the point that MNCs have been around for a long time and there is no need to fear, or be shocked by their enormous growth rate

during the past two decades. Christopher Tugendhat, former staff member of the Financial Times(London) and now Member of Parliament and a director of Phillips Petroleum of London, states that industrialists put the blame of exaggeration of the current situation on "politicians and writers." MNCs have been around for quite some time. International banking began during the Middle Ages; trading companies have been thought to be founded by the Mesopotamians; under Elizabeth I, England founded the East India Company; during the last century American, British and European companies ran sizeable "international trading operations," even to the extent that some companies ran the utilities in other countries; also, at the same time, a number of the developed nations "exploited the raw material and natural resources of Latin America, Asia, Africa and Australia on a vast scale;"[27] and by 1860, many companies began production operations in foreign countries whereby in 1914 a large portion of the super-MNCs had such facilities in various nations.

Prior to World War II, most of the investment and strength of international manufacturing companies was in colonial and developing nations. After the war, MNCs began their heavy investment program along with the post-war rebuilding program in Western Europe.[28] According to their book value, U.S. investments in Europe showed a remarkable growth: $1.4 billion(1929); $1.0 billion(1946); $21.5 billion(1969). Naturally, other changes resulted with this growth in investments. For example, no longer must the greatest economic holdings in

a particular country be owned by citizens of that country, or even if this is a pre-requisite, the majority of the shares be in the hands of foreigners.[29]

The development of MNCs from the 19th century was not rapid, nor did it entice very many companies. Friedrich Bayer founded his company in Cologne, Germany in 1863, and within 2 years began going multinational by investing in a plant in Albany, New York. In 1866, Alfred Nobel, began going multinational by establishing an explosives plant in Germany, which was outside his native Sweden. A year later Singer established a sewing machine company in Scotland, and became the first enterprise that produced and sold essentially the same product, using the same logo, throughout the world. It has claimed to be the first of the multinationals.[30] The Singer Company, for example, has earned almost a supranational status, touching "the national life of 180 political jurisdictions."[31] It has been so unobtrusive that even Queen Elizabeth did not realize that, upon visiting Singer's estate and factory in Scotland, that the company was American. "We regard the entire world as an area of operation," says Donald P. Kircher, Singer's chairman and chief executive officer, "at least as far as we are able to do so politically."[32]

During the latter part of the 19th century, companies went international for three major reasons, with profit being a part of each one: (1) as markets got bigger, and steamships and trains brought them to these markets, the companies knew

it would be cheaper to manufacture goods closer to the markets and save the cost of shipping. (2) Nationalism played a role also, because it was soon realized that local managers operating the subsidiary, who knew the local customers would be able to offer more efficiency and bring better results than someone in charge of exports at home. Edison's establishment of a plant in Germany was evidence of this, and also of the preference of local suppliers wishing to have local goods. (3) Protectionism was also important because many countries continued to increase tariffs on imported goods, but encouraged building of plants to create new jobs. William Lever of the Lever Brothers soap firm, for example, said in 1902 that if the tariffs on imports going into Holland and Belgium go any higher they must establish local plants.[33]

American companies were not shy about establishing themselves fully. By 1901, the Westinghouse plant was the largest industrial factory in England. Standard Oil was the largest producer of oil in Europe, and about one-fourth of the cars made in England by 1914, were made by Ford. Not all advances toward Europe were made by Americans. By 1906, Perceval Perry, an Englishman, was already in Michigan, with plans, asking Henry Ford to establish operations in Britain.

The idea of the international company was already a solid one by 1914. John Dunning has shown, however, that in that same year 90 percent of international investments were portfolio investments,[34] while today 75 percent of the capital from developed nations comes in the form of direct investments

by corporations.[35]

During the 1920's and 1930's, many American companies set up operations in Europe. These were either of a highly technological nature or were oriented for mass consumption. General Motors and Ford had sizeable operations there as well as companies like Hoover, Remington Rand, and Proctor and Gamble. During the 1930's, cartels were also practical. For example, in 1928, Shell, Anglo-Persian(now known as British Petroleum), and Standard Oil of New Jersey formed a cartel and shared facilities outside the U.S. They had common pricing and eliminated competition. Yet, cartels were not always the best solution because there was no central control.[36]Needless to say, the cartels gave the corporations a chance to practice international methods, and actually were the precursors to today's multinational corporations.

Distinguishing features of modern MNCs are important as compared with the traditional corporation. First, an "enduring aspect of the big corpoation was its bureaucratic machinery-- more enduring than the stockholders who nominally 'owned' its assets, the creditors who loaned it money, the customers on whom it relied."[37]If a "corporation was large enough to generate a public market for its securities, the umbilical tie to its stockholders and debtholders was weakened.. ..."[38]Second, by the time of the 1950's,"[i]ncreasing size in the corporation had been leading to increasing specialization of its parts. Increasing specialization meant increasing division of function."[39]Hence, the MNCs became multi-faceted

corporations with even some big conglomerates.[40]

Central direction is another distinguishing feature of the MNC. While each MNC "has its own particular global strategy; some are highly centralized while in some cases local management is relatively free of detailed head office control."[41] Of course, their strategies are linked to the general managerial policies of the parent. However, the problems that are encountered by the subsidiaries or branches are different (i.e., "languages, legal systems, and governmental pressures") and so are the types of products which are produced. For example, a furniture manufacturer will be less centralized than a computer manufacturer, since local tastes play a greater interest in the production of furniture, and technical know-how would be more emphasized in the computer company, thus demanding more centralization. And yet, the subsidiaries are not run like separate businesses. The subsidiaries function according to a general policy or plan which has been designed at the central office, or headquarters, and their operations are integrated, for the most part with those in the home country. Their efficiency and performance is not based on their operation alone, but on how this helps the corporations as an entity. Prevention of a competitor from entering one of its markets can be more important than a financial loss by that particular subsidiary.[42]

This characteristic of central direction is relatively a new phenomenon arising out of the technological breakthroughs of the 1950's. Prior to rapid international travel, and

international tele-communications and highspeed information data bank computers, the subsidiaries, by necessity, were generally on their own. It was not an integrated international market, but each subsidiary had to serve its local needs. Also, with the arrival of GATT(the General Agreement of Tariffs and Trade)[43]came general guidelines and regulations controlling trade among nations, thus furthering the ability of a MNC to integrate its operations.

Size of the corporation has also been considered by some scholars as being a distinguishing feature of modern MNCs. However, it "is not necessarily a good indicator being 'multinational.'"[44] One example is the British Steel Corporation which is owned by the government. While it is considered to be one of the largest of the industrial concerns in the world, it only has facilities within Britain, and thus is not a multinational company.[45]

Economic Impact

Multinational corporations have accrued a great deal of economic power in recent years. This has led a careful MNC watcher to say: "Multinational companies are becoming the characteristic industrial organization of the age."[46] Some of the largest MNCs which are most influential in Western Europe are not only the leaders in their industries, but their names are sometimes synonymous with these industries. Included in this can be such MNCs as Ford, G.M.,Shell, Esso, SKF, IBM, Unilever, Proctor and Gamble, Agfa-Gevaert and Olivetti. More

and more, one finds that industries are not arranged on the basis of country-by-country.

MNCs have the sheer ability to transfer their investments at will within the company to whatever subsidiary they may select. They can also"allocate export markets between subsidiaries,"[47] and thus some nations profit in their balance of payments ledger. General Motors and Ford provide us a view of how this occurs. General Motors manufactures Vauxhalls in England and also builds Opels in Belgium and Germany. They export Vauxhalls to Canada and instead send Belgium, not German, Opels to the United States. Ford builds Cortinas in England and Taunuses in Germany. They chose to import only Cortinas to the U.S., until they decided that Cortinas were no longer going to be sent here. Instead, today Pinto engines are made in Britian, thus compensating for the loss of the Cortina export. Germany loses out in both cases. Local management has no say in deciding where they would like to have export sales because the world-wide strategies are decided in Detroit and Dearborn, for G.M. and Ford, respectively. One manager of a G.M. subsidiary in Europe said: "GM assigns us a plot of ground, and then judges us by what we grow on it."[48]

It is also interesting to note that the units of the MNC are quite interdependent. None of the standard model IBM-360 computers made outside America are manufactured in one country. Their plants in England, France, Germany, and Italy each make some of the parts, and then they are finally

assembled for sale. Ford tractors are made at three different locations--Basildon (U.K.), Antwerp (Belgium and Detroit. All transmissions are manufactured at Antwerp, hydraulics and motors are made at Basildon, and Detroit makes the gears. International Harvester makes tractors in a similar way in its French and German branches. Massey-Ferguson has the same task-sharing functions in its tractors made in the U.S. for export to Canada. The engines come from England, transmissions from France and axles from Mexico. Some companies, like Phillips Electrical or Olivetti use the approach were one subsidiary will manufacture only certain items, and then depend on the other branches for the rest of the parts.[49]

Much of the economic impact of MNCs relates to imports and exports. A 1969 study showed one example where one-sixth of Belgium's imports and exports were actually intracompany activities between Ford factories there and in Germany. A 1966 Board of Trade study showed that 22 percent of Britain's exports were actually intracompany transfers.[50]

Furthermore, MNCs have a very significant economic position of influence since one estimate shows "that the value of their production outside their own countries is now estimated to exceed the value of world trade."[51]

The MNCs have caused hardships for governments when one considers the economic factor, since the enterprises are becoming less and less controllable. As business works across national lines, governments are constrained within their units. Governments exist to better the standard of living, reduce

unemployments, keep the currency stable and regulate industry, but MNCs have hampered governments' ability to fulfill these functions.

Currency instability

There was a time when the U.S. balance of payments was in a good position and the dollar reserves were overflowing. There was also no thought about a devalued U.S. dollar, and so the U.S. government had no fear about the great amount of capital leaving the country. However, concerns about currency instability, and an unfavorable balance of payments grew during the 1960's and 1970's, as more dollars left the U.S. for investments in MNCs abroad.

The staff of the Senate Subcommittee on International Trade report in 1973, however, made it clear that MNCs are really not causing quite as much harm as was expected. The report says: "Multinationals apparently made a major positive contribution to the current account of the U.S. balance of payments and were not a factor in the deterioration of the basic balance of payments deficit during the late 1960's."[52] While the 1973 Tariff Commission study reports that the U.S. balance of payments problem was chiefly due to the transactions with Canada and Japan, no problem arose out of transactions with Western Europe.

In reference to the Tariff Commission's findings, the subcommittee staff reports that:

> private corporations at the end of 1971 controlled some $268 billion in short-term liquid assets, with the

> lion's share controlled by multinational firms and banks headquartered in the U.S. Movement of only a small portion of the $268 billion could produce massive monetary crises. The study points to the creative role MNCs have played in the development of the international money market, but also that such firms and banks could, without any destructive or predatory motivations, frustrate a country's monetary policy because of the mobility of short-term capital. Interest rate differentials or rumors of a currency revaluation, for example, could send billions of dollars or other currencies from one country seeking to maintain low interest rates for employment reasons to another--seeking to maintain high interest rates to assuage inflationary pressure.[53]

During the Johnson administration, the U.S. had to begin restricting foreign investment by U.S. MNCs, banks and financial institutions, because it was perceived that the MNC was, at least partially, to blame for the huge balance of payments deficit. Although the MNC did not deliberately plan to disturb the balance, the deficit was still there and something had to be done about it.

On February 10, 1965, President Lyndon Johnson sent a message to Congress regarding the balance of payments and the gold position.[54] Regarding the outflow of capital he proposed the following:

> ...to maintain and strengthen our checkrein on foreign use of United States capital markets, I ask the Congress
>
> ...to extend the Interest Equalization Tax for two years beyond December 31, 1965.
>
> ...to broaden coverage to non-bank credit of one-to-three year maturity;
>
> ...to stem and reverse the swelling of U.S. bank loans abroad, I have used the authority available to me under the Gore Amendment to the Act to apply the Interest Equalization Tax to bank loans of one year or more.
>
> ...to limit further the outflow of bank loans, I am asking the Chairman of the Board of Governors of the

> Federal Reserve System in cooperation with the Secretary of the Treasury to enroll the banking community in a major effort to limit their lending abroad.
>
> ...to ensure the effective cooperation of the banking community, I am requesting legislation to make voluntary cooperation by American bankers in support of our balance of payments efforts, under the Government's auspices, exempt from the anti-trust laws wherever such cooperation is essential to the national interest.
>
> ...to reduce the outflow of business capital, I am directing the Secretary of Commerce and the Secretary of the Treasury to enlist the leaders of American business in a national campaign to limit their direct investments abroad, their deposits in foreign banks, and their holding of foreign financial assets until their efforts--add those of all Americans--have restored balance in the country's international accounts.[55]

On January 1, 1968, President Johnson issued Executive Order 11387 "Governing Certain Capital Transfers Abroad." This gave further elaboration to the U.S. policy of equalizing the balance of payments deficit.[56] The Executive Order empowered the U.S. Department of Commerce's Office of Foreign Direct Investments to administer the program described by Johnson. The current "Foreign Direct Investment Regulations" are quite complex, and are thus summarized for the convenience of the reader in Appendix A. These regulations deal primarily with the restraint placed on investment financing of "affiliated foreign nations" made by American "direct investors."

Transfer of Technology

Keith Pavitt stated a few years ago that MNCs and technology "have upset the classical theory of world trade, suggesting that there are new factors of production that must be looked at, and that assumptions about their international

mobility may be wrong."[57] Spending on research and development (R & D) has reached the point between 1.5 percent and 3 percent of GNP in the developed nations of the OECD.[58] Pavitt goes on to say that "technology and the multinational form are mutually dependent."[59]

> Furthermore, technology and the multinational firm are mutually dependent. Most industrial research and development (R & D) is performed in large--and therefore probably multinational--firms. In eight industrially advanced OECD countries, eight firms account for between 30% and more than 50% of all industrial R & D; and in the Netherlands, the first five firms account for nearly 65% of the total. And while multinational firms employ a very high proportion of technological resources in the OECD area, their management and operation have been considerably facilitated by technological advances in communications, transportation and -- more recently--information.[60]

One cannot say that large MNCs are totally responsible for all the new important innovations, although those in the areas of "commercial EDP computers, pharmaceuticals, plastics and nuclear energy,"[61] have been made by them. Since the 1950's, however, there have been countless new or small enterprises which have come out with important innovations, such as "xerography, instant photography, advanced electronic components, large and small computers."[62] Often, the brilliant scientists who made the radical discoveries in the laboratories of the new or small companies had previous experience with the larger MNCs. And, many times the larger enterprises are the customers for those products.

Finally, it should be noted that:

> Both technology and the multinational firm have been heavily influenced by the conditions of industrial competition. As levels of education have risen, and the explanatory powers of science have grown, industry has come to recognize that organized knowledge and trained intelligence are an important competitive resource--in some sectors today more important than the cost and availability of conventional factors of production. In the USA, this recognition has taken place within the framework of a large, competitive, national market, and resulted in the growth of industrial R & D over a period extending roughly from 1910 to 1965, and the parallel growth of university-based business schools.[63]

It must not be forgotten that:

> Whether firms be multinational (i.e., with manufacturing subsidiaries in many countries) or not, the nature and the growing importance of the competitive advantage afforded by new technology, together with trade and capital liberalization and growing pressures of competition, are forcing firms to exploit both technological knowledge and markets on an international scale.[64]

Domestic employment

There have been various claims as to what effect overseas operations of American MNCs has had on American domestic employment. A report that was prepared for a board meeting last year of the AFL-CIO Maritime Trades Department reflects a very grim view of what effect MNCs have had on American jobs. The report says:

> The industrial base of the American economy is growing weaker. For tens of thousands of workers in the textile, electronics, chemical, steel, pottery, toy, shoe, and other U.S. industries, that base has collapsed. At least a million Americans are unemployed because their jobs have been shipped overseas. The currency speculations and tax avoidance facilitated by overseas operations are merely reflections of the basic problems. The basic problems are decreased production and employment, decreased merchandise exports and increased imports.[65]

The report goes on with its criticism of the MNCs:

> The American-based multinationals have washed their hands of the misery caused by the shut-downs of their own plants in the United States. In place of responsibility and concern for the welfare of this nation, they have substituted a 'multinational mythology.' Multinational myths would have the American people believe that:
>
> Overseas operations of multinationals greatly benefit America.
>
> Losses in tax revenues, trade balances, and payment balances are more than made up by royalties and dividend payments.
>
> Overseas operations are not driving American-made products off the shelves.
>
> Foreign facilities are not robbing American-made goods of their share in the world-export market.
>
> Plant closings do not cost American workers jobs.[66]

The 1973 Tariff Commission report on MNCs, in the eyes of the AFL-CIO Maritime Trades Council, also attempted to measure the impact of American MNCs' operations outside the U.S. on domestic employment in the U.S. The results of this study showed, among other things, "what would have happened" if MNCs would not have gone overseas: (1) If there would not be any American plants overseas, those host nations would not have their own production in those sectors, and thus would import the same amount of products from the U. S.[67]

National Security

There have been recent allegations that multinational corporations can endanger the U.S. national security. Senator Jackson has made comments to the effect that American MNCs, i.e., the major oil companies, during the recent energy crisis perpetrated such a crisis for their own benefit, and thus great shortages existed not only for the average American citizen,

but for the military as well. He felt that a military force on rationed fuel is an ineffective force, and thus must always have the necessary fuel. Worldwide oil companies can affect the national security, according to Jackson and others, and other companies may also be able to, according to this premise, make transnational deals and perpetrate transnational schemes endangering the security of nations.

U.S. Investment in Europe

There has been a vast amount of literature published in recent years which has criticized American investment in Europe. In his essay, "Germany's 'Westpolitik'" in Foreign Affairs, Willy Brandt reacted to such comments in a mild way. He said:

> the community as a whole is less protectionist than the United States. . .I am not one of those who complain about foreign investment in Europe; but this does not change the fact that among certain Europeans its volume has aroused fear of 'Americanization' in the economic and technical sectors.[68]

The U.S. Department of Commerce reports that about $14.7 billion were spent by U.S. firms in new overseas investments in 1971, which was more than a 12 percent increase from the previous year. The book value of U. S. plants overseas is about $78 billion, with the real value estimated at twice that figure. Many people have thought that these investments might go to the developing nations, but surprisingly, most have gone to developed nations such as Britain, West Germany, and France, as well as Canada, because of the readily available capital, the existing skilled labor forces, existing markets for their

products, research and development possibilities, and the relative political stability (compared to Latin America, for example). The expansion after WWII was also catapaulted by the strong U.S. dollar's purchasing power, and supported by the large gains American corporations were able to provide through increases in productivity. A key point, though, has been the expansionary vitality of American corporations themselves and their executive personnel. As these MNCs spread throughout Europe, many Europeans were alarmed at this economic exploitation and accused American MNCs of neocolonialism. Jean-Jacques Servan-Schreiber's The American Challenge, first published in 1967, became a runaway best-seller on this topic and sent shivers through the offices of European executives and board of directors' offices.[69]

With this American expansion came a great deal of the American life-style. Upton Sinclair once wrote that "Thanks to the movies, the world is becoming unified--that is, becoming Americanized." Obviously it is not only due to films, but a penetration of American products, culture and ingenuity, along with technological superiority in many areas. While Servan-Schreiber accused European corporations of letting Americans take over, or allowing them to already control, such major industries as computers, he himself hired an American specialist on a political campaign to help him win a National Assembly seat with the slogan reminiscent of the Kennedy days, "I can do more for Lorraine." Multinational corporations have operated with the profit motive in mind, of course, and have also off-

ended many people in the process. On the other hand, they created new jobs and brought in new capital and often helped out the host country's economy. In many instances, they have not been effectively controlled by labor unions, by consumer advocates or by governments. For quite some time, little control was effectuated over the MNCs, but today they are controlled to a greater degree by both the home and the host countries. And, the host country is always in danger of losing more by stricter regulations thus further setting back the time when control is possible.

Europeans have worried about the American MNCs on their continent, but they have approximately an equal amount of money invested in the U.S. The main difference is that two-thirds of the European investors are primarily savers who want to make a profit on investment in the U.S., but are not interested in controlling U.S. enterprises, while American investors are corporations. However, the rate of investment has increased more rapidly from Europe to the U.S. since 1971, than from the U.S. to Europe.[70]

A great portion of the European investments, then, are portfolio investments, while the American investments are in the direct investment category. Portfolio investments are simply investments made through the purchase of share in foreign companies for financial gain only. There is no control of the operations of the foreign companies, and usually little or no ownership of the physical plants. Direct investments, on the other hand, include the founding of branches or sub-

sidiaries in the host nation, or takeover of existing subsidiaries and physical plants. Direct investments, then, involve the establishment of subsidiaries in host nations, while portfolio investments primarily involve the purchase of shares in foreign enterprises.[71]

Much of the European economy is dependent on the American economy. For example, one-sixth to one-fifth of investments in England, Holland, Belgium, and Luxembourg came from Americans, rising to one-third of new investments in Belgium in one year.[72]

Many diverse industries are owned by Americans. The oil and auto industries have been generally owned by Americans for many years, while more recent American ownership has entered into such fields as aluminum, engineering, paper, packaging, precision instruments, sporting goods, and others. Technological progress through R & D has been a hallmark of American operations in Europe, while the American style of life has added in the marketing of the new products through advertising,[73] leasing and investment certificates which are now very popular in Europe.[74]

During the 1960s, France had been considered the one country to be most selective about receiving American investments and even restricting them more than other European nations. France also refused to allow American enterprises to takeover French companies. At the same time, de Gaulle and Pompidou both continued to try to invite new industries into the underdeveloped areas of France. The other European

countries have been less restrictive, intervening only where there were threats of takeover in some of their large companies.[75]

American MNCs have tried to attune their operations to the myriad of those nations in the Community, with the realization that no two nations are exactly alike. They have also tried to adapt their policies to the economic guidelines of those nations, often by necessity, in the realms of the competition laws, labor relations, and the general modus operandi of doing business there. Research and development functions have been located there for some industries, often because the market required it. The Container Corporation of America, for example, has a manufacturing plant in the Netherlands, in addition to seven in Latin America. The research and development is done on location. In the area of packaging design this is necessary by its very nature.[76] Exxon, on the other hand, has three research centers at Abington (Britain), Hamburg(Germany), and Finnicino (Italy). The research work is done by the nationals of those countries, but the results of the research are sent back to the U.S. for further study or implementation. So in this instance, research is separated from development. American corporations, again, have the dominance in both the research and development, because although research may be in other nations, the general scope of the research is guided by home office policies.[77]

Yet, they have still had tight reins over the capital development of their subsidiaries in the E.C. nations. As

mentioned before, whatever degree of freedom the branch operations may have, it is only a freedom to work within the guidelines of the policy determined at the company headquarters.

The host nations have coped with the American MNCs, perhaps because they have been unable to actually affect the policy decisions in the home country. In addition to this, the American government through Congress and the Administration has caused some problems for the MNCs as well as the host governments. The U.S.

> claims tax sovereignty over American citizens abroad. It applies its anti-trust legislation extraterritorially to American firms in Europe... It desires that the American corporations abroad purchase as much as possible in the United States in order to improve the balance of payments of the mother country. For the same reason the government in Washington demands from American corporations a partial repatriation of the profits earned in Europe and financing of their investments in Europe if possible without dollars.

Furthermore,

> ...the American legislator and the government, because of the volume of foreign investments, cannot tolerate American citizens and corporations by passing and thus endangering the efficiency of American laws with the help of their foreign property.[78]

American legislators finally realized that the time was ripe for investigation and in 1973, two Senate committees held hearings on the multinational corporation. The Subcommittee on International Trade of the Finance Committee held hearings in February and March, 1973,[79] and the Subcommittee on Multinational Corporations of the Foreign Relations Committee held hearings in March and April, 1973, on the case of I.T.T. and Chile.[80]

The E.C. countries must not consider individual protectionist policies if they are to be a part of a true community. Europe, as a community, must decide whether it wants a "liberal or restrictive policy towards the American challenge."[81] A more restrictive policy might bring an American reaction against European investments in the U.S. A part of the new policy to come should also include European MNCs like Anglo-Dutch Shell and Unilever, SKF and Agfa-Gevaert and VFW-Fokker.[82] The U.S. and the E.C. currently have trade, tariff and investment problems and must enter into more serious negotiations and the Community must be united in this effort. The E.C. can convince the Americans to stop applying U.S. laws in the Community nations only at the point where there is a harmonization or unification of company laws within the Community, and perhaps a "Euro-currency." (However, present indications show that extraterritoriality of laws only applies when the action taken by an American corporation on foreign soil actually will affect the U.S.) If the market in Europe is uniform, it would then also be possible for an institutionalized deterrence of American takeovers of European firms and markets to be in effect.[83]

European MNCs

In order that more European firms will be able to be fully competitive MNCs, mergers are generally necessary. Most European corporations which are international in scope, do not have a sufficient financial base to compete with U.S. firms.

Of the world's 500 biggest enterprises, 55 are listed as British companies, 30 are German, 23 are French and 8 are Italian, with most of the remainder being American. If such European firms are to make significant progress, cross-national mergers are necessary, but in order that such actions be profitable and permissible, there must be a European company law. With the myriad of existing laws, mergers are very difficult to attain.[84]

So, cross-national mergers will have to take place if European MNCs are to be viable competitors to the American firms. There have been few successful mergers of European companies: Agfa-Gevaert, Hoechst-Roussel-Uclaf, and BSN-Demag being among the few. Fiat had bought a 15 percent holding in Citroen, but when Fiat tried to acquire a 40 percent share of the company, the French government overruled the move, because it felt that it should "maintain the independence of an important French industrial firm."[85] Germany also exercised a veto by denying the proposal of the French firm, CFP, to buy 30 percent of the firm, Gelsenkirchen, which was Germany's major coal and oil enterprise. The German government said that it wanted to encourage closer cooperation among German firms.[86] The recent Dunlop-Pirelli merger was a failure, because of management disputes and labor problems in Italy. One German-Dutch merger between two aircraft firms, VFW and Fokker, has been successful since they were brought together in 1969. However, there are two Anglo-Dutch merged enterprises which are now considered venerable veterans of European merger

history. Royal-Dutch Shell was formed in 1907, and Unilever was formed in 1929. Both have been models for future mergers, yet so few firms have followed in their footsteps.[87]

While mergers have often been advocated, there has been a great deal of disappointment because there has been a deep misunderstanding of the industrial realities within the Community. There are obvious advantages to mergers, but companies, like nations and individuals, have separate goals and interests. Often the differences are never reconciled and result in failure, as in the case of the Dunlop-Pirelli failure.

The problem brings us back to American MNCs. These American enterprises have definite advantages over the European companies. American MNCs which decide to pursue foreign operations most often have a high level of technological expertise in their industries, and have easily accessible financial resources. So, they have quite a bit to offer to their future partner. And, many times European companies are anxious to join with American firms because it strenghtens their competitive position.

Most often Community comapnies cannot offer the same advantages as American MNCs, in either the technical or financial sectors. And, if they cannot offer as much, the scope of European mergers is, naturally, limited. In addition, there is little incentive to begin cross-national mergers in Europe, and often insufficient means to fulfill the agreements. It is just much simpler for Community companies to expand their export sales to other Community nations, or to establish

subsidiaries instead of following the American pattern of mergers and takeovers. Also, those "normal jealousies, rivalries, and suspicions of bad faith are increased, and it becomes harder than ever for a single undisputed decision-maker [to command] the obedience and respect of all to merge."[89]

Until such time as there exists a European company law on mergers (and restrictive practices), the outlook for increased cross-national European mergers is dim. The Community, however, has been working toward a unified company policy in recent years which has been based on Articles 85 and 86 of the E.E.C. Treaty. Certain precendents have been established, as will be indicated in Chapter 4, but the competition and merger policy will not be completely definitive until such time as there is a European company law.

NOTES

1. Howard V. Perlmutter, "The Tortuous Evolution of the Multinational Corporation," World Business: Promise and Problems, ed. by Courtney C. Brown (New York: Macmillan,1970),pp. 66-67.

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3. Richard Eells, "Multinational Corporations: The Intelligence Function," World Business: Promise and Problems, ed. by Courtney C. Brown (New York: Macmillan, 1970),pp.140-141.

4. See Chapter 1.

5. Based on J. Fred Weston and Bart W. Sorge, International Managerial Finance (Homewood,Ill.: Richard D. Irwin, 1972),p. 248.

6. Ibid.,p.249.

7. Ibid.

8. Ibid.,p.250.

9. Ibid.

10. Ibid.

11. Ibid.

12. Commerce Today (March 5,1973),pp.12-13.

13. These publications include: Overseas Business Reports, Foreign Economic Trends, Global Market Surveys, Export Market Digests, and Commerce Today.

14. Under the Legislative Reorganization Act of 1970, the House Committee on Foreign Affairs began investigating various activities of the Administration. As a result, the committee held hearings during May and June,1973, to investigate OPIC (Overseas Private Investment Corporation). OPIC was established under the Department of Commerce in 1971, to encourage investments, by U.S. citizens or firms, in developing nations. One of the criticisms leveled against OPIC was that it "still issues the preponderance of its political risk insurance to the

large multinational corporations. Since 1971, about 79 percent of all insurance by dollar volume went to institutions on the Fortune lists of the top 500 corporations and commercial banks." U.S. Congress, House of Representatives, Committee on Foreign Affairs, The Overseas Private Investment Corporation: A Critical Analysis, Prepared for the Committee on Foreign Affairs by the Foreign Affairs Division, Congressional Research Service, Library of Congress, 93rd Cong., 1st sess., September 4, 1973. Hereafter cited as OPIC Analysis.

15. Weston and Sorge, Op. Cit.,p.252. Hereafter cited as Weston and Sorge.

16. Ibid.,p.253.

17. Ibid.

18. Ibid.,p.254.

19. Ibid.,pp.254-256; Neil H. Jacoby, "The Multinational Corporation," The Center Magazine,III (May,1970),pp.58-60. See also John H. Dunning, American Investment and British Manufacturing Industry (London: Allen and Unwin,1958).

20. Personal interview with Mr. R.E. Cooper, Public Affairs Adviser, Esso Petroleum Co. Ltd. (London) May 30,1973.

21. OPIC Analysis.,p.255.

22. Weston and Sorge, p. 256.

23. Ibid.

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25. Ibid.,pp.103-105.

26. Weston and Sorge, p. 257.

27. Christopher Tugendhat, The Multinationals (New York: Random House, 1972),p.10.

28. Richard Mayne, The Recovery of Europe,1945-1973 (Garden City, N.Y.: Anchor Press/Doubleday, 1973).

29. Tugendhat, Op. Cit.,p.12.

30. Ibid.,p.13.

31. Newsweek, November 20, 1972, p.98.

32. Ibid.

33. Tugendhat, Op. Cit.,pp.13-14.

34. Tugendhat, "Transnational Enterprise,"p.503.

35. U.S. Congress, Senate, Committee on Finance, Multinational Corporations, Hearings, before a subcommittee on International Trade of the Committee on Finance, Senate, 93rd Cong.,1st sess., Feb. 26, 27, 28; and Mar. 1 and 6,1973,p. 402.

36. Ibid.

37. On February 28, 1965, the Department of Commerce issued a memorandum elaborating Johnson's statement. This was the "Program of Voluntary Cooperation with the Business Community to Improve the U.S. Balance of Payments." On February 24,1965, John T. Connor, Secretary of Commerce, "named a committee of nine prominent business executives to advise him on the conduct of the program of voluntary cooperation by the business community to improve the U.S. balance of payments position." Department of Commerce Doc. G 65-29, February 24, 1965.

38. Transcript of the Official White House Press Release of the Message to Congress, 12 noon (E.S.T.), February 10,1965.

39. Federal Register Document 68; Filed January 1, 1968; 6:05 p.m.

40. Keith Pavitt, "The Multinational Enterprise and the Transfer of Technology," in The Multinational Enterprise, ed. by John H. Dunning (New York: Praeger,1971),p.61.

41. See: The Overall Level and Strucure of R & D Efforts in OECD Member Countries (Paris: OECD,1967).

42. Pavitt, Op. Cit., p.61.

43. Ibid.,pp.61-62.

44. Ibid.,p.62.

45. Ibid.

46. Ibid.,p.63.

47. Ibid.

48. "U.S. Multinationals-The Dimming of America," (A Report Prepared for the AFL-CIO Maritimes Trades Department Executive Board Meeting, February 15-16, 1973) in Hearings

before a subcommittee on International Trade, Op. Cit.,p.466.

49. "These were portfolio investments undertaken for the purpose of financial gain. They did not involve control of the operations... Nor did they involve ownership of physical assets, except in cases of default. Contemporary international companies, by contrast, make direct investments, which means they establish or take over subsidiaries and factories in foreign countries which they own and control." Tugendhat, Op. Cit.,pp.10-11.

50. See John Dunning, "The Multinational Enterprise: Some Economic and Conceptual Issues."

51. See Christopher Tugendhat, Oil: The Biggest Business (New York: G.P. Putnam's Sons, 1968).

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54. Ibid.

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62. Ibid.,p.501.

63. Ibid.

64. Ibid., pp.501-502.

65. Ibid., p. 503; see also Board of Trade Journal (August 16, 1968).

66. Ibid.

67. Tariff Commission report summary in Hearings, before a subcommittee on International Trade, Op. Cit., p. 401.

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72. Ibid., p. 77.

73. See Advertising Age, March 26, 1973, special issue dedicated to "Foreign Agency Billings."

74. Hellmann, Op. Cit., p. 78.

75. Ibid.

76. Personal interview with Mr. Cutter, a Vice-President with Container Corporation of America, November 6, 1973.

77. Personal interview with Mr. R. E. Cooper, Public Affairs Advisor, Esso Petroleum Company Ltd. (London), May 30, 1973.

78. Hellmann, Op. Cit., p. 80.

79. Ibid., pp. 80-81.

80. U. S. Congress, Senate, Committee on Finance, Multinational Corporations, Hearings before a subcommittee on International Trade of the Committee on Finance, Senate, 93rd Cong., 1st sess., February 26, 27, 28; and March 1 and 6, 1973.

81. U. S. Congress, Senate, Committee on Foreign Relations, Multinational Corporations and United States Foreign Policy, Parts 1 and 2, Hearings before a subcommittee on Multinational Corporations of the Committee on Foreign Relations, Senate, 93rd Cong., 1st sess., March 20, 21, 22, 27, 28, 29 and April 2, 1973.

82. Hellmann, Op. Cit., p. 82.

83. VFW-Fokker is a Dutch-German enterprise comprising Focke-Wulf, Heinkel, Bremer Flugzenbau and Fokker. It is a major European airplane manufacturer, Neue Ruhr Zeitung (Germany), April 10, 1974.

84. Jean-Jacques Servan-Schreiber, The American Challenge (New York: Avon, 1969), p. 153.

85. Jack N. Behrman, National Interests and the Multinational Enterprise (Englewood Cliffs, N.J.: Prentice-Hall, 1970), p. 162.

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88. Ibid., p. 80.

89. Ibid., pp. 81-82.

Chapter IV

Definitions of the Policy Goals of the European Community

As the new legal system of European company law is created, new problems also come to mind, as to which of the existing national laws will apply and what conflict may exist with the laws of the member states. The relationship of the new and existing national laws may create a conflicting situation, since the new laws will form a law of the group of nations while the nations are still sovereign entities.[1]

This chapter will include a discussion of the following topics: the institutions and powers of the European Community, the overall policy goals of E. C. concern in this sector, and, a summary of the E. C. philosophy in this area.

The Institution and Powers of the Community

> All political order rests upon political community. Hence its institutions reflect, to the extent to which they are adequate, the social structure of the community. . .[and] provide a framework for the realization of interests through conflict and compromise.[2]

As Carl Friedrich said five years ago, that order rests with a community and its institutions reflect it, one cannot ignore the value of the institutions. It is for this reason

that in order to understand how the European Community can resolve the problems of the varying national laws and MNCs, there must be a basic understanding of its institutions.

The basic political structure of the European Community is composed of four primary institutions: the European Parliament, the Commission, the Council of Ministers, and the Court of Justice. The European Parliament is considered to be the weakest of the four institutions, since it is primarily consultative in nature. The Parliament can debate the Commission's annual report, suggest alterations in the budget, make elaborate studies of significant issues, and question Commission members. It does not appear to even have any greater consultative strength than the special committees which have a nature of greater expertise. It also does not have great political power, because its members are elected to the national parliaments, and represent them in the E. C.

The Commission has competency in both administrative and political spheres. It has three main functions. First, it initiates Community legislation by making policy proposals to the Council. An example of this function relating to MNCs will be discussed later in this chapter. Recommendations from the Commission can either be accepted or rejected by the Council in the original form, or amended only by unanimous vote. Thus, it is understood that the Commission thoroughly examines the proposal before its submission to the Council. Second, it performs a "mediating" function. It is assumed that mediation and negotiation takes place within the Com-

mission to ameliorate the difference in viewpoints of the member states on important issues, before these issues are presented to the Ministers. Finally, the Commission implements Community legislation. After the policy has been agreed upon, the Commission has the power to take "Decisions," and also make "Regulations," which are both also types of delegated legislation. When Community law[4] is breached, the Commission has the power to intervene, and then, if the need arises, refer the problem to the European Court.[5]

The Commission has been referred to as the "conscience" of the European Community, as it is more representative of Community interests than those of individual nations, thus making the Commission more than a bureaucracy. Through agreement among the member nations, Commission members are appointed for four year terms and are prohibited from representing the views of any particular governments. In addition to the nine Commission members, there is a staff of about ten thousand people which is responsible for administration and research.[6]

The Council of Ministers is made up of the foreign ministers of each of the member nations. It provides a basis of sovereignty, because it is not responsible to the other branches of the Community, and also because the ministers need only respond to the governments they represent. The vast majority of the decisions are made by unanimous acceptance. Although there are provisions for majority rule (through weighted voting), unanimity has come into practice

as the norm for decisions. There is also a formal link between the Council and the Commission, which is called COREPER -- Committee of Permanent Representatives. Since the Council only meets on occassion, COREPER has the power to make recommendations which the Council usually approves. COREPER's members -- bureaucrats, diplomatic personnel and "experts" which are nominated by the national governments -- are seen as representatives of their own nations to the E.C., as well as E.C. representatives to those nations. The COREPER brings in continuity and perhaps homogeneity which the Council could not supply by itself. It has been said that the true center of power is in the hands of COREPER, along with perhaps being the real center of the technocrats, not in the Commission as has been thought by some individuals.

The Court of Justice is composed of judges who are appointed for 6-year terms on the basis of agreement between the member nations. It is primarily designed to be like a supreme court for the E.C. It has appellate power and appeals can be submitted to this court by individual citizens of the Community, companies, institutions or governments within the Community. The appeals can be submitted for adjudication on any activity of the Commission, Council of Ministers, or any member nation that has violated the provisions of the treaty. Since the Court has the final say in interpreting the Treaty of Rome, all entities concerned are bound by law to accept the Court's decision.[8]

A number of years ago, Professor Scheingold summarized the functions of the Community's institutions in the following manner:

> Structurally, the institutions of the European Economic Community are very nearly as Janus-like as the treaty that gave them birth. There is a legislature (the European Parliament) which doesn't legislate; and administrative organ (the Commission) which both initiates legislation and administers it; a cabinet (the Council of Ministers) which is responsible to no one; and a supreme court (the Court of Justice) which is supposed to act as if these glaring weaknesses and strange anomalies didn't exist.[9]

Professor Lindberg adds to this anomoly, by saying that the organization's policy-making process is really a colloquy between the Council of Ministers and the Commission, with the Council representing the national cabinets and the Commission representing the Community's interests.[10]

The continuing colloquy between the Council of Ministers and the Commission may appear to be based on equality, but in reality, the power of the Commission has been increasingly eroded. The Commission's definitive proposals have become mere drafts for COREPER to re-shape before they are to be approved by the Council. This problem crops up at the present time with the Commission's proposal on MNCs in jeopardy of change by COREPER and the Council. So, it is not merely a question of institutional or structural problems, but one which will directly affect the outcome of pending solutions to the question of MNCs in the Community.

The Commission's problems relate to the fact that "it exists in a political vacuum, a result of the 'failure' to

settle the question of securing political responsibility."[11] The Commission also does not have a say in the allocation of the Community's finances. While the funds come from the national governments, the Council has control of the budget, with only about 3-5 percent allocated to the European Parliament for administrative purposes. If the Community itself, through the Commission, could have its own sources of revenue -- rather than being dependent on national contributions -- there would be a greater chance for the organization's sovereignty.[12]

With all these problems, we find that an administrative harmonization panacea has resulted. Ralf Dahrendorf, a longtime Commission member and now with the London School of Economics, has argued that the Community is beset by a "harmonization madness." A number of proposals have been submitted to the Community for harmonization of laws and administrative rules. While the Commission is especially interested, and thus, madly excited in dealing positively with such proposals, the member nations are reluctant to act.[13] This dilemma has not yet been resolved, but perhaps the solution will come when the member nations take some of the recent proposals more seriously.

Policy Goals

The overall policy goals of the Community must be delineated in order to be able to appraise its successes or failures in specific terms. The five major goals will be discussed in

detail. These policy goals of the European Community's concern are to: stimulate integration, stimulate economic growth, provide for competition, harmonize state aids and the nationalistic, monopolistic practices of member states.

Stimulate integration

The Preamble of the E.E.C. Treaty states that the signatory nations are:

> DETERMINED to establish the foundations of an ever closer union among the European peoples, and have
>
> DECIDED to ensure the economic and social progress of the countries by eliminating the barriers which divide Europe.

And, Article 2 also states that its purpose is "to promote throughout the Community a harmonious development of economic activities...and closer relations between its Member States."[14] Basically, these are the formal Treaty statements regarding integration. Integration is to develop common institutions along with common interests, and the interaction of both further initiates the need for more common institutions. This process of European integration is a kind of dialectic which can be adjusted only by greater leaps toward increased integration in each instance.[15]

The Community method of integration has three primary features. First, each of the treaties establishing the Communities "contains a rigid backbone of precise commitments."[16] Second, there are agreements-to-agree on other common policies which are not quite as substantive as the precise commitments but are still important. The backbone of precise commitments

accelerates the pace of future commitments and enhances such agreements over time," through consolidating mutual confidence between countries working together within the Community, and through increasing the congruence of their substantial interests."[17] Third, the Treaty establishes institutions which are independent of any national unit. Such institutions, then, make policy recommendations, and take actions within the guidelines set up by the Treaty. Such policies should not merely attempt to harmonize various national policies, but confront Community problems from a Community perspective. Yet, many of the major decisions are made by the member nations through their representatives in the Council of Ministers.

Stimulate economic growth

The second essential element is the stimulation of economic growth. It is made quite evident in the EEC Treaty that the aim of the Community is also "to promote throughout the Community a harmonious development of economic activities and a continuous and balanced expansion."[18] From the beginning, the Community was organized to better the economic situation of postwar Europe, through a carefully planned development process. While the western European nations received development aid for the reconstruction of their economic facilities, the member nations felt that through the E.E.C. they could stimulate growth through programs and mutual cooperation through trade policies which were favorable to all parties concerned.

Provide for competition

Through the E.E.C. Treaty's Articles 85 and 86, common rules were to be set up regarding the guarantee of an open competition system between private companies in the member nations. The Treaty also prohibits "any concerted practices which are likely to affect trade between the Member States and which have as their object or result the prevention, restriction or distortion of competition within the Common Market."[19] There are exceptions to the rule, but, for the most part, open competition is guaranteed as a safeguard against the possibilities of monopolies and cartels. The Community and national policies regarding competition attempt to continue or initiate favorable conditions for competition through rules applying to both public and private enterprises. The unified policy, including the national and Community policies, advocates the optimal use of production resources benefiting the Community's economy, and especially the consumer. There is a concern for increasing the amount of goods for the consumer, bringing about better information for the consumer, and also harmonization of laws so that the best conditions would be provided for the establishment of a "genuine common market."[20]

Harmonize State aids

Since the early 1960's, a tool of economic policy used by the Community nations has been state aid. State aid was

considered a viable instrument of the national economic policies because of increased competition and a constantly changing technology. These changed conditions have brought forth some of the weaknesses in the Community economy and state aids had to be considered to fill in some of the gaps. State aids to certain industries and sectors of the national economics are often crucial to those economies, but the goals of the state aids must not necessarily be short-term goals. In fact,

> The purpose of such aids must be to re-integrate the sectors and regions benefiting from them within a practicable and efficient system of competition while reducing the social cost of change, without, however, permanently tying up resources which could be used more efficiently elsewhere.[21]

State aids basically consist of cash grants, long-term and low-interest loans, and tax reductions (sometimes zero taxes for the first few years) for investors interested in investing capital and establishing production facilities in the respective Community nations. The various national governments grant such types of aids in order to help certain depressed sectors of their economies, i.e. industries, and specific economically depressed regions of their countries. These governmental aids are based on the respective national development plans. For example, France will give up to 25 percent of development costs in the form of cash grants for new industries in western and southwestern France, and Corsica. Belgium exempts new industries from real estate taxes for the first few years of operation, if they locate in specified regions of the country. Similar aids and exemptions are granted for new investments in the Mezzogiorno region of southern Italy.

These aids, then, are governmental aids for investors to develop new facilities or improve existing facilities, so that the economy can be boosted in certain sectors and in certain depressed regions. State aid programs vary from nation to nation, and they do restrict competition. It is for this reason that the E.C. has found a need to harmonize them.

In its capacity as harmonizer of state aids, the E.C. Commission follows a policy based on three precepts: (1) National state aid programs must be aligned with the E.C.'s policy on solving specific problems which led to state aid, or else impractical rivalries between the nations could arise, and perhaps even placing greater burdens on other nations while alleviating the economic problem of one nation. The E.C.'s policy should be one of coordination of the state aids so that greater tensions do not result throughout the Community. (2) State aids can only be justified as viable aids if they help improve the sectoral structuring of the E.C. Also, they are acceptable if they do not severely restrict competition within the Community. So, aid should be temporary in nature, should aim to help businesses or production centers so that they can be successful competitors, and the aid should be as transparent as possible. (3) The Commission should keep in mind that it is only a segment of greater innovations which would solve some of the critical social problems within the Community. Other means or tools, instead of aid, can be used to solve those problems, "such as measures to build up parts of the infrastructure or speed up occupational training and retraining of workers."[22]

Thus, the Commission is attempting to harmonize state aids in the above-mentioned ways.

Harmonize the nationalistic, monopolistic practices of the member nations

The fifth policy goal of the Community is to harmonize the nationalistic practices of the member nations. Each of the nations, by signing the Treaty has agreed to cooperate in the attempt to form an economic union. However, certain needs often lead to the creation of government monopolies, which also have tinges of nationalism. National governments established state monopolies for a number of purposes, including fiscal purposes, protectionism of the national production system and guaranteeing that supplies are always available. Yet, under the provisions of Article 37 of the Treaty, all state monopolies of a commercial character are to be abolished.

The Community institutions must ensure that the national governments comply with such Treaty provisions. There have been numerous cases of state monopolies such as the French oil products monopolies, German, French and Italian match monopolies, and the French tobacco monopolies. Since all of these, and other similar state monopolies interfere with free trade and competition, it is the duty of the E.C. to end their operation. In fact, it is the duty of the E,C, to prevent development of animosities and rivalries between the member nations. While competition must be guaranteed, the focus is on competition between enterprises and not nations.

Philosophy of the Community

The basic philosophical goals of the Community on concentration of power and regulation of enterprises include the desire to have a formidable guarantee of competition, so that the old national exclusive dealing patterns would be broken up; to allow free movement of goods; and, counter governmental subsidies to industries. In effect, the E.C. seems to have a single-minded devotion to free movement of goods, while the national philosophies stress other values.

The Community's position on concentration of power and regulation of enterprise is far different than that of the member nation. While the individual nations focus on morality, distributive fairness, a great deal of discretion in governmental rule implementation, and private individuals in governmental decision-making roles, the Community has another focus. Article 2 of the E.E.C. Treaty clearly explains the basic purpose and philosophy of the Community. It was established to promote

> a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States.[23]

Assimilation of the laws of the member nations is also a function of the Community as it is a function of European integration. The intention of this basic principle to eradicate the differences among the laws of these nations which act as a stumbling block to coalescence provides a motive force for the Community, and thus is a part of its basic philosophy.[24] Added to this we find that the Community has pursued a policy of implementing Article 85, and later Article 86, so that agreements between companies -- which interfere with compe-

tition and the unity of the market within the Community -- could be terminated.[25] This policy is consistent with the basic philosophy of the Community, which is also stated in the Preamble as member nations sought "to establish the foundations of an ever closer union among the European peoples."[26] To understand some of the difficulty encountered by the Community, a brief discussion on the philosophy of the nations themselves is useful because the Community's philosophy does not always reflect that of the nations comprising the E.C. And so, the business philosophy and the cultural inheritance's influence on business restrictions in Europe may be characterized by the following six points:

(1) Focus on moral consideration in business matters. This emphasis on moral obligations has been prevalent in both the Catholic and Protestant countries of western Europe. While competition is acceptable and even desirable, Edwards notes that competition "is not accepted as an automatic selective device by which the fittest survive."[27] When competition results in fair business practice it is considered as a good, yet if it results in ruthless behavior, it is considered a vice.

(2) Focus on "distributive Justice" and equal opportunity. This concept of distributive justice is applied "to the relations among business enterprises and between such enterprises and their customers."[28] The accent is on fair prices, available supplies and market access. The fairness applies in both the supplier-customer relations and between suppliers using the same market. These are moral considerations, but are also economic at the same time. Fair conduct is implied by the mode of the economic relationship and not

by the motives of those parties involved in the relationship. In European nations, then, the norm is not to focus on increased productivity as the primary goal of competition policies, but to focus on fairness in business relations.[29]

(3) Concentration of private economic power in private hands as acceptable behavior. Strong cartels or monopolies are not regarded as opprobious per se, but are assessed on their own merit. If their behavior cannot be condemned, then they are considered harmless, however, if it is condemned, then the activity must be corrected.[30]

(4) "Acceptance of broad discretionary governmental power."[31] European laws are designed broadly to allow for a great deal of discretion to be applied by the public officials. Usually, one official or small groups of public officials not only collect data and carry out public policy, but also set broad policy guidelines. Such activities are considered as part of policy formulation and not legal implementation of policies.[32]

(5) Public power in hands of people with private interests. In quite a number of the Community nations, individuals who represent private interests have a say in governmental institutions and in the decision-making in those institutions. They sometimes have the legal privilege of giving advice to public institutions before a governmental decision is made. In such situation, negotiations are perceived as those between private enterprises and individuals who represent the public interest and also have greater know-how about a particular situation and a specialized viewpoint.[33] It is noteworthy that these nations have

traditionally used economic power as part of their national power, dating back to the days of monarchy. Therefore, the close relationship between private and public power is not new. And, thus the discretionary use of governmental power is quite understandable.

(6) Emphasis on the "freedom of contract." While limiting restrictive business agreements is considered an act of hindering the "freedom of contract," the national governments still emphasize the point that this "freedom" should be preserved. There are more attempts in Europe than in the United States to negotiate and have voluntary corrections of illegal action on the part of the restrictive business agreements. The governmental actions tend to be less far-reaching and governmental control of such agreements tends to be short-lived so that the freedom of contract can be maintained. And, the notion of permanent injunctions against businesses is not found in Europe.[34]

In the smaller and more homogenous economies of western Europe, concentrated economic power is more readily palatable because the markets cannot support too many competitors. Thus, the focus on morality, distributive fairness, a great deal of discretion in governmental rule implementation, private individuals in governmental decision-making roles, and acceptable concentrations of power are all characteristics of the style of European attitude toward restrictive business practices.[35] The philosophy of the Community appears to be compatible with the national philosophies only in the areas of distributive fairness, discretion in rule implementation, and acceptable concentration of power.

The Community is adequately suited to deal with the problems of regulating multinational corporations through the European Parliament,

the Commission, the Council of Ministers, the Court of Justice, and COREPER. Regulation of the enterprises is consistent with the policy goals of the Community, which are to stimulate integration, stimulate economic growth, provide for competition; harmonize state aids, and harmonize the monopolistic practices of the member states. Difficulties have arisen in the decisions whether or not to implement some of these goals. Additional problems have also arisen because the basic business philosophy of the member nations has not been the same as that of the Community.

The following chapter will deal with the actual law areas of MNC regulation and the controversial proposals for future regulation. This material will be the basis for the operationalization of the model for integration.

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16. Article 54.

17. Ibid.

18. Article 56.

19. Article 85.

20. Article 86.

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24. See footnote 19.

25. Edwards, Op. Cit., p. 284.

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30. ECSC, EAC, EEC, Commission, Third Report on Competition Policy (Addendum to the "Seventh General Report" on the Activities of the Communities (Brussels-Luxembourg: Office for Official Publications of the European Communities, May, 1974), p. 15. Hereafter cited as Third Report.

31. Ibid.

32. Ibid, pp. 15-16.

33. "Decision of 5 October, 1973 on a proceeding under Article 85 of the EEC Treaty, 'Deutsche Phillips GmbH,'" Official Journal, L 293 of October 20, 1973, p. 40.

34. Third Report, p. 17.

35. "Decision of 14 June, 1973 on an application for negative clearance under Article 2 of Council Regulation No. 17, 'Du Pont de Nemours Deutschland,'" Bulletin of the European Community, 6/1973, point 2111.

Chapter V

Substantive Law Areas and Proposals

The substantive law areas of regulating multinational corporations and proposals for future regulations are of vital concern in this study. Individuals, representatives of member nations, and Community officials have discussed, at great length, the merits of regulating MNCs. Hence, it is of great value to discuss those existing and possible future regulations. This chapter is designed to fulfill this function.

Commercial Problem Areas

The chief commercial problem areas regarding MNCs to be discussed include: establishment, competition, merger, abuse, state aids, and state monopolies.

The Right of Establishment of Business

Articles 52-58 of the Treaty Establishing the European Economic Community deal with the specific question of the right of establishment. In this regard, the Treaty states that: "Freedom of establishment shall include the right to... set up and manage enterprises and, in particular, companies ...under the conditions laid down by the law of the

country of establishment for its own nationals..."[1] The Treaty defines "companies" as "companies under civil or commercial law including co-operative companies and other legal persons under public or private law..."[2] Only profit-making companies are included in this category. So, the European Community's stipulation on the right of establishing companies is very vague. While it is clearly stated in the Treaty, the provisions merely say that each member nation will continue to set limitations as to what company or type of company may have the right or privilege to establish commerical operations on its territory. It does, however, say that enterprises from other member nations should have the right to establish businesses with equal status, and under equal limitations, as for companies of its own nationals. It does not say that any of these privileges or rights apply to companies or MNCs from non-member states.

It is considered imperative that restrictions on the freedom establishment of companies from member states be abolished through the concerted effort of the Council of Ministers and the Commission. The problem, though, still remains, because proposals for a European company law have been rejected or tabled up to this point. Conditions for the establishment of "agencies, branches or subsidiaries in the territory of a Member State,"[3] should be unified throughout the Community. The only limitation that the Treaty places on the need for harmonization of the laws of the member nations in this regard, are the rights of these nations

to "lay down special treatment for foreign nationals and which are justified by reasons of public order, public safety and public health."[4] Other than these limitations, the company laws should apply equally in all the member states. However, the national company laws still differ.

There was need for something more explicit which Article 58 could not provide. Also, "in order to reconcile the general law on establishment with the theory of those Member States which retained the criterion of the real headquarters to establish the link with a State, it was necessary to define the legal status of companies whose statutory office and real headquarters were in different countries."[5] Furthermore, "it was necessary to lay down the extent to which public policy could be invoked to prevent the recognition of companies."[6] So, on February 28, 1968, the Convention Between Member States of the EEC on the Mutual Recognition of Companies and Legal Persons was passed. Passage of such conventions was supported by Article 220 which stipulates an encouragement for member nations to negotiate conventions among each other on subjects mentioned in Article 58.

According to the Convention on the Mutual Recognition of Companies and Legal Persons, the following types of enterprises are recognized:

> a) Companies under civil or commercial law including co-operative companies (Art. 1); and
>
> b) Legal entities in public or private law other than these companies which, whether principally or incident-

> ally, have a business activity normally exercised for payment or which, without being in breach of the law under which they have been set up, in fact engage in such activities in a continuous manner (Art. 2).

Article 1, then describes the commonly recognized companies of the business community, while Article 2 describes the legal persons, which are legal enterprises but are not incorporated as companies. For instance, a partnership can be considered a legal person, where the partnership has all the rights and responsibilities as would a private person. It has been found that "the requirement of a profit-making aim has been significantly altered and more precisely defined, this requirement being as we have seen the limiting factor of the scope of the freedom of establishment."[7] This also applies to juridical persons who do not necessarily form companies, but who "lawfully exercise an activity other than gratuitously."[8] Articles 1 and 2 of the Convention also include the limitation of which companies would be recognized in the signatory nations: "(a) a minimum capacity within their country of origin; and (b) a juridical link with a signatory State," and "the company (or other juridical person) must have 'the capacity to have rights and obligations' under the law under which it is constituted...."[9]

Some problems have arisen which had not previously been considered. As far as the relationship between the national government and the company is considered, uniformity of laws no longer existed in the Community after the 1959 Dutch Law was passed. It changed the stipulation that the actual headquarters of the enterprise must be on its territory. Thus,

as a result of this law, an enterprise registered in the Netherlands is deemed to be Dutch while its actual headquarters is located in some other nation. All other Community nations do not have such laws considering companies in the host country, i.e., the Netherlands, to be national companies. Yet, as far as Article 58 is considered: "Automatic recognition is in fact accorded to any company of juridical person."[10]

A very important exception is explained under Article 4 of the Convention, that

> any signatory state can declare that it will apply the provisions of its internal law that it considers imperative, to any company or juridical person whose real headquarters are on its own territory, even though it may have been set up in accordance with the law of another signatory State (where it is obliged to have its registered office)...It was considered that...the difference between the country of the registered office and that of the real headquarters was not a means of avoiding the laws of the latter country.[11]

Goldman emphasizes that "if the registered office and the real headquarters are in different countries, this should not in any event justify application of the law of the real headquarters by a State other than that on whose territory the real headquarters are situated." He goes on further with an example: "France could not apply Belgian law to a company whose registered office was in the Netherlands and whose real headquarters were in Belgium."[12]

In addition, the Convention's Article 11 "provides that in relations between the signatory States, the provisions of their internal law or law arising from conventions which are

more favourable to recognition remains compatible with the EEC Treaty."[13] After numerous negotiations, a "Protocol" and "Joint Declaration" were signed on June 3, 1971.

The Protocol and Joint Declaration of June 3, 1971, were to expand the reach of the Convention on the Mutual Recognition of Companies and Legal Persons. The Protocol provided for powers resembling the Treaty of Rome, Article 177. As a result, the Court of Justice has jurisdiction over the interpretation of the Convention on recognition, and Article 1 of the Protocol. Also, "the courts of Member States consider that a decision on a question of interpretation is necessary before making judgement they may request the Court to rule on this question, or must do so, according to whether their decisions are or are not subject to appeal to higher internal courts (Art. 2.)"[14] It appears that the Convention can now be uniformly interpreted.

As the law stands at the present time, each of the members are complying with the Convention, The Protocol, and the Joint Declaration on the rights of establishment. What still needs to be done, if the rules are to be truly rigid, would be to remove the exception to the rule under Article 4, which is detailed on the preceding page. If this is not done, nations can continue to use their own national laws to freeze out competition with domestic business, as France still requires prior authorization of the French government for direct investments that are made in France by non-residents living outside the country.

Competition

Tariffs and quotas, which are the basic tools of mercantilism, do not exist among the member nations of the Community. There is a free flow of labor and capital, and the national markets are becoming more subject to increased competition from both within the Community and outside the Community. The competition policy necessarily must include more than just an anti-trust policy on restrictive agreements, but merger policies, policies on abuse of a dominant position in the market, but also on permitted types of cooperation.[15] This section, however, will deal with the restrictive agreements policy and the permitted types of cooperation, while the other topics will be dealt with later in this chapter.

It has been said that the Community's competition policy "contributes to the constant improvement of the population."[16] Its purpose, however, is to ensure honest and fair competition and competition conditions for the companies and corporations engaged in business in the Community. The policy prohibits restrictive business practices which hinder competition.[17]

The competition rules are comprised of E.E.C. Treaty provisions, E.C. Commission decisions and regulations, and court rulings made by the Court of Justice of the European Communities. As of May, 1974, the Commission had handed down 65 decisions and the Court had issued 26 rulings. The Court has interpreted the rules on a strict basis in an attempt to guarantee the unity of the Community as a common

market. The Commission is now following a stricter course making decisions against prohibited cartel arrangements. This is a shift in policy, since the Commission tended to continue to allow the restrictive agreements as it was thought that they were generally beneficial to the Community. Now the Commission has imposed sanctions by imposing severe fines on prohibited arrangements, i.e. totalling $12 million in four recent cases.[18] Again, this is quite different from the competition policy of the 1960's when the Commission pursued a policy of encouraging companies to cooperate with one another if economic benefits to the Community would be evident, and if some competition is maintained.

Permitted types of cooperation

While the Commission has maintained the policy of eliminating cooperative and restrictive agreements between companies, its policy of promoting cooperation among companies has been quite significant. For this purpose, the Commission has tried to specifically delineate which agreements do not fall into the category of Article 85 prohibited agreements, and which agreements are prohibited, but can be granted exemption. In fact, the Commission made quite a number of individual decisions, according to the circumstances, to allow negative clearance for agreements which did not interfere with competition in the Community.[20]

So that the Commission could show its favorable position regarding cooperation between smaller and mid-size companies,

and to clarify the situation concerning agreements not coming under the ban of the agreements, it tried to explain its position on forms of cooperation which do not restrict competition. This was done through its policy statement, Communication concerning Cooperation between Enterprises. Another policy statement of the Commission, Communication concerning Agreements of Minor Importance, brought out the point that: "Agreements between enterprises which are limited by their minor position on the market and by their limited economic and financial potential are, in general, incapable of appreciably affecting either the intensity of competition or the freedom of choice of third parties."[21] So, the Commission favors cooperation between small and medium-sized firms because they could only then be competitive in the world market. Alone, their economic impact is too small. However, the Commission opposes cooperation between the giant firms because it would be a restraint of the market.

In addition, various types of cooperation have been granted exemption from prohibition through "individual exemption decision." Each case is studied separately, with the characteristics of each case studied, as well as the market effects caused by the agreement. Specialization agreements - agreements on allocating production between parties -- are generally permitted because the "provide a means of obtaining

specialization which contributes to lower costs by the setting up of long production runs and a better utilization of available production capacity by the concentration of effort on a limited number of products."[22] They are also usually acceptable because they promote a higher level of developed technical cooperation which results in improved products which are beneficial to the citizens of the Community.

Exemptions were granted in cases where the disadvantages resulting from such business practices are offset by advantages to the general population of the Community. One example shows an exemption from prohibition to an export association of French companies. That association of food canners was allowed to restrict competition because all the companies involved were small and would be unable to compete with foreign producers on their own. In fact, the Commission is beginning to encourage such cooperation between small E.C. companies so that they can compete with non E.C. firms.[23] This is considered to be a policy that is beneficial to the general interest of the Community.

Prohibited practices

According to Article 85 of the E.E.C. Treaty, as interpreted through Council Regulation No. 17, Art. 1,[24] all restrictive agreements which restrain or inhibit competition and trade between the member nations are prohibited.

This is an automatic prohibition and needs no special decision in each instance. The Commission's interpretation of Article 85, Section 1 defines prohibited agreements in terms of only those which appreciably restrict competition.[25] The Community Court of Justice supported this interpretation and expanded it by saying that restrictive agreements should be prohibited when they impair commerce.[26] The Commission has stipulated still further its position on competition by elaborating its meaning of "appreciable" restraint of trade. Restrictive practices aiming at impairing competition "appreciable" cannot be prohibited if the participating businesses do not have a 5 percent share of the total market for that product or service. The other minimum is $24 million dollars in annual business turnover. This quantitative limitation is authorized by a Commission "Notice on agreements of minor importance,"[27] and is not binding on the Court or the administration.[28]

The ban on cartels and restrictive associations applies to non-Community enterprises if the agreements are made with Community companies, or if their policies have an effect on the Community. These enterprises would have to pay a fine for their prohibited activity. And, imposition of fines are not limited to American firms, as in one case before Britain joined the Community, both a Swiss firm and a British company had to pay a severe monetary penalty.[29]

The Commission does not apply the prohibition of Article 85 to arrangements within conglomerates. In the Christiani

and Nielsen case in 1969,[30] the Commission ruled that Article 85 is not applicable in cases involving such intra-company arrangements, i.e. by the parent company and its wholly-owned subsidiary which carries out the orders of the parent company. A year later, the Commission also ruled that agreements among the 100 percent parent-owned subsidiaries of Kodak in Europe[31] were not prohibited by the competition policy. The Commission also considers parent companies and their 51 percent subsidiaries as single economic units due to the fact that parent companies have the ability to control the subsidiaries. Therefore, the Commission does not apply its prohibitions to conglomerates -- at least not yet. It must be noted that all cases to date have dealt with parent companies and subsidiaries involved in the same product. It is unlikely that the same policy position would remain if the various branches of the conglomerate dealt in different products.[32]

The competition policy, then, serves an important function by helping to fulfill the aims of the Community. Goods are crossing the borders of the Community nations more at an ever-increasing rate, and there has also been a great deal of international business cooperation within the Community. This has all led to more choices and an improved supply of products for the consumers of the Community,[33] which is a task of current interest,[34] since it helps to curb inflation.

It can be said that the Community policy on cooperation is two-fold, according to Dr. Willy Schlieder, the Community's Director General for Competition. First, the Community's goal is to maintain competition by putting into force the Treaty competition rules, and by regulating restrictive practices and by regulating the actions of companies or corporations which have a dominant position in the market. This goal includes the maximum utilization of production forces, while, at the same time, protecting consumer interests.[35]

Secondly, it is necessary if the common market is to continue to be viable, the Commission must guarantee that trade barriers would not be set up between the Community nations by private enterprises. Open trade between nations is essential, and the Community must ensure that all companies are treated equally and are regulated equally. This essentially means that competition should not basically be distorted through the use of state aids to companies and commercial state monopolies. Nonetheless, the Community continues to grant exemptions from the prohibitions if the restrictive agreements are more beneficial to the Community than detrimental.[36]

Merger

The Community policy on mergers depends on the future forms that European business will take, and also on the

Treaty provisions. In the European markets there ought to be a substantial number of enterprises so that competition can be safeguarded. Yet, these enterprises also ought to be big enough to cope with the difficulties of wide-area sales, research and development. While each company chooses its own approach toward financial success, more and more firms have selected the merger method since European integration started. A majority of the enterprises that have chosen the merger method have done so because they were inadequately equipped to compete in the growing European markets and also the worldwide markets. Usually their goal is not to restrict competition, they are simply attempting to improve their own competitive position. And so, when a number of the smaller enterprises merge, the level of competition increases. These types of mergers are in agreement with the Community's competition policy.[37]

The majority of the mergers have occurred between enterprises in the same country, or between Community companies and non-Community companies. Mergers between enterprises from different member nations are rare, and the Community would like to improve this situation. Mergers between enterprises of various member nations could help hasten the integration of Europe. The new markets served by the merged enterprises should be based on the Common Market and not national divisions or boundaries. In effect, the financial and "economic success of the Community depends on optimum allocation of the factors of production."[38]

While cooperation and mergers between firms are desirable, the Community also maintains that mergers which are too large must be regulated. The Commission follows this dual policy because in some industries more mergers would hinder workable competition. In 1970, the Commission clarified its position by defining what it meant by mergers that are too large. Competition could be hindered if a group of enterprises controlled 12-13 percent of the market for that product.[39]

In 1973, it was made clear that Article 86 of the E.E.C. Treaty allows the Commission to intervene -- after the fact -- in cases where businesses have merged and thus increased dominance in an industry, and also interfered with competion. This clarification was made in the Continental Can case, and made it evident that the strengthening of a dominant position, which could end effective competition in particular industries, is not in accordance with Article 86.

One of the current plans of the Commission is to attempt to gain powers to get the chance to assess mergers prior to the time they are put into effect. The proposed regulation is to allow a review of the concentration prior to its being put into effect so that the Commission could make qualitative judgements if it would restrict competition or not.[40]

Mergers are controlled through the enforcement of Article 85 and Article 86 and investigating the prohibited activities. The Commission and the member nations have concurrent jurisdiction in the enforcement of these Treaty rules. When a merger agreement is allowed to exist and is exempted from prohibition, according to Commission Regulation 17, the exemption cannot be granted by a state. Under this Regulation, the Commission is empowered to pursue investigations, examine business files and copy them. The Commission is to also inform the national governments concerned of the proceedings and consult them prior to any final decisions. And, if the Commission requests it, the nations concerned must also make investigations.[41]

When the prohibitions under Article 85 and 86 have been trespassed, the Commission then can recommend to those companies participating in the merger to end that infringement. The Commission can simply make those recommendations, or make a formal decision calling for an end to such action and impose fines up to $1 million, and up to $1,000 per day late charges for delays in action. However, appeal is allowed following any such decision which is then sent to the Court of Justice of the European Communities.[42]

In 1973, one example of the Commission granting exemptions was the approval of the merger whereby August-Thyssen-Hutte A.G. bought a majority of shares in Rheinstahl A.G. The acquisition was approved for the steel manufacturer on the basis of Article 66 of the European Coal and Steel

Community (E.C.S.C.) Treath which is very similar in effect to Articles 85 and 86 of the E.E.C. Treaty. The approval came as a result of conditions agreed upon by that German steel company and the Commission, whereby Thyssen would disengage itself from other involvements in the steel sector by as much as 25 percent of its holdings in other merger agreements, and that there would no longer be any more interlocking directorships with other companies.

Thus, whether through enforcement of the E.E.C., and E.C.S.C. Treaties or Regulation 17, the Commission, at its discretion, may prohibit mergers, or exempt them from prohibition.

Article 86 deals with mergers, but the focus is on abuse of a dominant position in the market. Hence, the following section deals with this question in greater detail.

Abuse of a dominant position

There is nothing in the E.C. Treaty that specifically states that very powerful businesses are bad, or that they should be prevented from gaining more power. Achieving a dominant position in a particular industry is not prohibited, but abusing a dominant position in the Community is forbidden. Abuse of a dominant position in an industry includes discrimination in buying and selling, and the use of tying arrangements (which link certain areas of production among enterprises). These tying arrangements are agreements which force a purchaser to buy unneeded items as part of a package in order to get what he wants from a seller. The "direct or

indirect imposition of unfair buying and selling prices or other unfair trading terms" are also prohibited, as well as "the limitation of production, marketing, or technical development to the prejudice of consumers."[43]

Any abuse of a dominant position is determined as such only in cases where trade between member nations would be affected. An example of a Community ruling on an abuse of a dominant position case is the Continental Can company case where the Commission charged Continental with such an abuse. Although Continental won the case in the Court of Justice on the basis that the Commission's evidence was insufficient in this particular case, a precedent was set. The Court mentioned that future cases on the abuse of dominant positions may be adjudicated if the evidence is sufficient. This is very important because it has put "the Commission in a position to act against amalgamations with market-dominating enterprises of especially grave consequences."[44]

The landmark case in the area of abuse of a dominant position is the Continental Can case.

Continental Can case. The Commission filed a case against Continental Can Co., an American MNC, before the Court of Justice of the Community, for abusing a dominant position in the market which is expressly forbidden by Article 86 of the E.E.C. Treaty. Continental Can Co. of New York and its subsidiary Europemballage Corporation (of Wilmington, Delaware and Brussels, Belgium) were accused

of buying out its major European competitor, Thomassen and Drijver-Verblifa NV (of Deventer, Holland). The outcome of the court decision in February, 1973, was in favor of Continental Can and its subsidiary, but the Commission won a principle: "the court declared that acquisition or merger by a domimant company in itself could constitute abuse of that dominance."[45] This court precendent has given the Commission the ability to check corporations in their merger activities only after the fact. This gives the E.C. Commission the power of threat, and may cause some MNCs to give second thoughts about mergers. Obviously, regulatory power would give more confidence to Commission officials, but it is still a first step.

The E.C. Commission decided on April 9, 1970, to start ex officio proceedings against Continental Can Company, inc., and Europemballage relating to Europemballage's acquisition of a majority holding shares in Thomassen and Drijver-Verblifa NV. The decision of the Commission was based on Article 86 of the EEC Treaty, and on Regulation 17, articles 1 and 3, which came into effect on February 6, 1962. Such ex officio proceedings are permitted under Regulation 17, article 1.[46] Obviously, the Commission was not pleased with the undertakings of the American MNC, and thus took action.[47]

Continental Can had obtained control of Schmalbach-Lubeca-Werke A.G. (of Brunswick, Germany) on February 9, 1969, and before 1970, was able to have more than 85 percent

of its shares. During the same year it also discussed the formation of a European packaging company with Metal Box Company Ltd. (London). Two Continental Can licensees were to be asked to join this holding company, namely Thomasses & Drijver-Verblifa N.V. and J.J. Carnaud et Forge de Basse-Indre (Paris). In order the Continental Can would have a majority control of the new European packaging company, it offered to increase its share in Thomassen & Drijver-Verblifa or Carnaud. Carnaud declined the offer in August, 1969, but on February 16, 1970, the agreement between Continental Can and Thomassen & Drijver-Verblifa was effected. The agreement states, in essence, that:

> (a) Continental Can would for a Delaware company (subsequently called Europemballage Corporation) to which it would transfer its present holding in Schmalback-Lubeca-Werke.
>
> (b) Europemballage would have two types of share, a 'common stock' (ordinary shares) and a 'class B stock' (preferential shares). The class B stock would at all times have at least 80 percent of the voting rights of the company.
>
> (c) Continental Can concluded an agreement of principle with Metal Box whereby the latter would transfer to Europemballage, as 'common stock' its holdings in Thomassen & Drijver-Verblifa, in Superbox SpA of Florence (Italy) and in a company which would become proprieter of Metz Box's White Cap factory in Poole (England).
>
> (d) Continental Can would cause Europemballage to offer to the shareholders of Thomassen & Drijver-Verblifa, other than Metal Box and Carnaud, 140 guilders for each nominal 20-guilders share in Thomassen & Drijver-Verblifa. Every Thomassen & Drijver-Verblifa shareholder who offered his shares would also receive a certificate granting him a preferential right to the purchase of ordinary shares in Europemballage when they were offered to the public. Continental Can would make

> available to Europemballage the funds necessary for the purchase of the Thomassen & Drijver-Verblifa shares offered to it by acquiring supplementary shares in Europemballage.
>
> (e) Continental Can's offer was based on the declaration of Thomassen & Drijver-Verblifa that its 1969 profits, before deduction of taxes and discretionary placing to reserve, were approximately 28,000,000 guilders.
>
> (f) Europemballage proposed offering a part of its ordinary shares to the public between May 1972 and May 1975.

Finally, on February 20, 1970, Europemballage Corp, was chartered as a holding company under Delaware laws in Wilmington, and would have "establishments in Germany, Austria, Holland, Belgium, Dutch Antilles, England, and Italy."[48]

The E.C. Commission began to sense that acitons undertaken might be incompatible with Article 86 and the legal and financial ramifications resulting. Between March 13 and April 8, the Commission sent letters and telex messages to the companies involved, informing them of its concern. After the final April 8 telex to Metal Box, on April 9 and 10, Metal Box made it known to the Commission and the media that it was "postponing for the moment its plans to join Europemballage. In the meanwhile, conversations between Metal Box and Continental Can will continue."[49]

When the merger took place the three companies were quite prominent in their industry. Continental Can Co. (along with its Continental Can International Corporation) is the largest manufacturer of metal packaging anywhere. It is also important in the field of paper and plastic con-

tainers, including the machinery to make them. It had 208 manufacturing plants, and about 62,000 employees. It not only held interests in the companies mentioned above, but in International Machinery Corporation in Belgium and licensees in Sweden, Spain, Greece and Portugal. Schmalbach-Lubeca-Werke A.G. was the most important European company that made "light metal containers." Schmalback-Lubeca-Werke was an enterprise that had bought out the following companies: Bremer and Bruckman, A.G. fur Cartonnagenindustrie, Gunther Wagner, Heinrich Brauch, Deutsch Plax GmbH, Niedersachsische Kunstsoff GmbH, M. Loffler GmbH, and Eversmann. Finally, the largest Benelux producer of metal containers was Thomassen & Drijver-Verblifa N.V. This company was formed as a result of a number of mergers, including one with "N.V. DeVereenigde Blickfabrieken (Verblifa) which was a licensee of the American Can Company, the principle American Competitor of Continental Can."[50] In addition, it also bought out A.E. Ruys-Haarlem N.V. The other companies, Metal Box, Superbox, and Carnaud, decided not to join Europemballage.[57]

Under Article 86 of the Treaty of Rome, "any abuse by one or more undertakings of a dominant postion within the Common Market or in a substantial part of it shall be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States."[52]

Berthold Goldman, Professor of European commercial law at the University of Paris, feels that the explanation of a dominant position under Article 86 is insufficient. He refers to the Commission Memorandum of December 1, 1965, which is a clarification of Article 86, and which concentrates on the activities of the company in the dominant position, not on the effects of the position per se. The Memorandum states:

> The domination of the market cannot be defined solely by reference to the share of the market which an enterprise covers or by reference to the quantitative elements in the structure of a governed market. It is rather more a question of the economic influence over the functioning of a market which is, in their view, apparent to the dominant enterprise. Such economic preponderance of a dominant enterprise would make itself felt on the policies and economic decisions of other enterprises whatever the way in which this preponderance may be used. An enterprise which, when it is desired, could eliminate other competitors from a market is deemed to hold a dominant position and be able to affect the conduct of other enterprises in a decisive manner even in its own share of the market is as yet comparatively small.[53]

In view of the Commission's feelings that Continental Can Co. had taken a dominant position in the market, it set forth the following statement regarding this dominance:

> --The purchase of a majority shareholding in a competing undertaking by an undertaking or a group of undertakings which have a dominant position may, in certain circumstances, constitute an abuse of the position.
>
> --For an undertaking in a dominant position to reinforce that position by means of merger with another undertaking with the consequence that the competition which would have existed actually or potentially in spite of the existence of the initial dominant position is in practice eliminated for the products in question in a substantial part of the Common Market constitutes behaviour which is incompatible with Article 86 of the Treaty.[54]

The Commission not only felt that this was an infringement of Article 86 of the EEC Treaty, but also Article 3 of Regulation 17. Under the guidelines of Article 3, Continental Can would be required to cease the activities which were in violation of Common Market law, Continental Can was required to cease the violation of Article 86, with proposals for such an end to the violation due the Commission by July 1, 1972.[55]

Europemballage and Continental Can responded by filing for a court case before the Court of Justice of the European Communities. On February 23, 1972, the applicants filed a petition with the Registry to suspend the enforcement of the Commission's decision, and on March 21, 1972, the President of the Court refused the request of the applicants. However, the Advocate-General of the Court decided to open the proceedings, subsequent to a report of the Judge-Rapporteur. On September 20, 1972, the defense and applicants each presented arguments before a hearing of the Court.[56]

The applicants requested that the Court:

> 1. Declare null and void the decision of the Commission of the European Communities of 9 December 1971 'IV/26 811 -- Europemballage' finding that in purchasing 80% of the shares of the undertaking Thomassen & Drijver-Verblifa N.V. of Deventer, through the medium of its subsidiary Europemballage Corporation, Continental Can Company of New York has infringed Article 86 of the EEC Treaty, requiring it to put an end to this infringement and enjoining it to submit proposals to the Commission before 1 July 1972.
>
> 2. Hold that under Article 73 (b) of the Rules of Procedure of the Court of Justice of the European Communi-

> ties is required to report to the applicants the costs incurred by the parties in these proceedings.[57]

The E.C. Commission, the respondents, requested that the Court "dismiss the application and order the applicants to bear the costs."[58]

The holding of the Court at Luxembourg was that the Commission's decision of December 9, 1971, is to be annulled on the basis of procedure under Article 86 of the EEC Treaty, and the defense was to bear the costs of proceedings. This was signed by the members of the Court: R. Lecourt (President), Donner, Monaco, Kutscher, and Pescatore. The Court found that the Commission's evidence was insufficient in this particular case, but did not foreclose the possibility of future cases.

Finally, the Advocate-General was not hesitant to comment on the nature of the MNC. Mr. Advocate-General Roemer cited the applicants' complaint that Europemballage is a separate company with its own legal personality. The applicants felt that Europemballage and Continental Can should not be treated as single unit. Mr. Roemer felt that in this instance it did act as a single unit, because the subsidiary could not have acted without the cooperation of the parent company. He felt that the precedent should be set that, in such cases where a subsidiary does not show independent behavior, corporations and their subsidiaries should be treated as one single unit. The Court also upheld his opinion.

In addition to the Continental Can case, the Commission acted on other cases, but one which stands out is the railway rolling stock case. In 1972, a complaint was filed with the Commission against a company which had been established through an international convention. This company included 16 railway administrations in Europe and was designed for the purpose of providing railway rolling stock of standardized characteristics to those various administrations. The administrations could be either wholly dependent on the company for the stock or be selective, as their needs demanded. In 1971, the railway rolling stock company asked for offers to develop and produce passenger cars for European railways, which would be standardized and would replace the existing cars throughout Europe. And, these offers for bids were open to all manufacturers of railway cars, irregardless of nationality.

The complaint was not against the standardization plan for European railway passenger cars, but against the provisions for offering the possibility of open bids. The offers "included a provision giving unrestricted rights to use the designs, documents, patents and other proprietary rights arising from the planning and execution of the contract to the company which had invited the tenders."[59] This meant that the railway rolling stock company, which included 16 railway administrations, asked for bids for the manufacture of standardized cars, and said that it would accept the most

favorable bid. The problem lay with the fact that it would then want sole rights over those cars, and future cars of that standardized type once they were built. The prospective manufacturer (bidder) would have to relinquish all rights relating to the cars, once the bid was accepted.

The Commission, in an important policy decision, made its viewpoint very clear that the buyer (the railway rolling stock company) would hold a dominant position in the Community, and thus railway administrations would become dependent on the buyer for future purchases of railway cars. This would be a definite interference with competition and free trade, and, thus, would constitute an abuse of a dominant position.

The exploitation would, as a result, not be done by the bidder, but by the buyer. And, by the manufacturer's own rights, the producing company should have some right of exploitation also.

This case was settled out of court, but even an out of court settlement is a good indication of the Commission's regulatory power. The railway rolling stock company -- composed of the 16 administrations -- backed down on the demands of having unrestricted exploitation rights. So that standardization of railway cars could be continued, the railway rolling stock company could grant licenses for manufacturing railway cars, but only with permission from the successful bidder.[60]

In summary, it can be said that in the area of abuse of a dominant position, the changes in policy that occurred were accomplished through further interpretation of Articles 85 and 86, and not through any new rules or regulations.[61]

State aids

The Commission has been dealing with the problem of harmonizing state aids to depressed regions within their territories so as not to interfere with competition throughout the Community. In its November 28, 1973 communication to the Council, the Commission established the following policy guidelines on state aids which have not yet been adopted for coordination arrangements for regional aids:

> (1) the imposition of ceilings on regional aids throughout the Community, account being taken of the problems existing in the various regions;
>
> (2) detailed rules for measuring regional aids throughout the Community[62]

The beginning date for the technical work in solving the coordination problems is January, 1975. To date, the Commission's policy position on state aid is as follows.

(1) Great Britain. Great Britain's current development scheme includes special aid to promote relocation of service industries to regional-aid focus areas of Britain. This plan is known as "regional selective assistance." This scheme includes aid in paying for the costs of relocating enterprises and grants for office rental payments, so that more service industry businesses will move to the regional-aid areas. While manufacturing industries have already been set

up in these areas with the help of British government aid, service industries are necessary for a more balanced economic structure.[63]

The Commission's position on this matter is not to oppose the scheme, because this type of aid is complementary in nature and is not intended to bring in a comparative business advantage to the regional-aid areas.[64]

(2) France. France has had a program of aid to certain regions of the coutry, especially in the northwest so that industry could be decentralized away from Paris and so that economically under-developed sectors of France could be helped as part of this program, tax advantages and concessions have been granted to investors as incentives for development. The French government has made proposals for grants to certain geographical areas which coincide with tax concession areas, which would not be in agreement with Commission policy. To date, the Commission has not been satisfied with the justifications for grants added to tax concessions in the specified areas of France. At the present time the Commission is examining the statistical data presented by the French authorities before coming out with a final judgement on the matter.[65]

(3) Germany. The Commission has had a more difficult time with Germany. The German authorities did not comply with the Commission's ruling to end state aid in a certain sector, and Article 93(2) of the E.E.C. Treaty provides that in such a case the matter is referred to the Court of Justice.

Since Germany did not comply with the Commission's ruling of February 17, 1971 to end "blanket investment grants in the mining regions of North Rhine Westphalia,"[66] the Commission used this power as never before to enforce its decision.[67]

On July 12, 1973, the Court of Justice dismissed the Commission's action and decided in favor of the Federal Republic of Germany. The Court ruling was contrary to the Commission's decision that aid would not be justified any longer to the specified coalmining regions and including any pending grant applications made after a specified date. The Commission had felt that the aid system was incompatible with Community policy and gave fair warning of this. However, the definition of this incompatibility came only a year later as a result of intense meetings between German and Community officials.[68]

Thus, in the Court's decision, it was held that aid schemes may continue and not be suspended by the Commission through provisional measures while final decisions are imminent.[69]

(4) Other policies on state aids. The Community is working on a definitive policy on aids for the European shipbuilding industry. While many member nations are engaged in aiding their shipbuilding industries, the Community -- in harmony with O.E.C.D. policy -- is aiming at reducing such aids to the point where they are to be terminated by November 1, 1975. This applies only to state aids that are liable to adversely affect competition in the shipbuilding sector, because

world shipbuilding capacity is anticipated to exceed demand before 1980.[70] One problem which will be terminated, for example, relates to France's subsidy of French ship manufacturers' production cost increases between the time of order and delivery. It was concluded that such subsidies restrain competition and would be terminated.[71]

In addition, the Community's policy on the textile industry is noteworthy. First, any state aids for the textile industry may be submitted to the Commission prior to their implementation. Second, a consultation procedure is to be established "by the Commission to consider all complaints with evidence received from the national Governments against aids granted to textile firms which are liable to have a serious effect on trade and competition."[72] Finally, a yearly compendium of all state aids to the textile industry will be printed along with a statistical analysis of all such investment aids in order to make valid judgements of the situation.[73]

The Community, then is attempting to establish a general policy on state aids, while it has policies for specific industries such as shipbuilding and textiles. In any case, it is in need of a common policy which is firm, but not so strict as to not allow exemptions. Of course, the member nations can appeal decisions of the Commission to the Court of Justice.

Monopolies

The Community policy regarding monopolies has focused on state monopolies which are of a commercial character. Through Article 37 of the E.E.C. Treaty the Community has continued to seek the free movement of goods for such goods are produced through a state monopoly.

The Commission's position is that the ideal way in fulfilling this goal "would be to abolish exclusive import, export, and/or marketing rights."[74] An objective might be the adjusting of state monopolies so that only the elements which caused discrimination could be eliminated. However, the Commission decided that it would go ahead and completely eliminate the monopolies, although such an extreme is not specifically provided for in Article 37. Nonetheless, the Commission has initiated action and these are the results: France abolished its match gunpowder and explosives monopolies, and will abolish its manufactured tobacco monopoly before 1976. Italy has abolished its "cigarette lighters, cigarette papers, flints, and salt,"[75] monopolies, and, like France, promised to end its manufactured tobacco monopoly by 1976.

National governments establish state monopolies for a number of purposes, including fiscal purposes, protectionism of the national production system and guaranteeing that supplies are always available. Exclusive import and sales rights really permit a monopoly to determine what foreign products would be permitted on the market in that country,

which is contrary to the intent of establishing an economic community. Such action is discriminatory in the supply conditions of the national markets.[76]

The Commission's interpretation of Article 37 is that its purpose is not only to assure the removal of discriminations, but that since monopolies had such special rights and privileges, the solution should be to abolish the exclusive rights of monopolies. These special rights included exclusive import, domestic market and export rights for certain products.[77] The Commission also feels that member nations involved with such activities should permit individuals the free exercise of rights under Article 37(1), and this cannot be done while states restrict a free movement system as they harbor monopolies.[78]

The national governments involved in monopolies mentioned above have already removed, or have promised to remove, exclusive import and marketing rights to those products. In effect, compliance has not been difficult although statistical evidence as a justification for Commission action was necessary to prove that breakthrough.

While Article 37 of the Rome Treaty provided that national commercial monopolies should be adjusted so that by 1970 there would be "no discrimination regarding the conditions under which goods are procurred and marketed exists between nationals of Member States,"[79] four years later some monopolies are still in existence. The Commission has done its job since 1962 to inform the national governments that their monopolies needed adjustment, but some governments paid no heed. Although the

monopolies were difficult to remove, and although many of them played important social, fiscal, and protection of freedom roles, the existence of the monopolies was contrary to Community principles.[80]

The Commission's policy, then, has been to abolish their exclusive rights instead of adjusting them. The greatest difficulty for the Commission in enforcing such a policy has been the fact that there was very little goodwill in the national governments' attitude toward this Commission policy. Most countries have been very reluctant to give up their hold in this particular area of commerce.[81] And, because the Commission was dealing with very important political actors, member nations, it merely made recommendations for action to the countries, although sometimes the recommendations were padded with threats of court action in the European Court of Justice.[82]

Despite the fact that the German, French and Italian match monopolies have been adjusted, as well as the French potassium, powders and explosives monopolies and the French oil products monopolies, the dilemma remains that there are still monopolies in existence.[83] Three monopolies persist in troubling the Commission. The German match monopoly cannot be adjusted because it was created by an international treaty between Germany, Sweden and Holland in 1930, and the treaty does not expire until 1994. Germany is protected by paragraph five of Article 37 which clearly limits the abolition

of monopolies to areas where international treaty law does not apply. In addition, the controversy continues with the German and French alcohol monopolies, because those two national governments contend that the monopolies cannot be adjusted until the Community establishes an organization for alcohol. Thus, a stalemate exists.

The dilemma of the Commission's actions regarding state monopolies also continues on a fine legal point. Mr. Lassier, a French legal expert contends:

> Article 37 lays down no imperative rule either on the disappearance of monopolies nor on compulsory maintenance of monopolies. It is a problem which is not only unsolved but not even posed in Article 37. This Article requires a certain result known as non-discrimination to be achieved by a procedure which it calls 'adjustment.' But there is not a priori position on maintaining or abolishing monopolies.[84]

Such an interpretation has been generally considered as valid among legal experts, and thus puts a limitation on the effective enforcement of the provisions of Article 37 by the Commission.

It is simple to see that the European Community's commercial policy is very complex and is not unified at all. In the area of establishment, competition, merger, abuse, state aids and state monopolies there has been a great difficulty in clarifying the policies and also enforcing such policies. Quite a number of proposals have been suggested for dealing with enterprises in Europe, and so the following section will deal with the most feasible of the proposals.

Proposals for the Future

There have been a number of recent proposals within the European Community which are noteworthy. The first of these is the Sanders draft.

Sanders draft

The Sanders draft was completed within a few months by Professor Pieter Sanders, Dean of the Law School at Rotterdam. It is a sizeable work in excess of two hundred articles, and is entitled "The Proposed Statute for the European Company."[85] The Sanders report was submitted to the Commission, and then sent to the Council of Ministers which published it. On May 11, 1966, the Council of Ministers passed a resolution and included a statement mentioning that the "Council and the Member Governments shall consider, as soon as possible, the problems relating to the European patent law and to the creation of a European Company."[86] Problems arose when Italy and Holland were not sure whether there was a need for a European company, and Holland felt that the EEC Treaty had sufficient control over companies. France added that the Commission was incapable of handling such a discussion and wanted the Council to discuss it. In October, a working group presented its report of pros and cons, since the Committee of Permanent Representatives had wanted further study into the question of what kinds of companies the Sanders draft would apply to. On May 29, 1968, in a show of its own

force against the Council and its Committee of Permanent Representatives, the Commission was to form its own separate committee to study the question. The Commission then was to have the Council select capable Ministers to iron out the differences. The Commission never formed the committee. At various times the issues were found on the agenda of the Permanent Representatives and also on the agenda of the Council, but nothing happened. Since 1969, no progress has been reported, but staff members of the Commission have worked closely with Sanders to bring about new negotiations. Some of the key barriers to the proposals have been the Netherlands and Belgium. They are two countries which have felt that the E.E.C. Treaty has been sufficient. Professor Stein reports that:

> The trend seems to be toward a widening consensus that a European company would be helpful, if it is assured access to national capital markets, where significant legal restrictions against foreign companies still prevail, and if the agreement on its establishment is accompanied by a realistic harmonization of national tax laws.[87]

Professor Sanders' main goal was to create a new set of rules to regulate European companies. As far as legal foundations were concerned, he proposed that a new treaty would be drafted on the subject which would tie in European company rules with the existing Community organs. Yet, he prepared the draft in a manner that would allow the law to become effective "either as a part of a 'directly applicable' (self-executing) treaty, or in the form of national legislation enacted in

pursuance of a non-self-executing treaty, to which the 'uniform law' was annexed."[88] The first choice would be favored in France, Holland and Luxembourg, because treaty law supercedes legislation in those three countries. And, although there had been trends in changing the system in the other three nations, in Italy, Germany and Belgium, national legislation still supercedes treaty law. However, "the danger of an application of a conflicting national law could be reduced, if the Community Court of Justice were given supervisory jurisdiction."[89] But,

> if national courts are to look to uniform national legislation, rather than directly to the treaty text, the international or Community origin will be muted, and with it as von Caemmerer suggests, the integrating effect as well. It is not surprising that the trend of opinion in literature has been in the direction of a 'directly applicable' treaty, which Sanders also appears to prefer.[90]

According to the Sanders draft, the new company would be conceived as a stock company. The European company would have a legal personality in each of the countries, and would be co-equal in status with the companies already existing in those nations. It is also designed "to promote the purposes of the Common Market," and so its registered office and the real home office would be required to be within the Community, and would be at the same location. This "same location" requirement has already been considered as to constraining for some enterprises, and that theory might be dropped,[91] as they would not want to be limited to the E.C. area only.

The general trend seems to be that the status of a European company, as conceived by Sanders, would be given to companies in the following situations: "fusion between companies of different Member States, formation of a holding company or formation of a joint subsidiary by companies of different Member States."[92]

The problem of American and other non-member companies has troubled many of the Community nations. The Sanders proposal "would allow a non-member company whose bona fides is demonstrated by continuing active operation during a preceding minimum time period, to create, own or joint subsidiaries in the form of a European company."[93] It would not seem logical to exclude American companies, since so many of them already have subsidiaries operating in the member states as national companies, under the laws of those member states. If they were denied access, they could form a company under the national laws of one of the member nations, and then, after the proper period of time, transform the company into a European company.[94]

Jose Nicolai's proposals

In addition to the discussion of assimilation of laws in discussion of the Sanders draft, more recent proposals have dealt with the problem of companies in Europe and how the competition question will be resolved. One of the more serious suggestions actually dealing with multinational corporations was that of Jose Nicolai.

Jose Nicolai, an E.C. staff member, has outlined some possible measures the Commission might take that would be part of an "anti-multinationals" plan. As part of such a plan, the E.C. would attempt to:

1. Provide appropriate information on multinational companies to whoever needs it.

2. Adapt company law to multinationals, in particular, as far as possible, so as to prevent a parent company located outside the Community evading commitments and debts of a subsidiary registered in the EEC toward shareholders, employees and third parties.

3. Organize tax controls at Community level in order to channel transfer-pricing and licensing into acceptable paths.

4. Control short-term capital flows. If tax controls can be made effective, the idea would be that all normal transfers could be made at the official exchange rates. All others would be through the free market. This, however, depends entirely on a Community agreement to create a two-tier exchange market, which currently is far from generally accepted.

5. Control the origin of funds invested. Money from offshore centers like the Bahamas would be unacceptable. Self-financing on normal issues on the usual capital market would be acceptable.

6. Bring the Eurobond market within reasonable bounds. This could be achieved by making all banks operating in the Community, wherever their parent banks may be, submit to certain rules of good behavior.

7. Adapt Community-wide regulations on takeovers.

8. Set up a Community stock exchange commission, or at least a Community-level cooperation system between national bodies, in order to stop moves leading to dominant market positions.

9. Obtain a revision of Article 86 of the Treaty of Rome (which covers anti-trust) adapting it to present conditions. This would mean barring the creation of a dominant position and not just, as at the present, abuse

of one. It would also bring conglomerates into consideration, and would enable economically justified take-overs to be blocked.

10. Strengthen employee protection. This would involve adoption of EEC regulations on dismissals, and, in particular, those likely to occur as a result of mergers.

11. Encourage the creation of European multinational companies and help their expansion. This could be done by eliminating tax and legal obstacles to intra-EEC transnational mergers, by devising incentives through a company marriage bureau, by awarding EEC development contracts, by creating EEC guarantees for investments abroad etc.

12. Eliminate disparities between EEC-based multinational companies. This would particularly mean negotiating with the United States on the interest equalisation tax (if the tax has not already vanished, as Washington said it would by the end of 1974), and also with Japan.[95]

E.C. Proposal to the Council of Ministers - 1973

Recent reports have also shown that there are two more outstanding problems regarding MNCs that confront the European Community. First, there should be some way of guaranteeing citizens of the Community the equal opportunity of reaching prominent positions in non-Community MNCs. Second, there should be ways in which MNCs could be deterred from utilizing E.C. financial sources for their acquisition of European industry without allowing European stockholders in on the benefits.[96] There are no satisfactory answers to these dilemmas, to date, without using authoritarian regulations. E.C. officials would prefer a milder approach, but with definitive strength.

The Commission has fully realized that the level of anxiety about the spread of MNCs in Western Europe has con-

tinually increased in recent years, although all member nations encourage foreign investment. At its November 7, 1973 meeting, it passed a draft resolution which was submitted to the Council of Ministers. This resolution recognized "the increasing impact multinational corporations have on the political, economic, and social life of the countries in which they operate, and the consequent need for a common EC policy. That policy, the Commission said, should take account of both the positive and negative contributions of multinationals."[97] In essence, this policy is supposed to:

1. Protect employees in mergers.

2. Create EEC rules on stock exchange operations and investment fund origins.

3. Institute cooperation between and amalgamation of national stock exchange authorities.

4. Aim for international assistance and cooperation measures regarding information, monitoring, tax recovery, and the drawing up of a joint schedule of transfer price and license fees.

5. Establish a body of law on groups of companies.

6. Improve information gathering on multinationals' international activities.

The Commission was careful to emphasize the fact that these are to be "supervisory measures" and are not geared to be biased against MNCs of any particular nation, and that actions should be taken on a global level, since MNCs are not only a problem for the E.C. Although, the Commission Vice President indicated in February, 1973, that discussions about the MNCs should be held with the United States.

The Commission's communication to the Council, Multinational Undertakings and Community Regulations of November 7, 1973,[98] is a landmark effort in the area of dealing with multinational corporations, and marks the greatest effort to date on the part of the Community toward solution of the problem of "multinationals."

In the Commission's communication the statement was made that "too many European industrial undertakings still retained a national dimension and were slow in adapting themselves, in size and location, to the European economic area."[99] The Commission made known that there continued to be too many legal and fiscal stumbling blocks, and an insufficient capital market in the Community area for European industry to be transformed in this way. The Commission went on to say:

> [T]he growing hold of multinational undertakings on the economic, social and even political life of the countries in which they operate, gives rise to deep anxieties which are sufficiently divided, particularly in the areas of employment, competition, tax avoidance, disturbing capital movements and the economic independence of developing countries, to demand the attention of the public authorities.[100]

In addition, the Commission made excellent summary remarks regarding the entire situation of restraint of business and the MNCs.

> The main reason for this situation is that these undertakings have reached a size and geographical spread such as to cast doubts on the effectiveness of the traditional measures of the public authorities and the trade unions, which up to now have been unable to achieve an equivalent degree of coherence or international integration. This situation has resulted in particular in inadequate national legal, fiscal, economic and monetary rules, the scope of which is too narrow to grasp the problems raised by the existence of numerous groups

> of companies legally separate and covered by different national laws.[101]

The Commission's communication made recommendations for the following areas of concern: (1) protection of the general public (2) protection of the workers' interests (3) maintenance of competition (4) takeover methods (5) equality of conditions, and (7) improvement of information. Of primary interest for our purposes here, the section on competition will be discussed.

A great majority of the MNCs are quite large and have some control of large portions of markets, and so are more able to restrict competition in those markets than other corporate entities. They are also able to abuse those positions of dominance. The following is a series of measures which could maintain the competition level:

> (a) the adoption of the draft Regulation under Articles 87 and 235 establishing the incompatibility of merger operations making it possible to obstruct effective competition with the Common Market and laying down the obligation to give prior notice of merger operations involving undertakings or groups thereof with a turnover in excess of 1,000,000,000 units of account [dollar value].
>
> (b) active surveillance by the Commission in accordance with Article 85 and 86 of oligopolistic situations.[102]

The intent here of further enforcing the existing provisions would effectively increase the power of the Commission in the area of competition, as would the point about the incompatibility of mergers with Community policy.

The intent of the suggestions made above is good if the Community is willing to implement at least some of them. How-

ever, there are difficulties which must first be overcome before all these suggestions become realities and act as catalysts to European integration.

Draft convention on the international merger of societes anonymes

Professor Berthold Goldman, of the University of Paris Law School, was the author of the draft for a "convention on the international merger of societes anonymes" corporation . The draft was completed in the fall of 1972, but requires adjustment since the Community of six nations expanded to nine. When finally approved, the Convention will have the status of a multinational treaty among all the member states and will be binding on all the nations of the Community.[103]

In essence the Convention would provide permission for mergers in accordance with the law of the member states, as long as the corporations participating in the merger are recognized under the "Convention of 1968 on the mutual recognition of companies and legal persons."[104] If the merging companies do not have their parent offices in a Community nation and/or if they are not recognized under the Convention of 1968 rules, the merger will be prohibited.[105]

This Convention was needed because the Commission has felt that there has been a general lack of rules on international mergers. And, the Convention will become treaty law once the adjustments have been made and the treaty is signed.

"Proposal for a Regulation (EEC) of the Council on the Control of Concentration between Undertakings."[106]

The Commission has also made a proposal for a regulation which would give the EEC full power for enforcement. This proposal was adopted by the Commission and was presented to the Council on July 20, 1973, but no definitive action has been taken by the Council to date.

While the Commission already has powers of regulation over concentrations after they have gone into effect, this proposal would make it mandatory for enterprises to give prior notice to the Commission of intended concentrations. The Commission would set up a time limit for investigation, and if the proposed concentration is incompatible with the common market, the concentration would not be granted the right of establishment. Permission to establish concentrations would be granted only in cases where they would not result in a distortion of competition in the E,C, This applies only to mergers of companies whose total annual sales exceed 1,000,000,000 units of account (1 u.a.=approx. $1.25).

The proposed regulation provides the following:

> Any transaction which has the direct or indirect effect of bringing about a concentration between undertakings or groups of undertakings at least one of which is established in the Common Market, whereby they acquire or enhance the power to hinder effective competition in the Common Market or in a substantial part thereof, is incompatible with the Common Market in so far as the concentration may affect trade between Member States.[107]

The Commission has felt that this regulation has been needed for a long time and seeks the Council's approval.

Proposal for a European Cooperation Grouping

This final proposal fulfills the role of summarizing all the needs in the sector of enterprises in the Community. The European Cooperation Grouping (ECG) would not supplant the other proposals on concentration, mergers and the European company, but would serve to enhance integration at a more rapid pace, by helping small and medium sized firms get together.

The proposed Regulation for an ECG is designed to enable cooperation to occur between enterprises in the member nations. The ECG is a new legal instrument and could be operated outside the legal systems of the member nations. The ECG's could eliminate the barriers of the national laws and could bring about more ideal "conditions for cross-frontier contacts between undertakings.[108] This could further enhance the drive toward a truly international market.

The ECG would be a tool for the business of the members of the grouping and would not attempt to make profits for itself. "Each member retains complete economic independence: in this way the grouping also differs from a group, in which one company is in a position to give orders to other companies."[109] Its activities are focused in the area of providing services for its members through:

(i) Common buying office
Common sales office

(ii) Provision of specialized services

(iii) Representation of the members for the purposes of individual transactions

(iv) Coordination of certain technical activities of the members[110]

While the Commission submitted the proposal for a regulation on ECGs one year ago, Council action is still pending.

The summary and final analysis of the question on establishment, competition merger, abuse, state aids, state monopolies, and proposals for future action will be discussed in the following chapter.

NOTES

1. "Treaty Establishing the E.E.C.," United Nations Treaty Series, 298, No. 4300 [1958]

2. Ibid.

3. Ibid.

4. Ibid.

5. Berthold Goldman, European Commercial Law (New York: Matthew Bender, 1973), pp. 387-388.

6. Ibid., p. 388.

7. Ibid., p. 389.

8. Ibid.

9. Ibid.

10. Ibid., pp. 390-391.

11. Ibid., pp. 391.

12. Ibid., p. 392.

13. Ibid., p. 393.

14. Ibid., p. 394.

15. Emmanuel M.J.A. Sassen, "Ensuring fair competition in the European Community," Community Topics occasional paper No. 35 (European Communities Press and Information, March, 1970), p. 3.

16. "Statement by Wolfman Doerinkel before the United States Senate Committee in the Judiciary, Subcommittee on Anti-trust and Monopoly," (mimeo.) (May, 1974), p. 4. Hereafter cited as Doerinkel Statement.

17. Ibid.

18. Ibid., p. 5.

19. ECSC, EEC, EAEC, Commission, First Report on Competition Policy (Annexed to the "Fifth General Report on the Activities of the Communities") (Brussels-Luxembourg: April, 1972), p. 24. Hereafter cited as First Report.

20. Ibid., pp. 39-40.

21. Ibid., p. 40.

22. Ibid., pp. 41-42.

23. "Restrictive Trade Practices and Common Market Law," European Community Background Information, No. 16. (June 21, 1972), p. 3. Hereafter cited as E.C.B.I., No. 16.

24. Article 1 states: "Without prejudice to Articles 6, 7, and 23 of this regulation, agreements, decisions and concerted practices of the kind described in Article 85(1) of the Treaty and the abuse of a dominant position in the market, within the meaning of Article 86 of the Treaty shall be prohibited, no prior decision to that effect being required."

25. Grossfilex-Fillistorf case, 1964, Official Journal, No. 58, April 9, 1964, p. 915.

26. See: Begeulin v. Import Export, Nice, and Gebruder Marbach, Hamburg, Official Journal, No. C9.

27. Official Journal, No. C64, June 2, 1970.

28. Doerinkel Statement, p. 6.

29. Ibid.

30. Official Journal, No. L165, July 5, 1969, p. 12.

31. Official Journal, No. L147, July 7, 1970, p. 24.

32. Doerinkel Statement, p. 8.

33. E.C.B.I., No. 16, p. 1.

34. Recently, Commission member Mr. Borschette made a speech to the European Parliament where he said: "In the present situation, where the chief priority of economic policy remains the fight to curb inflation, a pricing policy must be followed based on the mechanics of effective competition...." He also said that current inquiries are being conducted by the Commission into the restraints of competition by 20 oil companies in the Community during the oil crisis, which necessarily hurts consumers. "Competition policy and the consumer," Industry and Society(Brussels), No. 39/74 (November 5, 1974), Annex 1, p. 1.

35. Ibid., pp. 1-2.

36. Ibid., p. 2.

37. Sassen, Op. Cit., p. 5.

38. Ibid.

39. Doerinkel Statement, p. 18.

40. ECSC, EEC, EAEC, Commission, Third Report on Competition Policy (Annexed to the "Seventh General Report on the Activities of the Communities") (Brussels-Luxembourg: May, 1974), p. 16.

41. Corwin Edwards, Control of Cartels and Monopolies, An International Comparison (Dobbs Ferry, N.Y.: Oceana, 1971), pp. 291-292.

42. Ibid., p. 292.

43. Ibid., p. 285.

44. Doerinkel Statement, p. 19.

45. "The Commission Opens Fire," Vision (April, 1973), p. 63.

46. Article 1 states: "Without prejudice to Articles 6, 7, and 23 of this regulation, agreements, decision, and concerted practices of the kind described in Article 85(1) of the Treaty and the abuse of a dominant position in the market, within the meaning of Article 86 of the Treaty, shall be prohibited, no prior decision to that effect being required."

47. "Restrictive Practices: Re: Continental Can Company Incorporated," Decision of the Commission of the European Communities 72/21/EEC, Common Market Law Reports (R.P. Supplement), Issue No. 2, (March, 1972), p. D12. Hereafter cited as C.M.L. Rep. (3-72).

48. Ibid., pp. D 13-D 15.

49. Ibid., p. D 15.

50. Ibid., pp. D 15-D 17.

51. Ibid., p. D 17.

52. Ibid., p. D 27.

53. Berthold Goldman, European Commercial Law (New York: Matthew Bender, 1973), pp. 218-219.

54. C.M.L. Rep (3-72), pp. D 27-D 31.

55. Ibid., pp. D 34-D35.

56. Europemballage Corporation and Continental Can Company Inc. v. Commission of the European Communities, Reports of Cases before the Court of Justice of the European Communities, February 21, 1973, Case 6/72 (1973), p. 220.

57. Ibid.

58. Ibid.

59. ECSC, EEC, EAEC, Commission, Third Report on Competition Policy (Annexed to the "Seventh General Report on the Activities of the Communities") (Brussels-Luxembourg: May, 1974), pp. 60-61. Hereafter cited as Third Report.

60. Ibid., p. 61.

61. First Report, p. 186.

62. Third Report, p. 78.

63. Ibid., pp. 78-79.

64. Ibid., p. 79.

65. Ibid.

66. Ibid., p. 80.

67. Ibid.

68. Ibid.

69. Ibid.

70. Ibid., pp. 82-83.

71. Ibid., p. 86.

72. Ibid., p. 87.

73. Ibid., pp. 86-87.

74. First Report, p. 103.

75. Ibid.

76. Ibid., pp. 148-149.

77. Ibid.

78. "The Adjustment of State Monopolies in the EEC (Part II)," European Report, No. 148 (June 15, 1974), p. 1.

79. Ibid.

80. Ibid.

81. Ibid.

82. See: "The adjustment of State Monopolies in the EEC (Part I)" European Report, No. 126 (March 30, 1974); and "The Adjustment of State Monopolies in the EEC (Part III)," European Report, No. 154 (July 6, 1974).

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84. European Report, No. 126, p. 3.

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86. Europe, No. 2521 (October 4, 1966), p. 6.

87. Eric Stein, Harmonization of European Company Laws (Indianapolis: Bobbs-Merrill, 1971), pp. 433-437.

88. Ibid., p. 488.

89. Ibid.

90. Ibid., p. 449.

91. Ibid., p. 449-450.

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93. Ibid., p. 458-459.

94. Ibid., p. 459.

95. "The EEC's Plan for Multinationals," Vision (April, 1973), p. 63.

96. Ibid.

97. "Whither Multinationals," European Community, No. 173 (February, 1974), pp. 22-23.

98. Commission of the European Communities, Multinational Undertakings and Community Regulation, Communication to the Council, COM (73) 1930, Brussels, November 7, 1973,III/1048/73E.

99. Ibid, p.1.

100. Ibid.,p.2.

101. Ibid.

102. Ibid.,p.11.

103. Commission of the European Communities, "Draft Convention on the international merger of societes anonymes and Report on the draft," Bulletin of the European Communities, Supplement 13/73 (June 29, 1973), p. 3.

104. Article 1 of the "Draft."

105. Ibid.

106. "Proposal for a Regulation (EEC) of the Council on the Control of Concentrations between Undertakings," Official Journal, 16, No.C92 (October 13, 1973).

107. Ibid.,p.2.

108. European Communities Commission, "Proposal for a Regulation of the Council on the European Cooperation grouping (ECG)," Bulletin of the European Communities, Supplement 1/74 (December 21, 1973),p.17.

109. Ibid.,p.20.

110. Ibid.,pp.20-21.

Chapter VI

Conclusion

The purpose of the conclusion is threefold: one, to summarize the findings of the dissertation; two, to present a general statement of the current problems in the Community; and, three, to identify and describe Community strategies for coping with the questions regarding MNCs in the future.

Findings

The study was concerned with the status of political integration within the European Community in terms of regulation of multinational corporations in the commercial problem areas of establishment of corporations, competition, merger, abuse of dominant positions within the market, state aids and state monopolies. The findings show that MNCs are still formidable and very powerful, but are not uncontrollable. The fears that MNCs cannot be controlled by any government or international organization have not been completely dispelled, but much of the threat is illusory. MNCs must comply with European Community rules, as well as with national business regulations. At the start of the dissertation, it was stated that we would look at the impact of the MNC on the Community. The findings

show that the MNC has had a significant impact on the European Community. And, the degree of impact can be best shown through the answers to the following questions: (1) Is the MNC problem causing political changes to occur in the E.C.? If so, what types of changes? (2) Is the E.C. becoming more politically integrated as a result? (3) Do the regulatory efforts of the E.C. provide a model for regulation of the MNC?

(1) Is the MNC problem causing political changes to occur in the E.C.? If so, what types of changes? Yes, the MNC problem is causing political changes to occur. Multinational corporations have affected governments in executing their functions and their relationship with other nation-states. They have posed some threats to the E.C. as they do to the nation-states, such as threats to political control, currency values, trade, transfer of technology, and the creation of difficult legal questions. The MNC problem in the Community has caused the E.C. officials, and representatives of the member nations, to come to grips with the situation, and to make some decisions to confront the corporations. Ensuingly, these Community decisions have also had an effect on the E.C. organization itself.

The changes that have taken place have been in the areas of harmonization of laws; Community regulation and enforcement; and proposed Community regulations which would pre-empt the field. The best way to describe the changes is through the use of the original model, "Regulation of MNCs and Political Integration," which was first discussed in Chapter 2.

Figure 2

Regulation of MNCs and Political Integration of the E.C.

	States Dominant----------(continuum)----------Community Dominant					
	No Action Data Collection States Regulate	Policy Recommendation by Community	Harmonization	Regulations of Community with enforcement	Community Regulation Pre-empts the field	Community Regulations Exclusive
Commercial Problem Areas						
Establishment			x b		(x) b	
Competition				xac		
Merger			(x) ab	xac	(x) ab	
Abuse				xac	(x) a	
State Aids			x a			
State Monopolies			x a	x a		
SPILLOVER						
Social Changes						
Stockholder management			(x) ab	(x) ab	(x) ab	
Labor-Management			(x) ab	(x) ab	(x) ab	
Tax			(x) ab	(x) ab	(x) ab	
Transfer of technology			(x) b			

KEY:
x=actual regulation
(x)=proposed regulation
a=EC rule or Directive
b=Convention between EC states
c=Court rulings

The continuum scale shown in Figure 2 is designed to show the increase in political integration on the horizontal plane beginning with the level of least integration when the states are dominant. As is evident in Figure 2, to date, the Community's activity lies much further along the continuum than steps one and two. The current and proposed regulations lie in the sectors of harmonization, regulation, and where Community regulations may pre-empt national regulations.

(a) No action by the Community, data, collection, states regulate. In the first step, the states alone are dominant in the area of regulation of multinational corporations and national enterprises. The Community functioned as a data collection agency during its early years, but began to take action in the 1960's. States did perform the majority of the regulatory functions; however, the Community's powers were to increase.

(b) Policy recommendations by the Community. The organization has not been content to merely make recommendations for international conventions and legislation by the member states. Generally, the E.C. has tried to skip the policy recommendation level wherever possible and move directly to harmonization or regulation by the E.C.

(c) Harmonization. Harmonization of the laws of the member states is the next logical step. Harmonization has been achieved in the following commercial problem areas and proposed in others through Directives and Conventions.

1. Establishment. In the area of the right of establishment of business, evidence of rules affecting MNCs is found in the "Convention Between Member States of the EEC on the Mutual Recognition of Companies and Legal Persons" of February 28, 1968. This Convention provides equal rights of establishment for companies in the Community so long as they comply with the requirements of the rules. In addition, the Protocol and Joint Declaration of June 3, 1971, expand the reach of the Convention by giving the Court of Justice jurisdiction to interpret the Convention and make decisions accordingly.

2. Merger. Since there is no definitive ruling on mergers, there is a major proposal pending adjustments and ratification. This is the draft for a "Convention on the international merger of societes anonymes," which was written by Professor Berthold Goldman. This Convention, when ratified would have the effect of a multilateral treaty between the member states and would have the characteristics of law.

While the Goldman draft calls for general control of international mergers, the "Proposal for a Regulation (EEC) of the Council on the control of concentration between undertakings," is designed simply for regulation certain types of large corporations. This would be enforced by the Commission.

3. State aids. The Community has a definitive policy on state aids to companies. Although the Commission proposed guidelines for future policies, the technical work will not begin until early 1975. The actual policy in effect

provides for consultation between the Commission and the respective national government involved, before any new state aid is to be granted. It has also separate conventions--in harmony with O.E.C.D. policy--in such industries as ship-building.

(d) Regulations. Actual Community regulations are a part of Community law and are more important than the rules in the previous step, because they give more power of enforcement to the Community itself. There is a regulation which applies to three commercial problem areas. Regulation No. 17, as amended frequently, (combined with Articles 85 and 86) has been enforced by the Commission and the Court of Justice. According to Article 85 of the EEC Treaty, as interpreted through Council Regulation No. 17, Article 1, all restrictive agreements which restrain or inhibit competition and trade between the member nations are prohibited. This is an automatic prohibition and needs no special decision in each instance. The Commission's interpretation of Article 85, section 1, defines prohibited agreements in terms of only those which appreciably restrict competition.[1] The Court of Justice supported this interpretation and expanded it by saying that restrictive agreements should be prohibited when they impair commerce.[2]

Restrictive agreements may be exempted for public policy reasons through the enforcement of Article 85, section 3. When a restrictive agreement is allowed to exist and is exempted from prohibition, the exemption cannot be granted by

a state. Exemptions are usually granted if it appears that they may enhance the general economy of the Community. The Commission is empowered to pursue investigations, examine business files and copy them. The Commission is to also inform the national governments concerned of the proceedings and consult them prior to any final decisions. And, if the Commission requests it, the nations concerned must also make investigations.[3]

Any abuse of a dominant position is determined as such only in cases where trade between member nations would be affected. An example of a Community ruling on an abuse of a dominant position case is the Continental with such an abuse. Such proceedings are permitted under Regulation No. 17, article 1. Obviously, the Commission was not pleased with undertakings of the American MNC, and thus took action.[4] The final decision, though, came from the Court of Justice.[5]

Under Article 37 of the EEC Treaty, the Community has asserted its regulatory powers over state monopolies by abolishing them, or at least forcing them to behave like private companies and compete on the free market. The exempted monopolies which were not abolished are still under investigation because there have been arguments stating that the rules do not apply to them. Proposals for future regulation of state monopolies include: the "Proposed statute for the European Company," and the Commission communication to the Council, "Multinational Undertakings and Community Regulations."

(c) Community Regulations Pre-empt. In the next step toward integration one can find only proposed regulations, rules or conventions, since the Community does not have pre-emptive power in regulating enterprises over the Member States. The proposals for such future control lie only in the following sectors: merger and abuse.

1. Merger. In the area of merger law, the proposals include a "Convention on the international merger of societes anonymes," and a "Proposal for a Regulation (EEC) of the Council on the Control of Concentration between Undertakings." Although these proposals have already been included as drafts in the section on harmonization, they would also be impowered with very strong regulatory capabilities, and thus, are also placed in this category. There is a third proposal which would have little value if put into effect. The third example is a proposed directive that would require member nations, which have no merger laws, to pass such legislation. The Council has had this proposal since June 16, 1970, and has shown little interest in it. If the two other proposals would be accepted, this third recommendation would be unnecessary.

The proposed Convention between the member states, indicated by (b) in Figure 2, refers to the Sanders draft which is known as the "Proposed Statute for the European Company." The Sanders draft includes a section on the question of the right of establishment. The European company would have a legal personality in each of the countries, and would be co-

equal in status with the companies already existing in those nations. Its registered office and the real home office would be at the same location since its purpose is to promote the Common Market. Although the draft was proposed quite some time ago, action on this all-inclusive proposal is still pending.

2. Abuse of a dominant position. The proposed regulation in the area of abuse of a dominant position is the "Proposal for a Regulation (EEC) for the Council on the control of concentration between undertaking." It would not only cover mergers, but would give the commission new control over positions, which were problems of controversy in cases like the Continental Can Co. case.

(f) Community Regulations exclusive. There are no existing or proposed regulations in this final step at the end of the continuum. If there were regulations in every category of commercial problem areas here, the evidence would show that the Community is becoming fully integrated in terms of regulating multinational corporations. Obviously, this is not the cases today.

Regarding the point about spillover, we can say that although the Community has not reached that point in the areas of regulations of MNCs and restrictive business policies, spillover has been attempted. The Community has not yet been able to marshal enough force to attain its tasks in these areas. Spillover has been attempted at the following steps: (c) Harmonization; (d) Regulation of the Community

with enforcement; and (e) Community Regulation Pre-empts the field. Spillover into other areas has been attempted, but the slow and arduous process of decision-making in the Council has hindered such attempts.

One attempt at spillover has been in the area of transfer of technology, i.e. through the proposed European Patent Convention of 1972. While it has not yet been ratified, the Convention could include the twenty- one European countries, including the nine Community nations, which endorsed it. Under the provisions of the Convention, only one application would be made to the European Patent Office for a patent which would be applicable in all endorsing nations. When the patent would be granted in the E.C. nations, it would be a Community patent instead of a national patent. Of great importance is the fact that, when approved (perhaps later in 1975), the new European Patent Law "will further contribute towards the more effective use of the available technical and economic potential in the Community and will thereby strengthen the positions of Community industry in the field of technological competition."[6]

The attempts at spillover have also been evidenced in the endeavor to pass the European Company statute since 1970.[7] A stumbling block to its adoption is the German and Dutch requirement that there be significant worker representation on the boards of directors of the companies affected. Before adoption, the national tax laws must also be harmonized. If the European Company statute would be adopted, the following changes would result: purchases of stock in the public sector

would be permitted: competition in the high-technology fields would be advocated; modernization and transformation of declining industries (under appropriate social conditions); guaranteeing that mergers affecting Community enterprises are consistent with the social and economic goals of the E.C.; and the sustenance of fair competition.[8]

At the European Summit Conference in October, 1972, the general feeling was that through the proposed European Company statute, and the "Convention on the Merger of Societes Anonymes,"[9] it would be necessary to insure a greater level of participation by both labor and management in the decisions of the E.C. Primarily, it was proposed that the increased participation would be in the economic and social areas of Community decision-making. Consistent with attempted spillover, the Conference "urged closer involvement of workers in the progress of their firms (a veiled allusion to greater worker participation in management) and the conclusion of collective agreements at the European level in appropriate fields.[10]

The process of decision-making in the Council has been slow because the member nations have been concerned with other problems and have been hesitant to authorize their foreign ministers to take decisive action. The attempts at spillover were significant, yet the Council withheld support of the recommendations. This served to prevent Community moves toward further integration.

It should be recalled that spillover occurs when there is a need to upgrade the common interests of nations, and it

may also occur when the performance of existing institutions is inadequate because of a limited grant of governmental powers to the organization. Thus, the functional task expansion and consequent increase in governmental powers, designed for maximum performance, are direct outgrowths of the previous institutional programs and the reassessment of the group's expectations. In these instances, spillover has been attempted but the Council thwarted the Commission's initiative to upgrade the common interests of the member nations.

The most that can be expected of the Community at this time is to see some positive reactions to the Commission's recommendations regarding multinational corporations. Some slight evidence pointing in that direction was made known earlier last year. On March 5-6, 1974, there was a discussion of an expert group on the proposals to contain MNCs. This was the first occasion for the nine nations to discuss this problem on the basis fo the Commission communication to the Council, "Multinational Undertakings and Community Regulation," of November 7, 1973.[11] One member of the expert group said that such a discussion allowed the Commission to "take the temperature" and see the general feelings of the various delegations. The Council's secretariat is preparing a report of that meeting of the Committee of Permanent Representatives, thus preparing for ministerial level discussion of the matter.

The discussion was only an outline of what is to come in future discussion. Nevertheless, one could get a general impression of what interested the delegations most. The

Germans "insisted that the Commission give a greater stress to its company law initiatives, particularly those involving improved and harmonized information on corporate activity (harmonization of company accounts, law on groups of companies, rules on consolidated accounts)."[12] The political angles of the question will be discussed at the ministerial level, while the Commission sources made it know that there was a "general satisfaction that the multinational document avoided discrimination between European multinationals and foreign-based multinationals."[13] The Italians were disappointed that not enough emphasis was placed on European MNCs, while the Dutch showed some pleasure at the fact that both national and multinational companies were included. Thus, in general, it was found that those most in favor of the Commission's proposal were the Germans, Belgians, and the French.[14]

There is a chance, if conditions remain stable, that the activities of the Community toward a unified MNC policy will lead to spillover. However, all other conditions are not stable, and thus the problem continues.

If spillover would occur, the social changes could possibly occur in terms of stockholder-management relations, taxation and the transfer of technology throughout the Community. Further discussion of the possible social changes emanating from spillover would be in terms of sheer speculation. Future study of these (and possibly other) social changes would be a worthwhile contribution to the body of

knowledge about the Community, but should not be undertaken until more of the proposals discussed above become law.

Thus, the activities of the multinational corporations have caused E.C. officials--as well as representatives of the member nations themselves--to realize that regulations are necessary. Such decisions by the Commission and the Court have increased the regulatory power of the Community. The Commission now is increasingly gaining supranational political strength in this sector. The Commission has gained such strength as to even combat some of the world's largest corporations. For example, it was reported in January, 1975, that the Commission imposed a fine of $121,000 on General Motors' Belgian subsidiary--General Motors Continental (GMC)--"for preventing auto dealers and buyers from importing Opel cars into Belgium through channels outside GMC's distributing system."[15] The Commission now does have the power to enforce the regulations regarding obstructions of competition and other business restraints.

(2) Is the E.C. becoming more politically integrated as a result? As was indicated in the model, "Regulation of MNCs and Political Integration of the E.C.," and the ensuing discussion, the E.C. is becoming more politically integrated in this sector. This qualification must be made because, although the tasks have been expanded for the Commission and spillover has been attempted which has resulted in a move toward further integration, all factors are not constant. If all other sectors of the Community were making equivalent

progress, these moves toward integration could aid in achieving complete integration for the Community. However, other sectors of the E.C. have suffered setbacks during 1974. (The total picture of the current malaise of the Community will be discussed later).

(3) Do the regulatory efforts of the E.C. provide a model for regulation of the MNC? Yes, the successful, and attempted, efforts at regulation of MNCs do provide a model for future control and its international regulation. While it may be ideal to use the United Nations as a regulator of MNCs, it is simply not equipped to exert control over those enterprises.

One cannot help notice that the E.C. has used a piecemeal approach in dealing with MNCs. Other regional international organizations can learn from the E.C.'s experience by dealing with questions such as rights of establishment, competition, merger, abuse of a dominant position, state aids, and state monopolies, in a more systematic manner. If the European Company statute is approved, that model will be an excellent paradigm to follow.

Thus, the regulatory efforts of the E.C. show the difficulties that can be encountered by international organizations attempting to control MNCs. These efforts also show, however, that the process of creating new regulations has helped move the Community toward an increased level of of integration. But, all is not well with the Community.

It has taken this one brave step forward, but recent problems have led it to also take two steps backward. The following section characterizes this dilemma.

Current malaise in the Community

The idea of a united, integrated Europe was struck by some very difficult situations this past year. The Community showed signs of disunity when the fuel crisis hit the Continent. Most of the Community nations were drastically short of the needed fuel, and some states, such as France, made special arrangements with the Arab nations to purchase oil. Inflation and changes in political leadership in many Community nations definitely hurt the Community also. Italy's short-term import tax, which was designed to help her ailing economy, resulted in some very bitter feelings among the Community nations. One must then consider these extremely important factors when judging whether the Community can further integrate on the whole, and not just in certain economic sectors such as a common agricultural policy. Britain's Prime Minister Harold Wilson continually made threats that the United Kingdom would leave the Community if the economic situation did not improve. Such a decision would cause great harm to the morale and the economic environment of the other member nations. The decision to stay, or not to stay, in the Community will be in the hands of the British voters when they vote in the June, 1975 referendum election. If these basic questions and problems, which trouble and shake the framework of the Community, can-

not be resolved, the very existence of the organization is in jeopardy, let alone its policies on the multinational corporations.

The February, 1974 Washington Energy Conference of the thirteen major oil-consuming nations (including the E.C. "Nine") focused attention on the disunity of the Community. The E.C. foreign ministers came to Washington without any energy policy because they had not even started preparing such a policy. The results of the conference showed disunity in this sector which could apply to other sectors. The European showing did not present a pretty picture. In fact, former E.C. Commission President summarized the conference's activities by saying that it was a sad show. He further said: "It is difficult for me to remain optimistic about European integration."[16]

That conference and other events have crystalized the various problems of the Community into a general dilemma. Europe, then, is in a state of crisis--"a crisis of confidence, of will, and of clarity of purpose."[17]

According to E.C. Commission President Francois Xavier-Ortoli, the Community must resolve the following questions:

> Can the economic and monetary policies of our Member States continue to ignore each other and go their different ways, or does the interdependence that has already been established between our economics, and the fact that we face the same problems in our dealings with the outside world, demand a far-reaching harmonization of our aims and our policies?
>
> At a time when international relations are being reshaped, with crucial consequences for us all, is

> there any state in Europe that can exert real influence and carry any weight comparable to that of a united Europe?[18]

So far there are no answers to these questions, and numerous Community officials are fearful that when the answers do come, they may not be favorable to European unity. European unity is not inevitable, and only a concerted effort by all individuals concerned will result in unity.

While the Community foreign ministers prepared for the E.C. "Summit" of December, 1974 at Paris, they realized that the E.C. was not ready to make any significant decisions because hard times had arrived. If unity could not be achieved during good times, nothing decisive could be agreed upon now.

The "Summit" prepared Europe for 1975. The leaders of the member nations agreed on little more than to guarantee that each country would not gouge the others while grappling for survival. The leaders also made it known that 1975 could be an even worse year than 1974. Political violence resulting from economic collapse, in such member nations as Italy, might be a real possibility. One commentator's choice words at the end of the conference clearly point to the current malaise in the Community, and focus on a dismal future:

> European democracy is in danger and ... it is time for Europeans, if not to unify, at least cling to one another for dear life. If the Nine do stick together and if by so doing, they escape the worst, then the Community, so maligned of late, will have justified itself.[19]

What about the future of the Community's integration plans, and the role played by the Commission and MNCs? This question will be answered in the following section.

Commission's strategy

Some critics have said that during 1974, a year of crisis for the E.C., the Commission had not been responsive to the needs of the Community. In fact, some of the critics charged that the Commission is incompetent. Former Commission member Ralf Dahrendorf responded to such charges by saying: "Europe's crisis is the result of the member states' inability to make decisions, with particular reference to the proposals put forward by the E.C. Commission in 1973.[20] And, one can infer from this that the greater fault lies with the Council, but only because the ministers of the Council represent their respective nations' wills, and not necessarily the best interests of the Community. At the present time there is no easy solution, since, "in a worsening social and economic climate each state makes inordinate efforts to find advantages for itself at the expense of its partners."[21]

Hans Apel, the German Federal Finance Minister, has made some recommendations for change which are noteworthy. He suggests that the E.E.C. Treaty be amended to allow majority voting in the Council of Ministers, and strengthening of the Commission's right of introducing legislation. He also says that the Commission has to be granted more responsibility and independence in dealing with the daily concerns of the E.C.[22]

The Commission may increase its power, as it has done in the past, through manipulation of its existing powers. Notwithstanding Apel's recommendations for changes in the Treaty of Rome, which would also alter the power of the Commission, and consequently give increased power to the Commission, the trend in the future will focus on a gradual gain in strength for the Commission. This could be done without any structural changes in the Community's institutions, as suggested by Apel, but through a liberal interpretation of the provisions of the Treaty, in much the same way as the U. S. Congress and the courts interpreted the commerce clause of the U. S. Constitution. Congress created the Interstate Commerce Commission with wide-reaching powers to deal with such varied subjects as regulation of interstate transportation of diseased poultry, and the shape of mud flaps on interstate tractor-trailer trucks. In much the same way, the Commission could further enhance its own power by interpreting the Treaty's provisions, especially under Articles 85 and 86. A liberal interpretation of those provisions on restrictive business practices and competition could be further expanded to the "nth degree" if the Commission would rule that any enterprise which did not strictly comply with the regulations went against the basic goals of the Community. It should be recalled that the Community was established to promote:

> a harmonious development of economic activities, a a continuous and balanced expansion, an increased

> stability, an accelerated raising of the standard of living and closer relations between its Member States.[23]

It is quite reasonable to foresee a continued expansion of the Commission's range of authority to limit or control enterprises if, in the Commission's view, their operations were in any way contrary to the goals, or best interests, of the Community.

Such an increase in power in the hands of the Commission could bring the Community closer to becoming a viable governmental authority. However, the member nations have been hesitant to allow this, as witnessed through the constant resistance to approve Commission proposals such as the European Company statute. The Council has been the primary barricade to the adoption of new rules and regulations, and would probably attempt to limit major changes in the Community's power structure.

The basic strategy of the Commission, vis-a-vis MNCs, through the 1960's and into the 1970's, has been one of attempting to gain as much authority to regulate MNCs as possible. While numerous major proposals, such as the European Company Law and the "Draft resolution of the Council on the measures to be taken by the Community in order to resolve the problems raised by the development of multinational undertakings," have not been enacted by the Council, the Commission still has been able to gain strength. The gradual increase in power has been achieved through a dynamic process of incrementally moving toward a European Company Law, while

the all-encompassing proposals have not been accepted. In effect, this dynamic process has been one of aiming toward the same goal, but moving at a slower steady pace than if the law itself had been quickly accepted. While incrementalism may not have been the ideal way toward increasing Commission strength, the strategy has been successful. By building on court interpretation, the Commission has been able to go to the limit of its power.

In the future, the Commission is likely to continue along the lines of the current strategy of approving new regulations and tighter controls over the MNCs which also increased their strength. The pattern for the late 1970's and early 1980's will follow the guidelines set in the early 1970's, and it will not be hesitant to enforce the rules, as it is now confident that its power of enforcement is viable. All things being equal, the Commission's activities could go beyond the commercial sector and spillover into the social sector, i.e. in the areas of stockholder management, labor-management, taxing, and transfer of technology. However, all things are not equal as we have witnessed the current malaise in the Community. This malaise is even considered to be a crisis situation of "confidence, of will, and of clarity of purpose,"[24] by Commission President Ortoli. Yes, it is possible--but not likely--that the major proposals for significant changes in the approach to regulating MNCs will be approved in the 1970's. In view of the reluctance of the member nations to move forward toward a united Europe by

1980, we can say that the strategy of the Commission will remain the same. No lessening of the power of regulating MNCs is forseen, but also no radical change in the plans can be predicted. The policy for the future is incrementalism.

The Community's chances for total integration, or a united Europe, are not great at this time, but increased integration will occur in certain economic sectors. The Commission's policy will not be aimed at multinational corporations per se, but at those enterprises which engage in dubious business practices and bend the rules to fit their own gains. If the Commission is able to slowly increase its regulatory powers, then it may well be the factor which will see the Community through this period of political crisis.

NOTES

1. Grossfilex-Fillistorf case, 1964, Official Journal, No. 58, April 9, 1964, p. 95.

2. See Beguilin v. Import-Export, Nice, and Gebruder Marbach, Hamburg, Official Journal, No. C9.

3. Corwin Edwards, Control of Carterls and Monopolies, An International Comparison (Dobbs Ferry, N.Y.: Oceana, 1971), pp. 291-292.

4. "Restrictive Practices: Re: Continental Can Company Incorporated," Decision of the Commission of the European Communities 72/21/EEC, Common Market Law Reports (R.P. Supplement), Issue No. 2 (March, 1972), p. D12.

5. Ibid.

6. Commission of the European Communities, The New European Patent Law (Luxembourg: Office for Official Publications of the European Communities, 1973), p. 14.

7. Commission of the European Communities, Secretariat, Proposed Statute for the European Company, Supplement to Bulletin 8-1970 of the European Communities (Brussels: June 24, 1970).

8. J. J. Boddewyn, "Western European Policies Toward U. S. Investors," The Bulletin, New York University Graduate School of Business Administration Institute of Finance (March, 1974), p. 59.

9. "Convention on the Merger of Societes Anonymes," Bulletin of the European Communities, Supplement 13/73.

10. Boddewyn, Op. Cit., p. 59.

11. Commission of the European Communities, Multinational Undertakings and Community Regulations, Communication to the Council, COM(73)1930, Brussels, November 7, 1973, III/1048/73E.

12. "Multinationals: Positive Results of Nine's Meeting," European Report, Business Brief No. 120 (March 9, 1974), p.1.

13. Ibid.

14. Ibid.

15. European Community News, No.4 (January 31, 1975), p.1.

16. Emanuele Gazzo, "Conference and Crisis," European Community, No. 175 (April, 1974), p. 10.

17. Francois-Xavier Ortoli, "State of the Community," European Community, No. 175 (April, 1974), p. 12.

18. Ibid.

19. Richard C. Longworth, "At the 'Summit'" European Community No. 183 (January-February, 1975), p. 7.

20. "Ralf Dahrendorf, 'On record,'" European Community, No. 182 (December, 1974), p. 10.

21. Ibid.

22. Hans Apel, "European Community at the crossroads," The German Tribune Political Affairs Review (Hamburg), No. 3 (June 27, 1974), p. 7.

23. E.E.C. Treaty, Article 2.

24. Ortoli, Op. Cit., p. 12.

Appendix A

NATIONS and CORPORATIONS

This table shows the gross annual sales of MNCs and the gross national products of countries for 1970 (1969 figures for General Motors and centrally planned economies, except China). Amounts are in billions of dollars.

1. United States	$974.10	37. Philippines	10.23
2. Soviet Union	504.70	38. Finland	10.20
3. Japan	197.18	39. Iran	10.18
4. West Germany	186.35	40. Venezuela	9.58
5. France	147.53	41. Greece	9.54
6. Britain	121.02	42. Turkey	9.04
7. Italy	93.19	43. GENERAL ELECTRIC	8.73
8. China	82.50	44. South Korea	8.21
9. Canada	80.38	45. IBM	7.50
10. India	52.92	46. Chile	7.39
11. Poland	42.32	47. MOBIL OIL	7.26
12. East Germany	37.61	48. CHRYSLER	7.00
13. Australia	36.10	49. UNILEVER	6.88
14. Brazil	34.60	50. Colombia	6.61
15. Mexico	33.18	51. Egypt	6.58
16. Sweden	32.58	52. Thailand	6.51
17. Spain	32.26	53. ITT	6.36
18. Netherlands	31.25	54. TEXACO	6.35
19. Czechoslovakia	28.84	55. Portugal	6.22
20. Romania	28.01	56. New Zealand	6.08
21. Belgium	25.70	57. Peru	5.92
22. Argentina	25.42	58. WESTERN ELECTRIC	5.86
23. GENERAL MOTORS	24.30	59. Nigeria	5.80
24. Switzerland	20.48	60. Taiwan	5.46
25. Pakistan	17.50	61. GULF OIL	5.40
26. South Africa	16.69	62. U. S. Steel	4.81
27. STANDARD OIL (NJ)	16.55	63. Cuba	4.80
28. Denmark	15.57	64. Israel	4.39
29. FORD MOTOR	14.98	65. VOLKSWAGENWERK	4.31
30. Austria	14.31	66. WESTINGHOUSE ELEC.	4.31
31. Yugoslavia	14.02	67. STANDARD OIL (Calif.)	4.19
32. Indonesia	12.60	68. Algeria	4.18
33. Bulgaria	11.82	69. PHILIPS ELECTRIC	4.16
34. Norway	11.39	70. Ireland	4.10
35. Hungary	11.33	71. BRITISH PETROLEUM	4.06
36. ROYAL DUTCH SHELL	10.80	72. Malaysia	3.84

73.	LING-TEMCO-VOUGHT	3.77	
74.	STANDARD OIL (Ind)	3.73	
75.	BOEING	3.68	
76.	DUPONT	3.62	
77.	Hong Kong	3.62	
78.	SHELL OIL	3.59	
79.	IMPERIAL CHEMICAL	3.51	
80.	BRITISH STEEL	3.50	
81.	North Korea	3.50	
82.	GENERAL TELEPHONE	3.44	
83.	NIPPON STEEL	3.40	
84.	Morocco	3.34	
85.	HITACHI	3.33	
86.	RCA	3.30	
87.	GOODYEAR TIRE	3.20	
88.	SIEMENS	3.20	
89.	South Vietnam	3.20	
90.	Libya	3.14	
91.	Saudi Arabia	3.14	
92.	SWIFT	3.08	
93.	FARBWERKE HOECHST	3.03	
94.	UNION CARBIDE	3.03	
95.	DAIMLER-BENZ	3.02	
96.	PROCTOR & GAMBLE	2.98	
97.	AUGUST THYSSEN-HUTTE	2.96	
98.	BETHLEHEM STEEL	2.94	
99.	BASF	2.87	

Source: U. S. Congress, Senate, Committee on Finance, Multinational Corporations, Hearings before a subcommittee on International Trade of the Committee on Finance, Senate, 93rd Cong. 1st sess., February 26, 27, 28, and March 1 and 6, 1973, p. 404.

Appendix B

Definition of Key Terms

It is important to have an understanding of the key terms to be used in this dissertation because there is such a variety of interpretations possible when there is such little agreement on the meanings of the concepts.

Multinational Corporation

The first time the term "multinational corporation" was used was by David Lilienthal in a paper presented before a symposium of the Graduate School of Industrial Administration of the Carnegie Institute of Technology in 1960. He defined MNCs as "corporations which have their home in one country but operate and live under the laws and customs of other countries as well."[1] In Mr. Lilienthal's definition, the structure of the corporation is emphasized, where the number of countries where the company operates is an indicator. In later years other criteria appeared to be important in determining the "multinationality" or "internationality" of the corporation. These included: the ownership of the company, the structure of the company, the management's nationality, and the performance of the operations.[2]

In the category of ownership of the company, the definition given by Olivier Giscard d'Estaing was simple: American companies could become "at truly multinational enterprise by making available either the stock of ...local subsidiary or the mother country in all countries where...

[they]...operate."[3] This is a highly idealistic definition, since very few companies today actually fit into this category. The National Association of Manufacturers (NAM) has chosen to deal with the ownership in terms of what is calls the "transnational firm." This is a "multinational firm managed by and owned by persons of different origins."[4] However, it makes a distinction between this and the multinational firm.

Second, according to the NAM, the multinational firm is characterized by its structure. It is considered as: "One in which both structurally and policy-wise, foreign operations are co-equal with domestic...Decisions remain nationally based for ownership, and headquarters' management remains uni-national."[5] Quite similar in perspective is Sidney Rolfe's definition (although he calls it "international corporation"), since he views it as consisting "of several operating subsidiaries in different countries, under the control of a central company which owns the subsidiaries in whole or part, and which in turn is usually owned by the public through wide-spread shareholdings."[6]

Third, as far as the category of the management's nationality as an indicator or determinant of what is an MNC, Business International gives a terse definition. The The company "not only has manufacturing, sales, and R & D activities in many countries, but its executives are drawn without regard to nationality."[7] Although this may seem to encompass the spectrum of characteristics of an MNC, one

cannot help but question the statement that management personnel are hired irregardless of their nationality. Of course there are exceptions, such as Jacques Maisonrouge, a Frenchman, who is President of I.B.M. World Trade Corporation, and Mr. Vasquez, a Venezuelan, who is a senior vice-president of Exxon, but their numbers are few.[8]

Finally, looking at the performance of the MNC to determine what it actually is, we can look at Jack Behrman's definition of the MNC. He says that "it can shift the rates of expansion among its affiliates- change product mixes, alter sources of supply, or even phase out a market without going out of business."[9] Also tied into a combination of performance and structure is Raymond Vernon's definition: "a cluster of corporations of diverse nationalities joined together by ties of common ownership and responsive to a common management strategy."[10]

In attempting to pull together the four categories of definitions, the following working definition encompasses these categories. No definitions of MNCs can be agreed upon by everyone, but this definition brings in the basic characteristics and is a synthesis of the definition discussed above.

The multinational corporatoin, then, is a cluster of companies of various nationalities which has dispersed managerial centers and is linked by a common ownership and a common management strategy, and whose management may ideally be selected without regard to nation of origin.

There are also additional terms used throughout the dissertation.

Home Country

The home country is the nation where the central headquarters of the MNC is located. Unless otherwise noted in the dissertation, it is the U. S.

Host Country

The host country is the nation where the MNC has located its subsidiary office and/or operations.

Parent Company

The parent company is the company with its central headquarters in the home country. It either wholly owns or has majority control over its subsidiaries in host countries.

Joint Venture

The joint venture is the sharing of ownership of the parent company's "local subsidiaries with local interests," usually encouraged by the host governments," in the apparent hope that the benefits for the economy will be increased by such a sharing."[11]

Footnotes to Appendix B

1. David Lilienthal, Management of the Multinational Corporation," in Melvin Anshen and G. L. Bach, eds., Management and Corporations, 1985 (New York: McGraw-Hill, 1960), as cited in Yair Aharoni, "On the Definition of a Multinational Corporation," in A. Kapoor and Phillip D. Grub, eds., The Multinational Enterprise in Transition: Selected Readings and Essays (Princeton, N. J.: Darwin, 1972), p. 4.

2. See Aharoni, pp. 4-20.

3. Olivier Giscard d'Estaing in the Report of the Cortonville Conference held by the Atlantic Council (December 12-15, 1965), p. 67.

4. Ribicoff subcommittee hearings, p. 450.

5. Ibid.

6. Sidney E. Rolfe, International Corporation, p. 11.

7. Business International Corporation, Organizing for Worldwide Operations (New York: Business International Corporation, 1965).

8. Other than perhaps discriminatory hiring practices, there are two basic reasons why foreign nationals do not want to be in the top management of American MNCs. First, "Europeans don't like to live in New York." Second, "Taxes are too high in the U. S. For example, it would be a problem with moving from a low tax country like France to a high tax country..." Personal interview with Christopher Tugendhat (London), May 30, 1973.

9. Jack Behrman, National Interests and the Multinational Enterprise, p. 2.

10. Raymond Vernon, "Economic Sovereignty at Bay," p. 114.

11. Raymond Vernon, Sovereignty at Bay (New York: Basic Books, 1971), p. 140.

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