

1986

The European Community

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Recommended Citation

Benson, Sandra D., et al. "The European Community." *American University International Law Review* 1, no. 1 (1986): 365-389.

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RECENT DEVELOPMENTS IN INTERNATIONAL ORGANIZATIONS

THE EUROPEAN COMMUNITY

I. EUROPEAN UNITY

The European Community ("EC") has achieved a degree of unity within Europe.¹ There are differences among Member States, however, that prevent them from deriving the optimal benefits of such a union.² Movements by groups both in and out of the EC have sought to minimize these differences in order to create greater unity among the Member States. The most notable of these attempts were the Action Committee for the United States of Europe in 1956, and a political community proposed in 1963.³ Recently, there have been several renewed attempts to further the goal of European unity, including a Draft Treaty on European Union, an Action Committee for Europe and the Dooze Committee report.

1. E. NOEL, *WORKING TOGETHER: THE INSTITUTIONS OF THE EUROPEAN COMMUNITY* 3 (1985). The European Community consists of three regional organizations, the European Coal and Steel Community, the European Atomic Energy Community, and the European Economic Community. *Id.* The aim of the EC is to provide the means for European unity, both economically and politically. *Id.*

2. The Member States are Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, Denmark, Ireland, the United Kingdom, and Greece. Spain and Portugal joined in January 1986.

Problems within the EC are those inherently associated with the expanding membership of the Community. Other problems are caused by the growing economic gap between rich and poor Member States. Wash. Post, Dec. 23, 1985, at A15, col. 1; see also C. Ehlermann, *How Flexible is Community Law? An Unusual Approach to the Concept of Two Speeds*, 82 MICH. L. REV. 1274 (1984) (discussing the debate among EC Member States over the "two-speed" concept for development programs).

3. Gazzo, *Action Committee for Europe Plans Push for Unity*, EUROPE, Sept.-Oct. 1985, at 32. Jean Monnet headed the Action Committee for the United States of Europe in 1956; Paul-Henri Spaak led an *ad hoc* assembly proposing a political community in 1963.

A. DRAFT TREATY ON EUROPEAN UNION

In February 1984, the European Parliament adopted the Draft Treaty on European Union.⁴ The treaty proposes broad institutional and substantive reforms in the EC.⁵ The principles of the Draft Treaty represent a commitment to pluralist democracy, respect for human rights, respect for EC law, promotion of international peace, and closer unity within Europe.⁶

The Draft Treaty contains provisions for reshaping EC institutions.⁷ One reform the treaty proposes is to grant the European Parliament more power,⁸ thus elevating its role in relation to the Council of Europe and entrusting the Parliament with more than merely an advisory function.⁹ Further, the Draft Treaty creates a type of bicameral legislative process to replace the present EC system involving the issuance of directives, resolutions and recommendations.¹⁰ Additionally, the Draft Treaty proposes strengthening the European Monetary System.¹¹ Other measures in the Draft Treaty involve social, political and foreign policy.¹²

Before the Draft Treaty can be implemented by the Member States, it faces many political hurdles. These hurdles include constitutional

4. 27 O.J. EUR. COMM. (No. L 234) 14 (1984); see Lodge, Freestone & Davidson, *Some Problems on the Draft Treaty on European Union*, 9 EUR. L. REV. 387 (1984) (discussing origins of the Draft Treaty).

5. See Jacques, *The Draft Treaty: An Overview*, in COMMISSION OF THE EUROPEAN COMMUNITIES: AN EVER CLOSER UNION 17-25 (1985) [hereinafter cited as AN EVER CLOSER UNION] (giving an overview of the Draft Treaty).

6. *Id.* at 306 (listing principles of the Draft Treaty).

7. Draft Treaty, Part Three, Title I reprinted in AN EVER CLOSER UNION, *supra* note 5, at 311-15. See AN EVER CLOSER UNION, *supra* note 5, Annex I at 306-28 (citing a complete text of the Draft Treaty); see also E. NOEL, *supra* note 1, at 3 (describing present EC institutions).

8. See Lodge, Freestone & Davidson, *Some Problems on the Draft Treaty on European Union*, 9 EUR. L. REV. 387, 390 (1984) (detailing the legislative process proposed by the Draft Treaty).

9. See E. NOEL, *supra* note 1, at 29-34 (detailing powers and functions of the European Parliament).

10. See Lodge, Freestone & Davidson, *Some Problems on The Draft Treaty on the European Union*, 9 EUR. L. REV. 387, 390 (1984) (describing the respective roles of the European Parliament and Council of Europe under the Draft Treaty); see also J. LOUIS, *THE COMMUNITY LEGAL ORDER* 54-60 (1985) (listing different types of EC legislation: the regulation, which has general application; the directive, which imposes an obligation; the decision, which has individual application; and the opinion or recommendation, which is not binding).

11. See Pinder, *Economic and Social Powers of the European Union and the Member States: Subordinate of Coordinate Relationship?*, in AN EVER CLOSER UNION, *supra* note 5, at 103-26 (describing economic powers of the EC under the Draft Treaty).

12. See Bruckner, *Foreign Affairs Powers and Policy in the Draft Treaty Establishing the European Union*, in AN EVER CLOSER UNION, *supra* note 5, at 127-40.

problems within each Member State, as well as contradictions between the Draft Treaty and EC treaties.¹³ Despite these problems, commentators emphasize the significance of the Draft Treaty as an expression of the strong desire of the Member States for change within the EC.¹⁴

B. THE DOOGE COMMITTEE

The Dooge Committee is an *ad hoc* Committee on Institutional Affairs.¹⁵ The EC established the Committee to propose objectives, policies and institutional reforms in order to create a "genuine political entity."¹⁶ The first objective the Committee suggested, in its report to the Council in March 1985,¹⁷ was the creation of a homogeneous internal economic region.¹⁸ This economic region requires the: establishment of free movement of European citizens; creation of a favorable climate for investment; adoption of European standards for goods; coordination of customs; introduction of a common transport policy; allowance for free movement of European capital; creation of a technical community to take charge of vocational training and research and development; and the strengthening of the European Monetary System.¹⁹

Second, the Committee suggested promotion of common values²⁰ such as protecting the environment, achieving an integrated European social policy, and establishing greater cooperation in the enforcement and codification of community law. The Committee also suggested promoting the common cultural values of the Member States and people of Europe. This promotion of common values would be accomplished by such programs as safeguarding the European cultural heritage, enacting measures to overcome the language barriers, developing a new European-wide news media, eliminating obstacles to free movement of cultural goods, improving knowledge about other peoples of the Com-

13. See AN EVER CLOSER UNION, *supra* note 5, at 161-285 (discussing constitutional and political aspects of implementing the Draft Treaty in each Member State); see also Lodge, Freestone & Davidson, *Some Problems on the Draft Treaty on the European Union*, 9 EUR. L. REV. 387, 395 (1984) (discussing the compatibility of the Draft Treaty with the EEC treaty).

14. See AN EVER CLOSER UNION, *supra* note 5, at 8 (describing the Draft Treaty as "the most ambitious effort so far to achieve sweeping institutional and substantive reform in the European Communities . . .").

15. 3 BULL. EUR. COMM. point 3.5.1, at 102-11 (1985) (noting the interim report by the Committee).

16. *Id.* at 102-03 (detailing the purpose of the Committee).

17. *Id.* at 102.

18. *Id.* at 103-05.

19. 3 BULL. EUR. COMM. point 3.5.1, at 102, 103-05 (1985).

20. 3 BULL. EUR. COMM. point 3.5.1, at 102, 105-06 (1985).

munity, and intensifying exchange programs.²¹

As a third objective, the Committee proposed the creation of an external identity for the European Community through the development of an external policy.²² In initiating an external policy, security and defense measures could be developed involving the participation of each Member State.²³ To achieve these objectives, the Committee suggested changes to expedite the decisions-making process within the Council.²⁴ The Committee also recommended a strengthened Commission and a greater role for the European Parliament.²⁵ Finally, the Committee stated the European Court of Justice must be given more prominence and its binding decisions enforced, to assure that each Member State is complying with Community law.²⁶

C. THE ACTION COMMITTEE FOR EUROPE

The present Action Committee for Europe differs from the earlier Action Committee for the United States of Europe.²⁷ The present Committee no longer uses the phrase "United States of Europe" as the name for the ultimate goal of a unified Europe, because the Europeans do not want to be closely identified with the United States of America,²⁸ but seek an independent identity.²⁹ Furthermore, the new Action Committee includes business and labor leaders among its members.³⁰

In June 1985, the Committee released a statement to the Council that identified four areas for EC improvement:³¹ creation of a border-free European home market by 1992,³² EC response to problems created by advanced technology,³³ strengthening of the European Mone-

21. *Id.*

22. *Id.* at 106-08.

23. *Id.* at 107-08.

24. *Id.* at 108-10 (suggesting efficient, democratic institutions as the means to achieve objectives).

25. 3 BULL. EUR. COMM. point 3.5.1, at 109-10 (1985) (setting forth the Committee's proposal for strengthening Commission and Parliament).

26. *Id.*

27. See Gazzo, *Action Committee for Europe Plans Push for Unity*, EUROPE, Sept.-Oct. 1985, at 32-33 (describing differences between the old and new Committees).

28. *Id.* at 33.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*; see also Lodge, Freestone & Davidson, *Some Problems on the Draft Treaty on European Union*, 9 EUR. L. REV. 401 (1984) (commenting on the free movement of capital between Member States under the EEC).

33. Gazzo, *supra* note 27, at 33.

tary System³⁴, and finally, the creation of a concerted policy among Member States to promote better relations between regions separated by an economic gap.³⁵

II. EMPLOYMENT ISSUES

A particular area of concern for the Member States of the European Community is employment. Two aspects of employment that the Community discussed recently are unemployment and migration policy.

A. UNEMPLOYMENT

In April 1985, the Commission reported that 13.6 million Europeans, approximately 11.6 percent of the work force, were unemployed during 1984.³⁶ Five million of these persons were under 25 years of age, constituting 39 percent of the total number unemployed.³⁷

While there is substantial employee protection in the Member States,³⁸ Council action to combat unemployment has been limited. In 1985, the Council adopted a directive requiring EC action to combat poverty.³⁹ The European Parliament, believing the Council measure inadequate, passed a series of resolutions calling for additional action.⁴⁰ The Parliament resolutions included a special employment program for youth.⁴¹ The program involves vocational training and the creation of a European-wide job market through the establishment of a uniform system of recognition for diplomas and certifications.⁴²

To create an overall plan of employment, the Parliament stressed that any policy must account for changes taking place in the overall

34. See Rey, *The European Monetary System*, 17 COMMON MKT. L. REV. 7 (1980) (describing European Monetary System). See generally Ungerer & Hurst, *The European Monetary System: The Experience 1979-1982*, IMF Occasional Paper No. 19 (May 1983) (describing problems of the European Monetary System).

35. Gazzo, *supra* note 27, at 33.

36. 4 BULL. EUR. COMM. point 2.1.4, at 27 (1985) (report adopted by the Commission).

37. *Id.*

38. See generally Bellace, *Employment Protection in the EEC*, 20 STAN. J. INT'L L. 413 (1984) (describing employee protection available in the EC).

39. See 28 O.J. EUR. COMM. (No. L 2) 3 (1985) (discussing Council decision on measures to combat poverty).

40. See 28 O.J. EUR. COMM. (No. C 122) 54-68 (1985) (citing the complete text of European Parliament resolutions on employment, including the ones summarized in accompanying text).

41. See 28 O.J. EUR. COMM. (No. C 122) 54 (1985) (noting Parliament's resolutions concerning various employment programs).

42. See *id.* at 56 (measure calling for recognition of diplomas to give youth freedom of access in the EC job market).

European market.⁴³ The Parliament also considered the investment of European Social Fund resources into local undertakings to create more jobs.⁴⁴ Finally, the Parliament's resolution called for the harmonization of social security policies of all Member States and the safeguarding of disadvantaged groups including the elderly, handicapped, migrant workers, and homosexuals.⁴⁵ The resolution also reflected a special concern that the Commission set priorities to protect women.⁴⁶

B. MIGRATION

Migrant workers are also an important factor to be considered in the overall employment situation in Europe.⁴⁷ In February 1985, the Commission communicated its goals for migration policy to the Council.⁴⁸ The Commission's communication stated that the European migration policy is a vital part of progress toward European citizenship.⁴⁹ Additionally, it pointed out that the EC, in moving toward European citizenship, should remove all barriers to free movement of persons, adopt better legal standards for the status of immigrants, and take measures to remove obstacles to the equal treatment of immigrants.⁵⁰

In 1985, the Parliament adopted two reports on migration policy after much debate.⁵¹ One report expressed dissatisfaction with the Commission's communication to the Council⁵² and proposed that host Member States give immigrants the right to vote and stand for local election.⁵³ Furthermore, the report suggested that migrant workers be allowed to return to their country of origin to vote in those elections.⁵⁴ Some members of Parliament objected to this report because it did not

43. See *id.* at 58 (describing Parliament's plan for handling unemployment and establishing new priorities).

44. *Id.* at 59.

45. *Id.* at 67.

46. *Id.*; see also Duffy, *Working Women Hurt by Recession*, EUROPE, Sept.-Oct. 1985, at 26 (illustrating the vulnerability of women during the economic crisis in Europe).

47. 4 BULL. EUR. COMM. point 2.4.5 at 61 (1985). A report in the European Parliament stated there are 17 million migrant workers living in the Member States. *Id.*

48. See 2 BULL. EUR. COMM. point 1.3.1 at 14-16 (1985) (noting Commission's communication to the Council on migration policy).

49. *Id.* at 15; Evans, *European Citizenship: A Novel Concept in EEC Law*, 32 AM. J. COMP. L. 679 (1984).

50. 2 BULL. EUR. COMM. point 1.3.1, at 14-16 (1985).

51. 4 BULL. EUR. COMM. point 2.4.5 at 61-64 (1985). One report was given by Francesca Marino of Italy concerning the right to vote for immigrants and another was given by Giovanni Papapietro of Italy on the education of migrant children. *Id.*

52. 4 BULL. EUR. COMM. point 2.4.5, at 61 (1985) (Marinero Report).

53. *Id.* at 61-62.

54. *Id.* at 62.

distinguish between Community migrant workers and non-Community workers.⁵⁵ As one member pointed out, Community workers living in non-Community states were not given voting rights in that host country.⁵⁶ The report was adopted in May with some compromising amendments including the right to vote in the country of residence for workers who lived in a Member State for at least five years.⁵⁷

The second report concerned a 1977 directive on the education of migrant workers' children.⁵⁸ The report stated that the directive was being violated in many Member States⁵⁹ and recommended that Parliament urge the Council to bring suit in the European Court of Justice against any Member State violating the directive.⁶⁰

Many members of Parliament have felt that the increasing rate of unemployment in Member States has placed migrant workers in a vulnerable position.⁶¹ Thus, the Parliament suggested other measures in their resolution to help migrant workers.⁶² These measures included calling for more effective coordination of national laws to combat racism and xenophobia, information campaigns for migrant workers, and the establishment of institutions providing migrant workers with legal assistance.⁶³

III. EUROPEAN COMMUNITY TREATY REFORMED

On December 4, 1985⁶⁴ the ten core Member States of the European Community voted to reform the Treaty of Rome,⁶⁵ the instrument that

55. 4 BULL. EUR. COMM. point 2.4.5 at 61 (1985). A member of the European Right attempted to have the report replaced by two separate reports. *Id.*

56. *Id.* Nicole Chouraqui of France cited the example of French technical cooperation workers in Africa who were not allowed to vote by the host nation. *Id.*

57. See 28 O.J. EUR. COMM. (No. C 141) 462 (1985) (printing complete text of Parliament's resolution on migration policy).

58. See 20 O.J. EUR. COMM. (No. L 199) 6.8 (1977) (discussing directive requiring Member States to allow immigrant children to attend public school).

59. See 4 BULL. EUR. COMM. point 2.4.5, at 62 (1985) (printing Papapietro report on application of Council directive).

60. *Id.*; see also J. LOUIS, *THE COMMUNITY LEGAL ORDER* 27 (1985) (stating that the task of the Court of Justice is to enforce directives in Member States).

61. *Id.* at 464; 28 O.J. EUR. COMM. (No. C 141) 463 (1985) (Resolution of Parliament stating: "whereas the socio-economic crisis and the so-called third industrial revolution have led to mass unemployment and the weakest social groups such as migrant workers have suffered most").

62. *Id.* at 464-68.

63. *Id.*

64. *Common Market Changes Get Approval*, N.Y. Times, Dec. 4, 1985, at A3, col. 4.

65. Treaty Establishing the European Economic Community, entered into force January 1, 1958, 298 U.N.T.S. 11, reprinted in OFFICE FOR THE OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES, *TREATIES ESTABLISHING EUROPEAN COMMU-*

created the Community. The ultimate goal of this institutional reform was to enable the European Community to compete more effectively in international trade with its major competitors, the United States and Japan. The December 4th reforms are the first amendments to the Treaty since its creation in 1957.⁶⁶

At the Luxembourg Summit, the Intergovernmental Conference proposed a compromise package which would improve the EC's decision-making process and make its institutions more effective. The package was structured to strengthen Europe's economy and pave the way to a unified European Common Market⁶⁷ without trade barriers between Member States blocking all progress toward a true common market.⁶⁸ During the Summit, Italy, Belgium, and the Netherlands led the majority, calling for greater cooperation among Member States and more effective utilization of human and financial resources to support the European Community's drive for economic sufficiency. The majority also urged that concrete changes be made in the EC's institutions and procedures to assist the emergence of a politically and economically unified European Community. Among the suggested changes was a grant of real power to the European Parliament to oversee the decision-making process in the Community.⁶⁹ Denmark and Britain, however, opposed these material reforms and agreed only to a minor strengthening of the European Parliament's powers.⁷⁰ The Council of Foreign Minis-

NITY 202 (1978) [hereinafter cited as Treaty of Rome].

66. Although the EC was founded 27 years ago, no previous agreement to reform the Treaty of Rome was reached prior to the Milan Summit in July 1985. At the Milan Summit, an Intergovernmental Conference was established to begin revitalizing the EC's institutions at a future summit in Luxembourg. During the Luxembourg Summit, the Intergovernmental Conference indeed pursued this goal by updating the EC's policies and procedures by making them more compatible with modern political and economic realities. *Conference on E.C. Reform Begins*, 26 A Letter From Europe: A Monthly Update on the European Community From its Delegation in Washington 2 (Oct. 21, 1985) (available in the European Communities Delegation Library, Washington, D.C.).

67. *Common Market Changes Get Approval*, *supra* note 64, at 5. The reforms, including the abolishment of a unanimous vote requirement in favor of a majority vote, should support the goal of increased efficiency and lead to a more unified European Common Market by 1992. *Id.*

68. The Parliament estimates that the present system of national border-crossing requirements in Western Europe costs fifty billion dollars a year, or about two percent of the combined gross national product of EC Member States. *European Community Leaders Seek Greater Unity*, *Christian Science Monitor*, Dec. 5, 1985, at 16, col. 1.

69. Crossick, *E.C. Conference Focuses on Reforms*, *EUROPE*, Nov.-Dec. 1985, at 32. At present, the European Parliament is not a legislative body, nor does it have the power to override EC Council decisions. Its formal opinions, however, are usually required prior to EC Council legislative action. *Id.*

70. *See Common Market Changes Get Approval*, *N.Y. Times*, Dec. 4, 1985, at A3, col. 4 (noting that the Parliament's advisory role was modestly increased, but EC lead-

ters finally adopted these reforms at the December 16th meeting and adopted the amended texts.

One of the material changes in European Communities institutional procedure was a reform of the legislative process. Formerly, a unanimous decision was required to pass new legislation.⁷¹ Under the current system, pursuant to amendments to this procedure made at the Luxembourg Summit, only a qualified majority vote will be required to pass proposed legislation. The new process values each nation's vote according to the size of its population allowing a majority of votes to fulfill the passing requirement. The revised system was intended to accelerate the legislative process and to facilitate the entry of Spain and Portugal into the European Community.⁷² European Community officials hope that measures can now be passed that would have been delayed by opposition from one or two Member States.⁷³

IV. UNITED STATES AND THE EUROPEAN COMMUNITY'S AGRICULTURAL TRADE RELATIONS

Agricultural trade issues are a major source of controversy between the United States and the European Community. Farming community representatives in the United States and European Community agree that substantial cooperation is necessary to prevent the outbreak of a trade war.⁷⁴ Increased cooperation between trading partners is essential

ers denied the Parliament power over EC decision-making); *see also EEC Moves Toward New Integration*, Baltimore Sun, Dec. 4, 1985, at 2D, col. 1 (discussing the various reforms).

71. All major policy decisions required a unanimous vote by EC members. Each Member State reserved the right to object to any decision affecting important national interests and, ultimately, had the right to veto. This process was slow and inefficient, as it often resulted in political stalemates on proposed legislation. *E.C. Agrees to Reforms in Treaty*, Wash. Post, Dec. 4, 1985, at A29, col. 1; *EEC Moves Toward New Integration*, Baltimore Sun, Dec. 4, 1985, at 2D, col. 1.

72. EC officials anticipated a considerable slowdown in the legislative process upon the accession of Spain and Portugal. There were fears that the additional national interest groups could halt decision-making in the EC. The new voting procedure is intended to increase the movement of blocked legislation and improve the EC's progression toward unification. *EEC Moves Toward New Integration*, Baltimore Sun, Dec. 4, 1985, at 2D, col. 1; *Common Market Changes Get Approved*, N.Y. Times, Dec. 4, 1985 at A3, col. 4; *see also Crossick, EC Conference Focuses on Reforms*, EUROPE, Nov.-Dec. 1985, at 32 (discussing the potential problems of the reforms).

73. *EEC Moves Toward New Integration*, Baltimore Sun, Dec. 4, 1985, at 2D, col. 1. Member States could oppose legislation that adversely affected their vital national interests. The new qualified majority vote requirement should facilitate legislative acts for the benefit of the EC and the Common Market.

74. Trade conflicts between the United States and the European Community concerning agricultural products have recently escalated to dangerous dimensions. The grain, citrus, pasta, and wine trade disputes have caused producers on both sides of the Atlantic to fear an all-out trade war. European Information Service, *Farm Trade: EEC*

to promote the goals of orderly international trade and balance supply and demand for agricultural products.⁷⁵ In an attempt to avoid detrimental confrontations, affected parties in the United States and the European Community have agreed to participate in bilateral and multi-lateral consultations to promote "orderly and mutually respectful trading of foodstuffs."⁷⁶ This agreement was a result of the Conference on Agriculture held in Texas on October 23, 1985. The conference was hosted by the United States Chamber of Commerce and attended by representatives of the Committee of Agricultural Organizations in the European Community (COPA), the General Committee of Agricultural Cooperation in the EEC (COCEGA),⁷⁷ and U.S. farmers, producers, and consumer organizations.⁷⁸

The Conference on Agriculture concluded that it was to improve GATT rules governing agricultural trade in order to gain the respect of GATT member nations and ameliorate trade tensions between the United States and the European Community. Furthermore, dispute resolution procedures or required changes/amendments needed to be changed to make the process more efficient and the exchange rate among major world currencies would need to be set to enhance free trade and create market stability. In addition, the Conference insightfully noted that in adapting agricultural policies, increased consideration should be given to the different economic and social conditions prevailing in the United States and the European Community's agricultural producing Member States.⁷⁹

and U.S. Farmers' Representatives Seek Ways to Avoid Dangerous Trade War, European Report No. 1171, § III, at 5 (Oct. 30, 1985) (available in the European Community Delegation Library, Washington, D.C.) [hereinafter cited as European Report No. 1171]; see also Nuzum, *U.S.-EEC Back Away From Trade War*, Wash. Post, Apr. 21, 1986, at 9C (discussing the increasing tension between the U.S. and the EC on the issue of agricultural trade restrictions and the problems of food surpluses due to farm subsidies on both sides).

75. *U.S.-EEC Back Away From Trade War*, *supra* note 74, at 9C. Balanced supply and demand for agricultural products would help solve severe surplus problems in the United States and the European Community. The ability of farming sector organizations to affect such a market change is doubtful. Cooperation between United States and European Community farming sectors, however, is a productive step in the slow progression toward improved trade relations. *Id.*

76. See European Report No. 1171, *supra* note 74, § III, at 5, 6 (reporting results of U.S.-EC Conference on Agriculture).

77. *Id.* An additional meeting between COPA and U.S. farming officials convened immediately prior to the Conference on Agriculture to discuss the growing tension over the grain trade dispute in particular. *Id.*

78. General Agreement on Tariffs and Trade (GATT), *opened for signature* Oct. 30, 1947, 61 Stat. pts. 5 & 6, 55-61 U.N.T.S., T.I.A.S. No. 1700.

79. European Report No. 1171, *supra* note 74, at 6. COPA representatives also suggested that present surpluses of agricultural products should be handled in a man-

A. FRUIT DISPUTE

The United States and the European Community ultimately resolved their long-running dispute over canned fruits on December 4, 1985. The European Community offered to reduce its support to fruit canners by twenty-five percent in response to the United States' allegations of unfair trade practices.⁸⁰ In 1982, the United States lodged an official complaint with GATT, claiming that European Community aid constituted illegitimate subsidies. A GATT panel reported its findings against the European Community in July 1984, inducing EC officials to agree to a reduction of its support.

The U.S.-EC agreement requires a gradual reduction in processing assistance to fruit canners over the next few years. No firm date has been set, however, and the European Community has no intention of entirely eliminating the aid. The agreement merely requires a reduction in aid that will reflect the European Community's intention to compensate fruit canners for increased growers' prices.⁸¹

V. UNITED STATES-EUROPEAN COMMUNITY TEXTILE TRADE ISSUES

United States Congress passage of the Jenkins Textile and Footwear Bill on December 3, 1985, alarmed European Community leaders. Although the European Community was not a target of textile import restrictions in the bill, feared it would have to import the surplus textiles diverted from United States markets.⁸² President Reagan, consistent with his commitment to a free trade policy, lessened the European Community's fears when he vetoed the Jenkins Bill on December 17th, 1985.⁸³

ner that would avoid disruption of world commodity markets.

80. European Information Service, *EEC-U.S.: Canned Fruit Solution Raises Hopes of Citrus Settlement*, European Report No. 1182, § V, at 1 (Dec. 7, 1985) (available in the European Community Delegation Library, Washington, D.C.). The European Community claimed the support was intended to assist canners in meeting increasing growers' prices. The United States rejected that claim and regarded the aid as responsible for excluding U.S. canners from EC markets.

81. The EC only reduced support to peach canners but refused to alter processing support to pear canners. *Id.*

82. European Information Service, *Textiles: EEC Keeps Fingers Crossed For A Presidential Veto on U.S. Textile Bill*, European Report No. 1176, § V, at 7 (Nov. 16, 1985) (available in the European Delegation Library, Washington, D.C.).

83. European Information Service, *Textiles: Reagan Must Veto U.S. Textile and Footwear Bill, Says De Clercq*, European Report No. 1182, § V, at 4 (Dec. 7, 1985) (available in the European Community Delegation Library, Washington, D.C.). United States sources fully expected that President Reagan would veto the protectionist legislation, as his international trade policy is predominately anti-protectionist.

The impact of United States government action in this matter extends beyond U.S.-EC textile trade relations. The Multifibres Arrangement (MFA),⁸⁴ that governs eighty percent of international textile trade, is due to expire in July 1986. In December 1985, a conference was held in Brussels focusing on the form of the renewed MFA. This conference attracted over one hundred representatives from textile and clothing industries, as well as consumer groups, foreign trade associations, and the European Community Commission.

The EC Commission's completion of detailed proposals for its negotiating position in the MFA renewal talks exemplifies the importance of these concerns to Community members. President Reagan's veto of the Textile Bill should help to increase cooperation between the United States and the European Community and should have positive effects on the future of international textile trading.

VI. INFRINGEMENTS UPON COMMUNITY LAW: A GROWING PROBLEM FOR THE EUROPEAN COMMUNITY

Infringements of community law within the European Community are currently a major concern of the European Parliament.⁸⁵ The number of infringements is increasing and the Parliament has requested a Commission investigation into the reasons for this disturbing phenomenon.⁸⁶ The European Parliament emphasizes the need for strict and uniform application of Community laws. It is no longer acceptable that some Member States try to evade the compulsion of Community laws by establishing barriers to its application.⁸⁷ A review of the annual reports for 1983 and 1984 regarding the monitoring and application of Community law reaffirmed the Parliament's assertion that national laws in each Member State must be brought into line with Community

84. European Information Service, *Textiles: Future of the MFA Discussed at CEPS Conference in Brussels*, European Report No. 1183, § V, at 8 (Dec. 11, 1985) (available in the European Community Delegation Library, Washington, D.C.).

85. See European Information Service, *Community Law: European Parliament Calls For More Severity on Member States' Infringements*, European Report No. 1169, § I, at 1 (Oct. 23, 1985) (available in the European Community Delegation Library, Washington, D.C.) (focusing on the European Parliament's concern regarding frequent infringements).

86. *Id.* The investigation will have legal experts designated to execute an increasing number of spot checks and improve the penalty system for infringements of the Treaty by Member States. *Id.*

87. *Id.* The Parliament calls for strict adherence to Community laws by all Member States as an essential prerequisite for European integration. This precludes certain protectionist means of escaping adherence to Community law and suggests that individual states may enforce their rights under Community law through national courts. *Id.*

law to unify and strengthen the European Community as a whole.⁸⁸ In order to enforce the uniform application of Community laws more effectively, however, the penalty system against offending Member States must be improved.

VII. GATT NEW ROUND PREPARATIONS

The European Community will participate as a member of GATT in the New Round of multilateral trade negotiations. Member states of GATT agree that the procedures and the overall effectiveness of GATT must be reviewed and reformed.⁸⁹ Members are calling for a more flexible trade structure to accommodate new factors and developments in the international trade system.

Several meetings were convened to resolve disputes blocking the launching of the New Round of multilateral trade negotiations. A major issue in contention was the liberalization of trade in services. A group of nations led by Brazil and India continued to oppose the inclusion of trade in services in the New Round discussions. Those nations maintained that the inclusion of trade in services will injure their own infant service sectors by exposing them to "merciless competition" from the United States and other trade giants.⁹⁰ Proponents argue that the inclusion of services in GATT is fundamental to the proper and effective functioning of the international trade system. The two opposing positions must be reconciled before New Round negotiations can begin.⁹¹

88. *Id.*

89. See European Information Service, *GATT: Senior Officials Fail to Agree on Report on Preparation for New Round*, European Report No. 1177, § V, at 5 (Nov. 20, 1985) (available in the European Community Delegation Library, Washington, D.C.) (discussing United States threats to seek new trade agreements outside of GATT unless progress is made toward a new round of negotiations). The General Agreement on Tariffs and Trade was originally part of the United Nations Havana Charter. *Id.* Although the Charter was never ratified, GATT was adopted as a system of rules governing international trade. *Id.* Since its adoption in 1957, however, many new factors have entered the international trading system. Agreements between Member States have outgrown GATT's ability to solve current problems in international trade. Therefore, Member States agree that material changes must be made to renovate GATT and make it effective in present-day trade negotiations. *Id.*

90. Brazil, India, Yugoslavia, Argentina, and Egypt claim that GATT is only capable of dealing with trade in products. European Information Service, *GATT: Start of New Negotiations Set for Autumn 1986*, European Report No. 1180, § V, at 11 (Nov. 30, 1985) (available in the European Community Delegation Library, Washington, D.C.).

91. *Id.* The United States has threatened to boycott GATT in its trade agreements unless a compromise is reached soon. The European Community has posed itself as a mediator between the United States and Member States who oppose the inclusion of services in GATT.

The Forty-first Session of the GATT contracting parties convened in Geneva, Switzerland, on November 25, 1985. Chairman Felipe Jaramillo described the deteriorating condition of the international trade system, the system's marked movement away from liberal trade policies that facilitated economic growth between 1950 and 1973,⁹² and the present trend toward protectionist measures, subsidies and managed trade. Jaramillo discussed a bi-annual Report by the GATT Secretariat which contained evidence that ninety-four export restraint agreements had been negotiated outside of GATT, covering steel, machine tools, textiles, agricultural products, and various other traded items.⁹³ The Report also cites new instances of agricultural export subsidy programs, subsidized export credits, and the general problems encountered in dispute settlements in GATT. These factors are evidence of the decaying relationship between economic growth and the growth of trade in the European Community.⁹⁴

Chairman Jaramillo claimed that GATT has been undermined in recent years by a combination of ill-advised policy measures and a lack of confidence in GATT's ability to solve problems effectively in the international trade system.⁹⁵ To begin rectifying the recent impairment of GATT, a Preparatory Committee was designated to draft a series of recommendations to form the basis of a Ministerial Conference in September 1986.

The GATT contracting parties agreed that questions of rollback, standstill, treatment of developing countries and trade in services are important and the Committee should consider these questions in their deliberations.⁹⁶ The Conference will officially launch the New Round of GATT negotiations.

92. Opening Statement by the Chairman Ambassador Felise Jaramillo, 41st Sess. of the GATT Contracting Parties, reprinted in GATT Press Release No. 1376 2 (Nov. 25, 1985).

93. See *id.* at 4 (citing a bi-annual Report from the GATT Secretariat on developments in the trading system).

94. *Id.*

95. *Id.* at 2-4.

96. European Information Service, *GATT: Start of New Negotiations Set for Autumn 1986*, European Report No. 1180, § V, at 12 (Nov. 30, 1985) (available in the European Community Delegation Library, Washington, D.C.). "Rollback" is a dismantling of all existing protectionist legislation, generally by industrialized countries. "Standstill" is a restraint on new protectionist measures. An exchange of issues at the New Round is plausible and would engender cooperation among negotiating Member States. Developing nations may be willing to soften their staunch opposition to the inclusion of services in GATT, if the United States, the EC and other industrialized nations are willing to honor rollback and standstill pledges. *Id.*

A. STEEL

The European Coal and Steel Community (ECSC) resolved two important issues during 1985's final months. In late October 1985, the Council of Ministers agreed to tie EC steel production more closely to market forces following years of extensive quotas, fixed prices, and subsidies. Soon after, in early December 1985, EC Steel Ministers also ratified a new comprehensive steel agreement with the United States.

1. Slow Movement Back to a Free Market

The signing of the Treaty of Paris in 1951 creating the ECSC began years of rapid expansion for the European steel industry which peaked during the early 1970's.⁹⁷ After the first "oil shock" in 1973, however, steel production fell, partially recovered, and then dropped again in 1980.⁹⁸ Thereafter, ECSC production continued to decline, falling 30% below 1974 figures by 1983.⁹⁹

Steel production's precipitous decline gradually provoked a profound change in ECSC policies. Since its inception, the ECSC has concentrated on providing a framework for increasing steel production and removing intra-community trade restraints.¹⁰⁰ Although the ECSC retained regulatory powers along with crisis management authority, it limited its intervention in the steel sector to precluding certain cartels.¹⁰¹ When production began declining during the mid-1970's the

97. See generally Tsoukalis & Strauss, *Crisis and Adjustment in European Steel: Beyond Laissez Faire*, 23 COMMON MKT. STUD. 207, 208 (1985) [hereinafter cited as Tsoukalis & Strauss] (assessing the ECSC's response to the present steel crisis). For example, steel production in the six member countries during that period increased from 42 million tons in 1952 to 73 million tons in 1960 and 109 million tons in 1970. *Id.* at 209; see COMMISSION OF EUROPEAN COMMUNITIES DIRECTORATE-GENERAL FOR INFORMATION, *THE EUROPEAN STEEL POLICY* (1985) (available in the European Communities Delegation Library, Washington, D.C.) (providing a quasi-official view of the EC's response to the steel crisis).

98. Tsoukalis & Strauss, *supra* note 97, at 209. Steel production for the nine ECSC Member States declined from 156 million tons in 1974 to 126 million tons during the following year. *Id.* Following some fluctuations, steel production rose again to 140 million tons in 1979 only to drop to 128 million tons in 1980. *Id.* at 209-10 (rounded figures derived from chart).

99. *Id.* at 209. In that year, ECSC steel production stood at 110 million tons. See *id.* at 210 (providing unrounded figures in a chart).

100. *Id.* at 214.

101. *Id.* at 215. Under Article 65 of the ECSC Treaty, cartels are prohibited unless they contribute to increased efficiency without harming competition. Treaty Establishing the European Steel and Coal Community, Apr. 18, 1951, art. 65, 261 U.N.T.S. 140 (1957), reprinted in OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES, *TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES* (1978) [hereinafter cited as ECSC Treaty].

ECSC first reacted slowly to what was perceived as a merely cyclical downturn.¹⁰² Rather than acting decisively, the ECSC confined its initial response to monitoring prices and fostering industry cooperation.¹⁰³ As production continued falling, however, the ECSC finally realized that European steel faced a serious structural crisis.¹⁰⁴ Accordingly, the ECSC changed its focus toward regulating the market and promoting orderly industry restructuring¹⁰⁵ using the following devices:

(1) Quotas: After voluntary quotas promulgated in 1977 collapsed during the 1980 recession, the Council of Ministers declared a "manifest crisis" under Article 58 of the ECSC Treaty.¹⁰⁶ Under this provision, the ECSC imposed mandatory production quotas on most steel products through 1985.¹⁰⁷

(2) Price Controls: Starting in 1977, the ECSC published voluntary price guidelines of set minimum prices on a wide variety of steel products.¹⁰⁸

(3) Import Controls: Since 1978, the ECSC has negotiated a series of "voluntary" trade restriction agreements with countries exporting steel to Europe.¹⁰⁹

102. Tsoukalis & Strauss, *supra* note 97, at 215.

103. *Id.* at 215. In 1975, the ECSC introduced a system of warning signals, known as "clignotants," to indicate whether future action should be taken. *Id.* at 215. In 1975, the ECSC strengthened the "clignotants" system and published non-mandatory minimum prices. *Id.* at 216. During that same year, the ECSC fostered the formation of Eurofer, the European Association of Iron and Steel Producing Industries, a cartel controlling ninety percent of total ECSC production. *Id.* at 216. Presumably, this cartel was compatible with ECSC Treaty Article 65. See ECSC Treaty, *supra* note 101, at art. 65 (prohibiting cartels).

104. Tsoukalis & Strauss, *supra* note 97, at 219.

105. See generally THE EUROPEAN STEEL POLICY, *supra* note 97, at 7-11 (explaining ECSC response to steel crises). These measures were christened the Davignon Plan, in honor of the EC Commissioner for Industrial Affairs, Etienne Davignon; Tsoukalis & Strauss, *supra* note 97, at 216 (explaining the Davignon Plan); Du Mesnil, *The Policy Makers*, EUROPE, Mar.-Apr. 1984, at 20 (giving a biographical profile of Davignon).

106. Tsoukalis & Strauss, *supra* note 97, at 216-18; see also ECSC Treaty, *supra* note 101, art. 58 (citing the applicable treaty provision).

107. Tsoukalis & Strauss, *supra* note 97, at 218.

108. *Id.* at 216, 218. Under this system, mandatory prices were imposed whenever voluntary controls proved ineffective. *Id.* at 217.

109. *Id.* at 217, 219. Recently, the Council empowered the Commission to renegotiate "voluntary" trade restriction agreements with the EC's trading partners. European Information Service, *Steel: Renewal of Trade Agreements with Third Countries*, European Report No. 1184, § V, at 11 (Dec. 14, 1985) (available in the European Communities Delegation Library, Washington, D.C.). In 1985-1986 fourteen countries were involved in these discussions: Bulgaria, Hungary, Czechoslovakia, Poland, Romania, Austria, Sweden, Norway, Finland, South Africa, South Korea, Brazil, Japan, and Australia. *Id.* As of March 1986 agreements only remained to be concluded with Brazil, South Korea and Australia. European Information Service, *Steel: Conclusion of Agreements Between E.C.S.C. and Third Countries*, European Report No.

(4) Restructuring Aid: Although the ECSC Treaty of Paris precludes state aid,¹¹⁰ the ECSC authorized such aid under E.C. Treaty of Rome Articles 92 and 93.¹¹¹ As a precondition for this derogation, the Commission retained the authority to tie this aid to a restructuring plan.¹¹² The plan eventually called for a thirty to thirty-five million ton cut in capacity¹¹³ to be completed when aids were to be phased out in 1985.¹¹⁴ Moreover, the ECSC contributed its own European Currency Unit (ECU) loans for industry and grants for job creation and retraining in depressed areas.¹¹⁵

As the 1985 expiration date for these measures approached, the European steel industry reached its goal of trimming between thirty and thirty-five million tons of capacity.¹¹⁶ Plant utilization also climbed to 70 percent from 57 percent in 1983.¹¹⁷ Nevertheless, the long-range outlook for steel still remains gloomy. According to analysts, at least twenty million more tons of capacity must be slashed in order to reach an acceptable plant utilization rates of 80 percent.¹¹⁸

In light of this data, the Commission in July 1985 outlined its plan for a gradual transition back to the free market.¹¹⁹ Due to continued pessimism, the Commission did not suggest an immediate return toward competition. Rather, the Commission advocated a two-step process extending for three years.¹²⁰ During the initial eighteen to twenty-

1205, § V, at 10 (Mar. 8, 1986) (available in the European Communities Delegation Library, Washington, D.C.).

110. Tsoukalis & Strauss, *supra* note 97, at 222; *see also* ECSC Treaty, *supra* note 101, at art. 4 (citing applicable treaty provision).

111. Tsoukalis & Strauss, *supra* note 97, at 222; *see also* Treaty Establishing the European Economic Community, Mar. 25, 1957, arts. 92-93, 298 U.N.T.S. 11 (1958), *reprinted in* OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES, TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES (1978).

112. THE EUROPEAN STEEL POLICY, *supra* note 97, at 9.

113. *Id.*

114. *Id.*

115. *Id.* at 10. By such loans and grants, the ECSC hoped to soften the social and economic impact of the steel crisis. *Id.*

116. *The Future of Steel in the E.C.*, EUROPE, Sept.-Oct. 1985, at 47.

117. Agence Internationale D'Information Pour La Presse, *Steel Council: Having Noted Differences of Opinion Both As Regards to Subsidies and Liberalization, Ministers Will Have to Continue their Debates on Post 1985 Arrangements*, European Report No. 4186, at 8, (Oct. 12, 1985) [hereinafter cited as European Report No. 4186] (available in the European Communities Delegation Library, Washington, D.C., File No. 443.2).

118. Agence Internationale D'Information Pour La Presse, *Steel: European Commission Proposes Three Year Transitional Regime Following Expiry of Code of Aids, Before Abandoning Steel Industry to Market Laws*, European Report No. 4133, at 5 (July 1, 1985) [hereinafter cited as Europe, No. 4133] (available in the European Communities Delegation Library, Washington, D.C., File No. 443.2).

119. *The Future of Steel in the E.C.*, *supra* note 116, at 47.

120. *Id.*

four months, the Commission sought to drop production quotas on four products: galvanized sheet, coated flat products, concrete reinforced bars, and wire rod.¹²¹ A system of target price arrangements would replace minimum compulsory prices.¹²² Afterwards, only minimum constraints would continue before completely returning to the free market.¹²³ Nevertheless, power to reimpose price controls would remain¹²⁴ and import restraining agreements would be retained.¹²⁵ Aid would be encouraged only for grants devoted in part to fund research, development and environmental protection, or in some cases, to cover plant closure costs.¹²⁶

After the Commission submitted its plan to the Council, specific aspects drew criticism. It soon became evident that strong support existed for retaining more extensive quotas.¹²⁷ Some members even argued for leaving the present system unchanged for a few months or a year.¹²⁸ Moreover, the Netherlands, Denmark, Greece, and the Federal Republic of Germany (FRG) registered dissent on allowing continued closure aid.¹²⁹ Accordingly, the Council modified the Commission's plans.

As approved by EC Steel Ministers, the new plan abandoned quotas on only two products, coated sheet steel and concrete reinforcing bars, as of January 1, 1986.¹³⁰ Although the Council rejected the Commis-

121. European Report No. 4186, *supra* note 116, at 8.

122. Agence Internationale D'Information Pour La Presse, *Steel: Commission Adopts Two Communications to the Council on Market Organization and Aid Provisions After 31 December*, European Report No. 4170, at 7 (Sept. 26, 1985) (available in the European Communities Delegation Library, Washington, D.C., File No. 443.2).

123. *The Future of Steel in the E.C.*, *supra* note 116, at 47.

124. European Report No. 4133, *supra* note 118, at 6.

125. *Id.*; see also European Report No. 1184, *supra* note 109 (listing nations with whom the ECSC is negotiating voluntary restraints).

126. *The Future of Steel in the E.C.*, *supra* note 116, at 47.

127. European Report No. 4186, *supra* note 117, at 8. According to this source, the Federal Republic of Germany (FRG), Belgium, Greece, Italy, and Great Britain opposed dropping quotas for galvanized sheet metal. *Id.* The FRG, Belgium, and Great Britain expressed reservations on eliminating quotas for other coated flat products. *Id.* Greece, Ireland, Luxembourg, and Great Britain argued against ending quotas on concrete reinforcing bars. *Id.* The FRG, Belgium, France, Greece, Luxembourg, and Great Britain expressed reservations about terminating quotas for wire rod. *Id.*

128. European Information Service, *Steel: Slow Liberalization of the European Community Steel Market*, European Report No. 1172, § III, at 4 (Nov. 1, 1985) (available in the European Communities Delegation Library, Washington, D.C.). *But see* European Report No. 4186, *supra* note 117, at 8 (naming Belgium as the only hold out).

129. European Report No. 4186, *supra* note 117, at 8.

130. 28 O.J. EUR. COMM. (No. L 340) 5, 8 (1985) (providing the official text); see also European Communities Spokesman's Service, *Commission Decisions on Steel Policy After 1985*, Information No. P-100, Nov. 1985 [hereinafter cited as *Commission Decisions*] (available in the European Communities Delegation Library, Washington, D.C., File No. 443.2) (providing a summary of the ESCS's new steel plan). These

sion's recommendation that quotas on galvanized sheet and wire rod should be dropped,¹³¹ the Council ordered the Commission to undertake a market analysis before the end of 1986 to determine whether additional quotas should be lifted.¹³² In a related move, the Council removed the Commission's authority to award supplementary quotas to firms achieving 85 percent of required restructuring.¹³³ Nevertheless, the Commission retains some discretion to modify individual quotas should a firm incur severe losses.¹³⁴ The Council did grant the Commission the power to reimpose controls should crisis conditions return.¹³⁵ The production controls system will expire on December 31, 1987.¹³⁶

Although the Council modified the Commission's proposals on quotas, the proposed limitations on aid remain intact. As of January 1, 1986, Member State aid will be banned under Article 4 of the ECSC Treaty with three narrow exceptions available through December 31, 1988.¹³⁷ First, ECSC countries may underwrite up to 35 percent of basic research and 25 percent of applied research for national industries.¹³⁸ Second, Member States may contribute up to 15 percent of investment costs directly associated with environmental protection.¹³⁹ Finally, despite some resistance,¹⁴⁰ the EC Steel Ministers approved continued plant closure aid.¹⁴¹ Besides subsidizing 50 percent of social costs, such as early retirement for workers, member countries may also reimburse firms for their plant closure costs within clearly defined limits.¹⁴²

2. ECSC-U.S. Trade

One of the greatest problems facing ECSC planners has been access

provisions will not apply to Spain or Portugal. 28 O.J. EUR. COMM. (No. L 340) 7, 15 (1985).

131. European Report No. 1172, *supra* note 128, at 4.

132. *Id.*; see also 28 O.J. EUR. COMM. (No. L 340) 5, 15 (1985) (providing official text).

133. 28 O.J. EUR. COMM. (No. L 340) 6, 13-14 (1985); see also European Report No. 1172, *supra* note 128, at 5 (explaining the Council's decision to modify the Commission's powers to award supplementary quotas).

134. 28 O.J. EUR. COMM. (No. L 340) 6, 13 (1985).

135. *Id.* at 14.

136. *Id.* at 15.

137. See *id.* at 1-4 (providing official text of ESCS agreement on aid); see also European Report No. 1172, *supra* note 128, at 2-3 (summarizing aid agreement); *ESCS Treaty*, *supra* note 101, at art. 4 (citing appropriate treaty provision).

138. 28 O.J. EUR. COMM. (No. L 340) 2-3 (1985).

139. *Id.* at 3.

140. European Report No. 4186, *supra* note 117, at 8.

141. 28 O.J. EUR. COMM. (No. L 340) 3 (1985).

142. *Id.*

to the American market. In 1982 the United States and the EC assumed a 1982 voluntary import restriction agreement¹⁴³ hoping to provide an orderly framework for trade. Events, however, proved this assumption erroneous. Accordingly, negotiators from both sides worked toward a more comprehensible understanding during 1985.

Despite the 1982 agreement, brinkmanship characterized relations between both trading partners. In July 1983, the United States unilaterally imposed tariffs and quotas on specialty steel, thereby provoking EC countermeasures against unrelated American products.¹⁴⁴ Although President Reagan thereafter rejected an International Trade Commission (ITC) recommendation for quotas on steel imports exceeding 70 percent,¹⁴⁵ he aggressively pursued new "voluntary" restraint agreements for products not covered under the 1982 accord.¹⁴⁶ As a result, U.S.-EC trade relations remained in a constant state of turmoil.

a. *Steel Pipe*

Although the ITC found that steel pipe and tube imports had not injured United States industry,¹⁴⁷ President Reagan specifically targeted such imports for voluntary restraints.¹⁴⁸ In 1982, the EC pledged to try to limit exports in this category to 5.9 percent of the U.S. market.¹⁴⁹ By the first nine months of 1984, however, exports surged to 14 percent for the U.S. market.¹⁵⁰ In response, President Reagan threatened an embargo on further shipments until the year's end under authority granted him by the Trade Act of 1984.¹⁵¹

143. See 25 O.J. EUR. COMM. (No. L 307) (1982) (providing official text of agreement); Pope, *The European Steel Quotas: A Necessary Reprieve or a Pitfall for American Steel?*, 9 BROOKLYN J. INT'L L. 337 (1983) (criticizing protectionist aspects of agreement).

144. European Community Information Service, *E.C. Announces Countermeasures for U.S. Specialty Steel Import Restrictions*, 3 European Community News (Jan. 13, 1984) (available in the European Communities Delegation Library, Washington, D.C., File No. 443.2). In particular, the EC increased tariffs and established import quotas for certain chemicals, plastics, alarm devices and sporting goods made in the United States. *Id.*

145. *Reagan Seeks Cut in Steel Imports Through Accords*, N.Y. Times, Sept. 19, 1984, at 1, col. 6. See *ITC Finds Injury on Several Steel Products, Oil Country Tubular Goods Cases May Be Filed*, 9 U.S. IMPORT WEEKLY 1112 (BNA) (July 13, 1984) [hereinafter cited as *ITC Finds Injury*] (discussing the ITC's recommendations).

146. See *Reagan Seeks Cut in Steel Imports Through Accords*, *supra* note 49, at 1 (outlining the President's "get-tough" policy).

147. *ITC Finds Injury*, *supra* note 145, at 1112.

148. *Reagan Seeks Cut in Steel Imports Through Accords*, *supra* note 145.

149. *Import Ban on E.E.C. Steel Pipe*, N.Y. Times, Nov. 21, 1984, § 4, at 9, col. 6.

150. *Id.*

151. *Id.*; see Trade and Tariff Act of 1984, Pub. L. No. 98-573, § 805, 98 Stat.

In response to this pressure, EC negotiators tentatively agreed to limit their exports to 7.6 percent of the American market, with some exceptions.¹⁵² Unfortunately, despite an initially favorable response, the Reagan Administration backed away from the agreement following lobbying from American steel makers.¹⁵³ On November 29, 1984, the Customs Service began enforcing an embargo that was set to run until January 1, 1985.¹⁵⁴ Thereafter, the Administration pledged to hold steel pipe and tube imports to the 1982 target of 5.9 percent.¹⁵⁵

As imported pipe began piling up in bonded warehouses,¹⁵⁶ the EC retaliated by terminating the 1982 exchange of letters incorporating the 5.9 percent cap.¹⁵⁷ While EC officials argued the letter only authorized consultations, not unilateral American action, the EC maintained the letter's abrogation precluded the Americans from enforcing its terms.¹⁵⁸ Using this same argument, European steel importers sought to enjoin the Custom Service's actions reasoning that the President lacked authority to enforce a nonexistent agreement.¹⁵⁹ Meanwhile, the EC contemplated retaliation against American farm goods and further recourse under GATT.¹⁶⁰

After the Court of International Trade denied the importers' injunction request in late November 1984,¹⁶¹ tensions subsided. In January 1985, the EC and United States agreed by an exchange of letters to limit pipe and tube imports to 7.6 percent of the American market during 1985 and 1986.¹⁶² Within this overall percentage, imports of Oil

2948, 3045 (to be codified at 19 U.S.C. § 2253) (citing the applicable statutory provisions).

152. *Import Ban on E.E.C. Steel Pipe*, *supra* note 149. In particular, the tentative agreement excluded mill-to-mill contracts already signed but not delivered. *Id.*

153. *U.S. Rejects Common Market Proposal to Limit Shipments of Steel Pipe and Tube*, Wall St. J., Nov. 28, 1984, at 62, col. 1. American steelmakers objected to the plan arguing that its terms were too generous and allowed too many exceptions. *Id.*

154. *U.S. Embargoes European Steel Pipe, Tube*, Wash. Post, Nov. 28, 1984, at D1, col. 3.

155. *U.S. Rejects Common Market Proposal to Limit Shipments of Steel Pipe and Tube*, *supra* note 153, at 62.

156. *U.S. Importers Fail to Block Embargo on European Steel*, Wall St. J., Dec. 3, 1984, at 30, col. 3.

157. European Community Information Service, *E.C. Terminates Exchange of Letters on Pipes and Tubes in Response to U.S. Unilateral Restrictions*, European Community News, No. 35/1984 (Nov. 27, 1984) [hereinafter cited as *EC Terminates Exchange*] (available in the European Communities Delegation Library, Washington, D.C., File No. 443.2).

158. *Id.*

159. *U.S. Importers Fail to Block Embargo on European Steel*, *supra* note 156.

160. *Id.*

161. *Id.*

162. See 28 O.J. EUR. COMM. (No. L 9) 2 (1985) (providing official text of the agreement).

Country Tubular Goods (OCTG) could not exceed 10 percent of American demand.¹⁶³ Moreover, the EC could only exceed these figures in the event of a "shortfall" when American producers could not meet demand.¹⁶⁴ Under a compromise reached in March, of the 200,000 tons of warehoused steel involved, 135,850 metric tons were charged against the EC's 1985 quota while 73,150 metric tons were apportioned to the 1986 quota.¹⁶⁵

The OCTG and shortfall provisions provoked an additional dispute. Following the March agreement, the EC sought an additional exception under the shortfall provision for 320,000 tons of German and French OCTG already consigned to the "All-American" pipeline project.¹⁶⁶ Luckily, both sides narrowly averted a crisis when the United States finally agreed to accept 100,000 additional tons of OCTG.¹⁶⁷ In return, the Europeans committed themselves to negotiate further in other areas.¹⁶⁸

b. Consultation Products Including Semi-finished Steel

In partial return for accepting 100,000 tons of OCTG, the EC agreed to negotiate formal limits on "consultation products."¹⁶⁹ Although such products were not subject to mandatory quotas, the 1983 accords empowered the United States to call for consultations in the event imports of these goods surged beyond normal levels.¹⁷⁰ The United States first exercised this right in February 1985, when the Reagan Administration called for a consultation on semi-finished goods.¹⁷¹ Eventually, American concerns that the European manufacturers were avoiding voluntary limits on products formally covered in the 1982 accords by increasing exports of consultation products¹⁷² led

163. *Id.*

164. *Id.* at 3.

165. *U.S. Will Release European Steel Held in Embargo Last Fall*, Wall St. J., March 5, 1985, at 5, col. 3.

166. *Progress on Imports of Oil Pipe*, N.Y. Times, June 4, 1985, § 4, at 1, col. 3; *E.C. Accepts Terms of Deal to End Trade Dispute, Consultation Talks Set*, 6 INT'L TRADE REP. 784 (BNA) (June 12, 1985) [hereinafter cited as *EC Accepts Terms*]; see Schiller and Symonds, *Goodyear Pipeline Brawl with U.S. Steelmakers*, Business Week, Apr. 22, 1985, at 42 (repeating an account of the corporate wrangling between Goodyear, the pipeline builder, and American Steel Producers).

167. *Progress on Imports of Oil Pipe*, *supra* note 166.

168. *Id.*

169. *Id.*

170. *See U.S. Asks Talks on Exports of Semi-finished Steel*, Wash. Post, Feb. 10, 1984, at G2, col. 1.

171. *Id.*

172. *E.C. Accepts Terms*, *supra* note 166, at 784.

to tense negotiations with threats from both sides.¹⁷³ Nevertheless, neither side wanted a repetition of the pipe fiasco. After the United States allowed one negotiating deadline to pass, talks were intensified¹⁷⁴ and an agreement was finally reached.¹⁷⁵ In early August 1985, the Council of Ministers ratified a pact which placed limits on eleven categories of steel, but which ultimately left the semi-finished steel problems unresolved.¹⁷⁶ Thus, the way was open for renegotiating the 1982 accord.

c. Renegotiating the 1982 Accord

The EC also agreed to begin discussions on extending the 1982 accord in return for the OCTG compromise.¹⁷⁷ When discussions began in September 1985, both sides consistently disagreed in two areas. While the EC wanted two-year import limits,¹⁷⁸ with no provisions on semi-finished steel,¹⁷⁹ the United States desired a four-year agreement including semi-finished goods.¹⁸⁰ As an October 31, 1985 deadline neared, the United States threatened an embargo.¹⁸¹ None, however, was necessary. On November 1, 1985, United States and EC negotiators reached an accord limiting EC exports to 5.5 percent of the American market.¹⁸² While the Americans received a four-year agreement featuring far more extensive product coverage than in 1982, EC negotiators were able to exclude semi-finished steel which remained a consultation product.¹⁸³

Despite this apparent success, last-minute opposition from German

173. *U.S.-E.C. Unable to Resolve Consultation Dispute, Now Face Aug. 1 Deadline*, 6 INT'L TRADE REP. 926 (BNA) (July 17, 1985).

174. *Id.*

175. *Steel Agreement Reached*, EUROPE, Sept.-Oct. 1985, at 48.

176. *Id.*; see 28 O.J. EUR. COMM. (No. L 215) 2 (1985) (printing official text).

177. *E.C. Accepts Terms*, *supra* note 166, at 784.

178. European Communities Delegation, *U.S.-E.C. Open Steel Negotiations*, A Letter From Europe: A Monthly Update on the European Community From its Delegation in Washington 2 (Oct. 20, 1985) [hereinafter cited as *U.S.-E.C. Open Steel Negotiations*] (available in the European Communities Delegation Library, Washington, D.C.).

179. European Community Information Service, European Community News No. 40/1985] (Dec. 10, 1985) [hereinafter cited as *E.C. Approves New Steel Pact*] (reporting adoption of European position) (available in the European Communities Delegation Library, Washington, D.C., File No. 443.2).

180. *U.S.-E.C. Open Steel Negotiations*, *supra* note 178.

181. *U.S. Threatens Embargo on European Steel*, Wash. Post, Oct. 31, 1985 at A1, col. 1.

182. *U.S.-E.C. Settle Tiff on Steel Limits*, Wash. Post, Nov. 2, 1985 at G1, col. 5. 28 O.J. EUR. COMM. (No. L 355) (1985).

183. *U.S.-E.C. Settle Tiff on Steel Limits*, *supra* note 182.

and British steelmakers, apprehensive about their continued ability to supply American partners with pipe and semi-finished steel, respectively, nearly derailed the agreement.¹⁸⁴ While transfers between quota categories for pipe placated the FRG,¹⁸⁵ British opposition remained intractable.¹⁸⁶ Although the accord exempted semi-finished goods, a unilateral American decision to limit imports in this category led British Steel to express concern about its contract with Tuscaloosa Steel, an American affiliate.¹⁸⁷ As a result, the United Kingdom threatened to veto the entire agreement until this problem was resolved.¹⁸⁸ Although this last minute dispute led to American threats and even a temporary United States embargo of semi-finished goods,¹⁸⁹ eventually the United States assured the British that Tuscaloosa would be able to import 200,000 tons of British semi-finished steel through 1989.¹⁹⁰ Britain then lifted its opposition, and on December 10, 1985, the Council of Ministers approved the new comprehensive steel agreement with the United States.¹⁹¹

As ratified by EC Steel Ministers, the new arrangement, set to run through September 30, 1989, restricts thirty-three product categories.¹⁹² Besides ten products restricted in 1982 and eleven "consultation" products listed in August, 1985, the new agreement extends quotas to ten additional goods for the first time.¹⁹³ Previously, five of these

184. *Id.*

185. European Information Service, *E.E.C.-U.S.: U.S. Remains Firm on Terms of Steel Accord*, European Report No. 1179, § V, at 9 (Nov. 27, 1985) (available in the European Communities Delegation Library, Washington, D.C.).

186. *U.S. to Impose Limits on E.C. Steel Imports*, Wash. Post, Nov. 28, 1985 at F1, col. 3.

187. *Id.*

188. *Id.*

189. *Id.*

190. European Information Service, *E.E.C.-U.S.: Steel Pact Gets Go Ahead*, European Report No. 1182, § V, at 3-4 (Dec. 7, 1985) (available in the European Communities Delegation Library, Washington, D.C.).

191. *E.C. Approves New Steel Pact*, *supra* note 179. Despite the Anglo-American understanding, semi-finished steel remains a flash-point for U.S.-E.C. trade relations. See European Information Service, *E.E.C./U.S.: European Commission Wants Higher Quotas for Semi-finished Goods*, European Report No. 1187, § V, at 2-3 (Jan. 4, 1986) (available in the European Communities Delegation Library, Washington, D.C.). On January 1, 1986, the U.S. announced that it had fixed an annual target of 600,000 tons for ESCS semi-finished steel imports. *Id.* at 2. Because EC exports have been running at 900,000 tons annually, the Commission is seeking an annual quota of at least 800,000 tons. *Id.* at 3. *But see U.S. Steel Move Provokes E.C. Retaliation*, EUROPE, Mar.-Apr. 1986, at 42 (stating that exports were running at 800,000 tons annually). As a result of the U.S. action, the EC has retaliated by cutting back imports of American fertilizers, coated paper and animal fats. *Id.*

192. 28 O.J. Eur. Comm. (No. L 355) 3 (1985); see also *E.C. Approves New Steel Pact*, *supra* note 191 (explaining the new agreement).

193. *E.C. Approves New Steel Pact*, *supra* note 191. In the 1982 agreement, the

newly covered products were subject to quotas and tariffs unilaterally imposed in 1983 under section 201 of the U.S. Trade Act of 1974.¹⁹⁴ Finally, the new arrangement also extends the January, 1985 agreement on steel pipes and tubes to September 30, 1986.¹⁹⁵

VII. Recent Developments Demonstrate ESCS Viability

Despite criticism, the ESCS's handling of the steel crisis and trade disputes with the United States demonstrates the Community's utility and viability. Had the ECSC not existed, European steel would certainly be in more dire straits. Though proponents of a free market might argue that continued "transitional arrangements" threaten permanent ESCS interventionism,¹⁹⁶ the alternative, a series of *ad hoc* measures by national governments, would certainly be worse.¹⁹⁷ Moreover, while the United States has forced the ESCS into a series of "voluntary" export agreements, the ESCS enabled Europeans to present a common front.¹⁹⁸ Consequently, the European Steel Manufacturing Community has benefited from the better coordination and negotiating strength that only a supranational organization could provide.

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EC limited exports of ten steel products to 5.46 percent of the U.S. market. *Id.* The new agreement increases the quota to 5.57 percent of the market. *Id.* Under the new arrangement, the market share of the eleven consultation products will remain at 3.77 percent of the market. *Id.*

194. *Id.*

195. *Id.*

196. *Crack the Cartel*, THE ECONOMIST MAG., July 20, 1985, at 14.

197. Tsoukalis & Strauss, *supra* note 97, at 225; see also *Steel Support Scheme Will be Dismantled*, EUROPE, Jan.-Feb. 1986, at 42 (citing a positive appraisal of the ECSC's handling of the steel crisis).

198. Tsoukalis & Strauss, *supra* note 97, at 225.