TRADE BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE EASTERN BLOC: THE DEVELOPMENT OF A COMMON EXTERNAL COMMERCIAL POLICY FOR THE EEC

INTRODUCTION

New initiatives for the development of legal relations between the European Community and the Eastern bloc (COMECON)[1] were formulated in a draft opinion delivered to the Political Affairs Committee of the EEC in April 1973.[2] The draft drew upon experience gained during several years of East-West European trade and was prompted by substantial changes in the nature and needs of that trade. More importantly it was prompted by a heightened complexity in the dynamics leading to policy decisions relevant to trade with East Europe, and a generalized realization of this fact by Members of the Community.

Among the sometimes conflicting, sometimes complementary factors acting upon the decision-making calculus, a certain few stood at the fore. They included the utility of a common Community trade policy toward the East, and the necessity of a common Community foreign policy toward the East as a precondition for such a unified trade policy. But they also included the realization that a unified foreign policy was simply an unrealistic short or mid-range goal for the EEC.[3] But increased trade, through simplified and coordinated procedures, was considered too vital to the Community's welfare to be deferred until those procedures and the policies underlying them secured the necessary unanimous acceptance of the Member States. Accordingly, in 1972 the European Parliament, through the Political Affairs Committee, commissioned an in-depth study of the various procedures which would enable the Community to form closer trade ties with the East in the absence of a unified transnational trade policy.

That study, in the form of a draft opinion formulated by Hans Jahn has recently been presented to the Committee. It is the purpose of this

1. As referred to in this paper, COMECON is the East European trading community: Council for Mutual Economic Assistance, established in 1959 and including East Germany, Poland, Czechoslovakia, Hungary, Rumania and Bulgaria.

2. *Mommersteey Report*, Resolution of 6 April 1973, O.J. No. C 26, April 30, 1973, at 25.

3. Although the Treaty of Rome contemplated the development of a common commercial policy, the treaty does not provide for a common foreign policy. Treaty Establishing the European Community, Mar. 25, 1957, [1958] 298 U.N.T.S. 2 [hereinafter cited as Treaty of Rome].

article to examine the Jahn draft in context and perspective, and to offer some analysis and tentative conclusions as to its implications for inter-European trade during the next several years.

I. DEVELOPMENT OF THE EEC AND COMECON

A. Early Soviet Attitudes Toward the EEC

In early 1973 the outlook for EEC-COMECON commercial relations was more complicated than during the formative years of the two institutions.[4] The Soviet Union's attitude toward the EEC in the late fifties and early sixties remained one of dogmatic conviction of its rapid demise, an attitude more rigidly enunciated as apprehension as to its veracity grew more widespread among the Party elite. It was argued that the European Community, by fractionalizing capitalist world trade, would ultimately lead to the demise of capitalist society.[5] Nonetheless, in its first four years of trade among Community members, the gross national product of the Common Market increased rapidly.[6] Consequently, Moscow's subcurrent of anxiety had become justified and thus a new policy embodying fresh initiatives was clearly required.

B. Soviet Reassessment of the EEC

The success of West European integration generated a Soviet reas-

4. In 1946 the Soviet Union sought a new organization to be constructed within the United Nations framework which would concern itself with European economic cooperation. However, with the Soviet Union's rejection of the Marshall Plan and Soviet political command of East European nations, the West European States resolved among themselves to accept the Marshall Plan and established their own organization of economic cooperation. *See* H. JUNCKERSTAFF, INTERNATIONAL MANUAL ON THE EUROPEAN ECONOMIC COMMUNITY 24-25, 38 (1963) [hereinafter cited as JUNCKERSTAFF]; Kaser, *The EEC and Eastern Europe: Prospects for Trade and Finance*, 49 INT'L AFF. 402, 403 (1973).

5. The Soviet Union determined that the Common Market would be a menace to all Europeans in that it would mean that the economically stronger nations and large monopolies would be able to impose their terms on other European countries. The *Soviet Statement on the Common Market and Euratom* noted:

> The proposed abolition of customs duties within the common market would benefit only the largest monopolies, giving them additional profits. With the competitive struggle growing more acute in the common market, the lifting of custom duties can only lower the living standards of the people . . . since the monopolies will try to overcome all the difficulties created by their completion by . . . raising taxes [and] hiking prices of consumer goods.

N.Y. Times, March 17, 1957, at 1, col. 4. *See also*, Feld, *The Utility of the EEC Experience for Eastern Europe*, 8 J. COMMON MARKET STUDIES 236, 237 (1970) [hereinafter cited as Feld]; Schoplin, *Enlargement: The Soviet View*, 140 EUROPEAN COMMUNITY at 9.

6. The first four years of the EEC, trade among members of the Community rose by 73% and trade with the rest of the world increased by 27%. The Community's gross national product increased by 27% and industrial production by some 32%. EEC Doc. 2738/pp/62 — En, April 1962.

sessment of its position with the European Community. A formal charter for COMECON was adopted giving that organization similar status to that of the EEC.[7] However, prior to the founding of COMECON the Soviet Union had exerted a strong directive force on the economies of her satellite nations and imposed often unbearable trade arrangements upon them. The resulting price discrimination and exploitation foreclosed the building of a sound foundation for economic integration.[8]

However in 1962, new trade initiatives with West Europe were deemed necessary in order to rebuild a depressed East bloc economy. The Moscow Institute of World Economics and International Relations published several new theses pertaining to the EEC under the title *Concerning Imperialist "Integration" in Western Europe (The Common Market)*. The Franco-German alliance was recognized as the "backbone of integration" and the EEC was identified with stimulated production and increased wages for the laboring class.[9] The European Community was acknowledged as having faster economic development than the United States, and West Europe was adjudged to be the continued "center of attraction" with respect to industrial production and foreign trade.[10]

Commercial expansion in the Socialist Commonwealth had been met by the counter-thrust of the EEC. The People's Democracies' commercial contacts with West Europe had been adversely affected by the European Community's tariff programs and the abolition of internal customs barriers. These had resulted in insulating the Community against relatively less expensive goods from the East and had reduced inter-bloc trade.[11] The Soviet Union called for international economic cooperation and an elimination of closed economic groupings. The

7. COMECON (see note 2 *supra*) was founded by Stalin as a counterweight to the success of the Marshall Plan. This economic program, however, remained dormant until 1959 when the organization was revived as a direct response to the injurious effects of the EEC on East-West trade. JUNCKERSTAFF, *supra* note 4, at 41-43.

8. M. KASER, COMECON 15-33 (1965).

9. FELD, *supra* note 5, at 238.

10. 14 CURRENT DIGEST OF THE SOVIET PRESS 9-16 (1956). This "center of attraction" phraseology was a Soviet hyperbole designed as a warm overture toward the ideologically opposed, but economically indispensable EEC. An analysis of the level of foreign trade is noted in the Appendix.

11. Ludaszewski, *Western Integration and People's Democracies*, 46 FOREIGN AFF. 377-80 (1968). In accordance with the principles of a customs union, Article 13 of the Rome Treaty provided for the abolition of the then existing customs duties within the EEC; and as set forth in Article 14, internal tariffs were reduced in stages. Intra-Community duties on industrial goods were completely abolished as of July 1, 1968 in accordance with the Council decision of July 26, 1966 (O.J. No. 165, September 21, 1966); 1 CCH COMM. MKT. REP. ¶ 232.03 (1973).

"most-favored-nation" principle became the password and penetration of "closed economic blocs" became the Soviet goal. In this early sixties transitional period the objective of the Eastern bloc was the development of mutually advantageous trade relations.[12] This extremely important policy decision was reflective of and motivated by one central fact: the East, by the interplay of increased trade with the EEC, would become exposed to and learn the intricacies of a successful policy of economic integration.

Thus, while trade was seen as a necessity for the revitalization of COMECON, political infection was to be avoided while carrying it out.

The first commercial contacts between the Western states and the Soviet camp remained both bilateral and very businesslike with tough bargains and strict readings of the contracts exchanged.[13] By the mid-sixties an expanded pattern of trade had begun. However, the diversities in methodology and procedures between the two blocs, which impeded a free flow of trade, remained to be surmounted.

C. *External Relations of the EEC as a Customs Union*

The Treaty of Rome gave the European Community the power to enter into special external relations in only a few limited instances. Article 237[14] of the Treaty allows any European State to apply to become a member of the EEC and Article 238 provides that the Community may conclude with a third state, a union of states or an international organization, agreements establishing an association involving special procedures and reciprocal rights and obligations.[15] Most importantly Articles

12. Ginsburgs, *The Kremlin and the Common Market: A Conspectus*, 37 SOCIAL RESEARCH 296, 301 (1969).

13. 14 CURRENT DIGEST OF THE SOVIET PRESS, 9, 16 (1956).

14. Treaty of Rome, *supra* note 3, art. 237 states:

> Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the Commission. The conditions of admission and the adjustments to this Treaty necessitated thereby shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the Contracting States in accordance with their respective constitutional requirements.

15. The Court of Justice, in an adjudication of a dispute arising from negotiations carried out with third countries by each Member State in regard to working conditions for crews of vehicles engaged in international transport, discussed in dictum the relevance of some Articles of the Treaty which affect EEC external relations. The Court emphasized that the bases for Community foreign relation powers can be found in Articles 111-116 and 238. However, these Articles were deemed to be special provisions and to consider these *specialia* as *generalia* would be a very bold legal construction. Nonetheless, the Court noted that the Community should be granted foreign relation powers in areas where it is necessary. Commission v. Council (E.R.T.A. Case), Ct. of Justice, Case No. 22/70, 31/3/71. 17 Recueil at 263, 2 CCH COMM. MKT. REP. ¶ 8134 (1972).

110-115 provide for the creation of a common commercial policy.

Article 111[16] sets forth the common commercial policy which was to be achieved during the transitional period ending on December 31, 1969. The Member States were to coordinate their trade accords with third countries, while the Commission was to have submitted to the Council proposals regarding the procedure for achieving a uniform policy on a common customs tariff. Further, the Commission was to make all appropriate recommendations to the Member States in order to secure a high level of uniformity. Accordingly, Article 112[17] obliged the Member

16. Treaty of Rome, *supra* note 3, art. 111 states:

The following provisions shall, without prejudice to Articles 115 and 116, apply during the transitional period.

1. Member States shall coordinate their trade relations with third countries so as to bring about, by the end of the transitional period the conditions needed for implementing a common policy in the field of external trade.

The Commission shall submit to the Council proposals regarding the procedure for common action to be followed during the transitional period and regarding the achievement of uniformity in their commercial policies.

2. The Commission shall submit to the Council recommendations for tariff negotiations with third countries in respect of the common customs tariff.

The Council shall authorize the Commission to open such negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

3. In exercising the powers conferred upon it by this Article, the Council shall act unanimously during the first two stages and by a qualified majority thereafter.

4. Member States shall, in consultations with the Commission, take all necessary measures, particularly those designed to bring about an adjustment of tariff agreements in force with third countries, in order that the entry into force of the common customs tariff shall not be delayed.

5. Member States shall aim at securing as high a level of uniformity as possible between themselves as regards their liberalization lists in relation to third countries or groups of third countries. To this end, the Commission shall make all appropriate recommendations to Member States.

If Member States abolish or reduce quantitative restrictions in relation to third countries, they shall inform the Commission beforehand and shall accord the same treatment to other Member States.

17. Treaty of Rome, *supra* note 3, art. 112 states:

1. Without prejudice to obligations undertaken by them within the framework of other international organizations, Member States shall, before the end of the transitional period, progressively harmonize the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.

On a proposal from the Commission, the Council, shall, acting unanimously until the end of the second stage, and by a qualified majority thereafter, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such drawbacks of customs duties or charges having equivalent effect not to such repayment of indirect

States to progressively harmonize those systems whereby each member grants aid for exports to third countries in order to insure that competition between the States in the Community is not distorted. Similarly Article 113[18] stipulates that after the transitional period has ended uniform principles shall form the basis of the common commercial policy, particularly in regard to changes in tariff rates. Finally, Article 115[19] allows the Member States to request application of a safeguard procedure whenever the execution of measures of a uniform commercial policy would lead to a deflection of trade or economic difficulties in a Member State. The Commission is thereby authorized to recommend the methods for the requisite cooperation between Member States; and the States may in the case of "urgency," take the necessary

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taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

18. Treaty of Rome, *supra* note 3, art. 113 states:

1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

19. Treaty of Rome, *supra* note 3, art. 115 states:

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more of the Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission shall authorize Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency during the transitional period, Member States may themselves take the necessary measures and shall notify them to the other Member States and to the Commission, which may decide that the States concerned shall amend or abolish such measures.

In the selection of such measures, priority shall be given to those which cause the least disturbance to the functioning of the common market and which take into account the need to expedite, as far as possible, the introduction of the common customs tariff.

measures themselves for the protection of their economies upon notice to the other Member States and to the Commission.

Therefore, although the Treaty provides for commercial relations with non-Member States coordinated in such a way that the development of a common commercial policy will ultimately be brought about, the Treaty does not set forth a real basis for a uniform foreign policy whereby the united expectations and interests of each Member State may implement a common foreign trade accord.

D. An Evaluation of COMECON vis-a-vis the EEC

Along with the want of a uniform foreign policy in the European Community, the dissimilarity between the two commercial systems remains a significant hindrance to multilateral initiatives. The central problem of COMECON is the lack of effective economic integration. Long term economic plans have been duplicated by the various states and the lack of a common pricing system in the Eastern bloc nations has impeded trade policies based on considerations of cost advantages.[20] Furthermore, unlike the EEC, the flow of capital between COMECON nations and the free movement of labor is very limited. The EEC has made advances toward a supra-national body while COMECON has not.

The utility of the EEC experiences for the Eastern bloc is that the Common Market has succeeded not only in establishing a customs union, but also in arranging for the free movement of persons and capital, collaboration in border-crossing and a common agricultural policy; significant lessons from which COMECON might well draw valuable direction.[21] The forces against these achievements in the People's Democracies have been the diffidence of the Eastern states to supra-nationalism as exemplified by the Rumanian and Albanian opposition to Soviet encroachment upon their national affairs. The possibility of an independent customs union excluding the Soviet Union would require a transformation of political systems toward the Yugoslav pattern.[22] The political impasse in this area as well as the diversification of

20. *See* Feld, *supra* note 5, at 244-45.

21. *Id.* at 240-50.

22. There are few restrictions in the autonomies of Yugoslavian business firms, in comparison to other East European nations. The Yugoslav economic system is decentralized and self-management of enterprises is emphasized. Property is not State-owned but rather held in trust by the firm for society and firms are run by managers selected by workers in the enterprise. Further, business firms can be formed by governmental units, trade associations, existing enterprises, or private citizens.

Centralization, however, still prevails in the area of enterprise accounts which are kept according to a uniform accounting system; accounts are audited by a federal government service. *See* Dirlam, *Problem of Market Power and Public Policy in Yugoslavia*, in M. BORNSTEIN, COMPARATIVE ECONOMIC SYSTEMS 236-40 (1969).

the two trading communities remains significant.

II. THE PROBLEM OF BILATERAL TRADE AGREEMENTS

Despite the ideological and commercial differences separating the two trading blocks, a pattern of trade did commence on a bilateral basis.[23] By the mid-sixties Western European trade made significant inroads to the Eastern market (see Appendix, Tables 1 & 2). The economic opportunities offered by the West resulted in significant inter-bloc commerce which, analyzed on a transactional basis, meant more to COMECON than it did to the European Community. A single example of this pronounced EEC-oriented thrust among COMECON countries is seen in the case of Rumania, where Western exports and imports constituted approximately fifty percent of the country's total international trade.[24]

From these initial trade agreements COMECON sought to develop her sagging economy. As a corollary, convertible currency was welcomed since it enabled these states to expand exports and receive a larger amount of goods.[25]

Bilateralism has offered a tactical advantage to COMECON. With the increase of international trade with the West, COMECON had the ability to disrupt Western economy through discriminatory pricing. No market pressure, on a unified basis, was directed by the EEC on COMECON. Had the West depended increasingly on East bloc trade, the relatively low prices of COMECON imports could have been quickly raised or the State-trading nations could have easily engaged in dumping, thereby causing economic disturbances in the West. COMECON, however, still sought "most-favored-nation" benefits with the EEC members, contending that all internal tariff cuts should be extended to the State-trading nations.[26] Therefore, although the East bloc insisted that the EEC was "illegal" conceptually, COMECON sought the same tariff concessions as provided for Community members.

The EEC safeguard procedure also presented problems. As West Germany imported technical equipment from the East, and Italy sought raw materials from the Soviet Union, tension within the Community developed. One nation could restrict the flow of mechanical equipment or raw materials within the Community through national safeguards

23. In 1963, the Soviet Minister for Trade refused to accept a document from the Dutch ambassador to the Soviet Union containing EEC offers for trade concessions, because the Community was not recognized by the East as a commercial unit. However, the State-trading countries were attracted by the prosperity of the European Community and consequently sought bilateral cooperation. W. FELD, THE EUROPEAN COMMON MARKET AND THE WORLD 149 (1967) [hereinafter cited as FELD, EUROPEAN COMMON MARKET].

24. *Id.* at 151.

25. *Id.* at 245.

26. WEIL, A FOREIGN POLICY FOR EUROPE? 285 (1973) [hereinafter cited as WEIL].

sanctioned by Article 115[27] of the Treaty. These national safeguards, if applied increasingly, could damage the customs union. As one Member State freed more trade with East Europe and a second Community member felt that this measure could lead to her own economic difficulties, protective measures were to be authorized by the Commission.[28]

The Commission, however, has been reluctant to make judgments in this area because in so doing it would inevitably have to choose between the conflicting concerns of the several nations involved. Therefore, as the result of external competition for COMECON business by national industrial enterprises, coupled with the extensive divergence of each Member State's foreign policy objectives and the failure of the "EEC Clause,"[29] the formation of a uniform commercial policy has been delayed.

Furthermore, commercial relations with COMECON are very much determined by credit terms, along with barter transactions and cooperation in the construction of industrial complexes. The extension of credit has created a strain on the development of a common commercial policy. Although the commercial policy deadline was set for 1970, time limits on the extension of credits have been requested by Member States. COMECON nations have received generous credit from the Community members; this has resulted primarily from intra-EEC competition. France, for example, has pressed for no limits on giving credits due to her increased trade with the East and has likewise contended that

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27. See note 19 *supra*.

28. In this vein, Professor Weil writes:

> All members except the Netherlands made regular appeal to the safeguard procedure authorized under Article 115 of the Rome Treaty, but with increased national liberalization, recourse to this article has diminished. For example, when France freed about three-quarters of its trade with Eastern Europe at the beginning of 1966, it no longer needed to have recourse to Article 115 because of measures adopted by others. Italy and Germany on the other hand, were placed in the position of asking for safeguard action because of the French decision.

WEIL, *supra* note 26, at 286.

29. The "EEC Clause" was to be implanted in all bilateral agreements. The "Clause" which was enacted by the Council of Ministers decision of July 20, 1960, held:

> When the obligations resulting from the Treaty instituting the EEC and relative to the progressive creation of a common commercial policy shall make it necessary, negotiations will be begun in the shortest time possible in order to make any necessary changes in this agreement.

WEIL, *supra* note 26, at 227; EEC Council Decision, O.J. No. 71, at 1274, 4/11/61. The Council further called for uniform commercial agreements and if the "EEC Clause" was not contained in bilateral accords, such agreement could continue for only one year. However, the initiatives meant little or nothing. East Europe rejected "Clause" since it would imply recognition of a unified EEC and the member states did not follow the one year time limit set forth in the decision. *See* WEIL, *supra* note 26.

her credit arrangements are not in violation of Article 112[30] relating to distortions of competition. On the other hand, COMECON profited by the extension of such credit arrangements.[31]

The *Protocol Concerning Internal German Trade and Connected Problems*[32] of the Rome Treaty has been criticized by both trading blocs. West Germany's close contacts with East Germany has lead several COMECON states to charge that East Germany has become a de facto associate Member of the EEC. The *Protocol* accords the German Democratic Republic a special close status in the West, since trade between the two Germanys is considered internal; products imported from the G.D.R. to the West are not regulated by the common customs tariff or the common agricultural policy. G.D.R. imports are guaranteed free circulation and reduced turnover tax rates solely with West Germany. Bonn considers this duty-free intra-German trade agreement as an essential ingredient of her "Grundvertrage": a basic treaty affectuating closer relations between the two Germanys.[33] However, the *Protocol* may in fact injure EEC trade since there has been no common commercial policy. Third-country goods in many instances are imported into the G.D.R. and consequently many of these products enter West Germany levy and duty free. Ultimately these goods compete with EEC products.[34]

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30. See note 17 *supra*.

31. WEIL, *supra* note 26, at 279. A recent Council decision on consultation and information procedures in matters of credit insurance, credit guarantees and financial credits has been established. The decision notes that in the course of a consultation in the granting of a credit arrangement with a third country or to exporters or to financial institutions—whether public or private in nature—a Member State or the Commission should request oral consultation and any Member State involved in such a credit arrangement must every six months thereafter, give notification of the use made of that arrangement. Further, the duration of any credit granted, whether supplier credit or financial credit must not exceed five years. The five year limit as to capital goods consisting of individual items usable in themselves and capital goods for complete plants or factories, is calculated as commencing on the date on which the buyer is to take physical possession of the goods. Council Decision, 73/391, O.J. No. L. 346/1, 17/12/73.

32. Treaty Establishing the European Community, Mar. 25, 1957, [1958] 298 U.N.T.S. 199.

33. In August 1970, Chancellor Brandt concluded an historic treaty with the Soviet Union beginning normal relations with the U.S.S.R. In December 1970, Brandt signed a similar treaty with Poland which included the recognition of the Oder-Neisse line as the permanent Polish-German border. Accordingly postal and transport agreements were ratified with East Germany, culminating in 1972 with the signing of a basic intra-German accord whereby each state will have a permanent representative in the capital of the other. The treaty emphasizes that differences will be resolved by peaceful means, territorial sovereignty will be respected and that there will be cooperative ventures between the two states in the areas of transport, posts, public health, cultural exchanges, science, environmental protection and increased economic ventures. Braunthal, *West Germany's Foreign Policy*, 64 CURRENT HISTORY 150, 151, 153 (1973) [hereinafter cited as Braunthal].

34. 201 EUROMARKET NEWS 2 (1972).

Bilateral trade bargains, primarily initiated by the Soviet planning and foreign trade organizations, have resulted in higher levels of East-West trade. The significant factor of low credit terms has given COMECON favorable trade agreements. Nevertheless, as we have seen, such bilateral accords have impeded the establishment of a common commercial policy. Although a majority of the political parties and economic officials and ministries within each Member State have favored a common policy, the lack of agreements on the principles of such a policy among EEC nations, as well as opposition by large national business firms, have made a unified strategy a present-day impossibility.[35] As a consequence of this resistance, COMECON was free to conclude bilateral bargains, and the response by West European firms has been a scramble for Eastern bloc business. An appropriate scenario for a uniform policy had not been achieved by the mid-sixties. The political factor of European detente was the necessary impetus for a new economic ideology.

III. THE JAHN DRAFT AND THE DEVELOPMENT OF A COMMON COMMERCIAL POLICY IN THE 1970'S

A. Re-Evaluation of Economic Priorities with COMECON

The spirit of detente which has pervaded Europe in most recent years is embodied in Hans Jahn's draft opinion for consideration by the Political Affairs Committee of the EEC Parliament. The thrust of the report speaks to the implementation of a basic common commercial-foreign policy.[36] Jahn's opinion assumes the political reality that although the State-trading countries are of different social and economic orders, the status quo in the East must be accepted and that ideological differences should not prevent good neighborly relations from being attained through peaceful trade endeavors.

The prerequisite for this plan is a homogeneity of goals and security interests, with continued efforts for integration within the Community. Jahn, however, does not provide a formulation for a unified effort by each Member State within a detente atmosphere. If peaceful endeavors are constructed by each nation in the Community separately, a unified commercial policy may still be a mere vision of the distant future.[37] It may be contended, however, that the development of a common commercial policy is grounded on the unfolding of new, perhaps united, political ideologies with respect to East Europe through the efforts of West Germany's *Ostpolitik* and the Conference on Security and Cooper-

35. FELD, EUROPEAN COMMON MARKET, *supra* note 23, at 153-54.
36. EEC Doc. PE 23. 956/rev., 17/8/73.
37. FELD, EUROPEAN COMMON MARKET, *supra* note 23, at 153-54.

ation in Europe (CSCE).[38]

From a commercial standpoint, the bilateral system of trade has undergone changes, as noted in a Chatham House report, in four significant areas. First, the unilateral liberalization by each Member State of its import restrictions; second, in many instances bilateral trade agreements have lost their economic substance; third, East Europe's "minimum" planning is more widely applied today to import management; fourth, as more East bloc nations are manufacturing and exporting finished products to the EEC, this will "gradually transform the traditional structure of exchanges between Western manufactured products and Eastern foodstuffs and raw materials and weaken the case for the old type of bilateralism which accompanied it."[39] Consequently the need for *ex-ante* bilateral balancing of trade calls for uniform negotiations to confront these new levels of exchange from the State-trading nations.[40]

Jahn also stresses that since commercial relations with the East bloc are determined by barter transactions, there is a need for cooperation in the development of industrial complexes, credit terms, common rules and uniform principles.[41]

An effort toward such cooperation was established in December 1969.[42] The Commission of the EEC was given the power to restrict agricultural imports if they exceeded a certain amount or could cause disruption of the Common Agricultural Policy. CAP's price and levy system was to be observed. Article 113[43] was therefore implemented and the ensuing regulation stressed that with the end of the transitional period, the common commercial policy must be based on uniform prin-

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38. The CSCE is a multilateral conference including representatives from the nations of Europe (except Albania), The United States and Canada, which commenced on the ambassadorial level in January 1973. The agenda deals with economic and cultural exchange and expanded trade contracts between East and West.

39. Ransom, *The Future of EEC-COMECON Relations*, 27 THE WORLD TODAY 438, 446 (1971) [hereinafter cited as Ransom].

40. In this vein, Professor Ransom writes:

> Progress towards economic integration in Western and Eastern Europe poses innumerable problems of adjustment, both within the two groups and between them, to a new scale of economic organization. The harmonious solution of these problems requires: firstly, that each side accepts economic integration in the other as a logical . . . process; secondly, that each side recognize liberal policies as the best safeguard against economic confrontation between the two groups; thirdly, that the achievement of rational economic relations between the two groups becomes a major objective of foreign policy on both sides.

Id. at 447-48.

41. EEC Doc. PE 32. 056/rev., at 8.17/8/73.

42. Reg. No. 109/70, O.J. No. 1 19, p. 1, 19/12/69. This regulation attempted to establish common rules for imports of a wide variety of goods from the State-trading countries.

43. See note 18 *supra*.

ciples and common rules for the importation of products from the State-trading countries. However, Jahn offers no recommendation as to the limitations placed on this regulation, in that those non-agricultural products not mentioned in the regulation may be imported into any part of the Community without quantitative restrictions and that the protective-safeguard measures noted in Article 115[44] may also be applied by the Commission when import trends may damage the economic and commercial situations in each Member State. Furthermore, the regulation empowers the Member States in certain circumstances, provided that their actions are on an interim basis, to take protective measures individually. However, a more successful effort toward a common policy was initiated with the establishment of a single tariff applied equally for all imported goods—the Common External Tariff (CET) as noted in Article 19,[45] which was in force in 1968. Nonetheless, Jahn also fails to assess the possibility that the spectre of a European technocratic-capitalistic commercial entity might dissuade East European governments from joining with the EEC in close commercial relations, which espouse a radically different political ideology.[46] If COMECON members were able to barter at times with industrial firms bilaterally, does this mean that they will confront multi-national monopolies? Also, the Soviet Union's political conception of a unified COMECON—more closely tied, therefore more easily controlled—will no doubt meet resistance within the East bloc. Consequently, a unified West confronting independent State-trading countries may actually repulse rather than attract COMECON trade.

The best policy for the European Community in this area would be to let the Soviet Union develop a more unified COMECON which could then approach the EEC on a multilateral basis. COMECON has a Standing Commission on Foreign Trade which advises the State-trading countries on commercial transactions with the Community, and joint procedures for bilateral agreements have been discussed.[47] This possibil-

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44. See note 19 *supra*.

45. Treaty of Rome, *supra* note 3, art. 19 states:

1. Subject to the conditions and within the limits provided for hereinafter, duties in the common customs tariff shall be at the level of the arithmetical average of the duties applied in the four customs territories comprised in the Community.

46. COMECON is not a monolithic group in the sense that its State-trading nations have historically bargained as a unified entity. Rather the COMECON States have engaged in bargaining on the national level. See note 48 *infra*.

47. KOEHLER, ECONOMIC INTEGRATION IN THE SOVIET BLOC 96 (1965); *see also* Feld, *supra* note 5, at 251.

The new COMECON institutions: The Investment Bank, Scientific-Technological Information Center and the International Institute for Economic Problems of the World Socialist System have analyzed the internal economic integration of the People's Democ-

ity of a multilateral COMECON may be within Soviet political aspirations and may be the necessary catalyst for the development of a common trade policy within the Community. The "Brezhnev Doctrine"[48] can be re-enforced and conveniently broadened by an interpretation which sanctions the Kremlin's coordinating the economic policies of East Europe to meet the goals set by Moscow. The 1969 COMECON Executive Committee meeting in Berlin may substantiate this view. There the Soviet officials discussed the formation of a new supranational COMECON.[49] Effective economic integration is essential to COMECON cohesion and the Grand Master of economic policy in Moscow may compel stronger intra-COMECON ties. Consequently, as COMECON evolves to a multilateral framework the EEC may more readily approach the State-trading countries as a unified entity with a common trade policy. For the indefinite future, attempts at nurturing detente with Moscow should be pursued by each Member State individually.

B. The Further Development of Detente

The Jahn Report notes that the possible solutions available for a unified trade policy toward COMECON are dependent on detente, defined as a policy of cooperation founded on reciprocity with the State-trading countries. However, Jahn's major premise seems to be that to "live and let live" is potentially productive of greater individual benefit for both blocs than is a policy of hostility characterized by episodic adventures in attempted subversion.[50] Jahn concludes that peace can be

racies in the areas of monetary investments and close coordination of national plan. Ransom, *supra* note 39, at 440. International specialization and production cooperation through joint enterprise and investments have been emphasized by high officials of COMECON as important factors leading to a single and unified economy. *Id.* at 440-41.

48. The "Doctrine" justifies the Soviet Union in intervening in the affairs of the Peoples Democracies for the protection of "legitimate" Soviet interests.

49. However, particular resistance to COMECON as a supra-national planning organ was expressed by Rumania, while Hungary and East Germany refused committment to such far reaching integration. THE ECONOMIST, January 25, 1969, at 40-41; *see also* Feld, *supra* note 5, at 225.

Although both commercial and political problems have strained an effective commercial community in the East bloc, Poland, Hungary, Rumania and Bulgaria have recognized the EEC on a "de facto" basis in agricultural matters by direct negotiations with the Commission in Brussels. Ransom, *supra* note 39, at 442. However, the tension between "pluralists" and "centralists" in East Europe is unresolved. Michael Kaser in analyzing several Chatham House Study Group reports on East-West relations noted:

> The Soviet Government's decision of April 3, 1973 to put industry into the hands of 'production associations,' operating . . . on the basis of autonomous profit making would seem to suggest that the 'pluralists' in Russia have some influence, although the retention of the all embracing power of the industrial ministry to issue them with orders shows scant weakening with the 'centralists.'

Kaser, *supra* note 4, at 407.

50. Jahn emphasizes that at the Paris Summit Conference of 1972, the Member

guaranteed permanently only if the existing social differences are reduced. Thus the Jahn draft, while assuming realistic trade endeavors with the East, complicates commercial policy with social concerns.

The European Community will achieve its goal of a uniform commercial policy toward the East only if the factors comprising the social ideologies of the blocs are scrupulously avoided in negotiation. Primary among these ideological impediments have been conflicting theories as to the social utility of the degree of freedom in the movement of people, information and ideas. Attempts at reaching detente should be further formulated with Moscow by each Member State during this stage of the EEC's political development. Chancellor Willy Brandt's *Ostpolitik* has been successful in this area. The introduction of detente warmed the floes of East-West commercial relations. The *Ostpolitik* not only brought about affirmative political results but also had economic consequences that went beyond West Germany's increased trade with the Soviet Union, to extended cooperation with East Europe.[51] Conflicts in social ideologies have been avoided by Brandt, and consequently his subtle *Ostpolitik* and Moscow's affirmative response have stimulated more commercial contact between the two blocs.[52]

Aside from the German initiatives, three other events may more readily contribute to the development of a common external commercial policy. First, the enlargement of the Community from a six to a nine Member association has begun to quell some divisions within the EEC. West Germany had pushed for the admission of Great Britain into the Community to strengthen it and to serve as a counterforce against French influence. The operational effect of Britain's accession to the EEC is that it has increased trade significance with the East. Second, the Moscow turnabout in recognizing the EEC as a single entity is significant.[53] Third, the Conference on Security and Cooperation in Eu-

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States confirmed that the goal of a trade policy with COMECON is founded on political aims. The final communiqué of the Conference noted:

> In order to promote detente in Europe, the Conference reaffirmed its determination to follow a common commercial policy toward the countries of Eastern Europe with effect from 1 January 1973; the Member States declared their determination to promote a policy of cooperation, founded in reciprocity with these countries.

EEC Doc. PE 23. 956/rev. at 8.

51. Eighty-four percent of goods imported from the Soviet Union into West Germany were freed from import restrictions and trade issues were settled with Poland and East Germany. Braunthal, *supra* note 33.

52. Newhouse, *Struck Fast*, 51 FOREIGN AFF. 353 (1973).

53. EEC President Mansholt's address to the European Parliament in April 1972 expressed the willingness of the EEC to envisage economic cooperation with the East on the basis of "equality and mutual recognition." Brezhnev responded affirmatively noting that the Soviet Union was far from ignoring the existing situation in Western Europe

rope (CSCE) has instituted new cooperative ventures with the East bloc.[54] This conference which is being held in conjunction with the Strategic Arms Limitation Talks (SALT) and the talks on Mutual and Balanced Force Reduction (MBFR) indicates that the focus will be on trade. The Community's task in this area is the development of a penetrating policy for cooperation and peace along with the facilitation of EEC integration with pan-European cooperation.

Jahn contends that the CSCE is a vehicle for the development of a common foreign policy which is needed to implement the common trade policy. However, the single difficulty which has arisen in the CSCE is the discussion by Community Members of the free movement of people and ideas, be they for economic or social motives. Consequently, it may be noted that during the September 1973 meeting of the CSCE a Community foreign policy on the most rudimentary level concerning social penetration of the East bloc was initiated. The new EEC policy extending Community concerns beyond economics to the freer movements of information and ideas is a strategic error. The Community should not allow legitimate commercial concerns to be frustrated by the adoption of ill-conceived policies for the promotion of ideological concerns. This relatively new Community policy could prove to be the cause of ideological subversion since it would compel interference in Soviet-East European internal affairs. Such an initiative would destroy the spirit of detente which has been achieved through bilateral efforts. Therefore, overt foreign policy initiatives must remain with each Member State in the 1970's at least until that point when political union is achieved by the EEC.

Jahn, however, contends that no Member State should weaken the foreign trade policy function given to the Community by enacting new bilateral accords,[55] and that if this occurs the Commission should take

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including the evolution of the EEC. 1972 FACTS ON FILE 363. This new ideology was reaffirmed by the Soviet Politburo in April 1973, calling for mutually beneficial foreign economic relations between the Soviet Union and the European Community. AGENCE EUROPE, July 27, 1973, at 1.

54. The detente in part produced by Brandt's *Ostpolitik* has no doubt facilitated this international conference which had been sought by the East Europeans for a number of years.

55. On January 1, 1973 all EEC nations were barred from conducting bilateral trade accords with the State-trading countries. Existing bilateral agreements are to terminate in 1974. 167 EUROMARKET NEWS 2 (1972).

A Council Decision of December 16, 1969 stressed the progressive standardization of agreements concerning commercial relations between Member States and third countries. All negotiations with a view to conclusion of new treaties, agreements, arrangements or the amendment of existing accords were to be conducted in accordance with Community procedure after the end of the transitional period. All new agreements before being signed were to be checked to ensure that they would conform with joint conclusions. Therefore

measures as provided in Article 169[56] of the Rome Treaty for failure of a Member State to fulfill the obligations set forth in Article 113,[57] by bringing the matter before the EEC Court of Justice.

Furthermore, Jahn states that COMECON depends more on trade with the EEC than does the European Community upon its trade with the East,[58] and that the COMECON Bank is dependent on long-term credits and loans from the EEC and is using the Euro-dollar market to gain medium-term loans.[59] He also maintains that the development of the Economic and Monetary Union supplies COMECON with a necessary solution to the serious monetary discrepancies in COMECON trade, since East Europe has not solved its problem of non-convertibility of currencies. Consequently, Jahn concludes that a unified Western trade policy will not repulse COMECON trade. However, he fails to emphasize that the Member States would first have to harmonize their laws so that a universally accepted means of payment would be similar to national currencies. The harmonization of laws is not an easy task in that it requires much deliberation within each national parliament.[60] Therefore, all new national provisions or the amendment of existing national laws that might cause distortion of competition must be closely scrutinized and weighed against the desires of the Commission for a common commercial policy.

Jahn concludes by maintaining that the problem of bilateralism and multilateralism must be resolved. He finds that separate COMECON bilateral relations with the West jeopardize sales of products from other State-trading nations with Member States. Therefore the possibility of a setback of the economic growth of each COMECON member,

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the Member States were to notify the Commission of all bilateral accords. Consultation was to take place either by the initiative of the Commissions or at the request of a Member State. The consultation was to establish whether the bilateral agreements would constitute an obstacle to the common commercial policy. Council Decision 69/494, O.J. No. L. 326, p. 39, 29/12/69.

56. Treaty of Rome, *supra* note 3, art. 169 states:

> If the Commission considers that a Member State has failed to fulfill an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.
>
> If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

57. See note 18 *supra*.

58. Community trade with the State-trading countries accounts for only 7% of all foreign trade, while COMECON exports approximately 13% of their goods to the West, and Rumania alone sends 21.9% of her products to the Member States. EEC Doc. PE 32. 956/rev., at 10. 17/3/73.

59. *Id.* at 11 n.6.

60. A single example is that the EEC has not yet been able to develop a common value-added tax system after years of appraisement.

as well as their increased efforts for cooperative integration may, indicate that multilateralism will be the vogue for future trade relations.

Although official recognition of the EEC by COMECON is imminent, it is clear that the State-trading countries at present believe that relations between the Community and COMECON cannot supplant bilateral relations.[61] Even though the Commission has the power to negotiate trade accords with COMECON, the State-trading nations have insisted on their national prerogatives and counter Soviet initiatives to align COMECON as a single unit and therefore make the State-trading countries accessible to the European Community on a multilateral basis. Moreover, France's separate agreements with the East on cooperation, signed in July 1973, run counter to the Community's supranational trade policy. There is at present a substantial tension between the creation of an integrated EEC commercial policy and the practice of concluding bilateral accords through wide-ranging economic agreements which will cover the period to 1983.[62] Most Member States have now followed France in cooperative ventures with the State-trading countries. The success of common external trade measures would seem to be dependent on each Member State's political attitudes towards the East bloc.

IV. CONCLUSION

Western Europe's expansion of bilateral trade relations with the State-trading countries has opened the door for the return of East Europeans to closer cooperation with the West on an economic basis. Nonetheless, the insistence by some Member States for bilateral accords indicates that the goal of the Rome Treaty to develop a common commercial policy will not be fully achieved. Although the prospects for a supra-national economic order have been revived by detente and the CSCE, the achievement of a unified external policy may only develop when the Member States perceive that economics must be determined within a political environment.

At the present stage of political development, the EEC cannot fully achieve a common economic policy. Strong incentives toward supranational economic cooperation may encourage the nations of the East bloc to assess the European Community venture as part of the Soviet political ambition to centralize COMECON for its own purposes. Therefore, official relations between the two divergent trading blocs may be counterproductive. COMECON has not developed an economic order comparable to that of the EEC and its members have preferred to determine distinct national trade policies.

61. AGENCE EUROPE, July 31, 1973, at 1.
62. AGENCE EUROPE, July 27, 1973, at 7.

Although the Common Agricultural Policy, the Common External Tariff and the abolition of intra-state restrictions to trade make it difficult for COMECON members not to approach the European Community as an economic unit, the most recent efforts toward bilateral cooperation agreements decrease the possibility of a perfected multilateral external policy.

Nevertheless, "multi-bilateral" relations may be a solution. Although the Community is not a unified State, but rather *sui generis*, it is well suited for "multi-bilateral" accords, infusing a single Member State's trading ability with a supra-national diplomacy. A primary example is Regulation No. 109/70,[63] establishing common rules for imports from State-trading countries. Through this extraordinary capability, negotiations and international bargaining have developed effective cooperation with groupings of countries: *i.e.*, the Andean Group and the Association of Southeast Asian Nations. Consequently, such effective cooperation could be directed toward COMECON. With political union still in embryonic development, the Member States of necessity must rely upon bilateral contacts with COMECON States for the indefinite future. Nevertheless multilateral initiatives can and should be presented to COMECON in the areas of: technical trade, environmental protection, a uniform quota and liberalization system, common consultation before conclusion of bilateral treaties, uniform long-term credit accords, the development of energy resources, the adoption of uniform rules on inter-bloc commerce and the uses of a safeguard clause.

As both trading blocs slowly move toward integration, such evolution must not be construed by either bloc in purely ideological terms. The European Community can induce greater trade with the East only in an atmosphere of detente. The Community should continue to attract the Soviet Union to her commercial wealth allowing Moscow to take the initiative to unify COMECON. While the Member States will undoubtedly retain their individual and communal attitudes toward the East these must remain only a backdrop to commercial transactions; in so doing a subtle and unified foreign policy may well develop through economics.

Carl Cannucciari

63. See note 42 *supra*.

APPENDIX

Development of EC-Trade by Most important Partner—Countries Extra-EC (broken down according to 1970 value)

TABLE I: EXPORTS

Destination	Millions of $				% of trade			Situation (rank of Trader) in		
	1958	1965	1969	1970	1958	1969	1970	1958	1969	1970
U.S.S.R.	208	369	1065	1103	1.3	2.7	2.9	19	9	8
Czech.	110	216	365	474	0.7	0.9	1.0	33	25	21
Rumania	47	217	388	404	0.3	1.0	0.9	62	22	25
Poland	141	204	378	388	0.9	1.0	0.9	28	23	27
Hungary	58	156	233	336	0.4	0.6	0.7	52	34	30

Development of EC Trade by Most Important Partner
Countries Extra-EC (broken down according to 1970 value)

TABLE II: IMPORTS

Destination	Millions of $				% of trade			Situation (rank of Trader) in		
	1958	1965	1969	1970	1958	1969	1970	1953	1969	1970
U.S.S.R.	274	1000	913	962	1.7	2.3	2.1	17	7	9
Poland	124	637	341	446	0.8	0.9	1.0	29	27	27
Rumania	60	172	287	369	0.4	0.7	0.8	56	33	29
Czech.	104	230	331	368	0.6	0.8	0.8	39	29	30

TABLE III

EC Share in Imports by Main Non-EC Countries; % of each Country's total imports in 1970

Country	%
U.S.S.R.	10.0
Poland	10.3
Czech.	11.7
Hungary	13.7
Bulgaria	7.9
Rumania	22.0

TABLE IV

EC Share in Exports by Main Non-EC Countries: % of each country's total exports in 1970

Country	%
U.S.S.R.	6.7
Poland	11.7
Czech.	10.4
Hungary	15.3
Rumania	20.3
Bulgaria	7.9

Source: Statistical Office of the European Communities 99, 100, 101 (1970).