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Discussion Following the Remarks of Professor Hans Smit

QUESTION, Professor Henry King, Jr.: How does the European Community deal with the problem of the regulatory laws necessary for such an agreement? And, what about the problem of government procurement in the European scheme?

ANSWER, Professor Smit: When the drafters created this market they had to think about who was going to run it. They were not going to let any government run it, so they had to develop a scheme in which the regulatory roles would be as reduced as possible. They thought the market would be run purely on free market forces, which meant having anti-trust laws. But, though the development in the area of antitrust has been rapid and substantial, an economy cannot run only on antitrust laws.

There must be some measures for regulation. The treaty contains provisions which lay down basic rules, allowing the Commission to tell the States they may not do a particular thing. But progress in the area of evolving common regulatory schemes has been rather slow.

The treaty also provides for what is called the "harmonization of laws." Tax laws, for instance, depending on how they're formulated and enforced, could weigh unequally upon the productive forces. A good example is a sales tax. The solution was to have a uniform sales tax throughout the Common Market. Germany, Holland, Belgium and Italy were forced to change their entire sales/indirect taxation system and use the "tax on added value" system of France. This made it impossible to give hidden subsidies to exports or place artificial taxes on imports. The Italian Parliament wouldn't pass the statute, even though a directive was issued to Italy to comply. The Commission took Italy to court and the court said it had an obligation to comply and directed the Parliament to do so. But progress must still be made in that area and national protectionist forces make this difficult.

QUESTION: Based on the European experience, what could be done if, for example, the United States decided not to accept a court's decision on a matter of removal of import restrictions?

ANSWER, Professor Smit: DeGaulle, at one point, was very tempted to do that very thing. He said no matter what the treaty stated, France would not give consequence to any Council decision taken over France's opposition, if it affected its interests adversely.

The member states compromised for a time. They took notice of the French position and did not pass any directives over its opposition. But the member states knew that history was with them and, more impor-

tantly so were the French farmers. The farmers were the greatest beneficiaries of the subsidy program under the Mansholt Plan. It would have been politically impossible for DeGaulle if he had removed France from the Community. Today, decisions are made by a qualified majority vote and France no longer dares take such a position.