

I. INTRODUCTION

As the European Community¹ moves closer to the creation of a single, integrated market, several factors make the Community a more attractive location for direct investment by Canadians.

The reduction or removal of barriers to internal trade and investment will help make the Community a more efficient economy. As such, it will have higher levels of demand for quality goods and services, including those offered by Canadian suppliers. Much has already been accomplished in this area, especially since the launch of the Community's Single Market Program -- Europe 1992 -- which seeks to eliminate obstacles to the movement of people, goods, services and capital by implementing some 300 proposals for the harmonization of national laws.

The harmonization of rules governing the way business can be carried on in the Community will make it increasingly convenient for Canadians to establish, organize and administer businesses in the EC. Another potentially attractive consideration for Canadians looking at EC business opportunities is the Community's growing economic integration with the countries of the European Free Trade Association -- Austria, Finland, Iceland, Norway, Sweden, Switzerland and Liechtenstein -- through the creation of a European Economic Area. Finally, the EC can serve as a springboard for Canadian businesses interested in the emerging markets of Central and Eastern Europe.

This report focuses on the way in which EC company law is becoming increasingly harmonized and on the implications that such harmonization has for Canadian businesses interested in supplying products or services to the Community. The report also summarizes important developments in related areas, particularly tax and labour-management relations. The scope of the report does not permit a review of such related areas as securities regulation or bankruptcy law, or of issues such as harmonization of technical standards or government procurement practices. Similarly, the report does not deal with rules governing the provision of financial services, since specialized rules apply to this sector.

These developments do not mean that an investment by a Canadian company to acquire a Community-based operation is recommended in every case. In some instances, the appropriate strategy for a Canadian producer seeking a Community market for its goods and services is exportation, not investment. There has been much comment in recent years about whether the Community is likely to transform itself into "Fortress Europe" -- and indeed there are ways in which the EC effectively excludes or discourages imports. For example, Community producers launch more anti-dumping and countervailing duty actions against foreign products than does any other jurisdiction.

At the same time, the thrust of the Single Market Program is to implement economic reforms that will benefit producers and service suppliers, regardless of whether or not they are Community residents. This is because there is a basic difference between what can be called first-stage and second-stage trade liberalization. The Canada-United States Free Trade Agreement is an example of a first-stage reform. The most important element of such reform is mutual tariff elimination, which tends to cause diversion of trade, away from producers in third countries.

In contrast, the Single Market Program is a second-stage process, the most important element of which is harmonization of national rules. Often, non-Community suppliers can take advantage of such harmonization. For example, foreign producers benefit from the adoption of simplified customs procedures for goods moving between EC member states, in the same way that their Community counterparts do. Likewise, Canadian exporters to the Community will be able to take advantage of the efficiency that comes from elimination of internal border posts, once value-added taxes are harmonized among Community countries.

A Canadian enterprise that believes it has a strong potential market in the Community will, accordingly, have to determine whether or not a combination of tariffs, possible anti-dumping