point of view, such private arrangements, particularly if encouraged, if only tacitly, by the government of a member state, undermine the authority of the Commission over commercial policy; clearly it would be more appropriate for these matters to be negotiated by the Commission on behalf of the member state, or for Article XIX action to be taken. Moreover, the Commission is aware that such arrangements may well raise serious problems under Article 85 and 86 of the Rome Treaty — the basis for EEC competition policy. As far back as 1972, the Commission gave notice (in the Official Journal) that they were aware that Japanese firms might take export limitation or price fixing actions in concert with European industry; these could raise problems under the two competition policy articles.[30] Subsequently, the Commission held that agreements between French and Japanese ball-bearing manufacturers to fix prices, and that an agreement between French and Taiwanese mushroom packers to fix prices, and which had not been notified to the Commission, constituted infractions of Article 85. In the second case, fines were imposed on the French firms concerned.[31] These are examples of competition policy being brought to bear on what were "surogates" for Article XIX action.

It should be noted that, with regard to imports from the U.S. and Canada, the EEC industrialists have no choice but to invoke GATT mechanisms when dealing with problems of troublesome imports; U.S. or Canadian businessmen cannot, as a practical matter, discuss limitations of their exports to the EEC with EEC businessmen. Hence, the EEC looks to the anti-dumping provisions or, in the absence of dumping, to Article XIX action. An example of the latter was the Article XIX action taken by the EEC in 1980 on behalf of the U.K. against imports of synthetic fibre carpet yarn from the U.S. and Canada. Bilateral discussion of that issue turned primarily on the threat of compensatory withdrawals by the United States; it is doubtful that the U.S. was persuaded that the injury being suffered by the U.K. synthetic fibres industry was caused by imports from the U.S. and Canada given that there was no comprehensive report which exporters could examine since there was (and is) no EEC equivalent to the USITC.

Another community development which raises issues from a competition policy point of view is the use of "crisis cartels". Essentially what is involved is the reduction of production by means of the allocation quotas, the setting of domestic prices, and a related administered reduction in imports and the setting of prices for imports. This is essentially how the ECSC has dealt with the crisis of excess capacity, in Europe and elsewhere in the steel industry. In this arrangement, under Article 58 of the ECSC treaty, ceilings were placed on production in the various member states and imports brought under control by whatever technique was available; or steel imports were restricted by deploying a sort of "basic price" anti-dumping system (under Article 8 of the Kennedy Round Code). Without getting into the complicated jurisprudence of EEC (and ECSC) "crisis cartels",[32] it is sufficient to note that in this European approach trade policy measures have been incidental or secondary to measures designed to limit domestic production and to ensure that the industries in the various member states do not expand at the expense of their competitors in other member states.

Trade measures, however implemented, are seen as supplementary to domestic measures, in much the same fashion as measures restricting imports of agricultural products may be justified under GATT Article XI. Competition