

**Sovereignty in Transition:  
The European Commission's Influence on US Policy**

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**Abstract**

Scholars have long questioned the international political stature of the European Union (EU), portraying the organization as an economic giant but a political pygmy. Three recent case studies provide evidence to the contrary, showing that the European Commission can transform the EU's economic capabilities into the political capital necessary to influence policy in the United States. The cases (and policy areas) are: Boeing-McDonnell Douglas merger (aerospace/defense policy); Helms-Burton Act (foreign policy); and the EU Directive on Data Protection (privacy/Internet policy). After describing the EU's influence in these cases, the paper suggests three explanations for the assertiveness of the European Commission.

## INTRODUCTION

Much has been written about the European Union (EU) and its influence in world politics (Piening, 1997; Hill, 1993; Ginsberg, 1989). The consensus is that the EU is indeed a non-state actor, but that its influence varies over time and issue area. The EU is regarded as a relatively weak actor in defense and security issues, largely owing to its lack of a defense dimension. Its policy (or lack thereof) toward the crises in the Balkans during the 1990s is perhaps the most glaring example of this deficiency. In international trade and economics matters, the EU is much stronger. It negotiates international trade agreements on behalf of its 15 member countries, and it has launched the most ambitious common currency project in history. However, even in economic matters, the EU's influence on the global (rather than regional) stage is sometimes regarded as ineffectual. The United States (US) has been very critical of the EU for not "carrying its share of the burden" in helping Asian countries get through their recent financial and economic crises. Certainly, even these economic matters have political implications. Yet such non-actions give some credence to the claims that the EU is an economic giant but a political pygmy (Drozdiak, 1999).

The objective of this paper is to question the above conclusions. We argue that the EU is an influential international actor—even in the political realm. We have selected three cases to illustrate this point. Each of the cases examines EU influence on US policymaking. As the world's most dominant country, the US has disproportionate influence in international political and economic matters. The cases examine the influence of the world's most developed institution on the globe's most powerful nation-state.

The three cases cover EU influence in sensitive policy areas. The Boeing-McDonnell Douglas case is a merger between two US-based companies with close ties to the defense establishment. The Cuban Liberty and Democratic Solidarity Act of 1996 (better known as the Helms-Burton Act) is legislation intent on forcing regime change in Cuba through economic means. The Directive on Data Protection is EU policy that can forbid data exchange with third countries that have lax privacy laws; countries that, in the EU's definition, include the US. If the EU has been able to sway policies in the US that have, in the past, been widely viewed as the prerogative of nation-states (e.g., aerospace/defense, foreign affairs, and privacy rights), we may gain a better understanding of the EU's influence as an international actor.

While we recognize that the EU itself is comprised of three major institutions (the Council, Commission, and Parliament), our focus here is on the Commission. The EU's jurisdiction over the Boeing-McDonnell Douglas merger followed from the Commission's remit over competition issues. Similarly, the Commission has attacked Helms-Burton in its role as international trade negotiator. In the

ongoing discussions over data privacy, the Commission has sought to ensure that the rights of its citizens will not be infringed by third country data laxity. In the cases presented here, the European Parliament has played virtually no role and the Council of Ministers only a small one. If the EU does have influence over US policy, that influence has centered on the role of the Commission.<sup>1</sup>

The mere fact that the Commission took a position in these three cases does not necessarily mean that it altered US policy. One measure of influence is to suggest what the US position was or might have been in the absence of outside pressure. We will propose that the difference between the original preferences of US policymakers and the actual outcomes of the three cases is in large part due to the influence of the Commission. While such an experimental design is not ideal, we believe that our findings will, at the very least, enlarge the debate surrounding the EU's global political influence.

### **CASE 1: THE BOEING-MCDONNELL DOUGLAS MERGER**

A new merger regulation policy was adopted in 1989 in response to the merger boom that followed the signing of the Single European Act (SEA). The policy greatly expanded the Commission's power in approving mergers, takeovers, or joint ventures. Upon investigation, the Commission may approve a merger, approve a merger subject to the imposition of conditions, or deny permission for a merger to proceed. The regulation applies to all mergers, takeovers, or joint ventures when the companies involved have: 1) aggregate worldwide sales of more than ECU5 billion; and 2) EU-wide sales of at least ECU250 million each (unless both of the entities achieve more than two-thirds of their EU-wide sales within the same member state, in which case the merger falls under the domain of national authorities).<sup>2</sup> Significantly, the merger rules apply to both European and non-European firms if they meet the size criteria above. Thus, mergers between two US-based companies have required Commission approval.

In 1997, Competition Commissioner Karel van Miert argued that the EU was empowered to demand alterations to, or even block, the proposed merger between Boeing and McDonnell Douglas if the Commission judged that it would hurt competition within the EU. Three primary issues concerned the Commission (Clark, 1997). The first was that the merger could so dominate the European aerospace market that it would be difficult for Europe's Airbus, the world's second largest producer, to compete.<sup>3</sup> Second, the Commission was concerned about the spillover effects of US government funding for

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<sup>1</sup> In fact, to date the Commission has always been the most forward thinking and influential (at least outside of Europe) of the EU bodies. See Nugent, 1995 and Peterson and Green, 1998.

<sup>2</sup> This is somewhat of an oversimplification. The Commission can investigate other mergers upon the invitation of national governments. See McGowan and Cini, 1999.

<sup>3</sup> Airbus is an entity owned by Aérospatiale of France (37.9 percent), DASA of Germany (37.9 percent), British Aerospace of the UK (20 percent), and CASA of Spain (4.2 percent).

defense programs that could occur as a result of a merger between Boeing, which is the world's largest producer of civilian aircraft, and McDonnell Douglas, which dominates the military aircraft sector. Finally, the Commission was concerned about exclusive deals that Boeing had secured to supply three airlines for the next 20 years.

The Commission's concerns had validity. Van Miert calculated that if the proposed merger was consummated without alteration, Boeing would capture over 70 percent of the worldwide commercial aircraft market (Andrews, 1997). Such a large market share, coupled with the vast economies of scale inherent within the aerospace sector, would have left Airbus at a competitive disadvantage. That disadvantage would be magnified if the merged group offered attractive compensation packages to buyers of military aircraft, such as placing orders with local industry to supply equipment for Boeing civilian aircraft (Buckley, 1997). Such packages would have the effect of subsidizing Boeing's commercial aircraft development in a way that ran counter to the spirit of the Uruguay Round aircraft subsidization agreement.<sup>4</sup>

By far, however, van Miert's most pressing concern with the merger was Boeing's "sole-supplier" contracts. In the months following the merger announcement, Delta, American Airlines, and Continental all approached Boeing with a novel offer. In exchange for price breaks and other incentives, these airlines would promise to buy aircraft solely from Boeing for a term lasting as long as 20 years (Cole and McCartney, 1997; Auerbach and Cole, 1997). To the Europeans, such deals demonstrated abuse of a dominant market position, and constituted grounds for rejecting the merger (*Dow Jones News Service*, 1997). Through these deals, Airbus feared losing access to three major US carriers for a period much longer than 20 years. Once an airline had made a commitment to an all Boeing fleet, the costs of adding an additional air frame manufacturer would become prohibitive. "Exclusive deals are not for 20 years, they are for eternity," said Jean Pierson, managing director of Airbus (Bryant, 1997).

However valid the EU's views, Philip Condit, Boeing's chairman, said that the US Federal Trade Commission (FTC), not the EU's Competition Commission, should take the lead in investigating the deal, because the proposed merger "so obviously concerns key US interests, not the least of which is the sovereign area of defense" (Skapinker, 1997). Ironically, while the Europeans saw the merger as a potential threat to Airbus' viability, in the United States, Boeing used the international strength of Airbus to argue for the merger's domestic approval. As Airbus rapidly gained market share in the late 1980s and early 1990s, that gain came at the expense of McDonnell Douglas. At the time of the merger, McDonnell

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<sup>4</sup> On December 15, 1993, the Uruguay Round gavelled to a close years of US/EU haggling over the aircraft subsidization issue. The Americans admitted that subsidies had a place in the aircraft development business, but the Europeans agreed that they would be limited to 30 percent of total development costs. See Ostry and Nelson, 1995.

Douglas held less than 10 percent of the commercial aerospace market, and that share was primarily in the 160-seat niche.<sup>5</sup> In reality, the large commercial jet industry was already an international oligopoly, with Boeing and Airbus the only two players of significance. Boeing argued that reducing the number of domestic firms from two to one would not radically alter the competitive nature of the international aerospace market. It was the presence of Airbus, not McDonnell Douglas, which made that market contestable. The FTC bought the argument. On July 1, 1997, after analyzing the competitive effects of the merger on commercial aerospace, and being assured by the Department of Defense that the combination would not adversely influence military procurement procedures, the FTC chose not to oppose the acquisition.<sup>6</sup>

There the matter may have rested, if it was not for the power of the Commission. While the Commission could not “prevent” the merger of two US companies, under EU competition law the EU can impose fines of up to 10 percent of annual turnover where anti-competitive behavior has been established (*Europa*, 1999). In the Boeing case, that fine was an amount in the billions of dollars. Faced with the unpalatable options of retreat in the face of European demands, or the prospect of a “trade war,” Boeing retreated, offering four key concessions to van Miert in return for Commission approval:

- Boeing agreed to license patents obtained under US government-funded contracts to commercial aircraft manufacturers on a nonexclusive, reasonable-royalty basis and to report annually to the Commission over the next 10 years on patents arising from government-funding contracts and unclassified government-funded aeronautics research and development projects.
- Boeing agreed to not “unduly interfere with actual or potential relationships between its suppliers and other commercial aircraft manufacturers” now that it would be supplying parts to all McDonnell Douglas planes.
- Boeing agreed not to leverage customer support for existing McDonnell Douglas aircraft to obtain any advantage in sales of new commercial aircraft, and to maintain McDonnell Douglas’ commercial aircraft business as a separate legal entity for 10 years.
- Boeing agreed to nullify the “sole-supplier” contracts with Delta, Continental and American Airlines, promising not to enter into any new exclusive supplier agreements with commercial aircraft purchasers for 10 years (*Dow Jones News Service*, 1997).

The EU responded by issuing final approval for the Boeing/McDonnell Douglas merger on July 30, 1997.

Richard Albrecht, executive vice president of Boeing’s commercial airplane group, acknowledged that

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<sup>5</sup> The 160-seat MD-80 had already recouped its development investment and had a lower production cost than competitive models from either Boeing or Airbus. See Pearlstein, 1996.

<sup>6</sup> “The [Federal Trade] Commission reached its decision not to oppose the merger following a lengthy and detailed investigation into the acquisition’s potential effects on competition by a large team of FTC attorneys, economists and accountants. The [Federal Trade] Commission staff interviewed over forty airlines (including almost every US carrier, large and small, and many foreign carriers), as well as other industry participants, such as regional aircraft producers and foreign aerospace companies.” See *Federal Trade Commission*, 1997.

his company had blinked. "We were faced with a very difficult decision," he said. "None of the alternatives that we faced seemed attractive" (Andrews, 1997).

The Commission faced a difficult decision as well. Van Miert's negotiating tactic, to bully Boeing into submission by threatening prohibition, could have easily backfired and resulted in a trade war with horrendous effects on EU industry (McGowan and Cini, 1999). By holding firm, however, van Miert achieved an important international victory for the Commission, and may have emboldened it to pursue a harder line in future negotiations with the US.

## **CASE 2: THE HELMS-BURTON ACT**

US President Bill Clinton signed the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act ("Helms-Burton") on March 12, 1996. The act was a response to the Cuban government's shooting down of two US Cessna aircraft around Cuban airspace on February 24, 1996. Immediately, the legislation touched off a storm of international controversy subjecting the US to condemnation from all its major trading partners, including the EU, Canada, and Mexico. At the center of the controversy were the extra-territorial aspects of the law, which attempted to impose US foreign policy on other nations in violation of international law.

The most vexing provisions of the Act are Title III and IV. Title III permits US nationals with claims to property expropriated by Cuba, dating all the way back to January 1, 1959, to bring suit in US courts against persons who traffic<sup>7</sup> in such property. Title IV provides for the exclusion from the US of third country nationals (and even their spouse and children) if they traffic in expropriated Cuban property. If an individual or foreign company engages in such activities after March 12, 1996, then that individual, or persons associated with that company, could be barred from the US. A strict reading of the Act bars nearly all economic exchange with Cuba, and excludes any corporation with ties to Cuba from conducting business in the US.

The response from the EU was immediate and firm. On March 13, 1996, the EU issued a statement articulating its opposition, stating that, "Even if we understand American frustrations with Cuba, we believe this bill risks going well beyond the Cuba question and inflicting damage on America's major partners, as well as encouraging other less responsible countries to export their policies and principles in a similar way" (*European Union in Canada*, 1996). Shortly thereafter, the EU and France

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<sup>7</sup> The act defines "traffics" to include: transfers, distributes, dispenses, brokers or otherwise disposes of confiscated property; purchases, receives, obtains control of, or otherwise acquires confiscated property; or improves or invests in (other than for routine maintenance) or begins to manage, lease, possess, use or hold an interest in confiscated property. The term "traffics" also covers entry into a commercial arrangement using or otherwise benefiting from

passed separate legislation making adherence to the Helms-Burton provisions a crime (*Reuters*, 1996). If the US did not amend the legislation, France and its European allies vowed to convene a World Trade Organization (WTO) panel to decide on the international legal standing of the Helms-Burton Act. The EU and US then became embroiled in a number of legal actions and counter measures at the WTO. The EU filed suit against the US for international trade violations. The US countered by invoking a “national security provision” claiming that the WTO had no jurisdiction over US Cuba policy. Critics submitted that any justification for the measures taken under Helms-Burton on the basis of the national security exception would constitute one of the most alarming instances of reliance on this exception in the history of the WTO, and posed a significant threat to the credibility of the multilateral trading system as it exists today.

For that reason, both the US and the EU found themselves in a quandary. Neither side wanted the WTO to render a decision. The EU knew that it would win, but also knew that the US would refuse to acknowledge WTO jurisdiction (Dunne, 1998). Invocation of the “national security provision” by the US in this matter would set a dangerous precedent for the WTO, and undercut much of its strength in resolving trade disputes (*The Economist*, 1997). The US, which has won more times than it lost at the WTO, did not want to damage the credibility of the organization (Greenberger, 1998).<sup>8</sup>

The result was an elegant dance across the international stage. Clinton, in the face of much domestic opposition from a vociferous Congress, bowed to growing international pressure and suspended the right to file a claim under Title III of the Act for six months (*United States Information Agency*, 1996).<sup>9</sup> Upon repeating this action on January 3, 1997, President Clinton claimed that much had been achieved toward the goal of democratization in Cuba since the enactment of Helms-Burton. The EU, for its part, did not press its case before the WTO and let it lapse after one year (Greenberger, 1998). The *quid pro quo* was that along as Clinton kept waiving the onerous Title III provisions, the EU would not pursue the matter before the WTO.

The *quid pro quo* was tenuous, however. The US Congress, particularly Senate Foreign Relations Committee Chairman Jesse Helms, wished to see Title III strongly enforced, and the EU wanted its own waiver against any future extra-territorial laws that Congress might pass. Late in 1997, the EU

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confiscated property, as well as causing, directing, participating in or profiting from trafficking by or through another person or entity (*Libertad Act*, 1996, Section 4, Paragraph 13).

<sup>8</sup> Unfortunately, the latest transatlantic trade disputes and fissures within the WTO have placed the organization’s credibility and future in doubt. See *The Economist*, 1999c.

<sup>9</sup> According to the Act, the president can waive the right to file a claim under Title III if he determines that “suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba” (*Libertad Act*, 1996, Title III, Section 306). The waiver must be renewed every six months.

strengthened its rhetoric against the American policy. Speaking after talks with President Clinton aimed at settling the conflict, the President of the European Commission, Jacques Santer said “We cannot accept the position of the US.” After that same summit, the European Commission’s vice-president and trade commissioner, Sir Leon Brittan, told a news conference: “What we’re working towards is a mutually acceptable agreement which would lead to a change in [US] legislation” (*BBC News*, 1997).

The European criticism of Washington’s stance on international trade came on the day that a court in Miami sentenced a Spanish businessman to 18 months in prison for violating Helms-Burton. Convicted of exporting various products—including canned food, clothes and soap—to Cuba via third countries, Javier Ferreiro Parga languished in an American jail awaiting trial for eight months before his case was settled (*BBC News*, 1997). Publicly, the administration continued to repeat its hard-line support for Helms-Burton; privately, there were signs that the administration wanted a compromise.

That “compromise” occurred on May 18, 1998. In exchange for an understanding on deterring investment in illegally expropriated property worldwide, and subject to Congressional approval, European firms were to be exempted from US laws prohibiting trade with Iran, Libya and the provisions of Title III and IV of the Helms-Burton Act (*US Mission to the EU*, 1998; *BBC News*, 1998). In a press conference to announce the understanding, Clinton argued that the accord on Cuba would protect American interests “far more effectively than the US could have done alone.” British Prime Minister Tony Blair observed that what the US called sanctions policy the Europeans called interfering with the internal affairs of other nations. Stating that the EU had opposed US sanction laws “not only because we believe they are illegal but also because we believe they are counter-productive,” European Commission President Jacques Santer expressed his satisfaction with the agreement (*BBC News*, 1998).

Santer may have been satisfied, but the US Congress was far less happy. Marc Thiessen, a spokesman for Senator Helms, said, “The Europeans offered the administration absolutely nothing in exchange for this waiver” and cautioned that amending Helms-Burton in accordance with the understanding would be quite difficult (Bennet, 1998). Thiessen’s caution was prophetic. To date, Congress has refused to amend Helms-Burton, and the EU has delayed official implementation of the understanding until the Act is changed (Brittan, 1998; *European Union*, 1998). Clinton, however, has continued to waive the right of redress granted under Title III every six months, signing the latest decision effective February 1, 1999 (*US Mission to the EU*, 1999a). The Europeans, having been granted a *de facto* waiver, see no reason to waste political capital over the controversy, and seem content to focus their energies on other trade rows, including the data privacy case outlined below, and the ongoing battles over bananas and beef. The US administration and Congress, for their part, are unwilling to press the matter further, in what may be tacit recognition of the EU’s emerging political and economic power.



### **CASE 3: THE EU DIRECTIVE ON DATA PROTECTION**

On October 25, 1998, the EU's comprehensive privacy legislation, the Directive on Data Protection, went into effect.<sup>10</sup> Ten years in the making, the directive had the twofold aim of ensuring the free flow of data across the single market by standardizing national legislation within the market, and also of guaranteeing the privacy of EU citizens by mandating the level of data privacy necessary to operate in the single market. The directive requires that companies tell people when they collect information about them and disclose how that information will be used. Businesses cannot use personal data for anything other than the reason that was disclosed to the data subject. In addition, data subjects must provide informed consent before the company can use the data, and the directive also requires companies to give people free and unfettered access to information about themselves.

Transatlantic debate on the directive has centered around Article 25, which stipulates that data access may be curtailed to third countries which do not have adequate privacy laws in place. The Commission sees the United States, with its vast and legal market in the collection and resale of personal information, as lacking "an adequate level of protection." Withholding data transfer between the US and the EU, however, could have massive and stultifying effects on international commerce, with the demise of Internet-based businesses only the most observable casualty. Because of the risks involved, the Commission decided not to implement Article 25 so long as the United States and the Commission were negotiating seriously about the issue (Kellerhals, 1998). The talks started in December 1998, with meetings between the chief US negotiator, Undersecretary of Commerce for Trade David Aaron, and his EU counterpart, European Commission Director General for the Single Market John Mogg. They continued in January, March, April and May 1999, with the two sides professing a chance to develop an agreement by the time of the US-EU summit on June 21.

Even before the directive went into effect, US Vice President Al Gore outlined a series of measures intended to enhance the security of Internet users, and also to appease European officials (Wasserman, 1998b). The US approach centered on the concept of "self-regulation." Rather than create a new level of bureaucracy and compel compliance through legislation, leading businesses banded together and promised to police their own practices. A group of 50 leading online companies, including AOL, Disney, Netscape and Microsoft, formed the Online Privacy Alliance, which holds members to certain standards for privacy protection (Wasserman, 1998a). Members must publicly disclose company privacy policy and give their users the opportunity to opt out of having their information used for reasons other

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<sup>10</sup> The directive was adopted in 1995 by a majority of the EU. Under EU law, each member nation is required to implement the directive by enacting its own national legislation (Andrews, 1998).

than for which it was collected. Members also need to assure that reasonable steps are taken to keep information secure from data loss, misuse or alteration. Such standards appear to align closely with the EU data directive.

To the Europeans, however, such “self regulation” smells of the fox guarding the hen house. Statistics seems to bear out the EU position. A Federal Trade Commission (FTC) survey of 1400 US Internet sites last year found that only 2 percent had posted a privacy policy in line with that advocated by the FTC. Studies of the US Direct Marketing Association have found that more than half of the members did not abide even by the association’s modest guidelines (*The Economist*, 1999b).

The Europeans have traditionally held data privacy in much higher regard than Americans, and several nations, including Germany and the Netherlands, already have complex bureaucracies whose sole function is to ensure the privacy of their citizens. Many EU countries essentially ban telemarketing, along with unsolicited emails and faxes. Companies that are accused of violating privacy legislation can be prosecuted under criminal laws (Andrews, 1998). Yet, to most Americans, the idea of a privacy czar who could arbitrarily decide what was “private” and what was not, would be seen in itself as a violation of privacy. European tradition sees privacy as a bureaucratically protected right unchecked by the competing claim of information freedom. American culture sees the right to privacy carefully balanced against the essential freedom of information. On top of that divide lies another—European trust in government against US skepticism. Such a divide is obvious in the words that Aaron used to describe the Directive on Data Protection, a “top-down, umbrella approach—a comprehensive administrative and regulatory program establishing independent data ‘czars’ in each country who control every aspect of personal data collection and distribution” (*US Mission to the EU*, 1999d).

To address EU “self-regulating” concerns the US developed a system known as “Safe Harbor.” The goal of the US approach is to assure US compliance with the spirit of the EU directive, without installing legislation or bureaucracy to “certify” such compliance. According to the proposal, a US company may enter “safe harbor” by joining a private sector privacy program that adheres to the seven principles defined below. It can also qualify for “safe harbor” when it is subject to US statutory, regulatory, administrative or other body of law that effectively protects personal data privacy. Organizations may also put in place the safeguards deemed necessary by the EU for transfers of personal data by incorporating the relevant safe harbor principles into agreements entered into with parties transferring personal data from the EU (*International Trade Administration*, 1999). The seven “safe harbor” principles are:

- **Notice:** Enables individuals to know what type of information is being collected on them and what it is being used for.

- **Choice:** Gives individuals the right to decide if information is to be given, and how personal information is to be used, including use beyond its original purpose.
- **Onward transfer:** Mandates an organization may only disclose personal information to third parties consistent with the principles of notice and choice.
- **Security:** Requires that organizations creating, maintaining, using or disseminating personal information must take reasonable measures to assure its reliability for its intended use and reasonable precautions to protect it from loss, misuse and unauthorized access, disclosure, alteration and destruction.
- **Data integrity:** Authorizes an organization to process personal information only for the purposes for which it has been gathered.
- **Access:** Provides individuals with reasonable access to information collected about them and enables them to correct it if it is wrong.
- **Enforcement:** Include mechanisms for assuring compliance with the safe harbor principles, recourse for individuals affected by non-compliance with the principles, and consequences for the organization when the principles are not followed. (*International Trade Administration, 1999*).

After much wrangling the Europeans agreed to the US concept of self-regulation and “safe harbor,” but two issues, access and enforcement, have yet to be adequately addressed and constitute the key stumbling blocks on the road towards agreement.

The culture of the two continents influences their respective positions on the access issue. The Europeans are much less litigious than the Americans and do not see the directive creating a groundswell of consumer information queries. American corporations, however, fear the necessity of doing a complete data search, akin to a Freedom of Information Act request, every time a consumer asks for information. The US would like the Europeans to enact a reasonableness or proportionality test that ensures consumer access, while protecting corporations against the costs of trivial requests. Europe, for its part, sees any compromise on the access issue as undermining the original purpose of the directive.

The enforcement issue stems, in part, from US reluctance to enforce cash remedies for victims of data privacy violations within Safe Harbor. Such violations are increasing. In March and April 1999, errors associated with General Motors and Nissan’s Web sites exposed more than 10,000 email addresses (Glave, 1999). The EU directive recommends that the states legislate criminal penalties for data privacy violations. Without the threat of criminal sanctions, the EU sees the enforcement mechanisms of Safe Harbor as essentially toothless. As Mogg has said, “...we need to be sure that in this we are not just looking at a set of principles which have no meaning, but have a genuine substance and are properly enforced, not necessarily by juridical means, but have a genuine enforcement basis for which we have clear evidence” (*US Mission to the EU, 1999c*).

The compromises that have been achieved thus far on the directive speak to the cost of failure. During a briefing in Brussels on January 22, 1999, Aaron clearly emphasized the importance of the negotiations, “If this problem isn’t solved, if the data gets interrupted, this isn’t just going to harm

American companies or the United States. This is going to have a very adverse impact on the operation of the economies on both sides of the Atlantic and, indeed, could be a very serious blow. So the stakes are very high” (*US Mission to the EU*, 1999b).

Unfortunately, even with that knowledge in mind, progress made in January seems to have slowed considerably, and the threat of a full-scale trade war increases with each passing day. After their January negotiations, Aaron and Mogg laughed good-naturedly at a joint press conference (*US Mission to the EU*, 1999c). There was no laughter in March and on April 29, 1999, at the end of a fruitless meeting, Mogg stressed the importance that the Europeans attach to privacy regulations. He said that the failure of negotiations might force the European Commission to declare the US off-limits for European data and precipitate the threatened trade war (McCullagh, 1999). During the preparations for a meeting on May 28, both sides admitted that the chances for an agreement by the June 21 US-EU summit were low (Andrews, 1999). The US refuses to create a bureaucratic privacy regime on the European model, and the Europeans will not weaken protection for what they see as a fundamental right. In words of Spiros Simitis, a law professor at Johann Wolfgang Goethe University in Frankfurt and an adviser to the European Commission on the privacy directive, “Americans still have the illusion that they can change the directive, but they can’t... This is not bananas we are talking about. This is about what we consider a fundamental claim to privacy, and therefore there is a limit to compromise” (Andrews, 1999).<sup>11</sup>

Buoyed, perhaps, by their success in the Boeing-McDonnell Douglas merger, the Commission seems intent on playing the same dangerous game, pushing the US to the edge of a precipice, believing that an ensuing trade war will be more damaging to America than to Europe. Worldwide trends on privacy law may bolster Europe’s position. Twenty-five countries have already adopted legislation comparable to the EU directive. Hong Kong, New Zealand and Taiwan are among those limiting the free flow of consumer information (*US Mission to the EU*, 1999d). The *Canadian Personal Information Protection and Electronic Documents Act*, modeled on the EU directive, entered the final phase of the legislative process in April and could become law before the end of the summer (Friedman, 1999). Such an eventuality could leave the US as the odd-person out (along with Japan, which thus far has stuck with the US “self-regulation” model) of an emerging world data privacy regime.

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<sup>11</sup> European officials, however, seem to differ among themselves as to where the compromise limit may be. Sources close to the negotiations said that Mogg and others in the Commission were generally satisfied with the American approach and eager to reach an agreement. Many individual governments, including Germany, were more hostile, however, and insisted on stringent enforcement mechanisms (Andrews, 1999).

## **EXPLAINING THE COMMISSION'S POSITIONS**

There are several interpretations of the positions taken by the Commission in these three cases. We refer to them below as Commission leadership, critical industries, and the transatlantic relationship.

### *Commission Leadership*

One possible conclusion of these three cases is that the Commission has increased its relative importance among the EU's major bodies. Terms such as "policy entrepreneur" highlight the role that the Commission plays in the expansion of EU policymaking (Sandholtz and Zysman, 1989). Some observers argue that the SEA and Maastricht Treaty strengthened the Commission's leadership capacity (Nugent, 1995). They propose that virtually every major new development and every major change with which the EU has been associated in recent years has seen the Commission at the heart of decision-making processes: by, for example, Commissioners making speeches on subjects and advocating courses of action; by the issuing of position and policy papers; and by urging the other EU institutions and actors to act, and facilitating wherever possible their ability to do so.

While these three cases relate directly to economic issues, they also have implications for other policy areas, which makes the Commission's actions even more significant. The Common and Foreign and Security Policy (CFSP) agreed to at Maastricht has been a disappointment. It has not helped the EU's image as a foreign policy actor in the Balkans, nor has it served as much of a stepping stone on the way to a common defense policy. Much of the blame for CFSP's failures can be placed at the Council of Ministers and the divergent interests of member state governments. Ironically, the Maastricht Treaty placed responsibility for CFSP within the Council. But, as these cases illustrate, it is the Commission which has been better able to present a coherent foreign policy for the EU on the international stage. For example, it is largely the Commission that has formulated the EU's position on Cuba, not the Council under CFSP. This again demonstrates the Commission's leadership role. By executing its responsibilities in the economic realm, it has succeeded in carving out a role for itself in foreign policy.

This leadership explanation can be taken a step further in the case of the Boeing-McDonnell Douglas merger. The EU in general, and the Commission in particular, has taken a more active interest in developing an aerospace policy (Hayward, 1994) and a defense industrial policy (Guay, 1998). EU policies that affect Europe's defense industry go beyond vetting mergers to include: regulation of the trade of dual-use goods; economic development policies for defense-dependent regions; public procurement policies that cover some national government spending; and the disbursement of research and development (R&D) funds to companies whose products overlap both the civilian and defense sectors. The Commission and Parliament aired proposals in the late 1980s and early 1990s that would

give the EU more influence over defense industry matters. However, the Council rejected most of these initiatives.

The irony is that these three cases occurred on the watch of the Santer Commission, which has been roundly criticized for its lack of effective leadership (e.g., *The Economist*, 1999a). These case studies show, however, that even in a time of perceived Commission weakness, the body was still able to wield enough influence to alter US policy preferences in several areas. If one believes that the Romano Prodi Commission will be vastly more proactive than the Santer Commission, one can expect the influence of the Commission to grow.

### *Critical Industries*

A second explanation is related to notions of infant industry and strategic trade policy. The infant industry argument suggests that governments should shield domestic companies from international competition until they are established enough to compete globally. Such protection may include tariffs, subsidies, or other barriers on import-competing products. Strategic trade policy goes a step further in suggesting that governments can rebalance market imperfections (such as monopoly) through intervention. This often occurs in industries with a potential for strong future growth (in sales, employment, exports, and high-technology utilization). The Boeing-McDonnell Douglas merger and data protection seem to fit a critical industries explanation. While Helms-Burton does not directly affect any one European industry, European companies do have significant investments in Cuba. It should not be surprising then that the Commission is acting in a way to protect European firms from extra-territorial legislation and prohibitions on the travel of corporate executives.

The Boeing-McDonnell Douglas merger affects two industries that have long been regarded as vital to economic growth and, at times, national security: aerospace and defense. Governments on both sides of the Atlantic have historically gone to great lengths to protect both of these sectors. Viewed from this perspective, the Commission's more aggressive stance toward the Boeing merger reflects a concern over the implications of a merger between the world's first and third largest aerospace companies on the world's second largest producer—Airbus. While Airbus is not an EU-created entity, and the Commission does not administer policies that directly oversee this company, there is certainly a strong interest in Europe to maintain the international competitiveness and viability of Airbus. The criteria for approval of mergers and acquisitions are essentially based on competition measures. However, the criteria are sufficiently broad and the test sufficiently qualitative to permit the Commission to be influenced by factors other than competition, such as the consideration of EU-wide objectives, industrial policy goals, or the buildup of economies of scale to compete more effectively with American and Japanese firms (Osborne, 1990). There is some evidence that the general Commission view is that mergers may be

permitted where greater efficiency is needed to avoid massive import penetration from non-EU producers (Steinberg, 1992). The Commission has identified electronics, aerospace, and computer/telecommunications (all of which produce for the military and civilian markets) as sectors where that principle might apply. As Jacquemin (1993) suggests, in a context of strategic trade and oligopolistic competition, competition policy might be one important element of a broader economic policy that seeks to control activities occurring outside the EU.

In their article on the EU's technology policy in the 1990s, Sharp and Pavitt (1993) advocate EU policies that promote competition, on the grounds that competitive oligopolies perform better than monopolies or cartels. They further suggest that "[o]nly in circumstances where the monopoly power of other international players risks undermining the basis of competition is it argued that protection is justified" (p. 149). Viewed in this light, the additional requirements that the Commission placed on the Boeing-McDonnell Douglas merger serve as a quasi-competitive/protectionist policy that aims to ensure competition at the international level between the two dominant aerospace companies, while protecting Airbus from the now much larger Boeing entity. The Commission's approach toward the US in this case does give some credence to Wolf's (1995) claim that the EU "combines liberalism within and mercantilism without" (p. 333).

The Internet has the potential to dramatically change the ways that consumers purchase goods, citizens obtain information, and data is organized and disseminated. Thus, its strategic potential is enormous. Because the Internet is still in a very early stage of development, it is also realistic to categorize it as an infant industry (particularly in the way that standards and regulations differ internationally). As a major user and producer of Internet-related activities, the EU has a strong interest in influencing the standards related to the Internet, including the way information is collected. It is entirely reasonable to believe that the EU will continue its strong stance on privacy regulations and other standards for this emerging economic sector.

### *The Transatlantic Relationship*

An additional explanation of the Commission's positions in these three cases lies in an understanding of the relationship between the US and the EU. The relationship is shaped by two tensions: competition and cooperation (Guay, forthcoming 1999; Peterson and Green, 1998; Smith, 1998; Wolf, 1995). On the one hand, the US and the EU share many similar values and interests, including political democracy and, in general, economic liberalism. In 1997, the EU exported ECU141 billion to the US, while the US exported ECU138 billion to the EU (both figures represent about 20 percent of total exports). While they can be tough negotiators of international trade agreements, both entities want the WTO to succeed and extend multilateral economic rule making. Officials from both the US and EU have

proposed variations of a “New Transatlantic Marketplace.” On the other hand, companies in the US and EU compete in the global marketplace. Consequently, the political bodies that represent them seek advantages on their behalf (Hocking and Smith, 1997).

A variant of this explanation of changing US-EU relations is the perspective of complex interdependence (Keohane and Nye, 1977). Characteristics of complex interdependence include: multiple channels connecting societies; an absence of a hierarchy among issues; and the inability to use military force to resolve disagreements. Featherstone and Ginsberg (1996) suggest that complex interdependence explains much of the current nature of US-EU relations. This is mainly due to the relative decline of US international power (especially in the economic area) and rise of the EU’s international influence since the founding of the European Community in 1957. Thus, it should not be too surprising that the US is no longer able to get its way on every (or even all of the important) issues.

These three cases also show how the nature of the transatlantic relationship has changed with the end of the Cold War. Dissenting views to the contrary (such as Risse-Kappen, 1995), Europe had little influence on US policy decisions when the expectation that the Soviets would come marching through the Fulda Gap was real.<sup>12</sup> Disagreements on economic issues such as data privacy and Helms-Burton would be quickly resolved and not allowed to threaten Atlantic stability. Europe would not have the temerity or the rationale to challenge the merger of two US aerospace firms. The collapse of the Soviet threat removed the requirement for Atlantic unanimity at the same time that it dramatically altered the economics of the defense industry. The collapse of internal demand forced US firms, such as Boeing and McDonnell Douglas, to join the worldwide arms market as a major player for the first time, bringing the US into export competition with European defense firms (Callum 1998a and 1998b). The Cold War’s ending removed much of the glue that kept the transatlantic relationship together while it forced the allies into ever-fiercer economic competition (*The Economist*, 1999c). The result is a stronger EU, which is slowly learning how to translate its economic weight into political power, and is influencing US policy decisions as never before.

## CONCLUSIONS

In this paper, we have argued that Europe is beginning to exercise political power commensurate with its economic might. In the cases of the Boeing-McDonnell Douglas merger, enforcement of the Helms-Burton Act and with regard to the ongoing negotiations over data privacy, the EU has forced the US away from its preferred policy outcomes. While there may have been confounding factors leading to

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<sup>12</sup> What influence they may have had tailed off dramatically after the early 1960s. See Jervis, 1997, especially pp. 201-204.



the changes in US position, it is clear that the political influence of the EU played a decisive role in American decisions to compromise.

Establishing EU political influence, however, is only a first step. Further research could develop broader explanations for Commission involvement in US policy, and answer the following questions: Under what circumstances has the Commission been influential in shaping US policies? What do these cases have in common? What factors inhibit Commission influence over US policymaking?

As the economic interests of Europe and America diverge over the coming decades, we can expect more “trade wars” over data privacy, bananas, beef and aircraft. We can also expect that as the EU’s economic and political influence grows, Europe will have an increasing impact on US policy decisions. Even as awkward and uncoordinated as it sometimes is, the growing economic clout of the single market cannot help but be translated into political power. This will forever alter the dynamic of the transatlantic relationship, and the political relationship between the United States and the European Union.

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