COMMISSION OF THE EUROPEAN COMMUNITIES

THE CUSTOMS UNION: TODAY AND TOMORROW

Record of the CONFERENCE

Held in Brussels on 6, 7 and 8 December 1977

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CONFERENCE PROGRAMME

TUESDAY 6 DECEMBER 1977

(Brussels, Large Conference Room, Egmont Palace) Afternoon - Plenary Session

Chairman : M. Pierre Werner (Honorary Minister of State of the Grand Duchy of Luxembourg)

14.30 Opening of conference by Viscount Davignon, Member of the Commission responsible for the Customs Union.

14.45 Speech by Mr. Henri Simonet, Belgian Minister of Foreign Affairs, President of Council of Ministers, former Vice-President of the Commission of the European Communities.

15.00 Report on theme No. 1 :
"Free circulation of goods : reality or illusion?"

Mr. Pierre Schloesser, Deputy Director-General, Directorate-General for Internal Market and Industrial Affairs (Commission of the European Communities).

Mr. Albert Hazeloop, Chief Adviser, Administration of the Customs Union, (Commission of the European Communities).

15.20 Report on theme No. 2 :
"The European citizen and the Customs Union".

Mr. G. Backer, Deputy Director-General of the Touring Club of the Netherlands, on behalf of the Bureau of the Organizations of the International Touring Alliance within the European Community.

15.30 Co-report on themes Nos. 1 and 2. Mr. Altiero Spinelli, Member of the European Parliament, former Member of the Commission responsible for the Customs Union.

15.45 Pause.

16.00 Report on theme No. 3 :
"Community customs rules : the need for their completion."

Mr. Maurice Aubrée, Head of Division, Administration of the Customs Union (Commission of the European Communities).

16.10 Co-report on theme No. 3

Mr. Claude Berr, Professor, University of Social Sciences, Grenoble (France), Director of the University Centre for European and International Research.

16.20 Report on theme No. 4

"Customs Union and external trade."

Mr. Brix Knudsen, Head of Division, Administration of the Customs Union (Commission of the European Communities).

16.30 Co-report on theme No. 4.

Mr. Pierre Bernard Couste, Member of the European Parliament.

16.45 Discussion.

18.30 End of session.

WEDNESDAY 7 DECEMBER 1977

Morning from 9.30 to 12.00 Work in Committee (Conference Rooms, Manhattan Centre)

Chairman of committee on theme No. 1 :

Mr. Kai Nyborg (Member of the European Parliament).

Chairman of committee on theme No. 2 :

Miss Eirlys Roberts, Director General of the European Bureau of, Consumer's Unions, Member of the Economic and Social Committee.

Chairman of committee on theme No. 3 :

Mr. Hans Lautenschlager, former Member of the European Parliament.

Chairman of committee on theme No. 4 :

Mr. Tom Normanton, Member of the European Parliament.

Afternoon - Plenary Session
(Egmont Palace)

14.30 Report by Chairman of committee on theme No. 1

Mr. Nyborg.

15.00 Report by Chairman of committee on theme No. 2

Miss Roberts.

15.30 Pause.

16.00 Discussion.

17.30 End of session.

THURSDAY 8 DECEMBER

Morning - Plenary Session
(Egmont Palace)

9.30 Report by chairman of committee on theme No. 3

Mr. Lautenschlager.

10.00 Report by chairman of committee on theme No. 4

Mr. Normanton.

10.30 Discussion.

12.00 Closing speech

Viscount Davignon.

12.30 End of Conference.

OPENING ADDRESS BY VISCOUNT ETIENNE DAVIGNON

INTRODUCTION

On 1 January 1978 the Customs Union will have been in existence for twenty years and the five-year plan to promote economic and monetary union will begin.

1. On 1 July this year, in presenting the Commission's Communication on the state of the Customs Union, I took the opportunity to announce its intention to hold a conference on the achievements and prospects of the Customs Union. It seemed to me that the moment had come to take stock - honestly and exhaustively - of the experience of a period of twenty years that was to be completed in a few months' time. For it was on 1 January 1958 that the six original Member States began dismantling tariffs and the Common Customs Tariff was set up, to come into force on 1 July 1968. Then, the accession process of the new Member States was to be completed, from the point of view of tariffs, on 1 July 1977.

   It is at the beginning of next year, too, that the Commission intends to start implementing a five-year plan to strengthen economic integration in the Community, in preparation for further new departures leading to economic and monetary union at a later date. The Customs Union thus acquires a new dimension as a component of a single market which, together with strengthened coordination of economic policies and the development of a policy on economic structures, will create a suitable environment for more progress in that direction.

2. At the time of this stock-taking, we have to note that a major part of the work done by the Community's institutions and its Member States has been directed at building a Customs Union among nine States that have remained sovereign in many respects and responsible as such for the economic activity of some 250 million people; their trade across the Community's internal frontiers now represents some 30% of total world trade. The sheer size of the economic, social and regional interests involved in such a process amply illustrates how much of a wager such an undertaking was and, consequently, the extent to which its completion has been successful.

3. Before going on to discuss the prospects of the Customs Union, I should like to emphasize for you how much effort everyone - both business and the authorities - has put into bringing about this

fundamental transformation of the economic environment whereby the economies of our Member States have acquired a sudden new dimension. Measured against the time span of history, the opening of the national economies to take on the dimension of one continental economy - and that in the space of less than twenty years - can be described as a veritable revolution, and we have not yet seen all the consequences of it for our societies.

Without wanting to blame on the Customs Union a number of phenomena such as the growth of industrial giants, the development of the megalopolis and mass consumption, we should ask ourselves how far this process has contributed, through the changes it has induced in industrial structure, to the development of what everyone calls the consumer society - some in condemnation of its excesses and others in praise of its benefits. This society and its institutions - among which we must include the "common market" - can of course be very good or very bad according to the use that is made of it. This three-day conference to take stock of the Customs Union has been arranged purely to measure its achievements against the hopes that were placed in its construction and to sketch out the prospects for its development in face of the challenges to Europe, its nations and their governments.

4. "The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."

The concision of the Treaty of Rome's definition of the customs union shows, surprisingly clearly after twenty years, the four tasks assigned by the founders of the Community to this hard core, this cornerstone of European integration.

"THE CUSTOMS UNION: FACTOR FOR POLITICAL INTEGRATION"

5. First of all, the Customs Union is one of the bases of the Community, together with the free movement of persons, services and capital and with the coordination of economic policies, necessary for the harmonious development of the whole thus constituted. Through the changes it has brought about in the effective powers of the national authorities and the weight of responsibility it thus confers on the Community institutions, the Customs Union is a fundamental component of the political integration of the Member States and their peoples; it is sowing the seed of European citizenship - and this is the theme of the section headed "The European citizen and the Customs Union".

6. Seen from this institutional angle, the setting-up of the Customs Union has produced one of the most original structures in international public law: the Community legal system. In order to ensure that it works effectively, an international organization has been given powers normally belonging to a State, such as the capacity to act independently in passing laws on its own territory, with the prerogatives of international personality, the whole being sanctioned by an independent system of legal protection of the rights invested in individuals. At the risk of oversimplification, we could nevertheless say that it is the free movement of goods that has created the European citizen and that the Common Customs Tariff, as an independent source of funds to finance the Community budget, has created the European taxpayer: the connection of the two phenomena is linked up with the fact that the Member States and the European people have become aware of the need for strengthening the legal basis for the democratic functioning of the exercise of power within the Community, an awareness that is expressed in practical form in the recent decisions to hold direct elections for the European Parliament and to adopt the common declaration on the protection of fundamental rights in the Community. Other steps are also being taken to render membership of the Community more tangible for the citizen, such as the special rules for tax exemption for travellers within the Community, or the work on setting up the passport union.

"Efforts to achieve greater freedom of movement of persons and goods are possible"

7. It is very tempting not to look beyond the amount of work yet to be done in order to abolish the customs official at the frontier - the symbol of the sovereignty of our States. It does not seem very satisfactory however to confine the imaginative powers of our institutions within a vicious circle which consists of arguing that intra-Community frontier controls will have to remain as long as there are still great differences between the structures and rates of our Member States' taxes, particularly VAT and excise duties, while claiming that efforts to achieve sufficient harmonization of systems of indirect taxation involves constraints out of all proportion to an end result as tenuous as the removal of frontier controls. It would, of course, be presumptuous to believe that the Customs Union has inherent in it the elements of European Union - the final stage of political integration - and is of its own accord a sufficiently powerful lever to bring into action the energy and political will needed to harmonize the tax structures of the Member States so that they are close enough to permit a substantial easing of internal controls. I am convinced that the harmonization of tax systems is a project which deserves the special attention of our institutions, primarily because of the specific advantages expected from it as regards the objectives of

economic and monetary union and, as a secondary consideration only, because of the progress such harmonization would permit in the matter of movement within the Community. It is nonetheless true that real progress can be made in the context of the present structure of national tax systems towards further liberalization of frontier controls, for instance by making a sustained effort to improve tax exemption facilities for travellers within the Community and by stepping up cooperation between the national authorities in the matter of the tax treatment of goods in transit in the Community.

"THE CUSTOMS UNION AS A COMPONENT OF THE SINGLE MARKET"

8. The Customs Union covers all trade in goods and thus has exerted and continues to exert a powerful influence on the structures of our countries' economies, bringing about the establishment of a formidable industrial market and making possible the constitution of a supply capacity in agricultural produce that was beyond the reach of the individual Member States unless they were prepared to pay an exorbitant price in terms of human and financial resources. By its contribution towards the creation of an internal market based on the free movement of goods and of the factors of production, the Customs Union is one of the factors that has brought about a profound change in the structures of every sector of the European economy - industrial, agricultural, social, regional and financial - thereby marking out the new limits of the Community's area of responsibility for its action in the years to come. This subject, which is dealt with under the heading "The free circulation of goods: reality or illusion", is of fundamental importance for the balanced development of a European economy with a view to progress along the road to economic and monetary union.

9. Inasmuch as we are still convinced of the beneficial effects of a genuine industrial internal market to underpin economic growth, a new dimension must be added to the question of the free movement of goods. During the period corresponding to the establishment of the Customs Union, the efforts of the Community and the Member States were chiefly devoted to the elimination in each Member State of national measures which had the object or effect of creating for another country's products conditions of access to its domestic market that were, actually or only potentially, less favourable than those obtaining for domestic products. They could be financial measures which fell under the prohibition of charges having an effect equivalent to customs duties or regulations which fell.under the prohibition of measures having an effect equivalent to quantitative restrictions.

"The single market as a factor making for industrial growth and pointing up Community preference"

10. With economic integration at its present stage of development, it is no longer sufficient to guarantee firms in the Community the benefit of treatment equal to that accorded by each Member State to its own industry; in many respects it is now necessary for the industries in question to be able to organize their production by reference to a single market with essentially identical characteristics in each Member State. Recently, however, there has been such a proliferation of national legislation in the fields of consumer protection, environmental protection, safety and public health standards applicable to manufactured goods, to mention a few, that very few industries can still organize a mass production line that does not involve substantial adjustments to take into account the special requirements of the rules and regulations in force in each Member State. It was to counter this retrograde trend of the internal market that the Commission and the Council began some years back the Titan, or better, Sisyphean task of harmonizing this vast array of technical regulations in the field of industrial, safety, and consumer and environment protection standards.

11. The scale of this task of legislative harmonization, including the necessary adaptation of the harmonized measures to take account of technical progress, calls for the setting of priorities. These must be given to areas of industrial production where such harmonization is most urgent for market reasons - where intra-Community trade represents a major part of the trade in the products in question - and for industrial policy reasons - where the creation of a true single market is a prerequisite for achieving a certain level of technological and financial development.

12. Apart from the specific advantages deriving from the removal of technical barriers to trade, action of this kind reinforces the principle of Community preference in two ways: firstly it helps to strengthen the competitiveness of Community industry by providing it with a commercial base comparable in size to that long enjoyed by firms in the USA, and secondly, as these harmonized rules are developed, the technological threshold for entry into the Community market will be that much higher, thereby increasing the advantage enjoyed by Community firms which have adapted their production to the common standards.

"THE EXTERNAL CUSTOMS ARRANGEMENTS, THE EXPRESSION OF COMMUNITY PREFERENCE"

13. The last two topics, "The Community customs rules: the need for their completion" and "The Customs Union and external trade", refer to two aspects of the instruments of the Community's commercial policy: namely measures relating to the Common Customs Tariff, and non-tariff measures such as quantitative restrictions on trade and trade surveillance measures. The external customs arrangements - made up of all these measures - form the keystone of the Customs Union in that they ensure the economic cohesion of the Community vis-à-vis the outside world and at the same time give full support to the efforts to integrate the national economies. This work of construction is the expression of the principle of Community preference, which constitutes the fundamental difference between the Community and a free-trade area, for there has to be a legitimate quid pro quo for the discipline which the common policies impose on the Member States and the constraints they impose on firms; this quid pro quo takes the form of the advantages which result from preferential access to the Community markets. This suggests that justification for the efforts to achieve greater fluidity in intra-Community trade and to preserve a degree of relative protection for the Community economy is to be found primarily in the very process of European integration.

"Achieving uniformity of the common customs rules to make them a more reliable instrument of the external customs arrangements"

14. Furthermore, there is a very close link between the external customs arrangements and the movement of goods within the Community because there are national systems for the control of the movements of goods to and from the outside world. Although the tariff and non-tariff measures of the commercial policy are established on a joint basis, the administration of these measures is mostly in the hands of the national authorities. The Community has, it is true, begun the task of establishing uniform rules for the implementation of the external customs arrangements, but each step forward along this road represents a leap into the unknown, compared with the systems they had been applying previously, for most of the national administrations responsible for the application of these rules. If we bear in mind that the first task of a customs administration is to ensure that there is reliable control of trade with the outside world, we can but be amazed at the results already obtained and at the same time at the slow pace at which progress has been made.

15. This resistance to change on the part of the national administrations, based on long tradition and a body of well-established and well-tested rules, explains the still strong temptation to resort to the national system of control. At the same time it requires the Community to direct its efforts towards providing the Common Customs Tariff with a set of rules that affords the same degree of reliability as each of the old national systems. Only thus - on the basis of an organized system of administrative cooperation between the Member States modelled on the system that has long existed within each of our Member States - will it be possible to develop trade liberalization still further, for the methods of cooperation between the regional or provincial offices of the national customs and excise departments, for example, have attained such a degree of efficiency and reliability that the use of physical checks on trade in goods between Länder, provinces or regions, would now seem far fetched.

16. The day when our States will achieve a uniformity of tax, administrative and monetary structures comparable to that of the regions within a State seems a long way off. It is clear, however, that every effort to make the legal and administrative structure of the external customs arrangements more reliable by progressively standardizing the customs rules will help significant progress to be made towards ultimately eliminating the final traces of national "protectionism".
To substantiate this I should like to quote the example of textiles imports, where the lack of reliable control of external trade as a result of applying customs measures on the basis of national laws which in this field still differ in many important respects (for instance, outward processing traffic), or on the basis of common rules which are excessively lax because the Community had to integrate first six, then nine national systems (for example the rules of origin), explains why the Member States have had such frequent recourse to the Article 115 safeguard clause, which enables a Member State to refuse Community treatment for products in free circulation in the Community. It is true that such measures are confined to certain products, that their duration is limited and that they are subject to strict control by the Commission, but in practice they would lead to a repartitioning of the common market and jeopardize the entire Customs Union edifice if they were to become generalized and be perpetuated.

"THE COMMON CUSTOMS TARIFF AS INITIATOR OF THE COMMUNITY'S EXTERNAL RELATIONS"

17. The example quoted above brings me to the external aspect of the customs tariff, which makes it the principal instrument of the Community's external relations. The importance of the Common

Customs Tariff in the Community's external relations lies in the paradox that its importance grows as its raison d'être is whittled away, The Community has brought about the bulk of its achievements in the field of relations with non-member countries, such as the system of cooperation with the developing countries signatory to the Lomé Convention, by negotiating the dismantling of its tariff protection vis-à-vis the countries that have set up a free-trade area with the Community. Numerous examples of this process could be given. In establishing with the Maghreb and Mashreq countries a vast free-trade area around the Mediterranean, the Community has laid the foundations for a new type of cooperation that has been given practical expression in the famous Euro-Arab rialogue. Lastly, if the Community is a fully fledged partner of the economic powers of the West - without which none of the monetary, financial, trade or economic problems involved in creating a new international economic order can be tackled - there is no doubt that this is because any trade or tariff negotiations must include the world's leading trading power and its principal instrument of protection, the Community's customs tariff. The Community's presence at the Kennedy round of negotiations in 1968 was the first example of this and assumed symbolic value.

18. This should not lead to affirmation of the principle that the Community's only remaining interest in the Common Customs Tariff is in abolishing it as quickly as possible to enable a new set of methods of international cooperation to be introduced, such as those put into effect under the Lomé Convention or that devised under the Framework Agreement for economic and trade cooperation with Canada. It is true that the complexity and variety of the Community's relations with non-member countries inevitably leads to this kind of gradual transformation from a commercial policy based essentially on tariff measures into a sophisticated set of new economic cooperation instruments better adapted to the reality of the Community's role in the world economy and to the requirements of a new economic order to govern the relations arising there. However, this trend gives the Common Customs Tariff and all the measures that go to make up the external customs system a new role, which lies in their capacity to create the conditions required, in terms of economic resources and time, to permit orderly adaptation of the structure of the European economy to the necessary changes resulting from the developments in international economic relations and the new dimension given to the international division of labour.

"Redefining the role of the external customs arrangements"

19. This task assigned to the external customs arrangements of regulating the development of the structures, means that a particularly delicate and difficult balance must be maintained between the

temptation to use the relative protection afforded here as a screen hiding from firms the inevitable changes required by the new international division of labour - which will have the effect of delaying the necessary decisions to the detriment of the optimum allocation of resources within the Community - and the ever arbitrary assessment of the degree and duration of protection to be given to firms to guarantee an adequate incentive for the necessary adaptation of structures. From the latter point of view the external customs arrangements constitute one of the privileged instruments of the Community's industrial policy, for they complement the common industrial measures in relation to the corresponding efforts of the Member States as well as providing the framework of references for coherence between national measures at the level of the overall Community economy.

• 'From a tariff protection system to a trade control system"

20. In addition to this structural task the external customs arrangements are progressively being adapted to a new external trade control function. Of significance in this context is the proposal presented by the Community within the framework of the Tokyo round, namely to introduce a selective safeguard clause which will permit a certain degree of surveillance to ensure that trading and the new directions given to the international division of labour are fair. This means making sure that the advantages accorded to non-member countries are not diverted from their goal as when, for example, the only firms to enjoy those advantages in certain sectors or in respect of certain products are undertakings whose links with the exporting country's economy appear to be singularly tenuous or even artificial. Another proposal presented by the Community in the context of the Tokyo round - that an international customs valuation code be drawn up - is also illustrative of this trend in the external customs arrangements which, from a system based essentially on tariff protection, now seem to be heading in the direction of a system for the control of fair play in external trade flows.

21. In conclusion, I feel that the prime merit of the Customs Union is that it has served to point up the dynamic of European unification. Admittedly, this was the intention of its promoters, but it has been demonstrated in a striking manner that where institutional integration, the integration of the structures of the European economy, or the construction of the Community's external relations system are concerned, the Customs Union has highlighted the fact that closer integration of the Member States is necessary, in particular because of the need to preserve what the Community has achieved with regard to the free movement of goods and factors of production.

2

The Customs Union takes its place in the history of European unity as a permanent challenge to the institutions of the Community and its Member States constantly to look beyond the present in order to demand renewal of the common effort towards greater unity in areas of growing importance such as those of currency, employment, regional balance and external relations. This "provocative" character of the Customs Union is in my view the prime virtue of its achievements and of the prospects it holds out: the Customs Union, like a chrysalis, will be judged by the metamorphoses it promises rather than by its original form.

As Mr Henri Simonet, the Belgian Minister for Foreign Affairs, was detained elsewhere Mr Rodolfo Tambroni, Under-Secretary for Finance in the Italian Ministry of Finance, was called upon to speak.

Address by Mr Rodolfo Tambroni

I have the pleasure to be able to convey my Government's best wishes to this symposium on the state of health of the Customs Union, the development of its validity, its present and future effectiveness and, lastly, on the enlargement of its field of operations in view of the prospect of growth and consolidation of the Common Market.

I believe that the present state of the Customs Union — although the latter is not yet linked up with the Economic and Monetary Union so skilfully and enthusiastically envisaged by the Chairman, Mr Werner - may be considered satisfactory in the light of the impetus given to intra-Community trade. Today goods may be carried from Copenhagen to Palermo and from Manchester to Hamburg under cover of a single customs document; if goods, unlike natural persons, can enjoy the privilege of this Community passport it is due to the legislative and administrative machinery set up by the Customs Union that we have created. This has involved real harmonization of national administrative practices and is much more than a simple tariff union, which in any case would not in itself be enough to protect Community interests properly, since they are linked to international trade and consequently to tariff concessions.

The Customs Union we have conceived must be the foundation of the Common Market and, for this reason, it must be strengthened by increasing the links of cooperation among the national administrations responsible for giving effect to this Union by means of adequate procedures and also by seeking the most appropriate financial means for attaining this objective which means so much to us.

I hope that from time to time we can meet on such occasions as this and each time note the progress hoped for and accomplished in the work in which as convinced Europeans, we firmly and enthusiastically believe.

It remains for me to hope, in the interests of Europe, that you will work well during the three days of meetings, which cannot fail to bear fruit.

THEME No 1: "FREE CIRCULATION OF GOODS : REALITY OR ILLUSION ?"

Report by Mr. Pierre SCHLOESSER

Introduction

The free circulation of goods between the Member States of the Community is at once the most striking and irrefutable achievement of the first twenty years of the Community's existence. The economic dynamism which has marked this entire period in the EEC countries and which has led to a rapid and spectacular growth in industrial production, and the ongoing expansion of intra-Community and extra-Community trade which have made the Community the world's leading trading power, are very closely linked to the laying of this corner-stone of the Community.

Let me just give one or two statistics : in 1957, when the Treaties establishing the Community were signed, trade between the EEC countries amounted to :
11.000 million dollars.
In 1976, this trade totalled :
115.000 million dollars.

More than 50% of the trade of each of the EEC countries takes place within the Community.

To give a better idea of the importance and impact of these figures in the context of world trade and of the weight the Community carries in that context, suffice it to say that the total volume of the Community's internal and external trade accounts for a third of world trade.

Let me stop here, however, in this account of the free circulation of goods otherwise you will have the impression that we have no problems at all - when in fact cries of alarm can be heard from various quarters against a resurgent neo-protectionism - and I shall also present too easy a target for my co-rapporteur, who will surely offer a vigorous illustration of where we have fallen short of our objective as well as the shortcomings of the Commission.

I shall therefore try and illustrate my theme as critically and objectively as possible firstly by asking the question which many of you have no doubt already asked yourselves, namely whether, twenty years after the setting-up of the Community, the frontier barriers which hindered intra-Community trade have been dismantled.

That is the question which the businessman asks when, for the goods he sends across an intra-Community frontier, he is required to fill in forms, submit his products to checks, produce certificates of authenticity, origin or quality ; it is also the question which the man in the street asks when faced by certain action or behaviour on the part of the public authorities which are in flagrant violation of Community rules.

Before I answer this question, I must outline briefly the main features of the concept of the free circulation of goods, the obstacles to it, the provisions laid down in the Treaty for attaining it, the action undertaken by the Commission to ensure that the rules are observed, and facilities available to Community nationals to safeguard their rights.

Free circulation of goods, tariff and non-tariff barriers

The free circulation of goods between Member States is both a prime objective of the Treaty of Rome and a cornerstone of the European construction.

Under Articles 9 to 37 of the Treaty of Rome, the attainment of this objective involves the prohibition of customs duties and charges having equivalent effect between Member States, the adoption of a common customs tariff in Member States' relations with non-member countries, the prohibition of all quantitative restrictions and measures having equivalent effect and the adjustment of State monopolies.

Taken in its widest sense, the concept of free circulation of goods must, however, be interpreted in the light of the objective to be attained, namely the establishment of common and uniform conditions enabling products to move between the countries of the Community as they do within a national market.

In order to attain this objective fully, it was first necessary to remove the barriers to free trade in agricultural and industrial products.

What are these barriers ? You are all too familiar with them so I shall not stop and describe them to you in all their doctrinaire detail. I shall simply outline them very briefly using the traditional distinction - tariff and non-tariff barriers.

The first category includes :

- customs duties : these are pecuniary charges levied on imported products when they undergo customs clearance;

- charges having an effect equivalent to customs duties : any pecuniary charge, no matter how small and regardless of the name given to it or method used,which is levied unilaterally on national or foreign goods as a result of their crossing the frontier;
- fiscal charges ; internal taxation (VAT, excise duties, etc.) imposed directly or indirectly on products of other Member States. The conditions under which such internal taxation is prohibited are specified in Article 95 et seq. of the EEC Treaty.

The second category includes :

- quantitative restrictions : this expression is synonymous with "quotas" and refers to limits (total or partial prohibitions) on imports or exports. This is the instrument of protectionism "par excellence", the expression of outdated autarkic economic concepts;
- state aids : any benefit granted by a Member State through State resources to certain undertakings or for the production of certain goods is considered as aid within the meaning of Article 92 et seq. of the EEC Treaty.

This aid, in so far as it affects trade between Member States or distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, is incompatible with the Common Market, except where otherwise provided in the Treaty itself.

- State monopolies : the classic instrument of intervention by means of which States reserve for Government departments or confer upon certain public or private bodies sole rights to produce, import, export or market certain products.

The interpretation of the Article on State monopolies was, as you know, the subject of lengthy, doctrinaire discussions, until the Court, in its judgment of 3 February 1976, held that Article 37 of the EEC Treaty must be interpreted as meaning that as from 31 December 1969 every national monopoly of a commercial character must be adjusted so as to eliminate the exclusive right to import from other Member States.

Briefly, this means that any monopoly still remaining after the end of the transitional period must be considered as illegal under Community law.

New-style frontier barriers

The tariff and non-tariff barriers which I have just described could be said to constitute the conventional type of protectionist arsenal. Trade barriers such as bans on imports, quotas, customs duties and monopolies now belong to outdated autarkic eras which are inconceivable at the stage of economic integration reached after twenty years of the Community's existence.

They are instruments of protection which are too obvious and blatant still to be used by States which intend, for instance, to discourage imports or encourage a national sector of production.

States pursuing such objectives now have recourse to far more sophisticated and discreet means of protection.

These are the restrictions on free trade which constitute the new-style frontier barriers, the increasing proliferation of which - witnessed for some time - is one of the most worrying phenomena of recent years. It is worrying in that the new-style frontier barriers which are now appearing may result in compartmentalization between Member States apparently less perceptible but therefore more dangerous, and also in that the wide diversity of devices used, the political, economic and social context in which they are taking place, and the resulting difficulty in detecting and taking action against them, are likely to give them greater chance of impunity.

The devices used come from an arsenal of measures spread among a wide variety of different rules. To the uninitiated observer, they are usually cloaked by a demure veil of legality ; they apply, in almost all cases, to national as well as imported products and appear not to contain any discriminatory or protective element. Moreover, the objective which they are designed to attain is always very praiseworthy : the protection of human life and health, the campaign against pollution, consumer protection, the protection and improvement of the environment, the fight against inflation, standardization, the raising of the quality of products, etc.

I shall quote a few examples :

- National rules which fix selling prices or marketing margins irrespective of the origin of the products. In that the prices are fixed at a level which means that they would not cover, in the case of imported products, the various components of the cost price and the expenses and charges involved in importation, the national rules in question are likely to make imports, if not impossible, at least more difficult and awkward.
- The same is true of rules requiring products, whether of domestic or foreign origin, to meet technical or quality conditions before they can be marketed. An example of this would be rules imposing specific shapes or capacities for certain containers in order to protect the consumer, who is often misled by "false contents" ; other examples would be compulsory technical standards laying down particular characteristics as regards the shape, size, weight or strength of the product, provisions limiting the number of innocuous bacteria in bottled water, fixing the minimum alcohol content for certain alcoholic drinks, imposing unjustified maximum nitrate levels in milk, etc. Such rules result in the prevention of importation from other Member States of products which are often well known and liked in those States and which form part of traditional trade flows.

The legitimate objective aimed at by most of these rules could not justify the trade restrictions entailed in cases where the restrictions are not strictly necessary to protect the objective in question or where they are disproportionate to that objective. This is particularly true where there are other means which entail fewer restrictive effects for trade and offer guarantees equivalent to those sought by the rules in question.

- The so-called automatic licensing systems, technical inspections, frontier checks : these are formalities which imports sometimes have to undergo, and have the appearance of completely inoffensive measures. Experience has shown, however, particularly in certain situations where there is a crisis in a particular industry, that this instrument is, in practice, one of the most prejudicial to the freedom of trade.
- The requirement that a representative of the exporting firm be established and resident on the territory of the importing Member State, a condition often imposed on the grounds that there should be a person responsible for fulfilling the legal obligations.
- Lastly, I shall mention a category of measures which embraces a very wide range of national rules applicable to the intra-Community frontiers, namely customs clearance procedures, which are in themselves legal but which are often one of the biggest sources of damage to the Community cause, for they are what sometimes gives the Community businessman or citizen a rather disappointing impression of our Community integration : there are, for example, over-meticulous checks, excessively long waiting periods, the clutter of unnecessary - and expensive - paperwork, and sometimes even the holding-back of goods for reasons which only the customs official can understand and account for.

These rules and the restrictive effects which they entail, often unknown to the national legislative authority, cover the prime offenders against the principle of the free movement of goods. They constitute the endemic protectionism which has not yet been eliminated. The Treaty refers to them in terms which are striking in their originality and the pointedness and colourfulness of the jargon: "measures having an effect equivalent to quantitative restrictions".

The Treaty does not define the concept of "measure having equivalent effect". It simply prohibits any measure having "effects equivalent" to those of quantitative restrictions. This could not have been otherwise, given that this concept is capable of covering a whole gamut of unforeseeable situations, so that any attempt at definition, on the basis, for example, of the nature or content of the measure, its objective or its scope, could not have had any effect other than to restrict considerably its extent and its effectiveness.

In a Judgment of 11 July 1974 (Case 8/74, Dassonville), the Court of Justice of the European Communities defined the concept of "measures having equivalent effect" as follows : "all rules capable of hindering, directly or indirectly, actually or potentially, intra-Community trade".

It is a very broad definition, covering a very wide field which is to some extent indefinable and still largely unexplored. It is a definition suggestive of the most fertile and subtle imagination, and it can be applied to any attempt at new-style protectionist measures. It also involves a never-ending task for the watchful eye of the Commission.

The watchful eye of the commission and the means of redress available to community citizens

If the Commission considers that a Member State has failed to fulfil the obligations arising from the Community rules on the free circulation of goods, it may initiate the procedure for infringement provided for in Article 169 of the EEC Treaty.

After gathering the information required to make an initial assessment of the situation, where an infringement of the Treaty is confirmed, the Commission serves a notice upon the Government of the Member State in question inviting it to submit its comments within a specified period which varies from one to two months.

At the end of that period one of four situations may arise as regards the continuation of the inquiry :

a) The State may acknowledge having taken a measure which runs counter to the provisions of the Treaty and initiate the national procedures required to terminate that measure ; it will inform the Commission thereof in its reply. The infringement procedure is then suspended and when the contested measure has actually been abolished, the case is closed by the Commission.

b) The Member State may provide explanations and items of information which lead the Commission to change its opinion. Again, the case is closed after the necessary checks have been made.

c) In its reply, the Member State may contest the Commission's opinion without, however, putting forward arguments or supplying proof leading the Commission to change its position.

d) The Member State may not reply within the period specified.

In cases c) and d), the Commission delivers a "reasoned opinion" to the Member State concerned under Article 169 of the Treaty and requests that State to put an end to the infringement in question.

If the Member State 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.
In performing the tasks assigned to it under Article 155 of the Treaty, the Commission may act on its own initiative or on a complaint brought by another party.
Anyone who considers that action or conduct of a national authority runs counter to the provisions of the Treaty referred to above may have direct recourse to the Commission.
No special formality or procedure is required : no official forms, no registration costs, etc...
All that is necessary is a full and clear description of the facts behind the alleged offence, with an indication of the main points of the acts regarded as harmful and, where possible, proof of the existence of the grievances described.
After obtaining further information where appropriate, and in certain cases from the plaintiff himself, the Commission will initiate, if necessary, the infringement procedure described above.
The citizen may also seek a remedy directly with the relevant national authorities having jurisdiction ratione materiae.

The Treaty provisions on the free circulation of goods have immediate effect in relations between Member States and their nationals and create for the latter rights which the national courts are required to uphold.

This means in practical terms that the provisions in question now form an integral part of the national legal systems and are therefore directly applicable.

Any businessman can thus put his case to the competent national court if he considers that an action detrimental to his interests or rights has been carried out by the official authority, in infringement of the above-mentioned provisions of the Treaty.

It is thus a matter of pleading before the competent national court that the provision complained of is incompatible with Community provisions, thereby leading the national court to seek preliminary ruling from the Court of Justice.

Under Article 177, where a question concerning the interpretation of Community provisions is raised "before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice."

Experience has confirmed the remarkable usefulness and effectiveness of this means of recourse and especially the surprising speed with which it is applied. The average time-lapse between the lodging of the request for a preliminary decision with the Court and the date of the judgment delivered by the Court is six months, which must be considered more than satisfactory, given the complexity and extent of the problems raised.

Conclusions

On balance, this survey of all the problems described in connection with the free circulation of goods could leave you all in two minds about the whole matter.

Admittedly, the most pessimistic observers could point to the increasing proliferation of restrictive measures, a phenomenon which is all the more worrying in that it is occurring at a time when calls to nationalism are becoming more and more frequent and are increasingly becoming part of the political strategy of the anti-European movements. The same observers will also point to the poor image in many cases given to the Community by the endemic protectionism and the remnants of frontier barriers which we have not yet managed to dismantle.

While acknowledging the validity of these allegations, we could scarcely fail to mention the spectacular increase in trade during the twenty years of the Community's existence and the Community's weight and influence as the world's leading trading power ; the enlargement of the national markets of the Nine to international proportions; the considerable role played by freedom of trade in the prosperity of the peoples of Europe and in improving the living conditions of the most deprived strata of society ; the undeniable fact that the liberalization of trade within the Community is not only the most outstanding Community achievement but also a convincing and reassuring raison d'être for our existence as a Community, and an essential factor in the progress towards the building of Europe.

This being so, I shall refrain from parading the achievements in this field like a fleet about to pass before you, ready for review, flags and banners flapping in the wind.

The Commission is well aware that the wave of neo-protectionism which we have witnessed for some time threatens to undermine one of the Community's foundations and that the protection of the Community's achievements is therefore one of its major political responsibilities.

In a Europe which to some is nothing but a source of disillusionment and pessimism and in the midst of an economic crisis which seems to be leading the Member States to turn in on themselves, this is a responsibility which the Commission cannot shirk.

Admittedly, the task is difficult, like the age in which we live.
But with your support and with the support of the authorities wedded to the Community cause, we can prevent the seed from falling by the wayside and go forward together towards a better future.

Report by Mr. Albert HAZELOOP

Introduction

Free circulation of goods comes fairly high on the list of objectives for European integration. It would not be an exaggeration to say that it was hoped that free circulation would provide the driving force behind integration from the very beginning, since it provided Community industry with great opportunities - a wide-open market consisting of several hundred million consumers and free from all the hazards normally associated with export markets. The free circulation of goods thus creates conditions favourable to economic expansion and rising standards of living. At the same time the amalgamation of domestic markets was quite clearly to encourage the development of economic solidarity, not to mention solidarity per se, between the Community nations.

Of course free movement cannot be brought about, at least in any lasting fashion, simply by a policy decision to introduce it. Just as a country's laws apply to everybody in that country, so Community legislation and common policies should guarantee identical conditions of competition for businessmen throughout the Community, regardless of the country in which they are based. As we all know, drawing up Community provisions for all the various sectors is a lengthy process, and far short of completion. The difficulties involved in harmonizing taxation, for example, are well known. So it comes as no surprise that the movement of goods within the Community is still a far cry from the ideal, which is that goods should be able to move as freely around the Community as they do within any one Member State at present.

The free circulation of goods is therefore not a reality. Would we then do better to forget about it for the moment and wait for those cloudless days when harmonization is complete and the common policies safely installed: in other words, await the birth of economic and monetary union ? The answer is.no. It seems to me that all we need do is look back over the distance we have covered since 1959 to convince ourselves that we ought to press on, eliminating formalities and controls whenever new progress in harmonization permits, and simplifying or reducing the controls and the procedures in the meantime.

A wide range of obstacles

The Treaty of Rome, and particularly Title I in Part two, could give rise to misunderstanding. It is possible to interpret it in such a way as to believe that once customs duties, quantitative restrictions and all measures having equivalent effect have been lifted, free movement will suddenly become a reality. These are indeed basic barriers,

and the most obvious manifestations of the compartmentalisation into domestic markets that integration is supposed to eliminate. But if we stick to this narrow definition of free circulation, all the controls and formalities and other obstacles resulting from the multifarious rules applied by the various States to goods entering or leaving their territory remain intact. These obstacles are far too varied and numerous to be listed in this report, but some of the reasons for them are set out below according to the field involved :

Customs : Apart from the Community transit arrangements (see below), customs procedures, even when harmonized, always have a national character. Whenever goods subject to customs procedures cross from one Member State to another, the procedure has to be repeated (e.g. goods imported temporarily or for re-exportation after processing in two or more Member States).

Taxation : Leaving aside the need for a comprehensive harmonization of rates and methods of collecting VAT and excise duties, the principle of giving the revenue to the consumer country means that remissions have to be given when the goods leave a particular country, and the tax levied again when they re-enter another, thus leading to extra formalities and controls.

Health, including plant and animal health : Since domestic legislation in these areas has not yet been comprehensively harmonized, Community goods often have to go through the same formalities and controls as like goods imported from non-member countries.

Statistics : The fact that Member States wish to keep statistics on international transport and trade means that customs documents have to include a large amount of information extraneous to customs or tax purposes.

Mention should also be made of the obstacles arising from the differences between commercial policy measures which cause Member States to exercise control over certain goods that are or can be subject to protective measures (for instance under Article 115 of the Treaty), And finally the present international monetary situation gives rise to a large number of controls, whether it be because exchange control regulations necessitate close supervision of foreign trade, or because the appreciation or depreciation of Member States' currencies has meant that monetary compensatory amounts (MCA's) have had to be brought in for the purposes of the common agricultural policy.

We cannot expect every intra-Community control or formality to vanish when these restrictions are lifted. A large number of controls and formalities will continue to exist for reasons of public policy or public security (e.g. for firearms and dangerous materials), with the difference that they will be used not because such goods cross internal borders, but because they are moving within the Community.

Steps already taken to improve the working of the internal market, and steps that still need to be taken

1 January 1959 - 1 January 1970

If we follow to the letter the provisions laid down in the Treaty for the abolition of customs duties and quantitative restrictions and all measures having equivalent effect, we may safely say that free movement, as defined in Articles 9 and 10 of the Treaty, did in fact become a reality during this period of reference although there were, and still are, a number of sometimes quite glaring exceptions in the form of taxes or measures having an effect equivalent to quantitative restrictions, the continuing existence of which has, on occasion, caused legal proceedings to be instituted between the Member State in question and the Community authorities. Mr. Schlösser[1]s paper gives the details.

Formalities and controls, on the other hand, remained fully operational throughout this period, the only difference being that Community goods were thenceforth treated as being exempt from duty, which in practice led to a reduction in controls.

As it happened, an extra formality had to be introduced so as to enable the importing customs authorities to identify these goods as Community goods. It is interesting to note that the Treaty sees fit to direct the Commission, which was made responsible for sorting out these problems, to take into account the need to reduce as far as possible the formalities imposed on trade. Using this power, the Commission has brought in a system of administrative cooperation based on a simple document to be filled in by the Customs Office of exportation and presented to the Customs Office of importation by the person concerned as proof that the goods in question are indeed Community goods.

It was not until after this period that the simplification of customs formalities and controls became a subject of topical interest, when the prospect of the total abolition of customs barriers kindled hopes that were still a long way from fulfilment.

1 January 1970 onwards

When it became apparent that the reasons, whatever they might be, for the continuing existence of formalities and controls on goods passing from one Member State to another were likely to remain for some time, it was felt that a more pragmatic attempt to improve the situation should be made.

Community transit. The result was the birth of the idea of Community transit, which is basically designed to simplify frontier-crossing formalities by means of a Community document covering goods all the way from the Customs Office of departure to the Customs Office of destination, so that customs formalities do not have to be repeated at each frontier.

The Community transit system provides a sort of bridge over internal frontiers : the formalities normally required by a particular country for goods entering or leaving its territory do not have to be gone through when the goods physically cross the frontier, nor indeed at all if the goods are simply passing straight through the country concerned.

This system, which has been in use since 1 January 1970, should be seen as a considerable step forward towards the abolition of internal frontiers, partly because it streamlines the flow of intra-Community trade, and partly because certain of its basic principles lend themselves to further development.

A detailed examination of the way in which the system operates would be out of place in this report, since it would involve too many technical considerations.

We shall therefore touch only on its more general implications.

Customs control methods. It is clear that whether controls are inconvenient or not depends largely on the way in which they are carried out.

The number of staff and the infrastructure of the customs departments play a role here. One way of streamlining the system to a great degree would be to encourage the existing tendency to bring in alongside the physical inspection of goods (a tradition which dates back to the time when the customs duty was solely in the form of a duty to be paid on the spot) another form of control based on the accounts of firms engaged in foreign trade. Far from ignoring this tendency, Community transit expressly allows for the possibility of beginning or ending a transit operation without customs formalities when the goods are despatched from the sender's premises or when they are delivered to the recipient. This facility is available only to firms whose books lend themselves to this form of inspection.

It must also be pointed out that control of rail transport involving the crossing of frontiers can now be undertaken simply by means of the international consignment notes kept in the accounting centres of each rail network, since Community transit documents have been abolished for rail traffic.

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Administrative cooperation. It will be observed that the introduction of Community transit arrangements immediately posed the problem of administrative cooperation within the Community. The application of Community transit procedures is in the hands of nine national administrations (1), so the smooth running of the system is dependent on cooperation between them at every level. Apart from the need to ensure uniform interpretation of the provisions governing the system and to act jointly to suppress irregularities, cooperation has to start at the moment of despatch, since it is up to the office of departure to make sure, on behalf of the administrations of all the Member States whose territory may be entered, that the transit operation is in order.

In other words the system is so organized that the office of departure is able to tell whether the goods have been placed on the market in accordance with the rules or not, and to pass the details on to other administrations enabling them to recover any duties and taxes that have been evaded.

The fact that this responsibility is shouldered by the office of departure, has enabled controls at internal frontiers (including those between the Community and Switzerland or Austria) to be reduced to a basic minimum. The only formality that remains consists of handing into the office of transit a document giving details of the means of transport and the reference numbers of transit documents relating to the goods being transported. Even this formality (the idea of which is to pinpoint the Member State in which the goods went astray in the event of an irregularity) could be dispensed with if it could be agreed that the office of departure was responsible for dealing with any irregularity by applying the highest taxation in the Member States concerned.

Concentration of controls at the Customs Office of departure. The development of administrative cooperation could make a great difference outside transit operations proper, by allowing the office of destination to work from data collected at the point of departure and communicated by means of the transit document, thereby obviating further controls at the point of destination. If controls on intra-Community trade were concentrated at one point, this would certainly be a step forward until integration reached the stage where customs clearance procedures on departure and on arrival, and consequently the Community transit procedure itself, could be abolished.

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(1) There are actually 11 ; under agreements concluded with the Community, Switzerland and Austria have been applying Community transit arrangements in the same way as the Member States since 1 January 1974.

Controls on the collection of VAT. Value Added Tax on goods entering a Member State is collected by that State, on the basis of the import document, when the goods are released for home use (1). Where the supplier is responsible for the customs clearance payments (goods delivered free at destination), there are further charges upon delivery of the goods (less, of course, the sum paid when the goods were released for home use).

There is a considerable difference between this system and the system used in Member States for collecting VAT on goods changing hands between a vendor and a purchaser based in the same country. In the latter case, controls are based on each firm's accounts, which are examined at regular intervals, and cross-checked against details gathered from controls on other firms or en route, where these are relevant to the goods destined for or coming from the firm in question. Now that there appear to be no serious obstacles to an extension of administrative cooperation, there no longer seems any justification for continuing to base controls on deliveries involving one or more frontier crossings upon inspection at the frontier concerned, since exactly the same risks of tax evasion exist with domestic deliveries. Since the only charge to which the great majority of trade transactions are still subject is VAT, it would be tempting to measure the advantages that would stem from the suppression of the control undertaken at the frontier for the purpose of collecting VAT.

Collection of statistical data. Looking ahead, we should be thinking in terms of a reform of the methods of collecting statistical data on external trade and transport. At the present level of integration, it is true, Member States seem unwilling to give up the practice of keeping statistics relating to trade transactions with their fellow Member States. Similarly, transport statistics will continue to be of interest to Member States, but it should be noted that these normally cover not only transport crossing frontiers, but also domestic transport. But we should ask whether there is any real justification for adhering to the traditional practice of collecting this information from customs documents, which as a result have to carry a mass of information that serves no other purpose. The existence of domestic transport statistics proves that other means of collecting information, such as arranging for firms to supply it direct to the statistical offices, may be contemplated. The present methods of collecting information constitute the major obstacle to any simplification of customs documents, which means that the search for new collection methods is of immediate importance. In any case, it is inconceivable that internal frontiers should continue to exist solely for statistical reasons.

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(1) With the exception of the system for intra-Benelux trade and any simplified importation procedures.

Standardization of documents. It is only recently that attempts have been made to lighten the burden of formalities of all sorts that businessmen involved in external trade have to cope with, and to reduce the cost of these formalities, by bringing the supporting documents into line with a standardized model.
After the ECE layout)key was developed in the early sixties under the auspices of the Economic Commission for Europe, the committees for simplifying commercial procedures which operate in most Member States have not ceased to strive for the standardization of official and commercial documents, both within the Civil Service and in the private sector. Since for each foreign trade operation a large number of the same details have to be included in many, if not all the documents (e, g. description of goods), the use of standardized documents with boxes reserved for each particular would make it possible to obtain all the necessary documents (invoice, travel documents, bank and customs documents, etc.) either partially or entirely by making copies with carbon paper or some other more sophisticated technique. Not only would the costs be reduced - an important consideration at a time when all the other costs determining the cost price of a product are tending to rise - but standardized documents, by eliminating the risk of copying errors, would be more reliable. Customs and other departments would find it much easier to work with standardized documents, and administrative cooperation at Community level would benefit considerably. Since, moreover, the official documents form part of a standardized series of documents drawn up on a bilateral basis (e.g. insurance policy, travel documents) their reliability is enhanced, which also reduces controls and makes it easier to substitute controls based on accounts for physical inspection.

Realizing the favourable effect of standardization on the simplification of formalities and controls, the Community has tried to standardize most of the Community forms. For this reason it was decided that, as from 1978, Community transport and export documents would be aligned on a Community layout key, which is based closely on the Geneva layout key.

At present, very little use is made of data processing for customs administration, but when this is introduced it will bring benefits similar to those deriving from the standardization of documents. Developments in the future, including the prospect of direct dialogue between computers in different countries, will eventually enable all documents to be dispensed with.

This report shows that bringing about the free circulation of goods in the wide sense is a complicated and laborious task. It would be self-deception to suppose that it can become a reality before integration has reached the stage of economic and monetary union.

However, even without bringing in fresh harmonization in the fields of taxation, economic and commercial policy and so on, there are numerous opportunities for improving the present situation.

The difficulties involved are, of course, far from negligible, but the stakes are high.

THEME No 2 : "THE EUROPEAN CITIZEN AND THE CUSTOMS UNION"

Report by Mr. G. BACKER

Introduction

The citizen - and the European citizen is no exception - thinks mainly in terms of the crossing of frontiers when confronted with the concept of customs.

While frontiers are crossed very frequently by an albeit relatively small number of European citizens travelling on business, every year frontiers are crossed - in most cases only once - by many millions of Community citizens going on holiday. While the purpose of a business trip is usually economic, the holiday trip has itself become an economic factor of great importance to all holiday countries and thus to the whole of the Community. Any interference with the free movement of (holiday) traffic is therefore harmful to the countries concerned.

One of the consequences of the rather abstract aim of the Community as set out in Article 2 of the Treaty of Rome is that the Member States are being strengthened as a body vis-à-vis the outside world, while an effort is being made to achieve equal rights for all Community citizens. The European citizen's sense of belonging to a whole is strengthened both by the fact that he is part of a bigger community pursuing one objective and also by the fact that economically, socially and culturally he is increasingly becoming the equal of his fellow citizens in that community. Obstacles to the movement of citizens frustrate this community feeling and give rise to irritation against "those other people over the border" particularly when one is told that the frontier in question should be disappearing and the suggestion is made that it has in fact already disappeared !

If it is assumed that the Governments, which are responsible for integration, are also responsible for their citizens, it follows that they should also be obliged to remove the cause of this frustration and irritation.

The stronger the European citizen's feeling of solidarity becomes, the more strongly deviations from his conception of European citizenship will be opposed. The chance of this happening will increase, as long as obstacles exist, with the possibilities of putting European citizenship into practice. One possibility - if not the most important - is crossfrontier tourism, a yearly phenomenon that is constantly growing.

Apart from the check made on his identity and nationality the traveller of old found the inspection of his baggage as a result of the levying of import duties an unwelcome interference. If he was travelling by train matters stopped there, but if he was the owner of a vehicle he needed certain documents which were a direct consequence of the obligation to pay import duties. In the days of our parents and grandparents the structure of society was far simpler. In so far as they thought in international terms, their ideal was therefore a fairly simple one. They thought that if tariff barriers were dismantled peoples and individuals would come into contact with one another so much more easily that there would be a great improvement in international trade; the fulfilment of an ideal cherished by generation upon generation : a customs union.

At the frontiers the entry into force of the customs union passed by pretty well unnoticed. The reason for this - as is pointed out in the August issue of "Europese Gemeenschap" - is that it was merely the culmination of a long process. The fact is that on 1 July 1977 customs boundaries between the six old and three new Member States became a thing of the past. The whole Community is now a single customs territory with one common external tariff.

Although this achievement is gratifying it should not be forgotten that tariff barriers are only the tip of an iceberg. The invisible part is made up of countless, essentially protectionist, obstacles to trade which, despite the abolition of trade barriers, continue to exist or have even reappeared.

Although this report will deal mainly with the way the citizen as an individual is directly affected by the hindrances that exist and although trade barriers are hardly examined, if at all, I should like to conclude this introduction by giving some examples from this field, likewise taken from the article referred to above. As I see it they are symptomatic of a mentality which apparently permitted the emergence and continued existence of the obstacles which the citizen still encounters despite the customs union. For someone not directly involved, these examples will lead to a better understanding if approached with a sense of humour !

In the United Kingdom, for instance, silverware and silver ornaments should contain 92.5% silver while in other countries such as France and Italy the normal silver content of such articles is 80%. This rule means that it is impossible to import ornaments into the United Kingdom with a silver content of less than 92.5% since they are not regarded as made of silver.

A similar kind of problem has arisen with woollen jumpers. In France, for instance, such jumpers may bear the label "pure laine" only if they include not more than 5% of products other than wool, while "pura lana" Italian jumpers may contain less than 95% wool ; if that

is the case they cannot be sold in France under the "pure laine" label, but only with the description "laine mélangée" and at a lower price. This situation could be dealt with by a Community directive.

Lastly, in one Member State of the Community there is a rule limiting the weight of wool offered for sale in skeins, which means that foreign exporters are obliged to set up a special production line for the market in question and trade is hampered as a result.

The citizen/tourist and his frontiers

From the above it may be inferred that even though the customs union has been achieved the citizen still finds that there are obstacles to trade. The same applies to tourist traffic.

First of all, a word of explanation. What is usually meant by "citizen" in this context is the travelling citizen - one of the army of millions which sets off every year at certain preferred seasons to stay elsewhere for a while : in other words, the tourist. Here the whole business of customs is seen mainly through his eyes and through the eyes of those who look after his interests and assist him. They are the same people who give him advice in everyday life on problems to do with traffic and his means of transport where this is requested - namely the automobile and tourist organizations.

This narrowly defined approach is a result of the choice of the rapporteur for this contribution : as the director of an organization embracing two million tourists and motorists - the Koninklijke Nederlandse Toeristenbond ANWB - his role is primarily to advise and attend to the needs of the citizen in the somewhat limited sense described above.

It should not be forgotten, however, that in quantitative terms the traveller, the citizen enjoying his holiday, constitutes a force of the utmost importance, particularly in the Europe of the Nine.

It must also be made clear that the approach adopted by your rapporteur is that of a tourist weighing up and assessing the situation on the basis of his observations, findings and personal experiences. He stands alongside the citizen and through his organization tries to help him. His findings are not hampered by a knowledge of the background to situations. Indeed, he ignores that aspect because he knows that it will not help solve the practical problems of tourists.
This means that he can set himself up as the naive critic of situations which often seem to contradict the citizen's rough idea of a community of countries and peoples that are meant to be sharing a common ideal.

To get back to the obstacles encountered by the citizen, it is gratifying to see that the latter, in so far as normal tourist traffic is concerned, now comes up against few impediments of a strictly customs nature within the Community. He hardly has to bother any more about import duties and may be affected only by quantitative import restrictions on items such as alcoholic beverages and tobacco goods. Usually he is confronted at the border by nothing more than a raised barrier and a uniformed official indicating that he may drive on. In trains, too, the situation is much the same. For this the tourist organizations would like to express their appreciation and gratitude. The European tourist, however, has meanwhile gone a stage further in his thinking. He wants to know why he still sees uniformed customs officials at the internal frontiers of the Community. This is a logical question but the fact is that these officials are representatives of various authorities and their job is not confined to collecting customs duties alone. They are also there to collect indirect charges on imported goods (VAT), to compile trade statistics (extremely important for determining economic policy), to conduct checks on perishable goods, and to carry out checks on foreign currency (where required), exports of works of art and the movement of drugs. The public is confused by the fact that various functions are performed by the same uniformed customs official who collects the customs duties.

If this report confined itself to the concept of customs union in the strictest sense, there would be little more to add to the above apart from the conclusion that the European citizen can be satisfied with the situation !

Your rapporteur was, however, given the frfeedom to adopt a far wider approach and point out the ways in which, within the scope of his activities on behalf of the European citizen, the latter is confronted with obstacles and restrictions as regards movement between Member States.

In looking after the interests of tourists one comes up straight away against problems connected with free movement between the Member States, for it would appear that the travelling citizen enjoys considerably-more freedom than his conveyance ! The reason for this is rooted in the fiscal charges imposed by each of the States on the purchase and use of private motor vehicles. In particular, the use of a vehicle covered by temporary exemption from payment of import duties and import charges gives rise to a fair number of difficulties. For the purposes of applying the arrangements governing the temporary importation of private motor vehicles, the European Community delivered a Recommendation in 1963 defining the concept of "normal place of residence". With regard to these arrangements point 1 of this Recommendation (63/119/EEC) states that the owner or user of such a vehicle who has a residence in different Member States is deemed to have his normal place of residence in the country where his family is established, provided that he returns there at least once a month. This seems

clear enough ; however, the way in which the recommendation is interpreted differs from one Member State to another. Here are some examples which automobile and tourist organizations - in this case the Dutch one - have come across in looking after the interests of their members.

Example I

An unmarried Belgian, resident in Belgium and a nurse by profession, gets a job in Rotterdam. To begin with he commutes to and from Belgium. In connection with his job he looks for and finds a furnished room in Rotterdam where he stays for four days of every week. On Fridays he returns to his family in Belgium and on Mondays he comes back to Rotterdam.

According to the Belgian interpretation he lives in Belgium and must use a car with a Belgian registration. According to the Dutch interpretation he lives in the Netherlands and his car must bear a Dutch registration plate. Belgium bases its interpretation on point 1 of the Recommendation. The Netherlands claims that as the man is single and of age he is no longer part of his family.

For three years now a fight has been going on with both countries in order to prevent the person in question from having to pay all the taxes imposed upon private vehicles in both the Netherlands and Belgium.

Example II

An unmarried German has been working for three years in the Dutch province of Limburg and is also living there (in Weert).

The Dutch authorities require a Dutch registration plate on his car. The German authorities agree to this provided that he uses his car in Germany only for driving from the Netherlands to a fixed point in the Federal Republic, for instance Hamburg, where his parents live. He may not, however, use that car to visit any other places in Germany. If, for instance, he wants to go to Munich, he must first go back to Weert and then proceed from that point in the Netherlands to another fixed point in Germany, in this case Munich. Therefore the man can never spend his holidays in Germany ! With this car registered in the Netherlands he may visit Germany only as cross-frontier traffic. When the case was examined it transpired that the "Oberfinanzdirektion" was totally unaware of the 1963 Recommendation.

Point 2 of the above Recommendation of 1963 states that : "the owner or user of a vehicle who is staying in a Member State for the purpose of performing a specific job or attending a university or school shall

not be regarded as having his normal place of residence in that Member State provided that the duration of his stay in the said Member State is no longer than two years".

In this connection I quote the following example:

Example III

A Dutchman living in the Dutch town of Vlaardingen is employed by an American firm in Antwerp. He is sent by his firm on a temporary basis to spend a year in Le Havre to supervise a project being carried out there by order of his employer in Antwerp. For his temporary stay in Le Havre he rents a flat so that his wife can be with him.

France now requires him to drive with French registration plates. It is applying point 1 of the Recommendation : the man's wife is with him in France and therefore his family is not in the Netherlands. The fact that he lives in Vlaardingen and has an apartment in Le Havre on a temporary basis only is completely ignored. The Dutch authorities consider that point 2 of the Recommendation applies. The assignment is temporary - of one year's duration. The house in Vlaardingen is kept on and the man goes there regularly. Therefore he must drive a car with Dutch plates. So the man was stopped when driving in Vlaardingen with French plates. An attempt was made to solve the problem by using the wife's car with Dutch plates in the Netherlands, but it was not long before the wife was obliged in France to fit French plates to that car as well ! If these differences of interpretation were taken to their logical conclusion it would mean that two lots of taxes would have to be paid in this instance too.

Example IV

While the cases referred to above have been concerned with the private use of a car the following example shows that there is also still a long way to go before an ideal situation is reached as regards private cars used by employees for business purposes within the frontiers of the Community.

A German is in paid employment with Euro Gewürz Gmbh, Hamburg, and resident in Germany. He works as a representative of that firm, covering the Netherlands, Belgium and the Federal Republic itself and visiting his customers in all three countries. The firm grants him a mileage allowance, for he has chosen to use his own car in preference to a company car. The Dutch customs in Rotterdam stop the man and demand that his car be fitted with Dutch plates.

The Netherlands claims that the Recommendation does not apply in this case but only where the vehicle is used for private purposes. Here, the person in question uses his car for business purposes, for which he receives an allowance.

A case like this makes one wonder who can still make business trips. If the Dutch view is correct it means that import levies must be paid in all three Member States and also that the registration plates must be changed each time a frontier is crossed !

High-handedness and confusion take on altogether grotesque forms when the Recommendation - which was clearly intended for traffic between the Member States - is applied to persons residing outside the Community. This happened to an Israeli.

Example **V**

This Israeli, who was employed by a firm established in Tel Aviv, the Agricultural Export Company, was attached to the Flower Auction in Aalsmeer for a year to assess the scope for promoting the sale of flowers from Israel. The flower auction firm applied for a work permit for the man - since he came from outside the EEC - and he was found a furnished house for which a one-year lease was signed. Authorization was also granted for his wife to join him on a temporary basis subject to certain conditions which had to be satisfied to enable her to do so. The whole arrangement was clearly of a temporary nature. In this case paragraph 3 (a) of article 25 of the 1960 Tariff Decision on Exemption Arrangements (Beschikking Vrijstellingen Tariefbesluit 1960) was applied. The man was stopped in his car, which naturally was not fitted with Dutch plates, at Schiphol Airport and had to pay import duties and import taxes on the basis of point 1 of the abovementioned Recommendation.

The authorities' argument was that the man did not go to visit his family once a month, since his wife was also living in the Netherlands. After a good two and a half years' mediation the Dutch Ministry of Finance has authorized Schiphol customs to refund the amounts in question.

These are all examples, taken from everyday life, of the assistance which a tourist or automobile organization can provide. They are a result of international mobility of labour. But problems can also arise in private life.

For instance, in the frontier region between two Member States a private individual with a vehicle which is used exclusively for the purposes of tourism, such as a caravan, can meet with some strange surprises which again give rise to doubts as to the freedom of movement within the European Community.

A Dutchman living in the Dutch province of Limburg, close to the border with the Federal Republic, has a Dutch car and a Dutch caravan. He is unable to find a suitable site for this caravan on Dutch territory either in his area or within a reasonable distance from it. But he does find somewhere a short distance from his house on German territory. The caravan is kept there the whole year round. Once a year the man picks up his caravan, takes it to his house and gets it ready for his holiday: an apparently practical solution which solves the problems without detriment to the German or the Dutch exchequer. German customs think otherwise : although the caravan is ostensibly being stored, this storage could be interpreted as "habitual use" in the Federal Republic, with the result that VAT would also have to be paid there. A judgment has not yet been delivered in this case.

The citizen and the measures he would like to see taken

The examples given so far illustrate some of the problems faced by a tourist/automobile organization, in this case the Dutch ANWB, in providing its members with assistance and advice.

It is clear that, as a result of the services which they provide, all organizations working in this field in the Member States of the Community are confronted with similar problems. The tourist and automobile organizations are coordinated at world level by the Geneva-based ITA, the International Touring Alliance, which in turn is divided up into four regions. The European clubs come under Region I and within this region the Member States' ITA organizations set up the Bureau of the Members of the International Touring Alliance in the European Community in 1976. The purpose of this Bureau, which is based in the Hague, is to represent the collective interests of its members in dealings with the Community authorities. The following are affiliated to this Bureau : the Automobile Association (AA) for the United Kingdom and Ireland, the Allgemeiner Deutscher Automobil Club (ADAC) for Germany, the Automobile Club (ACL) for Luxembourg,the Koninklijke Nederlandse Toeristenbond (ANWB) for the Netherlands, the Forenede Danske Motorjere (FDM) for Denmark, the Touring Club de Belgique (TCB) for Belgium, the Touring Club de France (TCF) for France and the Touring Club Italiano (TCI) for Italy. The affiliated clubs have approximately 13 million members in the Community.

One of the first activities of the Bureau was to draw up an "Obstacle List", and this has been submitted to the President of the Commission. In an accompanying letter the European automobile associations state that the holidaymaker still faces unnecessary hindrances when crossing frontiers within the Community. The reasons given by the various Member States of the Europe of the Nine for the inconvenience caused are frequently incomprehensible to the motoring associations. For the tourist too they do not square with the principle of free movement for everyone within the Community. The letter goes on to say that it

is understandable that this kind of thing prompts critical questions about the reality of the European Community and the progress made in integrating or eliminating the great variety of rules.

The Obstacle List is a catalogue of such hindrances^which are partly the result of a failure to harmonize the VAT systems concerning traffic and road safety considerations and those of a widely differing nature ; in fact, far from giving the impression that Europe is striving for further integration, they suggest the contrary.

To begin with, a few examples which result from the fact that the VAT systems have not been harmonized - either in terms of their content or of the rates charged. Seen against the background of economic developments this is a modest collection of examples but, for our purposes, it nevertheless illustrates the problems involved.

Hire cars

Generally speaking, hire cars can be driven on foreign plates in the driver's home country only if special authorization is obtained. For example, a Dutchman with a car that has plates of another Community country may not drive that car in the Netherlands. It is entirely up to the customs official on duty to decide whether or not the motorist may drive home by the shortest route.

Importation of seriously damaged motor vehicles

The import arrangements for cars so badly damaged as a result of an accident that it is not worth transporting them back to the country of origin differ from one country to another. For instance, in Italy it is not possible to sell a wreck and thus earn some salvage money. In France a "certificat de vente" is required for the sale of a wreck. U.K. customs require an E 110 form.

Loose trailers

In Belgium and Denmark customs documents are required for trailers without a tractor vehicle.

Outboard motors

In Belgium customs documents (Carnet de Passage en Douane or Triptyque tous Pays) are required for yachts and pleasure craft more than 5.50 m long which are transported by road.

Portable television sets

In France an "acquit à caution" is required for the temporary importation of a portable television set.

Dispatch of parts for motor vehicle repairs

A standard Community form is required in order to import parts for motor vehicle repairs.

For parts worth more than approximately FL 300, however, France requires an additional customs document.

Spare parts for motor vehicles may be imported duty-free up to the amount of FF 60. Above that amount they must be accompanied by an "acquit à caution" and the customs authorities may ask to see the defective parts.

Below are a number of examples of variations in traffic and road safety legislation in Community countries.

Drivers

The rules applying to drivers and passengers differ widely from one Member State to another. This applies to the wearing of safety belts but it is also the case with driving lessons and the requirements that have to be fulfilled in order to obtain a driving licence. These requirements differ and so do the practical and theoretical tests, with the result that driving licences are issued without minimum requirements acceptable to everyone. The Community's draft directives on driving licences contain sufficient indications regarding the holding of the examination, but standards and requirements are not laid down.

In this connection it must be added that the medical requirements for driving licence applicants in the Member States should also be aligned. If these were agreed a person moving to another Member State would not need to apply for a driving licence of the country concerned.

Another matter which needs to be harmonized is the question of "on-the-spot fines". The offences giving rise to such fines, and the circumstances and the manner in which they are given vary so much that the foreign visitor finds them very complicated and is usually at a loss to know what to do.

The maximum number of hours which professional drivers are allowed to drive vary from country to country. Excessively large driving times can jeopardize road safety.

Boat licences and permits

- In Germany a licence is required to sail boats with an output greater than 5 HP in coastal waters and on canals.
- In the Netherlands there are plans to introduce a boat licence based on other criteria.
- In Luxembourg a licence is required for all boats.
- In Italy a permit from the local authorities is necessary.
- The establishment of uniform criteria for boat licences is desirable.

Vehicles

There are different rules regarding weight, height and length. In particular, differences exist between the United Kingdom and the other Member States. The rules concerning the use of lights and studded tyres also vary. The regulations concerning UN "E" marks and EC "e" marks, in particular with regard to imported vehicles, suffer from the same defect.

Driving licences and registration certificates

In some countries an international driving licence and a registration plate and certificate are required for mopeds because in those countries they are regarded as motorcycles.

I should now like to give some examples of the problems the European holidaymaker may encounter on his travels.

Registration in hotels

The filling-in of forms by hotel guests by order of the local police authorities has gradually lost its usefulness as an aid to the apprehension of criminals because such forms record only arbitrary items of information about guests.

In France compulsory registration has in fact been abolished.

Filling gas bottles

In many Community countries there are restrictions on refilling gas bottles. The test specifications for the use of such containers differ from one country to another. Filling stations act according to the national regulations.

Staggering of holidays

In some countries of the European Community efforts are being made to stagger holidays. In this field there is, however, little, if any, coordination between the Member States. This leads to overcrowded camp sites, hotels, etc... It is extremely important that there should be efficient coordination between the Community countries. Information is needed on international and national tourist flows.

Passports

Denmark, Ireland and the United Kingdom admit tourists only upon presentation of a valid passport or identity card. The other Member States will, for tourist purposes, also make do with an out-of-date passport, provided that it did not expire more than five years previously.

If an overall view is taken of the passport situation within the Community, the desirability of establishing Community rules on passports must be stressed. Since this subject is now being dealt with, I shall not go into it in greater detail here. This does not mean, however, that international tourism, as represented by the ITA Bureau referred to earlier, would not back the criticism levelled at the lack of progress made on introducing a uniform passport. In this respect the ITA clubs fully share the sentiment expressed by the Dutch Member Mr. Berkhouwer when he spoke on this matter in the European Parliament on 6 July of this year. His plea that something should be done for the man in the street for a change, appealed strongly to the Bureau.

Lastly, it is not only as a traveller - whether for pleasure or on business - that the European citizen is directly affected by restrictive rules. This may also happen when he sends off for goods from mail order firms in a Community country other than the one in which he lives. Again the problem here is not strictly speaking one of customs duties but primarily one of obstacles resulting from VAT differences.

The EMOA (European Mail Order Association) cherishes the ideal - as do the European ITA clubs referred to above - that uniform arrangements will be arrived at in this area. It is realized that this can only be achieved step by step but the ultimate objective is the publication of a European catalogue which would be valid in all Community countries, with the goods advertised in that catalogue being delivered anywhere in the Community without let or hindrance.

This matter is raised here only in passing as it is akin to the situation encountered by the citizen when he crosses borders.

Conclusion

Article 3 of the Treaty of Rome reads as follows :

"For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein

a) the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect ;

b) the establishment of a common customs tariff and of a common commercial policy towards third countries ;

c) the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital...".

The other points are not relevant in this context.

It may be concluded that the European citizen can say that the objectives referred to under a) have now more or less been reached and that, with the exception of a few remaining quantitative import restrictions, he is no longer confronted by customs restrictions in the strict sense. With regard to the measures referred to under b) he may be affected by the consequences of the common Customs Tariff but for our present purposes this is not important. As for the objectives referred to under c), however, there is in your rapporteur's view no denying that what was envisaged by those who drew up the Treaty has not yet been achieved. I think I am in good company here and would like to quote the article in "Europese Gemeenschap" to which I referred earlier, which says : "The Customs Union is definitely not perfect. There still exists a large number of obstacles to trade of all kinds which the Commission is constantly trying to break down, for the imagination of Governments knows no bounds when it comes to devising protective measures".

And here too ends the attempt to put into words what the outsider already suspected in the many examples of obstructive measures referred to above: the imagination of those who devise measures is greater than that of the citizen who has to comply with them.

The citizen, the European citizen, will therefore continue to be surprised, though hopefully decreasingly so.

Looking at the subject from outside, as an "aware" tourist, as an ordinary citizen who spends his holiday pay on a holiday which takes him once or twice a year to places, climates and experiences which give him the opportunity in the great, free land of Europe to recover from the exertions of his daily work, the point I would like to make is that

the objective of completely free movement without let or hindrance would perhaps be achieved more quickly if the creative talent which goes into devising protective measures were used instead to do away with such measures.

THEMES Nos 1 and 2 : "FREE CIRCULATION OF GOODS: REALITY OR ILLUSION ?"

"THE EUROPEAN CITIZEN AND THE CUSTOMS UNION".

Co-report by Mr. Altiero SPINELLI

It must be clearly stated at the beginning of any examination of the Customs Union - as Viscount Davignon, Member of the Commission, has stressed - that customs unification is not the objective for which the Community exists but an instrument for achieving certain other goals. It is enough to read a few pages or the Treaty of Paris, which established the common market in coal and steel (ECSC), or certain pages of the Treaty of Rome, which established the common market in goods as a whole, to see that the objective which the various governments set themselves is that of uniting their peoples' destinies, giving them a prospect of solidarity, of integration, of interdependence and of belonging different from that which existed in the past- and in the very recent past we have seen what that led to - and in order to move in this direction it was considered important to begin the common market with the Customs Union. I do not wish to give a history lesson but the logic which led governments to believe that taking decisions on customs matters was so very important came from a certain example in the past where it was remembered that Germany had begun its unification through a "Zollvereinigung" and that we could therefore follow the same path.

I should like to add that at the end of the war and in the early post-war years there was still a marked aversion to all the national planning policies which had existed, which had been imposed and which had broken all links, flourishing as they did during the war itself, and people thought that they ought to return to greater freedom of movement for goods, people and capital. And so, by striking out in this direction, we were following the right track.

At the time, however, sufficient account was not taken of the fact that at the beginning of the nineteenth century customs policy was, as it were, the major policy instrument - that is economic policy instrument - applied by governments. It was their way of obtaining certain fiscal revenue but above all of being able to create more favourable conditions for their industries when they wanted to do so and to some extent of being able to regulate the development of their industry. There were relics of the past which had to be eliminated but take, for instance, the monetary instrument - there was a general conviction that the only valid monetary instrument was gold. The role of the State was therefore to declare that a given coin contained so much gold or that a given note entitled the bearer to go and demand

so much gold from the bank. Monetary policy amounted to no more than that. If by chance a State deviated somewhat from this policy by abolishing the convertibility of its paper money it could return to that policy when it wished. And so, to say under those circumstances that customs unity is being created means that a start is being made on creating the foundations of a common policy. On that basis, any subsequent policy will be a common policy. We did not find ourselves in this situation and customs was only one instrument among many others of each of our governments' policies. It is true in the fifties the other policies were somewhat overshadowed. It was shortsighted, however, to believe that what was an entirely cyclical situation could be considered as a permanent economic structure.

There was a boom in expansion, intervention could be kept to a relatively low level, monetary convertibility was a fairly easy matter, we could let ourselves go. Today, in retrospect it must perhaps be acknowledged that we were wrong to let ourselves go too far at that time: to let ourselves drift into disorderly development, dominated solely by private demand, taking advantage of the fact that thanks to Ford we had discovered that it was not absolutely necessary to find more and more external markets but that, by stepping up domestic consumption, even intensively, we could obtain domestic markets which became increasingly large and consequently made increasingly greater development possible. We were not concerned with anything else and this gave the impression that if customs unity were created it was in effect the basic step after which all else would be easy.

Even so we gave ourselves twelve years, then we realized that we did not need so long and reduced the length of this period; it was a success. It is obvious that customs unity has a positive side, whose various aspects have been very clearly shown by Viscount Davignon, and this is something which must be defended. From the point of view of achieving the objective of the Communities, however, I must say that this is not enough and is not viable in itself. It is a position to be defended while waiting and hoping to be able to launch an attack on other objectives, but it is not in itself a defendable target. If you think that our States have as one of their instruments of action - not because they are mad but because it suits the needs of our economies and of our peoples - control over their currencies beyond certain limits this control has immediate consequences for external trade, and hence for imports and exports even between Community countries. They have completely autonomous legislation regarding environmental, health and consumer protection measures which are different, and there is no pre-established harmony, which means that they must all give the same responses to the same problems, and they find that they have requirements, of rate of development, even of general economic policy, which may be different.

It must be understood that the Customs Union is in itself something very delicate, dependent on factors which the Community is powerless to control, and this proliferation of obstacles and the fact that no headway is being made even in this field, are due to the existence of this vast economic policy, which is and continues to be national and prevents us from achieving this union.

There is a whole host of microscopic examples, such as those referred to in the Schloesser or Hazeloop reports. When things were going along fine - before the crisis - there were thirty or so treaty infringements a year but now there are between 300 and 400.

This shows that many attempts are being made to infringe the common customs system. Let us, however, take a macroscopic example. Two years ago Italy was in a difficult economic situation and if it had not belonged to the Common Market it would have introduced increased customs protection without further ado. The United States did so: since it did not belong to any supranational Community when it found itself facing difficulties in respect of a given product it simply increased its customs duties. Italy could not do this, so it introduced a system whereby importers had to deposit a certain percentage of the value of their imports at a bank for three months without interest. Obviously, the unpaid interest bn this sum deposited for a period of three months was in fact tantamount to a customs duty imposed on all imports. But it was not called a "customs duty". Italy was not acting maliciously; the other countries had to acknowledge that Italy was in a very difficult situation and that if it had not taken this measure it would have had to take another. It was the consequence of an economic situation in which the Community had no say and which was entirely in the hands of the Italian Government - for better or for worse - which at some time had to face the consequences and take certain measures. This example is valid for other countries. Where unification is as incomplete as it is in the case of the Community at the present time this kind of thing must be expected.

Personally I am convinced that the Customs Union is something which must be defended and this battle, conducted silently by all EEC officials and the Members of the Commission in charge of them, must be fought - let us not forget this for one moment ! It is a battle in which each side tries to wear down the other, a war in which positions are all-important. It is not that this may one day lead to the possibility of winning through and getting back on the road towards unification.
The road towards unification requires political steps and, if a historical perspective is taken, in the most famous case where a customs union (the "Zollvereinigung") managed, as in Germany, to lead to political unity, a war was necessary. The organic development of the customs union would not have been sufficient. I am not saying that another war would be necessary in the present case but a political struggle will certainly be needed, based on political objectives of

creating instruments which will serve an economic policy. We can, at this point in time, give ourselves another 12 years as in the case of the Customs Union and we can also face the slow and progressive creation of the instruments of a common economic policy. This is why I feel that even if the man in the street is somewhat cool towards the Customs Union this is due to the fact that even unconsciously he feels that it is useful. This is not the real problem, however! Much more is required. We must cherish a vision in our minds, for to deceive ourselves by imagining that the Customs Union will automatically lead on to other policies would be a mistake - one which we have made from time to time, not only in this case. You will all remember that in the Community it was once said that from now on, since an agricultural policy which required convertible currencies had been followed, this convertibility could no longer be abolished. It was not said that the agricultural common market was nearly swept away but that the currency had to remain convertible. What actually happened was somewhat different. Similarly, if we believe in this internal dynamism - not in the idea of Europe but in the idea of the Customs Union - we are to some extent taking the risk of counting our chickens before they are hatched. We must be careful to avoid this.

THEME No 3 : "COMMUNITY CUSTOMS RULES : THE NEED FOR THEIR COMPLETION"

Report by Mr. Maurice AUBREE

Introduction

If we turn to the section of the Treaty of Rome that deals with the Customs Union (Chapter 1 of Title I), it is not immediately apparent that the Customs Union is a "construction" in the sense that can be given to this term in the field with which we are concerned, namely a set of coherent and structured legal rules governing trade in goods both within the Community and with non-member countries.

Virtually all the 19 articles comprising this Chapter are concerned with the elimination of customs duties between Member States and the setting up of the common customs tariff. Only one article alludes, in a surprisingly optimistic vein with regard to the time limits set for its completion and also in a curiously diffident manner with regard to the means to be used, to the harmonization of other provisions laid down by law, regulation or administrative action in respect of customs matters. The article in question is Article 27, which stipulates that "before the end of the first stage (i.e. before 1 January 1962), Member States shall, in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of custom matters. To this end, the Commission shall make all appropriate recommendations to Member States", (under Article 189, recommendations are not binding).

In its communication on the State of the Customs Union of the EEC forwarded last June to the Council and to the European Parliament, the Commission drew attention to the inconsistent nature of that Article and to the considerable disadvantages to which this has given rise as regards completion of the Customs Union.

I. The Customs Union : a necessary construction

And yet, it is clear from the general philosophy underlying the Treaty of Rome - one of the prime objectives of which is the establishment of a common market on which traders of all Member States are to be guaranteed equal conditions of competition - that the Customs Union could not consist merely of the abolition of all customs duties in trade between the Member States which make up that union and of the introduction at their common external frontier of a single customs tariff. A Customs Union limited to that objective would be lacking in substance. To take only the Community's relations with non-Member

countries, what would be the point of a Common Customs Tariff if the value for customs purposes, on which application of the duties set out in the Tariff is based, was not defined in the same way in all Member States; if the rules of origin necessary for the application of different rates in line with the common commercial policy were not uniform; if interpretation of the nomenclature for the purpose of classifying imports according to their nature varied from one Member State to another; if the date to be taken into consideration for the purpose of determining the rate of duty to be charged was not the same in all Member States; if the conditions governing repayment or remission of import duties were not standardized; if the conditions governing the granting of duty-free admission differed from one Member State to another; and if traders had the benefit of customs facilities for suspending duties the scope of which differed depending on the Member State in which they operated etc... ? (the list is far from exhaustive).

The necessary corollary of the substitution of a single customs territory for separate national customs territories - primary characteristic of the Customs Union - has to be the elimination at customs level of any source of unequal treatment or trade deflection to the detriment of traders in the Member States.

II. A slow and laborious construction

Thus references in the Treaty of Rome to the Customs Union as the basis of the Community (Article 9), imply that an extremely comprehensive and well-defined legal entity must be established. To achieve this will clearly be a difficult, drawn-out affair owing to the obstacles in its path :

- on the one hand, national customs rules formulated over the years reflect what are often mutually irreconcilable economic conceptions, occasionally of considerable age, which leave some Member States with agonizing choices;
- customs provisions, which provide the framework for Member States' commercial policies, are also very numerous and of considerable subtlety, characteristics which do not make their harmonization easy,
- they reflect a specific legal context (civil law, criminal law, commercial law, administrative law, ...) that varies a great deal from one Member State to another;
- they are drawn up at national level taking into account the mentality peculiar to each administration, its organization and its conception of the delegation of powers and transfer of responsibility within the administrative hierarchy;
- they need to be harmonized at Community level in a logical fashion that takes account of the Treaty's objectives (Article 29, Article 110) and of progress made in other fields in which the construction

of Europe is under way (agriculture, transport, taxation, commercial policy, development policy, industrial policy, introduction of a system of own resources, etc.,,);

- the very task of devising Community rules imposes an - often heavy - administrative workload on the departments making up the Administration of the Customs Union (GUD) whose activities are hampered by a shortage of staff and which are unable to embark, with the requisite speed, on the work that is necessary if harmonization is to be pursued in other fields.

All these difficulties go to explain the slow pace at which construction of the Customs Union is progressing. It is not unusual for some five to six years to elapse between the time when the GUD begins preparation, in conjunction with the Member States' representatives, of a draft Community text, and the time when the Council finally adopts the relevant provisions, whether in the form of a directive or in the form of a regulation. It is not difficult to imagine the negotiations that must be conducted before a text is obtained that is acceptable to everyone (in view of the legal bases used, namely Article 100, Article 235 and Article 28, decisions invariably have to be taken unanimously).

III. A construction still very incomplete

In spite of all these obstacles, the inescapable conclusion is that progress has, none the less, been made towards constructing the Customs Union of the EEC even though work still remains to be done in several important fields.

In its Communication on the State of the Customs Union, the Commission took stock of the progress made in carrying out its 1971 General Programme for the Approximation of Customs Legislation (Annex II) and it can be seen from reading this document how much ground has been covered since establishment of the Tariff Union in July 1968. Since then, numerous Community provisions have been adopted by the Council, either in the form of directives or in the form of regulations. These are mainly concerned with :

- definition of the common customs territory;
- definition of the origin of goods;
- definition of the value of goods for customs purposes;
- Community transit system;
- inward and outward processing;
- customs warehousing and free-zones;
- the treatment applicable to Community returned goods;
- customs treatment of goods;
- deferred payment of customs duties;
- the granting of duty-free allowances (travellers, objects of a cultural nature, products intended for testing, etc.).

A number of important proposals - some of which were submitted several years ago - are still under examination by the Council. They include:

- proposal for a Directive on the harmonization of procedures for the release of goods for free circulation;
- proposal for a Directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt;
- proposal for a Directive on repayment or remission of import duties or export duties;
- proposal for a Regulation laying down conditions for the post-clearance collection of import duties or export duties which have been underpaid on goods entered for a customs procedure involving the obligation to pay such duties;
- proposal for a Regulation on mutual assistance between the competent authorities of the Member States and between the latter and the Commission for ensuring the proper application of Community customs and agricultural law;
- proposal for a Regulation on processing of goods under customs control before their release for home use.

Further proposals will be forwarded to the Council shortly :

- proposal for a regulation laying down the customs procedure for the supply of stores for vessels, aircraft and international trains;
- proposal for a regulation on the establishment of a Community system of reliefs from customs duty;
- proposal for a regulation on the harmonization of provisions laid down by law, regulation or administrative action relating to temporary importation;
- proposal for a directive on the harmonization of procedures for the exportation of goods.

Lastly, the GUD will shortly turn its attention to seeking a solution to the problem posed by the exclusively national nature of decisions taken by bodies responsible in the Member States for settling disputes that arise between the administration and declarants in connection with determination of the type, origin or customs value of goods.

The rather lengthy list above is a clear indication of the incomplete nature of the Customs Union as it stands at present and of the continuing lack of Community rules in fields that directly influence the customs requirements on traders operating in the Community. Such a situation, resulting in each Member State in the occasionally incompatible intermingling of Community law and national law, cannot be regarded as satisfactory. In a number of important fields, the existence of the Customs Union is, in actual fact, purely and simply negated. For instance, in most Member States, twenty years after the entry

into force of the Treaty of Rome, goods cannot in all cases be released for free circulation solely - which is a fundamental concept of the Customs Union - but must also be released for home use (payment of taxes due). With the object of resolving this scarcely credible situation, the Commission forwarded to the Council, in 1973, a proposal for a directive on the harmonization of procedures for the release of goods for free circulation. It is still impossible to say it will be adopted.

IV. Urgent need to complete the construction by action on different fronts

This simple example shows how necessary and urgent it is to finish constructing the Customs Union, at least in the major fields concerned, i.e. those most closely connected with the need for equal conditions of competition between traders in the Community. Adoption of the various proposals listed above will enable this objective to be attained.

However, there will still be work to be done elsewhere even then. If achieved progressively and in line with the needs and possibilities of the moment, the Customs Union would, even with these improvements, still consist of a disparate if perfectly coherent set of different kinds of legal provisions, some having been adopted in the form of directives and others in the form of regulations. Once all the pieces of the jigsaw have been identified, the priority task will be to draw up a Community customs code that will consist exclusively of regulations and will, together with the Common Customs Tariff, constitute the final instrument of the EEC Customs Union. The Commission will embark on this task, which was announced in its Communication on the State of the Customs Union, once all the proposals under preparation in the above fields have been finalized.

Nonetheless, such codification will in itself still not signify completion of the Customs Union.

Application of common customs rules in trade with non-member countries must go hand in hand with the elimination of all artificial obstacles to the free movement of goods between Member States that are not warranted by pressing arguments relating to protection of the interests referred to in Article 36 of the Treaty. A great deal of work remains to be done in this connection if the formalities and procedures governing trade relations between Member States that remain in place by force of habit and are not fully justified, are to be eliminated. Hence, the Commission, in its Communication on the State of the Customs Union, announced its determination to put an end to the formalities that are merely the relic of earlier practices which have now become outdated as a result of the establishment of the Customs Union and some of which have even become incompatible with Articles 30 et seq. of the Treaty.

Moreover, it is difficult to understand that non-compliance with common customs rules should still give rise to penalties that differ significantly from one Member State to another. For one thing, infringements of Community customs legislation recorded in one Member State affect the customs territory as a whole and should not normally be regarded as national infringements. For another, such differences are bound to result in unequal treatment for traders depending on the Member State in which they operate and, indeed, may ultimately lead to deflections of trade. The European Parliament was, therefore, quite justified in calling on the Commission, in a Resolution dated 10 February 1977, to take all the steps necessary to complete harmonization of penalties imposed by Member States for non-compliance with the provisions of Community legislation.

The objective is therefore the establishment, in so far as possible, of a harmonized system of penalties for non-compliance with Community legislation. Admittedly, this will not be an easy task. It has been argued that the Treaty of Rome made no provision for such a possibility. This is debatable. Once it has been established that the existence of different penalties for one and the same infringement leads to unequal treatment as regards competition between traders, recourse could be had to at least two articles of the Treaty : Article 100, since such a situation directly affects the establishment or functioning of the common market, and Article 235, since resolving such a situation would unquestionably help to attain one of the objectives of the Community. This matter of the legal basis to be applied needs, however, to be properly examined with the help of legal experts. In any event, if neither of these articles could in fact be applied, there would be nothing to prevent a Protocol being annexed to the Treaty adequately resolving a problem about which something clearly has to be done.

Lastly, the Commission, acting in close collaboration with the customs administrations of the Member States, must face the important task of ensuring that national officials responsible for applying Community customs legislation receive proper training. As is to be expected, Community customs legislation is in the final analysis unlike any national legislation. Even though the former is modelled extensively on national rules, particularly the most recent, and complies with existing international conventions, it is also tailored to objectives peculiar to the Customs Union and applies concepts that, in many cases, have no equivalent in national legislation. And so certain difficulties may arise in connection with its application in the Member States because of a lack of understanding of the texts, of the spirit in which they were framed, or of their underlying objective. In other words, there is a danger that national officials, trained to think along certain lines, will not fully appreciate the real objective of the Community legislation. Of course, the danger looms larger as Community rules increase in number. And so it is important for national training instructors and for all other interested parties to be kept fully informed of the situation with regard to Community legislation and

of any changes therein, so that they.can successfully explain to the officials responsible for applying Community rules the reasoning involved. This is a matter of prime importance which, if satisfactorily carried out, will maximize the extent to which Community legislation is interpreted in a uniform manner.

All these measures will need to be accompanied by approaches to international organizations active in the customs field, particularly the Customs Cooperation Council, which is exclusively concerned with such matters, with a view to gaining international recognition for Community achievements in the customs field and to allowing the Community, which now has sole responsibility for taking decisions that bind Member States in matters relating to the Customs Union, to exercise in due fashion the prerogatives it enjoys.

Once the measures on which attainment of these objectives hinges have proved successful, it will at last be possible to say that the Customs Union has been completed, in so far, of course, as any human undertaking of such magnitude can ever be regarded as having been completed.

To accomplish such a task within a reasonable period (three or four years) does not seem impossible since it would appear to be a matter of pure common sense.

V. The conditions that need to be met to complete the Customs Union

One such condition is, of course, that Member States show great determination to overcome the problems created by the inconsistency of their national customs legislation with the objectives of a Customs Union, which are often different from those that the national policies of those States might pursue. Admittedly, it is not easy to refrain from applying rules, procedures and methods that are perfectly suited to national objectives, but the task of approximating customs legislations must be carried out with the deep-seated conviction that such changes in the conditions governing the functioning of the administration are effected with a view to producing the greatest benefit for all concerned.

For their part, the Community institutions must play the role ascribed to them to the full :

a) firstly, by creating the conditions necessary for correct administration of the Community rules in force. Involving as it does a transfer of responsibilities to the Commission, which is responsible for seeing that the Treaty and the acts adopted for its implementation are applied, each Community instrument entails at times a quite appreciable increase in the workload of the GUD (particularly in cases where the Commission becomes responsible for direct administration of rules). With its present staff, the GUD could

not conceivably cope with the administration of the completed Customs Union as it should. It is of prime importance, therefore, that the Community institutions, above all the Commission, take without delay the steps that will enable it to assume this responsibility. Of these measures, the most pressing is, without doubt, the recruitment of a sufficient number of suitably qualified officials.

b) secondly, by ensuring that existing Community rules are scrupulously observed in all respects. There is no point in framing a set of Community customs rules if the Member States are not obliged to comply with them. No consideration, not even a psychological one, should be allowed to prevail over this commonsense rule, and it would ultimately be very dangerous for the construction and functioning of the Customs Union if a less strict approach were adopted in this field.

If all these conditions are met, there is no doubt that the Customs Union of the EEC will soon be completed and that it will be able to function to the utmost satisfaction of all concerned.

Co-report by Mr. Claude BERR

Introduction

My friend Maurice Aubree's report sets forth the thoughts suggested to him by observation of Community customs rules. With his usual rigour he has drawn up a list of the achievements and shortcomings, and he defines what he considers should be done to achieve better balance. In the circumstances, it would be quite futile to weigh his various proposals in the scale of theoretical criticism, as this would involve the risk of merely paraphrasing his idea. The academic point of view has no place in the work of this conference unless it can prompt reflection which is different from the thinking of men who are necessarily involved in day-to-day action. For such men the difficulties to be solved do not usually follow a logical pattern. They crop up haphazardly as a function of external constraints, and they have to be given urgent attention, with the result that the solutions applied in circumstances which are often difficult remain isolated one from another, and the basic inspiration behind them is not always apparent. The main job of the academic, who has no immediate responsibility, ought to be to propose to men of action coherent and harmonious models - the fruit of a slow process of disinterested reflection. Also, if he hopes to be useful, the academic must avoid stepping out of his role by giving advice to practitioners who do not need it, and he must accept that his ideas are not rules of conduct, but sketches or, if you prefer, reference systems. So I would like those participating in this conference to remember that, as an academic, I have no intention of preaching to the Community authorities ; indeed, I shall be asking questions rather than suggesting answers.

Scientific reflection, like action, is subject to constraints ; to be efficient, it must be based on objective observations and not on preconceptions.

With this in mind, it is obvious that we cannot unreservedly accept the title of this study, and assume as a kind of axiom that community customs rules are a structure that needs perfecting. Do not misunderstand me here. No-one claims that these rules, in their present state, are perfect: in other words excellent and complete. Obviously not. But, before postulating that it is imperative in the coming years to pursue the task undertaken, we should perhaps ask ourselves a few questions about the place of rules in the development of the customs union. How far are rules, in themselves, an integrating factor ? Are Community customs rules really inadequate at present ? Would it not be closer to the mark to say that they are excessively abundant in some areas, or even stifling ? Before thinking of perfecting them, perhaps we should try to find out whether present rules are efficiently

applied, and whether their application .helps the union to function properly. This is not absolutely certain. Moreover, before doing anything to perfect what already exists, I think it is essential that we should reflect deeply on the whole issue of the customs union. I have been struck for some time now by the uncertainty surrounding the actual concept behind the customs union, which is sometimes downgraded to tariff union, and sometimes likened to economic union. At different times, and depending on the case at issue, one or other of these two concepts is invoked. Strictly speaking, Community customs rules can develop only in the legal framework provided by Article 9 of the Treaty of Rome, since this is the Article which defines the customs union. If this view is taken, the rules must be confined to implementing "the prohibition between Member States of customes duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff". Let us not forget that the elimination of quantitative restrictions between the Member States is covered by one chapter in the Treaty of Rome and the customs union by another ; that all matters involving relations with non-member countries come under the commercial policy and that imports and exports of agricultural products have been brought within the ambit of the common agricultural policy, thus outside the scope of the customs union.

I do not think that the customs rules are restricted nowadays to matters concerning tariffs - quite the contrary. Their scope far exceeds the narrow field assigned to them by Article 9, and no-one would contemplate the idea of the customs authorities being left out of the application of the Lome Convention, for example, or not being asked to play their part in the enforcement of anti-dumping measures.

Where, then, are the natural limits of Community customs rules ? This is a vital question, for the way we answer it will determine how we answer the question to which this conference is devoted. How can we decide whether Community customs rules need perfecting without first of all defining very precisely what their scope is ? Perhaps the time has come to make a frank attempt to do so. Such a debate cannot achieve any positive results unless critical reflection is applied to a much more general issue, namely the ultimate objectives of the customs union. However, this basic question is obviously beyond the scope of my talk. So I shall merely demonstrate that the conception of customs rules cannot be divorced from the aims assigned to them by policy-makers. Nevertheless, present uncertainties need to be dispelled to some extent, otherwise the rules could eventually become empty shells.

In the light of these questions, two kinds of problems give food for thought. First, we must try to establish how far Community customs rules can and must be perfected; second, we must consider what their future purpose is to be.

I. Perfecting Community customs rules

There is no doubt that it is imperative to perfect Community customs rules. We can accept this point without demonstration, as we would in the case of any other branch of Community or national law. However, it seems more important to look at the problem from the qualitative point of view than simply to draw up a list of all that remains to be done.

Two kinds of action, which are not mutually exclusive, can be expected to contribute to perfecting the rules : action to improve the application of existing law, and action to simplify that law.

A. The application of existing law

The problem of applying Community customs rules is particularly knotty because this is an area where the powers are shared by the Community authorities and the national authorities.

I do not need to remind you that, in principle, it is the national administrations that are responsible for applying Community customs law. Too strict an interpretation of the principle, however, could lead the Community institutions to believe that the problem of applying Community rules was no concern of theirs, or at least that they were only marginally involved. The Commission would not need to concern itself directly with the way in which users actually applied customs law, except where it was necessary to bring Member States before the Court in the event of clear infringements of Community rules.

I must say I am sorry that some people take this view, for I consider it not only unfortunate, but also contrary to the Community philosophy, and even to certain established legal principles.

In view of the fact that the Treaty of Rome definies a regulation as a directly applicable legal instrument, and since the Court of Justice had held that, since the end of the transition period, certain articles of the Treaty itself confer subjective rights which individuals may plead in the courts, it would be incongruous to refuse citizens the right to have direct recourse to the Community authorities. I am as aware as anyone of the factors that militate in favour of maintaining the present situation. We cannot even think about impinging on the sovereignty of the States, because the Community has no recognized supranational status. The political stakes are so high that it would be unrealistic to propose general measures, since they would obviously never get beyond the stage of academic discussion.

Perhaps, however, it may be possible to imagine certain types of action which could get things going without impinging upon present

principles. For example, we should approve unreservedly the plans mentioned by Maurice Aubreé for settling disputes between national administrations and users over the factors taken into account for customs purposes. It is intolerable in this day and age that, in some Member States at least, the people concerned find themselves in a situation of almost total dependence on the national administration when disagreements arise on the nature, origin or value of goods - all matters which fall exclusively within Community jurisdiction and in respect of which the States no longer have any authority, even of a residual nature.

Without calling into question the present limits on the Community powers, one cannot help feeling that the Community institutions responsible for the smooth functioning of the customs union have allowed their powers to become blunted in some cases ; an example is the power to bring before the Court of Justice Member States which depart from the common rule or fail to take the necessary steps to comply with it, whether deliberately or by negligence. I am aware that many actions have been brought, and that more will be brought ; no-one can reproach the Commission with excessive tolerance towards the Member States. But even so, not enough actions have been brought. This may sound like the statement of a maximalist, an academic in an ivory tower, who ought to know that the Commission has to take considerations of political expediency into account before asking for sentence to be passed on a Member State, even if its transgression is a very serious one. Believe me, I am fully aware of the weight of these considerations, but if they can be used as excuses for such and such a "failing", one must fear that any effort to complete the structure of Community customs rules is doomed to failure. Is there any real point in conferring new rights on the citizens of the Member States, in imposing new constraints on the States themselves, and in introducing new rules, unless we are wholeheartedly convinced of the need to ensure that the standards that have been arrived at with so much difficulty are observed without exception ?

B. Simplifying the rules

It is not an easy task for the authorities to simplify rules. The quality of a legal instrument's form is by no means an aesthetic consideration, but one of the conditions for ensuring that the instrument is properly applied. Of course, we must beware of the romantic illusion that periodically overcomes certain well-meaning people who think that a legal rule can only be satisfactory if it is expressed in the language of the man in the street. This is obviously tantamount to demagogy. On the other hand, there is no justification for the modern tendency to use arbitrary or ambiguous expressions rather than clear and precise terms. To take an example from French terminology, sticking the adjectives "actif" and "passif", which are accounting terms, on to the noun "perfectionnement", which is the epitome of the

imprecise concept, hardly helps to explain what is involved - namely the working of goods within the customs territory, in one case, and outside the customs territory, in the other.

One should not smile at the relatively trivial nature of this problem, for its implications are fundamental. A rule which is incomprehensible to the layman will generally give no trouble to the initiated. There is no large multinational experiencing difficulty in world trade because Community terminology is not easy to understand. These firms can pay for the services of competent advisers, many of whom come from national customs administrations. The poor quality of legal terminology is neither here nor there to them. But what about the others, the occasional importers and exporters, the small- and medium-sized firms ? They have to ask someone who can understand the texts, and they have no protection against interpretations which may be biased. They may have an awful lot of trouble with their international operations, or else they may be unaware of certain advantages or rights to which they are at least theoretically entitled under Community law. It is well known that only a few privileged priests were capable of interpreting the pronouncements of the Pythian oracle at Delphi. Simple folk could only hear inarticulate sounds.

While we are on the subject, another question worth raising is why the volume of texts is so inflated - which is something we are all familiar with. I am not saying that this reproach is by any means specific to customs regulations. Jurists frequently complain about the complexity of documentary research and the lack of any really up-to-date coding system. But the situation is worse in the field of international trade than in other fields, because speed is particularly important. A sale of consumer goods abroad has to take place so quickly that it is hardly possible to examine the relevant texts meticulously and at length. However, because of the frequent application of both Community and national rules, which may contradict each other, people involved in international trade are exposed to uncertainty and risks. In fact, the only people who have a good word to say about the present situation are certain big-time traffickers.

It should be borne in mind that, in a perfected customs union, intra-Community trade operations would become as simple as national operations. This is the case in trade between the French Republic and the Principality of Monaco, for example. In other words, the ideal to strive for in perfecting customs rules, in so far as they apply to trade within the customs union, should not be the proliferation of legal rules but quite simply their gradual disappearance. So if the rules are to be genuinely improved a process of excision is needed and not the constant addition of more texts. Obviously, at the present stage in the construction of the Community, there is no doubt that new texts are essential if we are to reach our goal - the harmonization of national laws. But in the long run the rules should be deflated, as it were. In particular, there is no reason why harmonization directives should not cease to have legal force as soon as all the

Member States have conformed to them. This process, which might be compared to taking down the scaffolding once the building has been put up, would give back to the Community and the Member States their natural responsibility, and would avoid creating the illusion that there exist two separate standards. As for regulations, it is essential that they should not be disguised as national texts, codes or rules, a practice that is still applied too often, making for ambiguity about the nature of the rules they lay down.

Though relatively minor compared to the ones surrounding the very purpose of Community customs rules, these ambiguities were nonetheless worth mentioning.

II. The purpose of Community customs rules

We cannot pursue the action undertaken unless we give much thought to the factors on which the Community's customs rules should be based. The rules should not stem merely from immediate needs, whether economic or political, or from parliamentary promptings, unless we are prepared to accept the loss of everything that makes them original and of value. The task is not an easy one ? over the past few years, the certainty born of tradition has been gradually replaced by fundamental questions both about the aims of customs rules and about their scope.

A. The aims of Community customs rules

One may say, without great risk of being contradicted, that the aim of Community customs rules is to implement EEC customs concepts. However, thinking on this subject has evolved considerably since the Community came into being. Originally, the Community philosophy regarded the customs union as an essential stage in the process that was to lead to genuine integration of the economies and currencies. The customs union was to some extent a prerequisite for the achievement of economic and monetary union and, in the long run, political union. To-day, considering the difficulties of proceeding much further, the customs union seems to have become not a stage but an end in itself. Are we, then, to ignore the fact that a customs union cannot exist as an autonomous unit, surviving independently in the midst of economies that have remained sovereign ? Most of our present problems, if analysed scientifically, are not principally due to the inadequacy of customs rules, but to the fact that certain of their aspects involve other fields of Community action : taxation, economic and monetary matters, criminal law, etc.. There may, therefore, be a strong temptation to abandon, if not the term, at least the idea of a customs union, and slide imperceptibly towards a form of free-trade area - stronger than other such areas, perhaps, but like them, leaving a wide margin for national sovereignty. This is not the first time this remark has been made.

One could, of course, reply that there will always be a basic difference between a free-trade area and a customs union : the common external tariff. That is true in theory - but what about practice ?

Most observers to-day recognize that the Common Customs tariff no longer gives the Community economy any real protection, and the reasons for this are too well known to need repeating here. Does this mean that the liberalization of world trade has finally put an end to the protectionism of states ? If this were so, if customs duties were certain to disappear altogether one day, it would be odd to devote so much energy to perfecting our Community customs rules. Why make such a big effort just to achieve generalized free trade ? But unfortunately, as everybody knows, protectionism has never been stronger than now, in Europe and elsewhere. At a time when we are frightened of certain words, it would be in better taste to speak of "defending the fundamental interests of the national economy" or "the requirements of trade equilibrium" to justify practices whose restrictive effect on international trade is probably more effective than can be achieved by the traditional and much abused device of tariff protection. The American economist Baldwin has shown, with supporting figures, that the link between the degree of effective protection and the level of customs duties is far from being as simple as is sometimes thought. To give just one example, he showed that a 50% decrease in tariff protection following the Kennedy Round led to a decrease in effective protection of only 25% in the USA and 19% in the United Kingdom. The consequences of the decrease in customs duties are mitigated precisely because of the existence of non-tariff protection techniques. He mentions no fewer than twelve standard types, which naturally include administrative provisions concerning safety, hygiene, pollution, production subsidies and so on, without forgetting the most perfect of all - for it solves all the problems in one fell swoop - the manipulation of exchange rates. Everyone knows that you only need to devalue your currency to obtain a rate of protection approximately equal to the rate of devaluation.

Under these circumstances, perfecting customs techniques designed to implement the common external tariff may seem pointless. It could be compared to the work of the soldiers who were detailed to repaint the Maginot line just before the outbreak of the Second World War.

We cannot, of course, ask the customs authorities to solve these problems. It is not up to them to decide whether the Community wishes to protect itself as a Community or as best suits the interests of each of its members. But it should be recognized that if the aims are not clearly defined, the rules may well become tantamount to art for art's sake. Agreed, you may say, but meanwhile we have to. pursue the task we have undertaken. That is true. We are not recommending a wait-and-see policy. For the time being, in the midst of contradictions and uncertainty, customs rules must be perfected. However, we should at least know what their scope is.

B. The scope of Community customs rules

It is generally accepted without need for demonstration that customs rules (whether national or Community) determine the treatment of goods which are traded internationally. The fact that customs law is concerned with tangible goods is basically what makes it different from other branches such as the law on investment, exchange control, competition and so on.

However, it is clear that even where goods are concerned, customs rules are not the only ones applicable. Other rules such as those governing the quality of products and health and plant-health protection, also apply, even though it is often the customs authorities that are responsible for implementing them. Similarly, trade in agricultural products is not governed by customs rules in the EEC. Also, customs rules can hardly be narrowed down to a device for the collection of common external tariff duties, for a considerable proportion of these rules deal with the destination of goods and have no bearing on whether or not duties are paid.

In fact, the scope of customs rules is primarily the product of the history of each State. This is the reason why, for example, rules on the registration of ships are part of the French customs code - a completely artificial state of affairs that does not help us to decide what might be the natural scope of customs law.

In the framework with which we are concerned here, namely Community customs rules, the same problem arises, but we have no common history to help us. So it was agreed more or less intuitively that Community customs rules should be restricted to the most limited field possible— namely that covered by the common external tariff and the abolition of internal customs barriers. However, experience has shown that it is impossible to reduce customs law to such a restricted field, that customs law should cover all aspects of trade. This does not change the fact, though, that the customs mechanism does not come into play unless the trade in question is trade in goods. Yet, as everyone knows, the bulk of the transactions that take place at international level nowadays are not necessarily in the form of goods. At a time when transfers of technology, such as the setting-up of plant for manufacture or assembly, contribute more to the movement of goods than traditional export/import operations, is it right that such transfers should be outside the jurisdiction of customs law ? Why should we distinguish between a firm that imports 20,000 cars annually (under the control of the customs authorities) and one that sets up a production line turning out 20,000 cars a year entirely outside the jurisdiction of customs law ?

Although it is difficult to analyse the reasons clearly, one cannot help thinking that there is something irrational about restricting customs rules to the field of goods. In the long run, and considering

the other remarks I have made, they might well become mere rules of procedure. It is not difficult to imagine, on the other hand, the accusations of imperialism that would be bound to be made against people recommending an extension of the scope of customs law beyond its present limits. However, since much of the work of this conference is to take place in committee, I have merely mentioned the question, though I would like to add that it might be the key to the whole future of Community customs rules.

Conclusion

To conclude on a subject of this kind, which has an essentially exploratory nature would be shere presumption : better to be content to note how encouraging it is that the Community is examining with such lucidity the future of a legal construction which in our eyes remains the best of its achievements. We may be allowed to wish the Community not only perseverance, which has never been lacking, but courage in the face of the difficulties to be overcome. The reward would be to have established a solid foundation for the European construction for which we have long been waiting.

THEME NO 4 î "CUSTOMS UNION AND EXTERNAL TRADE"

Report by Mr. Brix KNUDSEN

1. Introduction

The establishment of a customs union implies that member states remove customs duties and other restrictions in trade between themselves while harmonizing the regime towards other countries. It would therefore be natural if a customs union chose to concentrate upon the internal liberalization of trade and adopted a passive policy towards the outer world.

The European Community is an example of a customs union which has instead engaged in an open and active trade policy.

This policy has found its expression in the participation of the Community in the general reduction of tariff duties under the auspices of GATT which is now again under discussion as well as in the conclusion of a network of free trade agreements and preferential trade arrangements which together compose the most important instrumènt of the foreign trade policy of the Community.

The number of agreements and arrangements to-day amounts to 24 in all. The number of countries covered is of course much greater, as several of the agreements and arrangements include more than one country.

Without taking into account the financial and non-commercial aspects of the agreements (this being outside the scope of this report) they can be divided into various categories according to the trade arrangements they establish.

2. Agreements leading to membership of the Customs Union

Examples of this kind of agreement are the Agreements with Greece and Turkey where a gradual reduction of duties in trade between the Community and those countries is followed by a gradual alignment of the tariff of these countries on the common customs tariff. The procedures and administrative provisions in force are essentially the same as those in force when the Customs Union itself was established. One of the countries - Greece - has now applied for full membership the Community. The agreements with Malta and Cyprus also lead to membership of the Customs Union eventually ; but in their structure these agreements resemble the next category.

3. Free trade agreements

The most important agreements in this category, as regards the proportion of the Community's foreign trade covered, are the seven free trade agreements with the EFTA-countries (Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland).

Other agreements in this category are the agreements with the Mediterranean countries (Malta and Cyprus, Spain, Israel, Morocco, Tunisia, Algeria, Lebanon, Egypt, Jordan and Syria), as well as the Lome Convention covering African, Caribbean and Pacific countries. Spain and Portugal have now sought full membership of the Community.

In principle, all these agreements do envisage reciprocity in the preferential treatment ; but for the Community's partners in the Lomé Convention and certain Mediterranean agreements this is not obligatory, which is a reflection of differences in the stage of the economic development between the Community and its partners in these agreements.

The product coverage of the various agreements is typically the following s selected agricultural products not covered by the common agricultural policy, processed agricultural products (with tariff preference only on the duty element protecting the processing), and - with a few exceptions - all industrial products.

While agreements leading to membership of the Customs Union include provisions for the harmonization of the tariff duties and commercial policy towards third countries, no free trade agreement contains such provisions, and partners in a free trade agreement can thus follow an independent trade policy towards other countries.

To prevent products from other countries from taking advantage of any differences in the regime (e.g. in the level of tariff duties) applied to them by the partners to a free trade agreement, it is necessary to limit the benefits of the agreement to products which fulfil the origin rules.

The origin rules determine which products are entitled to the benefits of the agreements by requiring that such products should either be wholly produced (e.g. ore mined in the territory of one of the partners) or, if they have been imported from third countries, that they be substantially transformed (e.g. by having changed their tariff heading in the course of processing).

When products "originate" they are not only entitled to obtain preferential tariff treatment but also to benefit from the abolition of quantitative and other restrictions which is a feature of most of the free trade agreements. Thus the origin criteria remain most important even if the importance of tariff preference for some products

is dwindling at a time when international competition is most severe for a number of industrial sectors because the origin rules determine the degree of processing that products from third countries shall undergo before being able to benefit from the liberal trade regime under the respective agreements.

4. Preferential trade arrangements

This category includes the autonomous preferential arrangements applied by the Community for trade with developing countries (GSP) and overseas countries and territories - the last arrangement being closely linked with the trade arrangements under the Lome Convention.

5. Problems in administering the trade agreements and arrangements of the Community

Importance of differences betweeri agreements

The increasing number of preferential agreements and arrangements has led to aisituation where the duties listed in the common customs tariff are applied only in a minority of cases and where the imports from the countries with which the Community has preferential agreements and which enter at preferential duty rates are subject to widely differing regimes where the product coverage, the tariff cuts and the quantitative limitations for the preference if any, differ from agreement to agreement.

To some degree this is inevitable. The various agreements and arrangements do have a different political and economic background which must lead to a different content in the agreements. A different regime must also result when countries are seeking membership of the Customs Union instead merely of a free trade agreement.

Nevertheless the many differences, even if they are minor, in the regimes for various countries, result in a tariff system of great complexity which is very difficult to understand and apply, for customs officials as well as for importers and exporters.

The problem is that the agreements have been negotiated separately without too much concern for what has been done in other agreements. Even if the necessity to avoid rules which are too complicated has been accepted beforehand, the temptation to use inclusion or exclusion of certain products as a last minute negotiating device is very great and often considered politically necessary.

That the result of this is self defeating is not often recognized. The complexity of the mass of different regimes makes any effective control of the provisions, resulting from the negotiations, very difficult for customs officials, thus the differentiated regimes which have been negotiated cannot in practice be effectively applied.

The Commission has taken steps to .improve the information available to administrations as well as traders and is now preparing an integrated Community tariff which will show for each tariff heading and sub heading not only the full duty, but also the various preferences applying. Nevertheless, while this should make it easier to obtain the relevant information, the basic problem of the excessive differentiation in tariff treatment remains.

Complexity in origin rules

The origin rules as mentioned above determine which products have access to the benefits provided for in the free trade agreements. Products imported from third countries must undergo a substantial transformation according to the origin rule for each individual tariff heading under which the product in question is classified.

One of the main problems in relation to the origin rules is the complexity of the origin system itself.

The origin system of the Community is based upon the notion that a change of tariff heading represents a substantial transformation. Thus an imported product must undergo a processing which results in the finished product being classified under a different tariff heading from the imported product. This basic rule is modified for certain products with additional rules requiring more processing than that represented by a simple change of tariff heading (list A) e.g. by fixing an overall percentage limit on the value of imported products which can be incorporated.

Another set of additional rules recognizes certain processes as giving originating status even if they do not result in a change of tariff heading for the finished product compared with the imported product (list B).

This system has been criticized as being too complicated and a much simpler system has been proposed where the only condition is that an originating product must not contain more than a given percentage (e.g. 50%) of imported material with or without a change of tariff heading in the course of the processing.

The present system of the Community to a large extent already uses percentage rules but not as the only criteria, as explained above.

Both systems have advantages and disadvantages. The advantage of the present Community system is that the criterion of substantial transformation (change of tariff heading) is in principle not dependent upon changes in prices for finished goods and materials, while a general percentage rule has the advantage of being much simpler in application especially in sectors where numerous components are used in

manufacture without an individual classification according to tariff heading being necessary e.g. in the electronics & engineering industry. In addition, a general percentage rule treats all products equally which is not always the case under the present Community system.

The acute problems with regard to the complexity of the present Community system relate to trade in industrial products in the two sectors mentioned above, and mostly with the EFTA countries where industrial products dominate, in contrast to the other agreements where other products are more important.

In principle origin rules should constitute an objective criterion defining what is to be considered as substantial transformation of a product.

When discussing possible modifications of the origin system one must nevertheless always take into account the economic effects of such changes for various products. Especially in the present economic circumstances this aspect cannot be overlooked even if the overall objective of a change is a simplification and not a change of the economic impact of the rules (apart from the removal of anomalies for certain products).

One important element in this consideration is often overlooked : it concerns the cost of applying a very complex system both for the customs administrations and for exporters and importers.

For customs administrations it means applying resources in understanding and interpreting the system which could otherwise be more effectively used in active control work.

For exporters and importers it means taking resources from production work and using them in administration of the rules to make sure that the rules are kept, inevitably in many cases leading to a situation where products do not obtain preference because it is too costly to find out if they fulfil the rules. The end result being that certain originating products lose the advantage of preference when competing with products from third countries.

Differences in origin rules between agreements

Another problem which gives rise to complexity in the origin system is the differences in the origin rules between the various agreements.

With an origin rule system in each of the 22 preferential agreements and arrangements in force, it becomes of course of major importance to align these rules with each other. Even if the systems are based upon the same basic principle (change of tariff heading) a situation with many differences between individual rules would make an effective overall management of the system impossible.

The main problem here is that there are many small differences between individual rules in the agreements introduced for economic or political reasons or simply by accident because the agreements have been negotiated separately.

When it became clear some years ago that the increasing number of agreements would lead to problems in this respect the Commission proposed to harmonize the origin miles in all agreements.

Important results have been reached with respect to this harmonization which requires that changes introduced in one agreement shall be included in all agreements. Unfortunately, work in this field has slowed down.

It has been difficult again here to get understanding of the fact that what might in theory be won from a short-term economic point of view by having a marginally stricter rule in one agreement might be lost overall because the complexity of the system makes effective control impossible and furthermore because exporters - especially small exporters - give up the system and do not apply for preference.

Improvement of_ ^mulatior^ system_

Most of the free trade agreements of the Community provide for "cumulation" meaning that an exporter can use imported products from the partner country without processing them sufficiently in accordance with the origin rules and still "obtain origin" and therefore preference when sending the finished product back. Thus processing in both partners to the agreement counts when obtaining origin and not only the processing in the last country of export.

In some agreements (EFTA and Lomé Convention) the possibilities for cumulation go further so that the cumulation system applies for all trade respectively with the EFTA countries and the Lome countries and not only for bilateral trade between the Community and the individual countries.

This possibility of cumulation is of course a most important factor in economic as well as commercial terms as exporters can look for suppliers outside the borders of their own country without fear that they may not process the materials enough to get originating status for the finished products.

Nevertheless the present working of the cumulation system gives rise to problems. Again the problems are most acute in relation to trade with EFTA-countries, where a heavy amount of trade takes place in industrial parts and components reflecting the increased specialization among the European countries.

The problems go back to the introduction of the cumulation system in the RFTA-agreements. Originally only bilateral cumulation with each EFTA country was proposed and only after very difficult negotiations was an extended cumulation system agreed, involving all EFTA countries.

The result is a system with nine different possibilities for cumulation for an exporter in the Community who exports to all EFTA countries depending upon the EFTA country of destination and the product in question.

Coming on top of an already complex set of origin rules this cumulation system can only be applied in practice to the extent that a producer invests substantial resources in understanding and implementing the origin system ; even the customs authorities will often have great difficulties in interpreting the rules and checking that they are kept.

There seems in the field of cumulation to be a need for a major simplification of the system.

Harmonizat.ion and simp li fication of jilocui^ntation and administrative procedures

In the field of documentation considerable results have already been achieved.

Different movement certificates were used a few years ago in the various agreements but have now been replaced by standard certificates based on the Geneva layout-key (called "EUR 1" and "EUR 2"). Thus Community exporters need now stock only 2 instead of 20 types of certificates for use in all agreements.

Also the administrative provisions and procedures in the agreements have now been harmonized to a large extent and included in the agreements themselves to avoid the earlier complicated arrangements where administrative provisions were adopted separately making it necessary to look in several places to get knowledge of all the provisions in force for a certain agreement.

^ocedure for chan gi ng ag re emen ts

A hindrance for much of the harmonization and simplification work has been the cumbersome procedure involved even in administrative or technical changes which have no economic or political significance but which are important for customs administrations as well as exporters and importers. Agreements are administered by "joint committees", which have the power to make modifications. Joint committees are assisted by a customs committee.

On the Community side the Council must first agree upon a proposal to present to the partner in the agreement and later adopt the necessary legal instrument to give the change effect in the Community. This procedure involves ten stages in all, each of which takes between one and three weeks thus making any quick change even of an administrative nature impossible.

Cooperation with partner countries

In many of the preferential agreements and arrangements the Community will inevitably be the partner with most experience in applying and administering such agreements and arrangements and is therefore asked to provide assistance as regards their administration in the partner countries concerned.

The Community has an interest in that it is very largely dependent on the effectiveness with which the partner countries administer and control the agreements.

Until now the possibility of undertaking such assistance has been limited because of lack of personnel. There is no doubt that with the increased importance of the preferential agreements and arrangements such assistance should be given higher priority.

Conclusion

Even if the system of preferential agreements and arrangements in general seems to work satisfactorily there is scope for improvements and simplifications such as :

- a less differentiated and complex product coverage;
- a simplification of part of the origin system including the cumulative system and the origin rules for certain industrial sectors;
- harmonization to the maximum extent of the origin provision in all agreements and arrangements;
- a simplification of the procedure for changes of an administrative or technical character in the agreements;
- improved cooperation with partner countries.

Co-report by Mr. Pierre Bernard COUSTE

Introduction

Contrary to fairly widespread opinion, the Treaty of Rone does not lay down common policies for all aspects of economic activity but operates on three levels.

In some cases - for example, where competition is concerned - the Treaty simply adopts a neutral stance, although it gives the Community means of ensuring that this neutrality is observed.

At the second level, the Treaty provides for coordination of policies. This is the case with the economic policies of the Member States. Also it provides for the harmonization of legislation linked to the functioning of the common market, particularly the free movement of persons, goods and capital.

In fact, there are only three fields in respect of which the Treaty makes provision for genuine common policies - the fields of agricultural policy, transport policy and commercial policy.

The commercial policy is an indispensable complement to the customs union which the member countries of the Community of Six and, later on, the Community of Nine desired to establish. Indeed, the commercial policy takes in more than just trade relations, since it covers export credit policy for example, and could also include aspects of economic and industrial cooperation, or even technology transfers.

Although the customs union was the first aim which the member countries of the Community endeavoured to attain, the very development of the Community had important consequences for relations with the outside world. The reactions to this development varied. The United States, which had encouraged the creation of a political entity in Europe, gradually come to regard Europe as a dangerous competitor, but a large number of other countries, both developed and developing, tried to establish special relations with the Community, in many cases successfully. It should not be forgotten that, at the general economic level, the Community developed during a very favourable period, which meant that it could grant products from many countries or groups of countries, easy access to its markets, but today's economic situation makes these trade concessions quite burdensome in some sectors.

I. The Customs Union

It would seem that a distinction can be made between visible effects and hidden effects.

A. The visible effects

The progressive elimination of customs barriers between the member countries has led to an increase in the proportion of intra-Community trade in the total volume of EEC trade, as the authors of the Treaty expected. Intra-Community trade as a proportion of the total volume of imports rose from 30% to 45% between 1958 and 1973, and its share of the total volume of exports went up from 30% to 46% during the same period. Obviously, one could dwell for a long time on the question of whether this increase in trade would not have happened anyway, because of the economic situation and the general improvement in the standard of living. However, it would certainly be difficult to determine the relative influence of purely economic factors and the elimination of customs barriers. Nevertheless, there is absolutely no doubt that for a country like France, for example, the agricultural common market led to a substantial increase in agricultural production, since access to Community markets was made very much easier when common prices were introduced in 1967 for a large number of agricultural products, and this is so despite the fact that the common prices later became more of a myth than a reality, because of monetary circumstances and the introduction of certain mechanisms which should never have been other than temporary, and whose continuing existence today is endangering the common agricultural market.

B. The hidden effects

These mechanisms are tending to create artificial incentives to production in some countries such as Germany while concealing the true prices of food products in others (notably the United Kingdom).

The opening of the frontiers has also shown that some preconceived ideas were perhaps slightly off the mark. The main reason France insisted on the Treaty enshrining the principles of a common agricultural policy was that it wished to balance trade relations with Germany, since it feared that German industrial products would overrun the French market. But although this fear has proved justified to a certain extent, competition from Italian industrial products has often been just as keen as German competition.

Another aspect of the hidden effects lies in the harmonization of legislation. The free movement of goods presupposes identical conditions of competition. This means that a given product in one country ought to correspond to the same product in another country. This is valid

both for food products, with all the consumer health protection standards that exist, and also for industrial products. It is interesting to note that while tariff frontiers were removed much faster than stipulated by the Treaty, and the major agricultural regulations were adopted between 1962 and 1967, directives for the harmonization of legislation often remained pending before the Council for five years or more, and the Commission has even started wondering whether it should not lower its sights a bit where harmonization is concerned, in view of the difficulties encountered.

My experience in the European Parliament has led me to believe that each and every one of us remains very much attached to national provisions - a contention that is backed up by the amount of time required for preparatory work in committee or the repeated deferment of parliamentary debates. Admittedly, national provisions are often very important, for by authorizing or not authorizing a given manufacturing process or a given type of packaging they determine the actual conditions of existence of an industrial activity. This is also true at the human level. We all know how long it took to achieve free movement of members of the medical profession within the Community.

II. External trade

The introduction of the common external tariff was part of the logic of the system, and was moreover provided for in the Treaty. However, the worldwide reactions to the creation of the Community could not be anticipated, and they put the Community in a position where it had to negotiate with the rest of the world right from the beginning.

This was when the Community's attitude, and its gradual integration, began to be influenced by what Professor Torelli of the University of Montreal calls external factors (see Revue du Marche Commun no 167, August/September 1973).

Professor Torelli refers to the Dillon negotiations in 1962, and to the Kennedy Round negotiations. Although the former have become a little blurred with the passage of time, the latter are still fresh in people's memories. Members of the European Parliament who were on the External Economic Relations Committee will remember the account given by Mr. Jean Rey, Member of the Commission responsible for trade relations as he then was, of the telephone conversations he had held one week-end with the Ministers of the various Member States just before the last day (or perhaps it was the last night) of negotiations in Geneva. There was genuine solidarity among the Six, although their interests often diverged, then as now. It was a solidarity born of the need for the Community to adopt a common front vis-a-vis the outside world.

Professor Torelli goes on to say that, later on, as the number of preferential agreements with Africa and the Mediterranean countries

increased, the attacks by the USA, Canada, Japan and Australia, among others, gained in intensity. This was particularly the case, he says, when association agreements were concluded with Morocco and Tunisia ? the USA rejected the agreements out of hand. He adds that the Community was also attacked during an UNCTAD meeting in New Delhi. This brought home to the Community the fact that it would have to tackle these problems in a comprehensive way, for example through a Mediterranean policy based on historical links, or through an authentic Community policy of development aid.

The need for such an approach was made particularly pressing by a number of new observations or circumstances.

Among the observations, the Community came to realize that its room for manoeuvre in trade negotiations had diminished because of the level of the common external tariff after the Kennedy Round negotiations ? the Community now had a lower average tariff than any of the other major economic units.

Moreover, when the Community took in three new members, and thus became the biggest importer in the world (36% of world imports, including the USSR but excluding the other countries with centrally planned economies) and the biggest exporter (34 % of exports), it looked as though there would eventually be a genuine free-trade area with the former EFTA countries. At the same time, preferential agreements, as referred to above, no longer covered just a few Mediterranean countries but most of the countries in the region, including Spain and some fifty countries in Africa, the Caribbean and the Pacific, which are signatories to the Lomé Convention which replaced the Yaoundé Convention.

Under the circumstances, these new developments in commercial policy came at a time when the basic characteristics of the world economy were undergoing a radical change. Bad harvests and large purchases by the USSR and India had led to an abrupt increase in the prices of agricultural commodities, and the quadrupling of the price of oil not only made prices in general shoot up but also gave rise to the economic emergence of countries which, until then, had been of little importance in world trade. The West also became a little more aware of the problems created by the backwardness of certain African and Asian countries, where annual per capita income is still less than £ 100 in some cases ; at the same time these countries were splitting up into two groups - those with raw materials and those without.

III. The new instruments

Confronted with all these facts, the Community began to develop new instruments for its relations with the outside world in the early seventies. These instruments can be roughly divided into three categories :

1. Instruments for consultation or cooperation with industrialized countries, since the low level of the common external tariff means that it can hardly be used to influence the course of trade relations any more.

While consultation instruments are an important feature of the trade agreements concluded with a large number of countries, they are even more vital in dealings with countries such as the USA or Japan, which have a determining influence on world trade.

Cooperation agreements have been concluded by member countries with Eastern European countries although one may well ask whether they are not infringing to some extent the principle of a common commercial policy as laid down by the Treaty. The Cooperation Agreement with Canada, on the other hand, was concluded by the Community entirely under the latter's responsibility and would appear to open up interesting long-term prospects, given the complementarity of the economies of Canada and the Community.

2. The field of relations with developing countries is covered by the Lomé Convention, which took over from the Yaoundé I and Yaoundé II Conventions. However, the number of partners is much greater and the Lomé Convention is set in a somewhat different perspective. Although development aid as such continues under the Lomé Convention, in particular through the operations of the European Development Fund, there is no longer any reciprocity involved in the trade aspect. This is more in keeping with the nature of relations between the Community and the developing countries, and also perhaps answers the criticisms of the Yaoundé Conventions made by other industrialized countries.

The Lomé Convention also introduced the Stabex system, which guarantees developing countries' export earnings from certain products under specific conditions.

3. Lastly, a network of agreements has been woven with the Mediterranean countries, based on the historical links between these countries and the Member States of the Community. On the economic level, these agreements provide the countries in question with improved access to Community markets, even though the concessions made by the Community - particularly in agriculture - create difficulties for our own producers. Admittedly, in return the Community is provided with outlets for its industrial exports - whether products of heavy industry or of manufacture - and our concern about supplies of oil and gas is not always unrelated to this policy of concluding agreements with the Mediterranean countries.

The overall effect of the multiplicity of links between the Community and the rest of the world is striking, and these links reveal Europe's leading world role as an economic power, quite apart from the political considerations underlying certain of the ties.

IV. The Community in 1977

But does the Community have the means to cope with this role ?

Notwithstanding the protectionism with which the Community has been charged in the sphere of agriculture - a charge which remains unproven if one considers that its imports of food products amount to 20,000 million u.a. compared with 7,000/8,000 million u.a. for each of the economic units consisting of the United States, the USSR and Japan - the Community may well be considered the last stronghold of free trade, given the low level of the CCT, the non-reciprocal agreements and, lastly, the application of generalized preferences to a very wide range of countries.

This situation, reflecting the Community's attraction for a large number of countries which have found it to be an understanding partner - and, indeed, one which often takes the initiative - would be enviable if it did not involve something of a paradox.

Today the Community is faced with problems of rising costs as a result of the increase in the prices of oil and certain raw materials, with unemployment problems and with problems of competition such as those arising in textiles - where, between 1972 and 1975, production in the Community fell by 11% making 430,000 workers redundant - and in steel (the Japanese steel industry has expanded by 600 % in the last 20 years compared with only 66% for the Community of Nine).

In the face of such problems it is obvious that the Community must reconsider its commercial policy very seriously. The starting point is still a fundamentally favourable attitude towards free trade. Any other approach would be inadvisable, as regards both our supplies of raw materials and energy products and our own exports, which would rapidly be hit by counter-measures taken by our trading partners. A return to protectionism would also involve the danger of adverse effects on competitive capacity, as happened in the past to one or other of the Member States of the Community. Besides, it would mean ignoring the dynamism of external trade as a growth factor, as pointed out by Raymond Barre (see Revue économique no 1, January 1975). Lastly, it could well lead to an internal split in the EEC.

On the other hand, our Community cannot allow its economic potential to be eroded for the sake of principles, not even in just a few sectors (which could increase in number), nor watch a considerable proportion of its labour force being made redundant. This was obviously not what the people who thought up the European Community had in mind. Nor would it be in the interests of the developing countries, since our attitude to them - both in strictly economic terms and from the standpoint of European workers -■ is bound up with our own situation.

It was therefore with good reason that these problems were raised at the London Summit in May 1977. The idea of organized free trade was launched, an idea which has yet to win the unanimous support of the Nine, but which will nevertheless have to be studied seriously since it represents the only way out. There is moreover some hope of attaining this end since in the very difficult sphere of agriculture, solutions in the form of agreements on certain products are already beginning to take shape at world level.

The road to be followed should reasonably be based on the principles of reciprocity, truth, justice and realism.

Reciprocity is an essential principle in trade relations between countries that have reached the same degree of development. One thing is clear regarding this principle : the expected results of the Kennedy Round have not all materialized. The USA, for example, has not abandoned the practice of the American Selling Price, even though its elimination was paid for by concessions from the other parties to the agreement. Since then, the country has adopted the Trade Act, many aspects of which are a cause of concern to us. Lastly, what is one to make of the numerous non-tariff barriers of which GATT has drawn up a list comprising no less than 900 practices. These practices, which are not solely concerned with customs matters proper but also with technical and health aspects, constitute obstacles that are often greater than customs tariffs. The contracting parties take back with one hand the concessions made with the other. The Community must be particularly vigilant with regard to this aspect of trade relations during the Tokyo Round negogiations. Our difficulties of access to the Japanese market are of particular significance here.

Truth : When this principle is mentioned, one immediately thinks of the question of dumping, which, as we know, is a practice that is not always easy to prove and can moreover take very varied forms. It is even difficult to define what dumping is in dealings with the state-trading countries, since they have a totally different idea of prices from that applied in the market economy countries. Admittedly, the Community has taken a number of specific measures, particularly with regard to ball-bearings from Japan, but it is important that the procedures should be made far more flexible and rapid if we are to be able to fight on an equal footing with the United States where almost anyone can make complaints, which, even though they may not necessarily succeed, at least have the effect of blocking trade in a given product for a certain time. The truth principle must also apply to monetary policies ; any discussion on the level of tariffs seems quite pointless if a party is manipulating its exchange rates to an extent that is out of proportion to the actual situation. On this point, moreover, the Member States of the Community now find themselves in a different position from the one they experienced before the energy crisis, since any currency depreciation serves to increase the burden of petroleum product supplies on the balance of payments.

Justice : We mentioned above the Community's attitude towards the developing countries and it must certainly be maintained. But we may well wonder whether the generalized preferences system is functioning properly when we see that only 70% of the total volume of 6,470 million u.a. for 1976 was utilized, that only a small number of countries took advantage of the system and that even within those countries it was not necessarily national firms which benefited. It is with good reason that Hr. Knudsen, my co-rapporteur at this conference, stressed the problem of the application of the rules of origin. This question is indeed a topical one, not only in our relations with the developing countries but also between industrialized countries, since the EFTA countries have presented a request for liberalization of these arrangements. Although the Community may agree to a certain amount of simplification, under no circumstances may it abandon the basic rules governing the concept of the origin of products.

Realism : The problems facing the Community in fact go far beyond the commercial policy alone. Nothing less than the present world balance is at stake. This has been clearly understood by the developing countries, which are seeking via the North-South Dialogue to alter the status quo by pressing for the implementation of an integrated programme for commodities, which may seem justified in principle but is envisaged on such a scale that it is impossible to see it being established in the short term. However, the Community, the originator of the Stabex system under the Lomé Convention, cannot avoid taking part in this debate. It must therefore approach it in a pragmatic and realistic manner.

Another aspect is the transfer of technology, a subject to which a major French daily newspaper has just devoted a series of articles. It is essential that the Community should frame a policy on this subject which is not excessively short-sighted, for there is a danger that these transfers, which temporarily serve to make up a balance-of-payments deficit, may become powerful instruments of competition in the trade field, not to mention the military aspects. Furthermore, these transfers are often made on credit terms the like of which are not even enjoyed by firms in the exporting country.

These, then, are a few ideas suggested to me by the present situation, and I invite the participants in this conference to give them their consideration.

The citizens of Europe called on to vote next spring will certainly be concerned about what the Community holds in store for them at a time when the economic battle is in full swing across the world. It is important that we should be able to give them a balanced but firm answer if we wish to see the continuation of an undertaking to which so many of us have devoted our efforts.

RECORD OF THE DISCUSSIONS WITHIN THE COMMITTEE CONCERNED WITH THEME No 1 : "FREE CIRCULATION OF GOODS ; REALITY OR ILLUSION ?"

Summary report by Mr. Kai NYBORG

Committee No 1 dealt with the question of the free movement of goods. It can be said that this is both a reality and an illusion. We did not spend too much time discussing the two words "reality" or "illusion" but I have the impression that the whole of the committee thought that the free circulation of goods could neither be called a complete reality nor a real illusion. In other words, it is something between the two. Accordingly, I am going to present to you the conclusions which we arrived at. It is not something that we voted about - this would have been impossible in view of the translation problems, which meant that we could not vote on the conclusions.
Doubt exists as to whether goods circulate between member countries as easily as within the various Member States. If this were so, customs checks at frontiers could then be limited to police surveillance alone, in other words to seeing whether there is any traffic in arms, explosives or dangerous substances. With regard to tax, there are national differences. There are also differences regarding health measures. There are technical specifications for industrial products. There are also different customs rates, which prevent the free circulation of goods. This is why an effort must be made to bring about intensive harmonization of national rules in all these areas. This will, of course, take a long time and a practical attempt will need to be made to restrict the number of formalities. This is why the committee recommends a procedure for this free trade,a procedure which must be improved from one day to the next. It will be transitory: after a number of years it must disappear completely. Likewise forms must be simplified and the number of items and boxes on the forms reduced. In addition, national authorities must step up their efforts in favour of reciprocal collaboration on the widest basis possible in order to avoid pointless formalities. For instance, reciprocal recognition of forms must be achieved, formalities must be eased for frontier-zone dealers and traders, which brings to mind the problems arising when a farmer possesses land on both sides of the frontier. The problems arising when such a farmer sells his produce on both sides of the frontier must be resolved. We feel that it would be very worthwhile and useful to facilitate the task of frontier workers. Such people, in exercising their activities, must not be encumbered by pointless formalities.

We recommend a system whereby, after a check on taxes and duties, everything will be calculated on the firms' accounts. Goods with VAT will therefore be exempt from such checks.

Thirdly, the relevant statistics must also be analysed from the customs point of view. The collecting of statistical information must not be based primarily on customs information and forms but research must be undertaken in the firms and the results transmitted to the statistical office,

A procedure must also be finalized as quickly as possible to facilitate the formalities for a whole host of goods in everyday use in the Community or goods which circulate in the Community but are not sold there in their entirety, such as machine tools, the samples used by sales representatives, articles intended for fairs and exhibitions and also agricultural equipment in the frontier zones of the Community.

Fifthly, health checks at internal frontiers must be done away with. Here we have two alternatives: to harmonize or not to harmonize. Vie feel that harmonization must go ahead as quickly as possible. A health test which takes place in one country should be valid for the whole Community and be recognized by all Community firms. It must also be possible, in doubtful cases, to undertake sample checks.

The Commission and the Member States must therefore pay greater attention than at present to the existing rules so that checks at frontier posts are simplified from the angle of the formalities involved and speeded up.

The committee recommends that thè Commission draw up as quickly as possible a realistic timetable for attaining the objectives we have set ourselves. That is for moving goods between the Member States as rapidly as within one of the Member States.

I would take this opportunity to say that everyone in our Working Party regretted the limited amount of time available to us. We were unfortunately unable to arrive at detailed conclusions but only at general considerations.

RECORD OF THE DISCUSSIONS WITHIN THE COMMITTEE CONCERNED WITH THEME No 2 : "THE EUROPEAN CITIZEN AND THE CUSTOMS UNION".

Report by Miss E. ROBERTS

I should like to say straight away how much the European consumer organizations appreciate the initiative taken by the Commission in organizing a conference and the idea of inviting them to it. European consumer organizations believe in the ideals of the European Community. We are fully aware of the criticisms levelled at the European Community in the various Member States and we would like all the Community's positive achievements, which are not adequately publicized, to be brought to the attention of the general public, as happens in the case of errors made by the Community, and I must add that this idea was in our minds when we came here. With regard to our discussions I should now like to read to you the specific recommendations made by our group. All these recommendations are of an essentially practical nature.

1. Our committee notes with satisfaction that a brochure will be published by the Commission's press and information departments on the present state of the Customs Union. The committee recommends that the customs departments of the Commission should take immediate steps to give information to the general public about whatever advantages have been achieved for them by the establishment of the Customs Union and notably by the abolition of customs duties within the Community. Our committee hopes that it will be possible to provide the holiday traveller with an explanation not later than next June (before people leave for their holidays).

2. Our committee notes the progress made in the Benelux countries in achieving free movement of people and goods within Benelux. We ask that the Commission pay particular attention to what has been achieved in those countries so that similar progress can be made in the Community. We know that it is annoying to tell one country that another has done better than it but frankly we could not fail to note that the Benelux countries have really done something extraordinary in this area and we feel that the other countries could learn from them.

3. The committee notes the illogical charges which appear to the citizen as customs duties when goods are sent by post. The committee recommends that such charges should be investigated and abolished.

4. We understand that the Commission has already recommended to the Council that Community residents should be exempt from tax and excise

duties on goods such as alcohol and tobacco. The committee believes that the proposal presented is too modest and recommends that the Council should go further.

5. The committee recognizes that passports are not strictly speaking the affair of the Customs Union. Passports are, however, extremely important to the citizen as tangible evidence of Community solidarity. We recommend that immediate efforts be made to break the deadlock and produce a European passport as soon as possible. As a British citizen I feel that some of the objections raised in the Member States are ridiculous and frankly I hope that a degree of common sense will prevail and that all the minor difficulties encountered in the preparation of this European document will be avoided.

6. The Commission notes that a list of obstacles by which motorists are confronted at frontiers was drawn up by one of the federations of the ITA and submitted to the President of the Commission in April 1977. The committee recommends that this list and other examples of the same kind affecting motorists and other travellers should be examined and dealt with. Of course these appear to be minor matters when seen in an official document but the discussion within our committee on this matter this morning was particularly lively. Everyone had an anecdote to tell. All these minor problems are bad for the Community's image. If they could be resolved it would be marvellous.

7. The committee notes the existence of a phenomenon which allows goods to be imported from other states either without payment of tax or with payment of tax both in the country of origin and in the country of importation. The committee recommends that this anomaly be ended as soon as possible.

8. The committee recommends that the European Parliament, the Economic and Social Committee, consumer organizations and other pressure groups for the citizen in European countries should exert all possible influence on the Commission and the Council to remove the obstacles to the free movement of persons and goods in the Community which still exist. We know that, generally speaking, it is another case of laws, taxes, financial agreements, a whole host of systems of fairly ridiculous documentation. We should like all the organizations to which I have referred above to exert pressure on the Commission and the Council to put an end to these difficulties.

9. The objective of completely free movement could be achieved more quickly if the creative talent which goes into devising protective measures were used instead to do away with such measures.

RECORD OF THE DISCUSSIONS WITHIN THE COMMITTEE CONCERNED WITH THEME No 3 : "COMMUNITY CUSTOMS RULES : THE NEED FOR THEIR COMPLETION"

Report by Mr. Hans LAUTENSCHLAGER

As Chairman of the third committee may I convey to you the following report. The theme "Community customs rules : the need for their completion" has proved during our work to be an extremely wide subject. It turned out that in addition to the customs rules, their development to date and their effect on the economy, trade and traffic, other fundamental fields must be considered when drawing up a future programme. Thus, it is essential that special attention be given to the relevant provisions of criminal and administrative law. Furthermore, due to the general nature of the theme, it was impossible to avoid certain observations encroaching on the subjects of the other three committees.

In detail, we can present the following facts and recommendations :

1. Coordination of the customs rules

In discussing this subject our working party recognized that different aspects have to be considered :

- first,there is the question of abolishing the contradictions which exist in the Community legislation. We were thus able to establish that in the field of the common agricultural market, rules have been developed which cannot be incorporated unrestrictedly into the structure of the common customs rules. These have led to confusion when they have been applied in practice.
- secondly, the committee came up against considerable resistance with regard to coordination of Community law with national law. This is largely due to the historical development of the national legal structures, which often prevent the Nine from reaching a compromise. A most significant example in this respect can be seen in the provisions of laws relating to customs penalties, which appear to be very closely linked with the sovereignty of the Member States.
- finally a certain friction arises from the close link between Community customs rules and excise duty rules which are still largely applied without uniformity.

These objective difficulties, Mr. Chairman, have not been underestimated by our committee. However, it does feel, on the other hand, that a certain "weariness" with Europe lies at the root of the stagnation in the harmonization process. Because some of those who up to now have

been driving Europe forward now seem to adopt a resigned attitude, a certain free-trade area mentality has developed, and our committee views this with great concern. Its first recommendation therefore aims to counteract this with an uninhibited consciousness of the idea of the customs union, which means much more than just a tariff union.

In practice this means an uncompromising use of the legal form of the regulation, which creates directly applicable law in all Member States. Only in this way can clear and unequivocal law be created. The committee thus came secondly to <the conclusion that the problems which arise from the multiplicity of channels set up by existing provisions can best be resolved by the extensive use of regulations.

2. Quality of Community customs legislation

Any efforts undertaken in this regard however, would be doomed to failure unless the quality of the texts were considerably improved. In the opinion of the working party such improvement of the quality would have to include not only simplified and more comprehensible language, but also a gradual reduction in the number of texts. With regard to the latter, the codification which has already been introduced in some branches of the law offers wide possibilities. The new version of the rules on Community transit may be quoted in this respect.

Agreement was reached in our committee that a limitation of these efforts to the narrow field of customs legislation would not lead to satisfactory results. Rather, the extension of the harmonization process to other fields of legislation which relate to import procedures should be encouraged.

The discussion within the committee showed that to date experience in harmonization merely of the bases of customs legislation had not given satisfactory results. Some representatives of the customs authorities of the Member States did however give warnings about perfectionism, which is often encountered in the agricultural sector.

On the other hand, the aim was recognized of making available to the citizen of the Community, legislation which would largely guarantee him the same advantages in all Member States which up to now he enjoyed on a national basis. This includes drawing up individual rules which are of fundamental importance for those concerned. Is it really impossible to produce forms of a uniform nature, content and description throughout the Community, with which, for example, imports from third countries are effected ?

Such a development would however be welcomed not only by Community citizens but also by trading partners outside the EEC. The European exporter considers it quite natural and agreeable that his exports to the United States of America are subject only to one uniform

system of customs legislation. The other way round, however, the American exporter finds that he has to face nine different and elaborate procedures when exporting his goods to the Community. It is not necessary to point out that a considerable simplification of the customs legislation, which successful harmonization would involve, would result in a considerable reduction in commercial and administrative costs.

Up to now my comments have dealt largely with trade with third countries. However, the problem of the quality of legislation also arises in trade relations between the Member States. Some members of the committee felt that it was necessary to point out that a clear distinction should be made between pure customs legislation and other trade regulations, in particular excise duties and other taxes and how they are levied at internal borders. Articles 12 et seq. and 30 et seq. of the EEC Treaty do not however really offer the possibility of implementing the suggested clear distinction with all its consequences. On the contrary, it must be clearly borne in mind that these rules of the Treaty have as their basis an overall concept of free movement of goods between the Member States. This must be reflected in the results of future work.

In the committee's view the keystone of all these considerations must be the common customs legislation. It was agreed that this objective can only be achieved gradually. However, a certain parallelism, in particular with regard to working out the basic concept of such an undertaking, was not excluded.

3. Customs union and the law to be applied to infringements. Customs union and legal protection

If the implementation of the customs union legislation is not to remain a rather "patchwork" affair, harmonization of criminal law must also be considered. Your working party soon realized that a differentiation must be made between minor infringements and violations of the law and more important tax evasion. Those participating in the discussion felt that the minor infringements should be excluded from the field of criminality in its real sense. A basic precondition in this respect is an indispensable abolition of the presumption of culpability, as it exists in certain Member States, as a result of a fiscal attitude developed over the centuries and based on the concept of State sovereignty. This is even more relevant since the European Court of Justice, in its Decision in case 41/76 of December last year, laid down the basic principles in this direction.

The committee came to the conclusion that the group of minor infringements should be classified within a Community rule on irregularities. This rule should also contain a list of facts which are to be taken into consideration in this respect. Certain participants felt that

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it was particularly urgent to rule on cases which arise in connection with infringements of procedures relating to Community transit.

With regard to the field of more serious tax offences, it was established that the criminal laws and procedure in the Member States differ greatly. From this one must conclude that harmonization of this criminal law must also be commenced forthwith. The isolation of the criminal law on tax evasion might however be hindered by the fact that it is intertwined with other criminal law.

Various participants pointed out the importance of differentiating between questions of penalizing infringements and the opportunity for the citizen to defend hinself against legal charges by the customs administration. This latter possibility of providing legal protection for oneself is at present not regulated in a uniform manner in the Member States. Differences exist, particularly in procedural law, in the organization of courts and tribunals and in the number of courts available. It was agreed that these differences could not be resolved wholesale within the foreseeable future. However, it was suggested that a permanent Community financial tribunal for disputes relating to imports and exports be considered.

4. General objectives

In dealing with the individual aspects of customs legislation the general objectives of such a task should not be forgotten. Modern customs legislation should above all be characterized by its close relation to life. This means, in particular, flexible legislation, which is able to adapt to every significant development in commercial and industrial policy. In this respect reference was made to a trend towards promoting quantitative import controls. This amounts to a weakening of the traditional control function of tariff legislation.

5. Mr. Chairman, I should like to conclude with the following comments :

a) the danger of the "free-trade area mentality" spreading any further is to be vigorously opposed;

b) the Commission is urged to make far more frequent use than it has done to date of Article 169 of the Treaty in cases of infringements of the Treaty;

c) the importance of the judgments of the European Court of Justice for the development of the customs union cannot be stressed enough;

d) the Commission is requested to make greater use than it has done in the past of its right of initiative to create a Community customs law;

e) these recommendations of the working party are based on the recognition that the customs union represents the essential basis for all fields of integration.

RECORD OF THE DISCUSSIONS WITHIN THE COMMITTEE CONCERNED WITH THEME No 4 : "CUSTOMS UNION AND EXTERNAL TRADE"

Summary report by Mr. Tom NORMANTON

I should like to inform you of the results of the work of committee No 4 on "Customs Union and external trade".

Generally speaking, there was support for the various points raised by Mr. Cousté and Mr. Knudsen in their respective reports. It has to be admitted, however, that there are differences of philosophy on this matter among the Member States. One of the members of committee No 4 felt that Mr. Cousté's report was too protectionist.

Our conclusions are as follows :

1. There is a need to update and harmonize the mass of agreements concluded with non-member countries, especially as other, more far-reaching agreements might be contracted, for instance in the context of enlargement of the Community or with COMECON.
2. Although the commercial policy was not examined our Committee reaffirmed the view that the Community must continue to work for the expansion of world trade and the Community's growing share of that trade. The climate for economic growth will, however, in future be very different from that prevailing before 1973, with the result that policies in general and customs procedures in particular must undergo changes.
3. The customs procedures in operation today are basically the same as those applied by the Member States at a time when international trade was a mere fraction in value and volume of what it has become today. If trade is to continue to grow there is a vital and urgent need to update these procedures.
4. The "mechanics" and speed of customs procedures have fallen ever further behind the mechanics and speed of the physical shipping of goods. For instance, airborne containers spend 98% of their life in customs and only 2% in transit.
5. There is a conspicuous lack of coherence between the formulation of Community policies generally and customs facilities and procedures. In the light of current political and economic thinking it can be expected that major changes involving industrial, technological and defence restructuring will impose upon customs an even greater responsibility and demands for which the Community is ill-prepared, while the Member States are unwilling to act.

6. Among the changes which must be made to the customs systems the following may be mentioned:

   a) greater use of data processing and the acceptance of the legitimacy of computerized documents. Typed and manuscripted systems must increasingly give way to data-processing techniques.

   b) An effort should be made to persuade customs administrations in non-member countries to adopt modern procedures, harmonized with and modelled on Community procedures wherever possible. The Community, as the largest exporter/importer in the world, has great leverage here and should use it.

   c) New Community procedures should have as their ultimate objective a uniform world-wide system rather than add a new Community system to an already diverse patchwork.

   d) The Commission should establish teams of experts and training schools for officials of the customs administrations of developing countries. The same training structures would be of help also to small-business exporters in the Community, a category which is particularly allergic to paperwork.

   e) Tariff schedules and classifications are too complex to be comprehensible to traders and too complex to be workable by the customs administration. Simplification in these areas is long overdue.

   f) Origin rules are quite out-of-date and should be rationalized and simplified. Certificates of origin should be urgently investigated and anomalies eliminated. These certificates should be banned in intra-Community trade.

   g) Customs procedures for imports are improving progressively although for exports they appear to be chaotic.

7. The work of the customs administrations will increase, even when the systems have been simplified, because of the growth in importance of VAT and perhaps Community requests for more statistical information.

8. A passing reference to "certification" required by Arab states highlighted some of the political factors affecting the customs union.

9. There are signs of a certain amount of frustration among traders at the inadequacy of machinery to settle disputes between them and the customs authorities. Recourse to the Court of Justice is too complex, too costly and too slow in the majority of cases. A new, simplified procedure or the creation of an administrative tribunal is needed.

10. The progressive reductions in the customs tariff have reached a point where tariff duties constitute only a minor factor influencing the pattern of world trade. Non-tariff or procedural barriers have a far greater influence and must be dealt with rigourously.

11. This Conference has exposed many defects and shortcomings and highlighted the need for the Commission to report to the European Parliament and the Economic and Social Committee on the progress made and to convene a second conference at the end of 1978.

COMPOSITE RECORD OF THE PLENARY SESSION DISCUSSIONS

The dangers of lapsing into protectionism

There is much support for the need to avoid greater recourse to protectionism, particularly in the context of intra-Community trade, where customs duties have recently been abolished.

There are signs that growing use is being made of Article 115 of the Treaty, which involves the presentation of origin certificates to customs in trade between Member States of the Community, a practice already condemned by the Court of Justice of the Community as being incompatible with the provisions of the Treaty regarding goods of Community origin. The Commission also considers that the same applies to goods imported from non-member countries in free circulation in the Community. While an origin certificate can no longer be demanded in intra-Community trade an indication of origin could, however, appear on an existing customs or commercial document.

The period of economic crisis, coupled with the threat of protectionism and partitioning of the national markets, however, calls for a reassertion of Community orthodoxy. Truly Community-minded solutions must be found in the sectors where regulating measures are taken. Whether quotas are established for the various goods in question or customs procedures applied to imports, Community-minded solutions must be found. A Community quota which is then translated into a number of separate national quotas contains the germs of a resurgence of economic nationalism.

At the same time it is impossible to speak of Community measures unless the procedures for applying them are also of an authentically Community character. The harmonious and equitable development of the Community economy therefore depends, inter alia, on the reliability of the "customs line" which should surround this cconomy in a uniform manner. It has accordingly become urgent for the Community both from the angle of improved regulation of trade with non-member countries and from that of the development of intra-Community trade that the proposal for a Commission regulation on the customs clearance of goods be adopted by the Council. In other words it is felt increasingly necessary to complete the Customs Union instead of being content with a free-trade area, and this would seem to be a real sign.

Problem of fiscal frontiers

It should be noted that in the short and medium term any attempt purely and simply to abolish intra-Community controls is unrealistic: since it has to be taken for granted that controls will remain in intra-Community trade for the time being, efforts should be concentrated on simplifying procedures.

While it is true that the introduction of the Community transit system was a first major step towards simplifying trade formalities, even today the system is capable of being further improved. Various proposals on this matter are at present being examined, the aim of one of which is to narrow the field of application of Community transit by endeavouring to define categories of goods to which the internal procedure now no longer need be applied.

A category of this kind is that of goods liable solely to VAT. Where surveillance is still necessary this could be undertaken via the controls used within each of the Member States.

The fact that trade statistics are collected via the customs administrations is another reason too often used as a justification for maintaining customs formalities at intra-Community frontiers.

Although it recognizes the importance of these statistics for the national governments the Commission feels it should begin the studies needed in order to start dismantling customs clearance, as the latter hardly seems to be compatible with a customs union within which customs duties have been abolished.

Tax-free shops

It is recognized that it is anachronistic in a customs union which is progressing towards an economic union that certain categories of Community citizens should still be able to purchase goods free of tax and that certain traders should be able to obtain supplies of tax-free products. Discrimination also exists according to the type of transport used: the traveller bn the European mainland who chooses to go by train or private car does not have access to duty-free articles. This situation amounts to discrimination between the various categories of taxpayer, and is quite incompatible with the provisions of the Treaty.

Furthermore, it appears that in some tax-free shops prices may be higher than the prices including taxes charged in retail shops within the normal economic market. There are therefore good reasons for believing that consumers would prefer anomalies in this field to be ended in accordance with the Treaty.

Staff

The desire to see progress made in the development of the customs union and in the field of measures equivalent to quantitative restrictions is shared by everyone. The rate of progress is, however, linked directly to the number of qualified staff made available to the relevant Commission departments and it must be said that so far the number of staff has proved inadequate for the various tasks devolving upon those departments. Although opinion on this matter is not unanimous, it is accepted that the relevant Commission departments should be reinforced so as to enable them to make progress at the desired rate.

CLOSING ADDRESS BY Mr. LAMBOTTE ON BEHALF OF VISCOUNT DAVIGNON

As we come to the end of this Conference, the first conclusion that may be drawn is that no one has come out against the actual principle of the Customs Union. No one has protested at the abolition of customs duties between the Member States; no one has questioned the value of a common customs tariff. It is clear that so far the Customs Union has lived up to expectations very well. This is something that is not perhaps fully appreciated by some? I am thinking here not so much of those who are involved with the Customs Union from day to day, as of the ordinary people of Europe. As emerges from the findings of committee No 2, which were presented yesterday by Miss Roberts, we need to find ways of keeping the citizens of Europe better informed of their rights and duties with regard to the Customs Union. This could form the substance of some practical initiative in the not-too-distant future.

Each of the Committees has pointed out a number of areas where substantial progress could be made towards completion of the Customs Union. I am thinking in particular of the free movement of goods. One thing that can be said without reiterating the conclusions so ably presented by Mr. Nyborg as Chairman of that committee, is that as things stand at present with the Customs Union, the advantages to be gained from further progress towards completion of the Customs Union are partly neutralized by the problems that would be created in other areas. This is the case, for example, with controls inside the Community. Our discussions on this subject have shown that the existence of physical checks at Community frontiers offers the national customs departments various safeguards, since it is on the basis of these checks that they can accomplish a whole host of other procedures relating to statistics, defending the national currency or other matters which strictly speaking have nothing to do with the Customs Union. Naturally, this argument was met by the retort that it leads to a vicious circle, since the tendency would be to say that as these controls exist anyway, let us make use of them for other purposes, thus blocking any progress towards easing them.

In the very short term, it hardly appears realistic to expect to do away completely with frontier controls. This is a sensitive area, and we must realize that progress is possible here only if we advance towards European Union in other ways too. In the last analysis, the only way out of this impasse where every step towards Customs Union raises problems in other fields is, as Mr. Spinelli pointed out, to remember that the ultimate aim of the Customs Union is the union of the peoples of Europe. Here the European Council's recently reiterated intention of directing the European Community's efforts towards Economic and Monetary Union underlines both the importance and the

limitations of the progress we are seeking in the Customs Union. In many instances, it is possible to obtain freer movement of goods only if progress is first made towards Economic and Monetary Union in other areas, such as tax harmonization, monetary union proper, and perhaps commercial policy as well. The value of putting this debate in the context of the plan to revive Economic and Monetary Union is that it will enable all concerned, particularly those responsible for taking the decisions, to appreciate how progress in the different fields is Interrelated. And here it is the Commission's job to make it clear that the Customs Union is an integral part of any progress towards the economic integration of the Community's Member States. In return, we may hope that each step on the road towards the greater union of the peoples of Europe will contribute to the development of the Customs Union. In particular, going beyond the free movement of goods, we shall probably need to expend a great deal of imagination, thought and money on giving the citizens of Europe more tangible signs that they do indeed belong to the Community. There are many obstacles which prevent spectacular strides in this direction, and we will therefore have to find some way of both demonstrating, with a suitable presentation and the necessary explanations, that a number of things have been achieved beyond what was strictly possible, and enabling people to feel that they are part of the European Community.

It is high time for a step forward in this direction and a show of political will on the part of the Member States, particularly since direct elections to the European Parliament are just around the corner, and if no signs of progress are forthcoming on details of this sort we might well find that the very people most affected by the Customs Union, the ordinary people of Europe, will lose interest in the whole venture.

I would like now to pass on to the two final topics-developments in the field of customs rules and in methods of implementing commercial policy measures as a whole. Here substantial progress is probably possible. The conclusions reached by committees Nos 3 and 4 show that although there are technical problems in introducing a system as comprehensive as the one organized at Community level for customs disputes, there are nevertheless no outside constraints in these fields comparable to those involved in that of the free movement of goods. Progress is therefore easier to achieve in the field of customs rules, since the problems posed by the lack of a harmonized tax system, for example, are irrelevant, whereas they do constitute an obstacle to the liberalization of controls on intra-Community trade.

It is in the interests of everybody, the national customs administrations as well as the business world, to develop the full potential of the Customs Union, in order to put an end to what may be called distortions of treatment between firms, arising from the fact that a single set of legislation is being applied under national rules which still differ widely, often for perfectly legitimate reasons. This situation means that one and the same customs operation will not have exactly the same economic significance in different parts of the Community.

Quite apart from this "distortion" in the treatment of firms, any progress towards a more consolidated, more homogeneous customs union is of benefit to the whole Community economy. The report by committee No 4 showed quite clearly that the complexity and diversity of the Community's system of agreements, and the commercial policy measures forming what we have called its external customs régime, are paid for out of public funds. In our present straitened circumstances, wherever it is possible to cut back on activities which are not absolutely essential, we ought all to make an effort to do so; that has been one of the major findings of this Conference.

In conclusion, I should like to say that Mr. Davignon attaches a great deal of importance to your discussions here, to the findings of your committees, and the ideas and suggestions which have emerged. I think the Commission and the various national authorities involved in this field will find that there is a great deal of work for them over the next few years. This being the case, I am sure that we will all feel the need to carry on with the dialogue which has been started, and take it on to a more specialized level, without losing the freshness of tone which has been one of its characteristics. In this forum we have been able to talk freely about the real obstacles - and others - to the practical implementation of the Customs Union, and I can think of no better way to plot out a surer road to progress towards the final completion of that Union.

European Communities — Commission

Record of the Conference The Customs Union: Today and tomorrow
Held in Brussels on 6, 7 and 8 December 1977

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A Conference entitled "The Customs Union: Today and tomorrow" was held in Brussels from 6 to 8 December 1977 at the initiative of Viscount Davignon, the Member of the Commission responsible for the Customs Union. The main objectives of the Conference were:

to seek solutions to the obstacles impeding achievement of the Customs Union,
to make public opinion more aware of the Customs Union.

Under the chairmanship firstly of Mr Pierre Werner, former Prime Minister of the Grand Duchy of Luxembourg, and then of Mr Kai Nyborg, Member of the European Parliament the Conference brought together Members of the European Parliament and of the Economic and Social Committee and representatives of the national customs administrations and of the various sectors particularly concerned with customs problems (trade, industry, transport, tourism, consumer organizations, etc.).

The objectives were pursued on the basis of four main themes, each one of which dealt with a different aspect of the Customs Union. The themes in question were as follows:

1. Free circulation of goods: reality or illusion ?
2. The European citizen and the Customs Union.
3. Community customs rules: the need for their completion.
4. Customs Union and external trade.

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