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**Agreements with the countries
of the European Free Trade Association
not applying for membership**

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AGREEMENTS WITH THE EFTA STATES NOT APPLYING FOR MEMBERSHIP

On 22 July this year, the enlarged Community performed its first act of international policy in signing, with Austria, Iceland, Portugal, Sweden and Switzerland,¹ free Trade Agreements in the industrial field also covered by the Treaties of Rome (EEC, Euratom) and Paris (ECSC).

In doing so, the Community has well and truly borne out the affirmation made by the Commission in its Opinion sent to the Council on 21 January 1972 concerning the Accession negotiations and according to which: "The enlargement, while protecting the internal cohesion and dynamism of the Community, will help to strengthen its part in the development of international relations."

But in reaching this conclusion, it must be remembered that it was during the Hague Conference of Heads of State on 2 December 1969 that the political decision was taken to start negotiations with the four European countries applying for Membership, of whom three are Members of the European Free Trade Association (EFTA). Para. 14 of the final communiqué from the Conference said, "As soon as the negotiations with the applicant countries have been opened, discussions will start with the other Member countries of EFTA as requested on their position in relation to the EEC."

All the Member countries of EFTA not applying for Membership asked for such discussion to be opened.

The initial outline of the Community's approach to its future relations with the EFTA countries in question was prepared during this first half of 1970 and presented as follows by the Council Chairman, Mr Pierre Harmel, during the first meeting concerning the negotiations with the applicant countries, which was held in Luxembourg on 30 June 1970:

"The Community is prepared to open discussions with the European States, Members of EFTA who have asked for Membership in the Community. The discussion would centre on the quest for possible solutions to issues raised by the enlargement and thus make it possible for these States to contribute to the work of European construction.

Regarding these discussions, I reiterate that the decisions taken at the Hague mean that an enlarged Community can only be conceived in terms of equal rights and obligations for all the Member States.

¹ Following the resignation of the Finnish government a few days before, an identical agreement with the Community was simply initialled by Finland on 22 July 1972.

The Community could give its agreement for the discussions to begin next autumn through a meeting at ministerial level with the countries concerned who so desire it.

The agreements concluded with the countries concerned would commit the enlarged Community; therefore, the appropriate terms should be sought which will allow the applicant States to be brought in good time into the preparation and conclusion of the said agreement.

For practical reasons and in the interests of all the countries involved, the Community deems it desirable that these agreements should come into force simultaneously with the Accession Treaties."

In the autumn of 1970, the Community worked out the basic principles for negotiation with these countries, concluding this preparatory task with the Council meeting of 10 November 1970.

On the same day, the Council Chairman, Mr Walter Scheel, met the Swiss, Swedish and Austrian Delegations and on 24 November those from Finland, Portugal and Iceland. At these meetings, the Council Chairman declared that the Community was aware of the ample contribution which the non-applicant countries had made and could in future make to European cooperation. He also expressed the conviction that these countries would understand how concerned the Community was to preserve its own construction all the more in that it had been the nucleus from which European unity had sprung. "The Community feels", said the Chairman, "that the solutions to problems arising must be sought in such a way as to safeguard completely the autonomous powers of decision of the enlarged Community, its common policies, its smooth running and its development prospects". Moreover, "the international commitments to which we subscribe especially those of GATT will have to be honoured." And lastly, "neither we nor yourselves want to see new barriers put up against inter-European trade..."

Development of the Negotiations

The negotiations were carried on in two stages. The first one consisted of exploratory talks to define the size of the problem. An initial round of exploratory talks led by the Commission between 16 December 1970 and 8 January 1971 was followed by a second more detailed series, affording a more thorough investigation, between 22 February and 2 April 1971. This allowed the Commission to write up a complete Report which was sent to the Council on 15 June 1971. Meanwhile the Community reached the nucleus of an agreement with the countries applying for Membership based on the overall

framework of the Acts of Accession and especially on the industrial "folio" (the pace of customs disarmament and the setting up of the common external tariff by the applicant countries), which clarified the outlook on possible solutions to be put to the non-applicant EFTA States.

During its session of 29 November 1971 the Council was able to give the Commission its mandate to open the negotiations as such which took place over five rounds:

- From 3-18 December 1971
- From 16-28 March 1972
- From 7-21 June 1972
- From 5- 6 July 1972
- From 13-20 July 1972.

The Content of the Agreements

The various Agreements can all be marked with one characteristic in that they all bear out one principle—the free-trade of industrial products—and determine all the necessary and specific conditions to carry out this principle.

But before getting that far, the Community had found itself faced with the requests from the Swiss, Swedish and Austrian Delegations not to confine the Agreement to trade problems alone. Allowing for differences according to the special interests of their countries, the Delegations referred to several aspects of Community projects such as the removal of technical barriers, harmonization of laws, agreements made under Art. 220 of the Treaty, etc. They also registered the interest taken by their countries in past and future moves for Community development, especially in the areas of industrial policy, energy policy, technology, environment, economic and monetary union, etc.

The Community felt throughout the negotiations that free-trade in the industrial field was the absolute limit of commitments regarding the non-applicant countries, which it could make at this stage without too much risk to its own running and development. The Community construction is an entity based on common rules, special disciplines and global objectives: the Community's goals in economic integration cannot be attained if there is not full participation in this organization of which all the elements are interdependent. Now, the Community rules and disciplines cannot be defined and administrated outside the Community's institutional system, which is already complex enough for it to be unable to carry additional procedures for consultation and institutional cooperation.

One result of this initial line-up by the Community governed the form itself of the Agreements, strictly bilateral in character, and which were thus better fitted to meet the needs, sometimes divergent, of some non-applicant countries.

A. General Framework of the Agreements

Every Agreement is headed by a preamble defining its scope in general terms. It stresses clearly that the various Agreements were concluded when the Community was enlarged and that the aim is to consolidate and amplify the existing economic relations between the partners and to ensure, while observing fair conditions for competition, the harmonious development of their trade. The preamble also affirms that these Agreements conform with the provisions of GATT.

Except for the Agreement with Finland, the preamble states that the contracting parties are prepared to examine the scope for developing and amplifying their relationships and if it seems of value to extend them to areas not covered by the current Agreements.

Inversely to what is contained in the other preferential Agreements made by the Community, these include an Article (an integral part of the Agreement) aimed at a number of objectives; namely, to boost economic activity, improve living and working conditions, expand production and promote financial stability.

Lastly, the contracting parties consider that this way they are helping, by the removal of technical barriers to trade, towards the harmonious development and the expansion of world trade.

In defining these objectives the Community with its partners was keen to stress the value it put on the expected quantitative aspect of development of trade and perhaps even more on the qualitative improvements to be hoped for in concluding such agreements.

B. The System for Industrial Products

a) *Scope of Application*

The Agreement applies to products under chapters 25 to 99 of the Common Customs Tariff (CCT), excepting certain agricultural items such as ovoalbumine, cork, flax and hemp. The Agreement also covers processed agricultural products.

b) *Schedule for Phasing Out Customs Duties*

The schedule is the one adopted in the Accession Treaty which provides for phasing out, in five stages of 20% from 1 April 1973 to 1 July 1977, the customs duties and fiscal customs charges.

This parallel approach allows both free trade to be maintained between former partners of EFTA and at the end of the temporary period for Member States of the Community to be treated equally in their trade relations with the EFTA countries.

But an exception is made for Austria since the temporary Agreement with her comes into force from 1 October of this year which will give her a tariff advantage for 18 months. This applies regarding the other EFTA countries as well as the Acceding Members.

Similarly to the schedule regarding the basic duty in which successive cuts are to be made, the same reference date was kept as for the Accession Treaty; namely: 1 January 1972. Naturally allowance will be made after this date for the single customs reductions resulting from agreements made in connection with the Kennedy Round (American Selling Price) and from the Agreement on clock-work mechanisms with Switzerland.

c) *The System for Certain Industrial Products*

It should be first mentioned that no industrial product has been excluded from the Agreements and that the initial tariff cuts begin for all of them from 1 April 1973. But it proved necessary both for the Community and her partners to provide special systems for certain products. This scheme anticipates a lengthier phasing out than for the standard one.

— *Paper*

The dominant position in this sector enjoyed by Sweden, Finland and Austria on the world market made the Community fear that the sudden opening of frontiers would endanger this sector of Community industry, all the more in that those countries are at the same time producers of finished products and suppliers of raw materials. The Agreement therefore provides for phasing out customs duties over 11 years (1 January 1984).

But for a large portion of products coming under Chapter 48 of the CCT, a global quantity is provided for imports from Sweden, Finland and Austria. This measure allows the Community to reintroduce the duty applicable to non-Member countries according to certain terms, for all quantities exceeding the amounts fixed each year.

It is only in this field that the Agreements depart from the principle under which no new duties should be brought in between the Members of EFTA. In fact, Denmark, Norway and the United Kingdom will have to progressively raise their customs duties against former partners. But this measure is considerably tempered by the option those countries have of opening each year progressively duty-free tariff quotas in relation to their former partners.

— *Ferrous, non-Ferrous and Precious Metals*

For these products an extended phase-out is provided, running up 1 January 1980 with global quantities.

— *Clockwork Mechanisms*

Solely in the case of Switzerland has the phase-out scheme been altered and that affects only the minimum levy. This has but a slight economic effect since, even in the Swiss Delegation's opinion, this exception would cover only 5% in value of Swiss exports of watches to the EEC in 1971.

— *Processed Agricultural Products*

By reason of the special nature of the rules laid down by the Community, it became necessary to provide special conditions for these products so as to avoid any ill effects of concessions here on the common agricultural policy. This is why concessions were provided on only the fixed element of customs protection of these products with none allowed on the variable element. The variable element is to compensate the gap between world prices and internal EEC prices of basic agricultural products. Most of the Community's partners have made offers of comparable economic scale.

d) *The Rules on Origin*

The rules on origin had to be defined in order to avoid traffic diversions due to the fact that within the compass of free-trade defined in these Agreements and contrary to what exists when there is a customs union meaning there is no common customs tariff. These rules fix the degree of work or processing required for a product to take on the origin of a contracting party and thus benefit from the preferential system.

The rules are largely similar to those already worked out by the Community in its dealings with other non-Member countries. But they obviously allow for the special ties between European industrialized States and the high degree of industrial division of labour.

C. Agriculture

Here the Agreement simply expounds a principle and a procedure. The principle affirms that the contracting parties are prepared, while respecting their agricultural development policy, to foster the harmonious development of trade in the agricultural produce not covered by the Agreement. This then allows the different parties complete freedom in implementing their agricultural policy. Nevertheless, a procedure is provided which, within the administrative body, would allow investigation of problems possibly arising in the trade of agricultural produce.

Besides the negotiation an exchange of correspondence provided a set of independent measures for certain agricultural produce and which should apply from 1 January 1973.

D. Special Systems covering Portugal and Iceland

Owing to the economic structure of these countries, marked by a lesser degree of development and the considerable importance of their agriculture, especially in exports, the Community committed itself to concessions over agriculture. For Portugal, they apply to fish preserves, tomato concentrates and some wines. For Iceland they involve fisheries.

Similarly, in the industrial sector, the Community agreed that these two countries phase out their customs charges on an extended schedule (1 January 1980 for some products, 1 January 1985 for others).

E. Global Measures in the Agreement

No more with the EFTA countries than with other non-Member States could the Community see its way to achieving industrial free-trade without taking suitable global measures to avoid distortion arising vis-à-vis the Community industries. This is why a whole series of traditional measures was provided in the free-trade Agreements and concerning the following:

- non-discrimination over taxation;
- non-discrimination over payment and trade credit;
- exception clauses concerning public safety, law and order;
- protection clauses for: sectoral and regional problems, tariff disparities, dumping, balance of payments problems, breaches of the obligations written into the Agreements.

The only exception made in the jurisprudence laid down by the Community in concluding agreements with non-Member countries was in the field of competition rules. The explanation lies in the fact that the Community's partners this time are highly industrialized countries and that lack of joint disciplines would mean serious risk of distortion in competition and threaten to impair a harmonious development of trade.

The rules provided for competition are sighted on the restrictive practices which would be incompatible with the proper running of the Agreements because they might affect trade between the EEC and the countries in question.

They cover:

- a) Any agreements between undertakings, any decisions by associated undertakings and any concerted conduct or practices between undertakings which try to or succeed in preventing, hampering or distorting the play of competition regarding the production and trade of merchandise.
- b) Abusive exploitation by one or several undertakings of a dominant position throughout the territories of the contracting parties or in a substantial part thereof.
- c) Any public aid which distorts or threatens to distort competition by favourizing certain undertakings or certain manufactures.

Basically, the rules are comparable with the provisions contained in the EEC Treaty regarding competition rules and the Community has declared that for its part it would interpret them as a function of the interpretation of its own rules. For the rest it should be mentioned that, if need be, the competition rules of the Rome Treaty and the corresponding provisions of the Agreements could be applied concomitantly.

Conversely, as far as their implementation is concerned and lacking a single agency responsible for applying them, each of the parties to the Agreement must independently ensure that these provisions are respected.

Infringement of the rules—which contrary to the provisions of the Rome Treaty are not applied directly to undertakings and are not penalized chiefly by avoidance—will give rise, as necessary, to the application of protection measures by the contracting party who considers himself injured by such an infraction.

In retaining these measures, the contracting parties were persuaded by the following considerations:

- To preserve complete independence of decision for each partner;

- Not to create blatant anomalies with existing legislation either internal or in other international agreements concluded by the different partners. (Mediterranean Agreements for the Community, the Stockholm Agreement for EFTA).

F. Administration

Since the Agreements signed by the Community with its different partners were bilateral in nature, it was possible to keep to a minimum the number of institutions responsible for administering them.

A joint Committee was set up responsible for supervising the proper function of the provisions in the Agreements and which in turn may form any technical committee which might be of assistance. The first of these Committees will be manned swiftly so as to tackle all the customs matters connected with application of the Agreements.

Moreover, the Joint Committee will be the strategic spot where consultation and exchange of information necessary to the contracting parties will take place. It is here that discussions will be held prior to the application of protection measures. The contracting parties are also entitled to investigate with this Committee the extension of their relations to areas not covered by the Agreement. This is a procedural provision which in no way prejudices the material content of this extension.

G. Final Provisions

The Agreement provides the traditional clause for notice of termination with a warning period of twelve months as well as an Article on the geographical application of the Agreements and a final Article concerning the Agreement's coming into force.

There is also an additional Agreement on the validity for Liechtenstein of the Agreements between Switzerland and the EEC and between Switzerland and the Member States of the ECSC.

These Agreements were necessary to extend all the provisions of the EEC- and ECSC-Switzerland Agreements allowing for the special relations linking Liechtenstein and Switzerland.

H. ECSC Agreements

Due to the existing Treaty inaugurating the European Coal and Steel Community, special agreements were necessary for the products involved. These Agreements are based on the provisions adopted in the EEC allowing for the requirements of the Treaty governing the ECSC.

The salient special feature lies in the rules on prices for iron and steel products. Regarding Switzerland whose enterprises, in their transactions on the common market would not be subject to a price discipline comparable with that governing Community undertakings, the Community is equipped with a protection clause with which it can take measures it deems necessary to remedy difficulties stemming from distortions of competition. The measures mainly consist of withdrawing the tariff concessions granted.

Austria, Finland, Portugal and Sweden have committed themselves to installing a system for publishing scales, with adequate publicity, for transport prices so as to use a price system equivalent to that governing the Community industries. So from now on for all their business within each zone created by the Agreements, the undertakings will have to fall in line with the obligations of non-discrimination. For the Community enterprises, this means that their price discipline is extended to sales made in the countries in question.

Equitable conditions over prices having thus been ensured, the protection clause with regard to Switzerland must be of a reciprocal nature.

Consequently, faulty application by one side or another of the rules, either by an undertaking or the authority responsible for implementing them, would be penalized by protection measures. These measures could also consist of exonerating the undertakings concerned from price obligations created on the basis of the Agreement.

One other innovation deserves mention. In the case of the four above countries, the Community as such is party to the Agreements alongside its Member States.

There remains Iceland. Since there is no coal or steel output there, a more summary Agreement was made primarily ensuring preferential access of ECSC products to the Iceland market.

Conclusion

To draw up at this stage a prospective balance sheet of the expected effects of these Agreements would be premature. All the same, a political appraisal has already been made by Mr J.F. Deniau, Member of the Commission responsible

for the negotiations with the EFTA countries not applying for Membership. When the Agreements were signed on 22 July 1972, Mr Deniau said: "The purpose of the negotiations was not Accession, since for various reasons the countries represented here today could not or did not want to join. The aim was to avoid the progress of European construction between Members emerging as a setback for European relationships in their entirety. The legal commitments, the high degree of economic relations already reached, and the ties of friendship all commanded us to do our utmost so that the resolve of some countries to achieve between themselves a strong and dynamic Community did not have damaging results for our closest neighbours. We can say today that this first objective has been fully attained and that by reciprocally opening markets which will interest sixteen countries, we have even gone further than that.

But our closest neighbours are also obviously European countries. There is therefore a broader and more long-term justification for the Agreements we are going to sign. Certainly Europe is a vague concept and geography does not help us much to mark out the boundaries. History is even less help for Europe's past is sadly one of conflict and rivalry. But we have specifically created the European Community to change direction and lay the foundations of lasting solidarity to ensure peace and promote prosperity. So the frontiers of Europe will progressively have to be those of awareness and the will to action. It is just, it is normal that the other European countries share in this venture of joint interest through their own means and allowing for their particular situation.

Our Agreements may thus be looked upon not only as a consolidation and improvement of what went before, but also as the door to a new experience, as the basis of future progress. Certainly experience is arduous and to some extent risky since, differing from Accession, these Agreements are based on the complete autonomy of each party. But the quest for a new European dimension in supplementing our national dimensions, this quest vital for us and valuable for the rest of the world, remains truly the prime project in the second half of this century. Today there is no question of fixing the objectives or the terms any more than forcing choice on anyone, seeing the great diversity in the situation of each country. But we should hold on to the idea which in the end alone justifies all our efforts and at the same time as recalling past commitments, emphasize that the future can and must remain."

