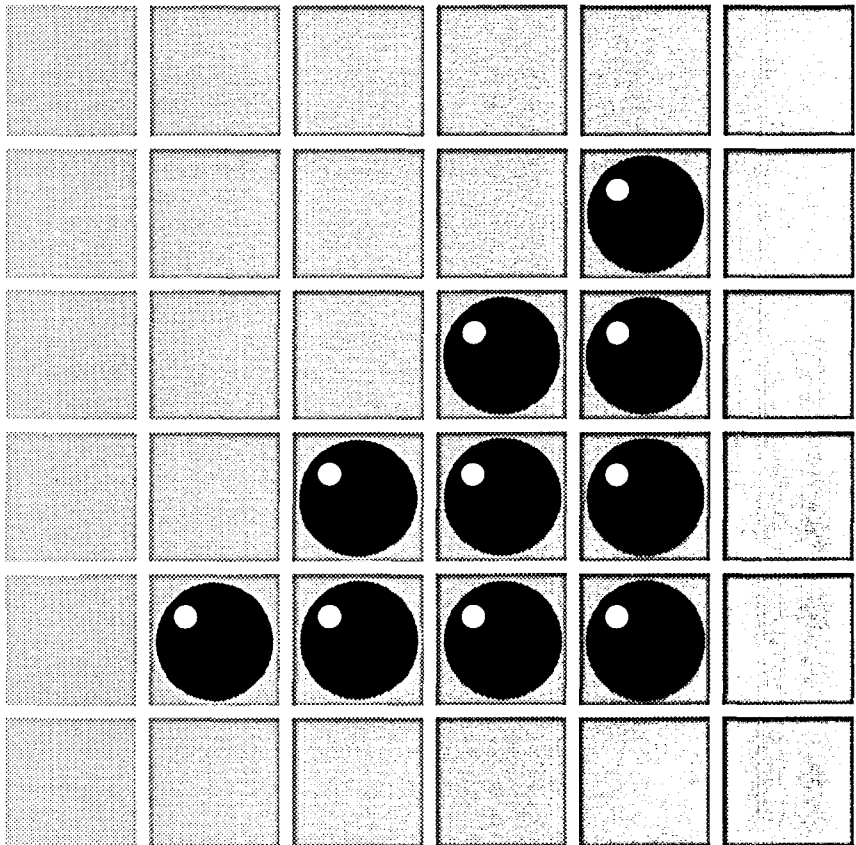


THE CUSTOMS UNION



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Introduction: The internal market under threat

Customs officials had a bad reputation even in biblical times. The New Testament usually refers to publicans, as they were then known, in the same breath as sinners. Today's traveller tends to be equally uncharitable when entangled in tiresome border formalities, or asked to open his purse strings. Nevertheless, customs posts have recently been enjoying something of a revival.

In the European Community, it is not strictly speaking customs duties which hold up the free movement of goods. 'Duties' on trade between the six founder Member States were finally eliminated 15 years ago. What is worrying those who work in this field is the increasing proliferation of technical and administrative barriers to trade, which, with recession, have become a real threat to the common market.

A quarter of a century has passed since the European Community was founded and yet customs formalities for goods moving from one Member State to another are still almost as complicated as those for 'foreign' imports. This can push up the price of goods by 5-10%. The countless health regulations, food standards, environmental protection rules and tax laws also act, if only indirectly, as troublesome barriers to trade. A more serious nuisance are the wild fluctuations in exchange rates, which even the setting-up of the European Monetary System (EMS) has been unable to prevent.

What then are the achievements of this customs union of which the Community is so proud? Why is there still an army of customs officials, and why does the prospect of complete abolition of frontier controls within the Community appear to recede ever further into the future? Such questions cannot be answered without a clear understanding of the special importance of the customs union for the development of the Community as a whole and of the fact that integration is a complex and lengthy process calling for a constant political commitment.

As we shall see, the customs union is the very cornerstone of the common market. Not only has it made possible a wider division of labour between the Member States and laid the foundations for the common policies, it also constitutes one of the major linchpins of Community solidarity.

However tedious it still is to have to queue up at frontier posts and however complex many trade formalities still appear to be, a great deal has been achieved in the past 25 years. Border crossings have become routine for millions of holidaymakers and business travellers. Trade has increased in nominal terms twentyfold and despite the obstacles which persist economic integration has reached a level undreamed of in the immediate post-war years.

Just how much has been done is clear today when we see the pressure being put on governments to erect fences round the national economies. There is no doubt that if there were no common market, protectionism could have run riot, and resolving serious trade disputes would have been a far more difficult task.

The free movement of goods is a principle which has often been flouted, but so far it has been possible to avoid the outright fencing-off of markets. Most complaints investigated by the Commission have been dealt with by negotiations between the affected parties. Community businessmen can still count on the customs union as a firm basis for their planning; but it does need to be taken further and the integration completed.

Community leaders have acknowledged that the strengthening of the internal market is one of the most urgent tasks to be undertaken, and this has put political weight behind the work of legislative harmonization. The Commission too is trying to move beyond purely defensive measures. The development of the internal market has to be given fresh impetus; it could help Europe pull itself out of its present economic difficulties.

I. The customs union, cornerstone of the Community

1. *Customs union or free-trade area?*

In international law, a customs union consists of an economic area comprising members who undertake contractually:

- (i) to refrain from applying to one another any customs duties, charges having equivalent effect, or quantitative restrictions;
- (ii) to apply a common external customs tariff to countries not within the union.

There is thus a fundamental distinction between a customs union and a free-trade area such as the European Free Trade Association (EFTA), of which Sweden, Norway, Finland, Iceland, Switzerland, Austria and Portugal are members.

In a free-trade area, customs duties and charges having equivalent effect are also eliminated between the member countries, but each member retains its own external tariff and tariff policy towards countries not belonging to the group. This means there is duty-free trade only in goods produced (or substantially processed) within the free-trade area, while in a customs union goods move freely irrespective of where they come from.

2. *Ambitious aims*

To achieve their far-reaching aims, the EEC's founding fathers laid down in Article 9 of the Treaty establishing the European Economic Community that 'the Community shall be based upon a customs union', which was to provide a foundation for the other policies designed to create a common market. Without the customs union there would be no common commercial policy or development policy, and the Community's system of own resources, the common agricultural market, the attempts to bring about a closer coordination of economic and monetary policies, are all based upon the customs union.

The Treaty of Rome did not envisage merely the introduction of free trade in goods manufactured within the Community, but called for a customs union 'which shall cover all trade in goods' within the single customs territory. This means that the rule of free movement of goods within the Community also applies to goods imported from non-member countries once the necessary formalities have been completed and customs duties and 'charges having equivalent effect' have been paid in the importing Member State (Article 10). Exceptions to this rule are allowed only within the limits of a special procedure based on Article 115 of the Treaty.

The Treaty of Rome is thus not simply aiming at the elimination of internal customs barriers and other restrictive trade rules but at establishing a 'Community preference' in trade, the margin depending on the level of the common external tariff on imports from outside the Community. In addition, in subscribing to these aims Member States are also committed, by virtue of Article 110 of the Treaty, 'in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers'.

Thus, for example, the Community has taken part in the international negotiations in GATT on tariff reductions.

From the outset the founders of the Community had more ambitious ends in view than the EFTA countries. They wanted to create a politically and economically united zone within which goods, services and capital could be freely exchanged. In their eyes, a broad fusion of national economies not only promised benefits in the economic sphere, but was also a way of laying the foundations for the political integration of Europe. At the very least, the common market would blunt the long-standing clashes of economic interest between the nations of Europe and prevent any recurrence of the sort of rivalry that culminated in war.

3. The first step: tariff union

By the middle of 1968 — a year and a half ahead of the schedule set by the EEC Treaty — all customs duties between the six founder members of the Community (the Benelux countries, France, the Federal Republic of Germany and Italy) had been abolished. The transitional period during which Denmark, Ireland and the United Kingdom dismantled their tariffs on intra-Community trade and adopted the common external tariff ended on 1 July 1977. Like those countries, Greece, which became a member of the Community on 1 January 1981, was also given five years to make the adjustment; in fact, most customs duties (except in the mining sector) had already been phased out in the course of Greece's association with the Community.

A customs union cannot simply be a matter of eliminating internal customs duties and adopting a common external tariff; the external tariff can only have the desired unifying effect if all the member countries apply it according to the same rules. Different countries' administrative rules for customs clearance may vary and have to be brought into line. Article 10 of the Treaty refers explicitly to the need to 'reduce as much as possible' formalities imposed in trade.

In the first 10 years of the Community's existence the internal and external dimensions of the customs union developed almost equally rapidly. Since then progress with the establishment of the internal market has lagged considerably behind the development of the Community's arsenal of external commercial policy instruments. The customs union is still essentially only a tariff union. Much remains to be done before the free movement of goods becomes a reality.

4. *New ways of thinking*

The abolition of internal tariffs and quantitative import restrictions did, however, bring a breath of fresh air into the national economies of the Member States, causing many businessmen and industrialists to alter their whole outlook.

The shake-up of traditional ways of thinking and working was most marked in those Member States which had been used to high tariff walls.

Instead of being able to count comfortably on their home market, many manufacturers suddenly found themselves faced with competition from abroad. For many, new export opportunities opened up; many had already laid plans for the advent of the wider European market.

Without the customs union, trade between the Member States would probably have expanded much less than it did. The stimulus of the wider market produced an optimism reflected in the growth of investment. Consumers benefited from the availability of an unprecedentedly wide range of goods, and in many cases prices actually dropped. Increasing economic interdependence also led to joint efforts to tackle the structural problems of the European economy, through instruments such as the Regional Fund.

5. *The growth of trade*

Between 1958 and 1972, intra-Community trade between the six founder Member States (imports and exports) increased ninefold (whereas trade with the rest of the world over the same period only trebled). After enlargement, the trend was not so marked.

Nevertheless, from 1973 to 1981, intra-Community exports (calculated for the 10-member Community) rose from 92 300 million ECU to 278 590 million ECU,¹ while exports to non-Community countries increased from 78 840 million ECU to 266 660 million ECU. Intra-Community trade, therefore, still outweighs trade with the rest of the world (not only in manufactures, but all trade in goods). Since the establishment of the Community, intra-Community trade has risen as a proportion of total exports from an average of 35.3% to 50.7%, reaching as high as 54.5% in the periods 1970-74 and 1976-80.

A comparison of intra-Community and extra-Community trade reveals that:

- (i) The sectors in which German and French industry do well in intra-Community trade are the same as those in which they perform strongly on international markets.
- (ii) For the Italian textile, clothing and footwear industries, the Community market is far more important than the international market.

¹ On 1 February 1983 1 ECU was equivalent to BFR/LFR 44.96; DKR 8.07; DM 2.29; ΔPX 78.09; FF 6.51; HFL 2.52; IRL 0.69; LIT 1319.04; UKL 0.61; USD 0.92.

- (iii) The common market is becoming increasingly important to UK industry; trade with the Community has increased as a proportion of the United Kingdom's total trade from 33.1% to 41.2%. The Community market is particularly important for the footwear and clothing industries, and for office and data-processing equipment, timber products and mining products.
- (iv) In numerous sectors — the food industry, textiles, clothing and footwear, rubber and plastics, paper, office and data-processing equipment, timber and mining products — the Community market is far more important than international trade. The same applies to products with high transport costs, and those for which the common market offers generous tariff protection.
- (v) Intra-Community trade is of overwhelming importance to the Netherlands (71.3% of total trade), the Belgo-Luxembourg Economic Union (70.0%) and Ireland (69.9%). There are geographic and historical reasons for this, as well as the importance of the Rhine delta ports as a centre of distribution.

6. *The weak spots*

The establishment of the common market gave the European economy room to develop, particularly as it came at a time of worldwide economic growth, low energy costs and exchange-rate stability. But there have been far-reaching structural changes in the world economy since those days.

The main change has been the decline of many of the traditional industries on which prosperity used to be built and the emergence of newly-industrialized or Third World countries as direct competitors, while in the application of new technologies the USA and Japan are often in advance of the Community. According to a study carried out by the Commission it is only in the field of agricultural products, raw materials and energy products that the Community has performed satisfactorily on world markets.

The recession has shown all too clearly that European industry is less successful than its main competitors in adapting to change. The Community has seen its share of world manufactured exports decline, while the USA maintained its position and Japan increased its share.

The main problem for Europe's industry is declining productivity growth, largely due to inadequate investment. In the past 10 years, only two million new jobs have been created in Europe, as against five million in Japan and a staggering 19 million in the United States.

Protecting the Community market or national markets from unwelcome competition is not the answer. The important thing is to regain our competitive strength. Fresh impetus can come only from the creation of a unified European internal market in which productive investment can yield a better return. Unless people again see some prospect of trade barriers coming down, the investment we need in order to meet the economic challenge from Japan, the USA and the newly-industrializing countries will not be forthcoming.

II. The Common Customs Tariff (CCT) as an instrument of trade and development policy

1. *Establishment and updating of the CCT*

Apart from the removal of customs barriers within the Community, the most important feature of the customs union is the uniform external tariff applied by all Member States to imports from non-Community countries. It means that duty need only be levied once on such imports in the Community, normally when they first enter the customs territory.

When the common market was set up it comprised four customs territories, the Benelux, the Federal Republic of Germany (including trade with the German Democratic Republic), France and Italy, each with their different external tariffs. Article 19 of the Treaty of Rome prescribed that the Common Customs Tariff should be set 'at the level of the arithmetical average of the duties applied' in these four territories.

The alignment of external duties, like the dismantling of duties between Member States, was completed 18 months ahead of schedule, thanks to flourishing economic growth which fuelled the process of integration. Since 1968 the power to enact binding tariff regulations has passed from the Member States to the Community; individual Member States for instance, can no longer decide unilaterally to suspend duties or otherwise alter the CCT.

The main sacrifices in the alignment process were made by France and Italy, whose economies had been protected before the establishment of the Community by relatively high tariff walls.

But even when the CCT was introduced, the average level of duties in the Community was lower than in many other industrialized countries — originally it was around 11%, well below that in the USA or Japan, and the difference between the highest and lowest duties was also consistently narrower than in the Community's main trading partners.

Today's CCT bears little relation to the levels of protection thought necessary in those early days. Even before the CCT fully came into force, the Community had agreed in GATT negotiations to important tariff reductions for most industrial goods. The Dillon Round (1960-62), the Kennedy Round (1964-67) and the Tokyo Round (1973-79) were stages in a comprehensive liberalization of world trade, and an earnest of the Community's intention not only to look after its internal affairs but to accept its responsibilities within the free world trading system.

The level of duties in the CCT now, therefore, is well below that agreed on in 1957. By 1987, when the tariff cuts accepted in the Tokyo Round have been implemented, the average rate of duty in the Community will have fallen from 9.8% to 7.5%.

2. Free trade and preferential agreements

When the United Kingdom, Denmark and Ireland joined the Community in 1973, it was important to ensure that this did not create new tariff divisions within Europe. The United Kingdom and Denmark had been members of EFTA, and did not therefore levy duties on industrial trade with their EFTA partners, while Ireland had long-standing economic and monetary links with the United Kingdom. Accordingly, it was decided to conclude free-trade agreements with the EFTA countries (Norway, Sweden, Finland, Iceland, Austria, Switzerland and Portugal), there being no question of their eventual accession (except in the case of Portugal).

The agreements allow duty-free access to the Community market only for goods produced within the EFTA countries themselves, and do not cover agricultural products subject to common organizations of the Community market. Nevertheless, they provided an opening of major economic importance to both sides. The Community's imports from EFTA countries rose from 16 060 million ECU in 1973 to 53 890 million ECU in 1981 (figures for the 10 present Member States); its exports increased from 20 930 million ECU to 59 700 million ECU over the same period.

The Community also has free-trade agreements with most of the Mediterranean countries, tailored to suit their different requirements; some of these countries have long-standing economic and cultural ties with individual Member States.

The Community's first agreements were concluded with countries aspiring to eventual membership — an association agreement with Greece was signed in 1962 and with Turkey in 1963, and these provided for the phased establishment of customs union to pave the way for accession.

There were also preferential trade agreements with Spain (1970) and Portugal (1973). Greece has now become a full member of the Community; negotiations for the accession of Spain and Portugal are under way.

3. Helping the poorer countries

The Mediterranean agreements are designed not only to increase the scope of the Community's special trade relationships, but to promote development. The prime examples of this approach, however, are the successive Conventions signed at Lomé in Togo; the current Lomé Convention links the Community with 63 countries in Africa, the Caribbean and the Pacific, known collectively as the 'ACP States'.

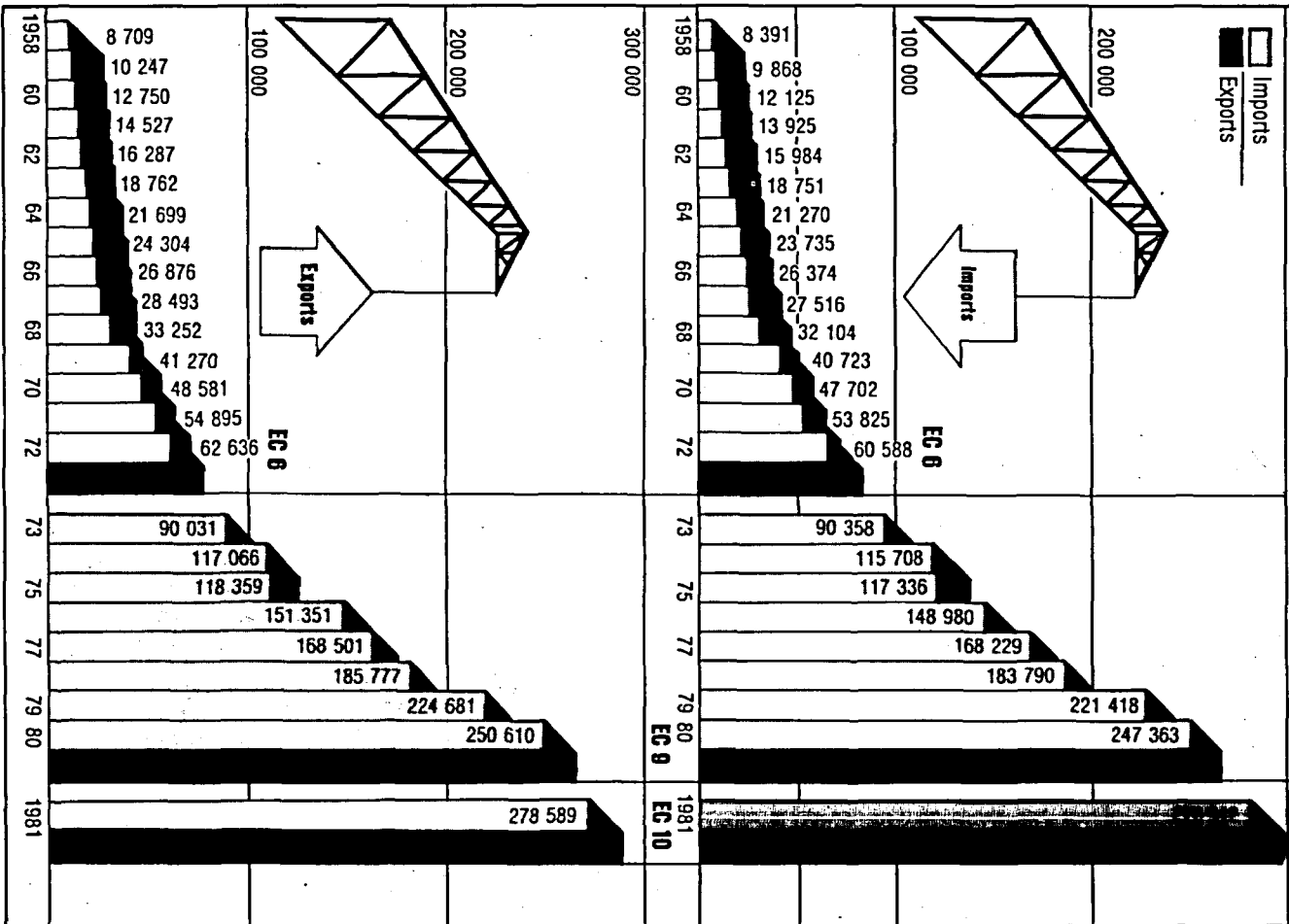
The Lomé Convention can be seen as a model for economic cooperation with the Third World. Signatories are accorded not only duty-free access to the Community for nearly all their exports, but substantial technical and financial assistance and also a degree of stability in their commodity export earnings, under the 'Stabex' system. The Community specifically waives any claim to reciprocal trade concessions.

Intra-Community trade (in million ECU)

300 000

EC 9 EC 10

Imports
Exports



The Community's generalized tariff preferences for developing countries, on the other hand, are offered on an autonomous rather than a contractual basis. Renewed yearly, but part of a longer-term political commitment, they provide duty-free access for a wide range of exports from all developing countries, not only ACP States, though there are special rules for textiles and those agricultural products which are also produced in the Community itself. In deciding on the scope of the preferential offer, the Community aims above all to give a helping hand to nascent industries, so the poorest countries are accorded more generous concessions than the already competitive newly-industrializing countries.

This network of preferential arrangements means that in trade with large parts of the world the Common Customs Tariff is applied only partially or not at all. It now in effect applies in full only to trade with North America, Japan, Australia, South Africa and the Eastern Bloc countries.

4. GATT trade negotiations

Nevertheless, the Community's tariff policy has had a considerable impact on external relations. The Community as a separate entity has been playing its part in GATT since 1960. All international agreements with a bearing on trade have to be compatible with the rules of the Treaty of Rome and to take account of the Community's own competence in these matters.

The fact that the Commission has now conducted so many international negotiations has also strengthened the Community's internal cohesion; even at the most critical points, member governments have so far always managed to find common ground on which the Community can negotiate, whereas the Member States individually would not have been in nearly such a strong position to defend their interests. The Community's acknowledged position as an interlocutor is reflected in the fact that over a hundred countries have diplomatic representations accredited to it.

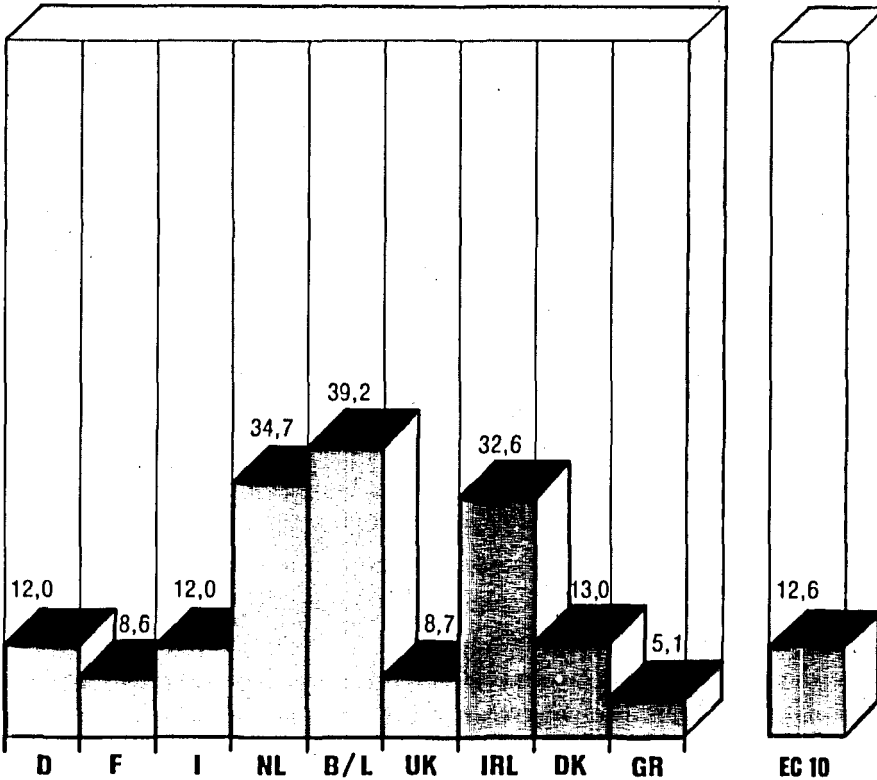
The Commission, then, has represented the Community in many multilateral negotiations. Of particular importance were the Tokyo Round talks concluded in 1979. These negotiations, in which more than a hundred countries took part, resulted in numerous agreements laying down new rules for international trade, with the aim not only of countering protectionism but also of lowering tariffs and liberalizing trade in other ways as well.

In the customs sphere, the GATT talks resulted in agreement by the industrialized countries to cut their tariffs on manufactures by an average of one third, equivalent, according to 1976 statistics, to over USD 100 000 million in trade. Progress was also made on another long-standing Community objective: bringing the various customs tariffs more into line by cutting more deeply into high tariffs than lower ones.

The cuts are admittedly spread over eight years, and there will be a review in 1984 to determine finally how extensive they will be. If the original agreement goes ahead, by 1987 over half of all dutiable imports into the Community will be subject to duties of only 5% to 10%. The only duty exceeding 20% will be that on trucks.

Intra-Community trade as a percentage of gross domestic product

1981 Exports



Even more important than the tariff cuts are the results of the GATT negotiations in a number of other areas, ranging from agreements on the removal of non-tariff barriers to trade to a code of conduct on State subsidies and from the definition of value for customs purposes to government procurement arrangements. Agricultural subsidies are allowed under the agreements, but they must not be given for the purpose of winning a disproportionate share of the world market.

5. Protection against low-cost imports

Though the CCT itself may have become less important, the customs union and the various Community commercial policy instruments based on it can still provide protection against cheap imports. In addition, there are the variable levies on agricultural imports and refunds

on agricultural exports, which make it possible to offset the difference between European agricultural prices and the usually lower world market prices; as world prices fluctuate so widely, no customs tariff could protect European farmers' guaranteed prices, though the import levies do operate like duties and are collected at frontiers in the same way.

For textile products, customs duties are backed up by a series of voluntary export restraint agreements. In 1982 the Community concluded a second set of these MFA-based bilateral accords setting annual import levels for a number of 'sensitive' products. This should give the European industry time to get itself into competitive shape again. Voluntary restraint agreements for steel have also been concluded with the Community's main international suppliers, while the Community itself has agreed to hold down its exports of general-purpose steels to the USA.

The Council may take unilateral measures to restrict imports if they present a serious threat to Community industry. Such measures may be on a national basis, and need not apply to all the Member States. Article XIX of GATT lays down that quantitative import restrictions should normally apply *erga omnes*, against all countries from which the offending type of good is imported; the Community considers that a selective safeguard clause would be preferable in some circumstances.

The Community can counter unfair trade practices by use of an anti-dumping procedure also provided for in GATT. Where a producer is selling goods cheaper in the Community than at home and thus driving European products off the market, the Community can impose a countervailing duty.

Normally, however, the Community cannot raise customs duties simply to suit itself. As GATT signatories, the Community countries have to abide by the rules of international trade, and customs duties on particular products which have been 'bound' by negotiations in GATT can only be increased if the Community grants its trading partners equivalent compensatory concessions instead (when the duties are said to have been 'unbound').

Tariff concessions, on the other hand, can be granted under GATT rules provided they apply to all trading partners — the 'most-favoured-nation' rule. The tariff preferences for developing countries are an exception to this rule, and GATT also allows members to form free-trade areas or customs unions.

6. *The alignment of customs regulations*

The Common Customs Tariff can lead to the formation of a genuine Community internal market only if it is applied according to the same rules in all Member States. The customs procedures for goods entering the various countries must also be aligned as far as possible. What is the point of having a common external tariff, for example, if the value of goods for customs purposes ('customs value'), which determines the amount of duty payable, is not calculated in the same way in all Member States? How can the Community's preferential system be properly managed if different Member States define the country of origin of processed or manufactured goods according to different criteria?

The Common Customs Tariff merely gives a brief description of the nature of different types of goods (there are about 2 950 such 'tariff headings') and the particular rate of duty which applies to each. But how the value of the dutiable goods is to be calculated, what criteria are laid down for the customs treatment of goods which have undergone working or processing outside their country of origin, and under what conditions goods may be temporarily imported duty-free, are in many cases questions of great economic importance.

The way in which goods are valued for customs purposes can affect trade more than the actual customs duty itself. In the Tokyo Round negotiations the Community concluded with its trading partners a customs valuation code which replaced the existing heterogeneous criteria, some of which constituted considerable handicaps for Community exporters, with a new, fairer and more uniform set of rules. The new code introduces a 'positive' definition of value, based wherever possible on the price actually paid or payable.

Origin rules are necessary in order to restrict the benefit of preferential agreements or unilateral concessions such as temporary tariff suspensions to the countries for which they are intended. They provide that products imported under such arrangements, must either have been 'wholly obtained' or at least have undergone substantial working or processing in the beneficiary country, and define, accordingly, how much working or processing products from another country must undergo in the beneficiary country in order to be eligible for the tariff concessions. The system of origin rules is complex, particularly as different percentage rules apply from one preferential agreement to another. Having to produce origin certificates for goods in intra-Community trade goes against the whole essence of the customs union.

Also of considerable importance are the Community rules governing what are known as 'processing' arrangements. These determine under what conditions goods may enter the Community duty-free either for processing and subsequent re-exportation to non-member countries (inward processing traffic) or after processing elsewhere (outward processing traffic).

However although considerable progress has been made towards a Community customs policy, there are still important areas where the work of harmonization remains incomplete. In recent years the work of the customs experts has repeatedly been stalled; the Commission has put this down to the lack of real political will at government level. The Commission would like the Council to deal purely with the politically and economically important aspects of harmonization, leaving it greater powers to adopt implementing regulations.

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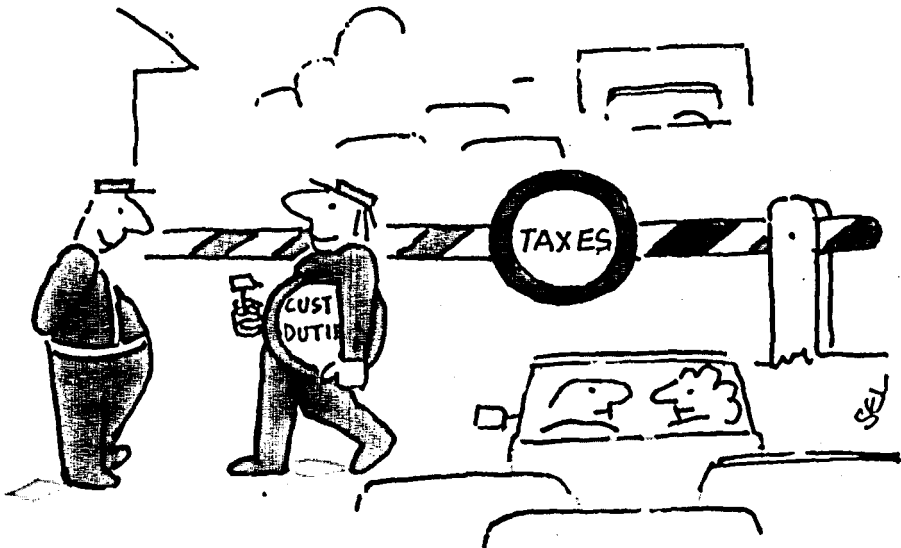
III. Intra-Community trade

1. Abolishing customs duties is not enough

In the past few years the removal of intra-Community trade barriers has been even more obstinately resisted than the establishment of uniform rules for applying external protection. This is partly due to objective difficulties, but also partly to the resurgence of protectionist tendencies in the Member States. Here economic motives are often combined with popular concern as expressed in health and consumer protection. Fiscal considerations and the tendency towards inertia in ministries and customs administrations also play a part.

One thing is certain, though, namely that the Treaty of Rome provides not only for the abolition of internal customs duties and quantitative trade restrictions, but also for the elimination of other measures that hinder the free movement of goods. It also expressly emphasizes the 'need to reduce as much as possible formalities imposed on trade'.

In fact, however, clearance at the Community's internal frontiers is in every respect still more elaborate and time-consuming than for instance, in trade between the Scandinavian countries. The constant stream of new laws, regulations, rules on testing procedures and standards is



particularly discouraging for small businesses, and, even though there may be good reasons for them, they do make the frontiers continually less open.

The red tape entangling external trade is still partly a result of customs procedures, since a unified Community customs territory with its attendant administrative structures has not yet been fully established. Most of the difficulties arise, however, from other sources such as the tax system, health and food legislation, transport regulations or the publication of statistics.

In the customs sector proper the problems arise in particular from the fact that:

- (i) numerous border formalities are still in existence;
- (ii) the Community provisions adopted so far act in isolation and are often difficult to understand;
- (iii) the decision-making machinery operates only with difficulty;
- (iv) there is a lack of appropriate legal sanctions to punish violations of customs law in the Community.

However, simplicity, desirable though it would be, has rarely been a feature of Community customs legislation, for it is usually the result of difficult and hard-won compromises. On average the Commission needs two years to present a major proposal for a regulation or directive to the Council. It then usually takes another few years for the proposal to be finally adopted.

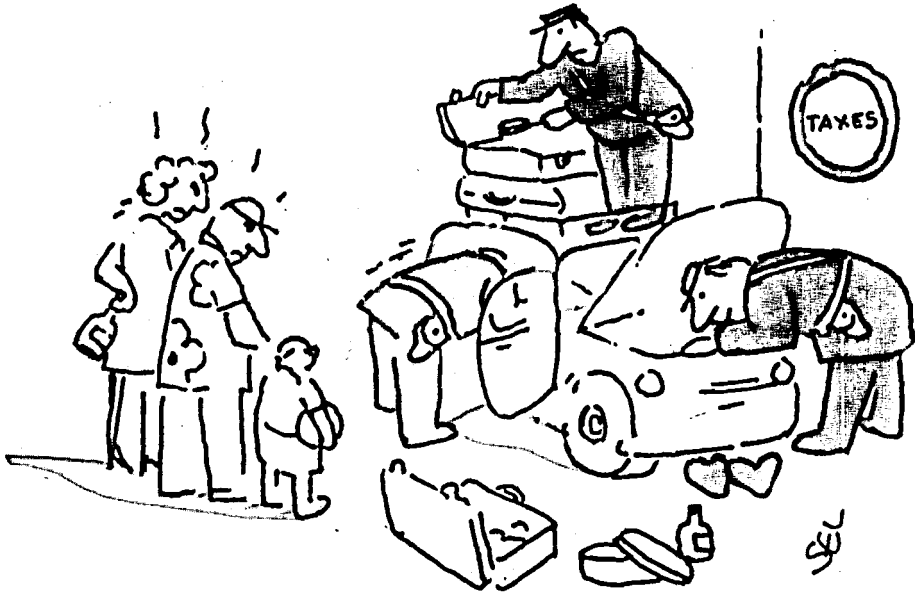
2. Differences in taxation and currency conversion compensation

One of the reasons most often given for maintaining frontier controls in trade is the considerable difference in indirect taxation levels between the Member States. Imported goods may have an unjustified competitive edge if the tax on them is lower than that on domestic products.

Admittedly, some progress has been made in harmonizing tax systems in the European Community, but taxation rates in the case of both value-added tax and specific excise duties (e.g. on tobacco, spirits, wine and petroleum products) still vary widely.

Obviously, States with a higher VAT rate have to tax imported goods to make up the difference in taxation compared with the country of consignment and have to grant appropriate relief on export. It is open to question, however, whether this taxation of imports must necessarily be like a customs duty collected at frontier posts. In trade between the Benelux countries, VAT differences have long been offset in taxation of the importing firm's turnover rather than at the frontier. The only remaining border formality is taking a copy of the invoice to keep a record of imported goods.

Simplifications of this kind are possible because of the special way in which the VAT system operates. Other charges, such as monetary compensatory amounts in agricultural trade, are similar to customs duties in the way they work. It should be pointed out here that frontier



checks still take place at present anyway because of differences in veterinary and food legislation. Upon export, the frontier compensation works as an export subsidy. This has proved necessary in order to ensure that the system of common agricultural prices is not jeopardized by revaluations or devaluations. The removal of controls in intra-Community trade will in any case become easier as the European Community progresses towards economic and monetary union. Most important of all is greater convergence of national credit and budgetary policies. Against the bleak background of present unemployment problems, however, it runs into major difficulties.

3. Exemptions for travellers

Whilst for holidaymakers and business travellers in Europe the customs union has not yet put an end to frontier controls, it has introduced a number of individual tax-free allowances. This enables travellers to perceive more clearly the reality of the Community and protects them from being taxed twice, in the country from which they have come and in their country of destination. In practice the work of customs officers today is generally confined to checking passports and occasionally making random examinations of the contents of car boots. For most citizens, going through customs is no longer anything out of the ordinary.

At present the maximum VAT-free allowance for goods in travellers' personal luggage that have been brought from other Community countries is the equivalent of 210 ECU; the sum may be rounded up in the national currencies. In addition, specific maximum allowances have been introduced for tobacco goods, spirits, wine, coffee, tea and perfume. These goods are subject to excise duties in the individual Member States which in some cases vary quite considerably.

It is necessary to see that there is a gradual increase in tax-free allowances, since inflation has eroded their real value over the past 10 years. This is an area where the public expects progress. Unfortunately the national governments, faced with a loss of tax revenue, and objections from shopkeepers in frontier areas in particular, are at present generally reluctant to agree. Yet they still expect the retail trade to put up with the distortions of competition caused by tax-free shops or the 'butter ships'. The European Court of Justice is currently trying to clarify the situation.

The tax-free allowances for goods intended for personal use apply also to business travellers and holidaymakers coming from non-Community States. Here, however, the maximum allowances are considerably lower. Small consignments may also be sent from abroad by private individuals without further tax being paid, provided that these consignments are of a non-commercial nature. In the spring of 1983 the Commission presented proposals for a phased increase in the tax-free allowances for travellers within the Community to 400 ECU as from 1 January 1987. It proposed at the same time that the quantitative limits for tea and coffee imported by travellers within the Community should cease to apply as from 1985.

4. *The Treaty's 'emergency brake'*

In certain cases the 'emergency brake' provided for in the Treaty of Rome allows departures from the principle of free movement of goods. Article 115 states that the Commission may, subject to certain conditions, empower a Member State to protect itself against third-country goods which enter the Community via another Community Member State.

In this case the goods in question are taken out of free circulation or — as they say in customs jargon — 'excluded from Community treatment', reverting to the status of third-country products. Often, however, the Member States are content with a system of surveillance of the imports in question.

The important thing is that no government is entitled to take such restrictive measures at its own discretion. For the protective clause to be invoked, there must still be a danger of deflection of trade as a result of variations in national commercial policies, and it must be proven that this jeopardizes the industry concerned in the Member State which has filed the application.

In practice, authorizations are granted mainly for textiles. The aim is to ensure that there is no deflection of trade in those cases where Community imports are divided up into national quotas. Many Member States also try to protect their long-standing import quota arrangements from being 'eroded' by imports from other Community countries.

The Commission applies the strictest possible criteria in approving such applications. In view of the difficult structural and sectoral problems of the national economies this is not an easy task.

In 1979 recourse to Article 115 increased alarmingly, but by 1982 the number of applications had fallen from 347 to 230, of which 168 were approved, as against 260 in 1979.



5. *Technical barriers to trade*

The elimination of technical barriers to trade is one of the pre-conditions for the creation of a genuine European internal market. Not until import restrictions other than customs duties or taxes are also removed will consumers stand to benefit from economies of scale and competition among producers in various Member States.

Although Article 30 of the Treaty of Rome prohibits quantitative restrictions and measures having equivalent effect, an express exception is made in the case of import prohibitions 'justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property' (Article 36).

The founders of the European Community did not, however, intend that such prohibitions or restrictions should 'constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States'. If there is any doubt as to whether they are essential, then they are not permitted under the EEC Treaty.

In individual cases, however, it is not always easy to prove that national regulations are contrary to the Treaty, especially as they are often adopted in good faith. This makes the European Court of Justice's very wide interpretation of the quantitative restrictions prohibited in

Article 30 of particular significance, in practice placing the burden of proof of the admissibility of such restrictions on the Member State government in question.

In 1979, in a key decision (in the 'Cassis de Dijon' case) the European Court of Justice defined as a barrier to trade any national rule 'of such a kind as to hinder, directly or indirectly, actually or potentially, trade between Member States'. According to this, trade barriers may be accepted only if they

- (i) are necessary, i.e. appropriate and not excessive, in order to satisfy mandatory requirements (public health, consumer and environmental protection, integrity of trade, etc.);
- (ii) pursue such a compelling objective, which is in the general interest, that the departure from a basic principle of the Treaty such as free movement of goods is justified;
- (iii) are to be regarded as an essential guarantee for attaining that objective, i.e. represent both the most appropriate and, in so far as trade is concerned, least obstructive means.

But generally, the Court ruled, any product imported from a Member State may normally be admitted to the territory of all other partner States, provided that it has been lawfully produced in the country of consignment. Although the Member States can lay down stricter marketing conditions for their own industries, they cannot do so for goods from other Community countries. In this way national production practices and quality standards (e.g. for beer or bread) may be retained, without the consumer being deprived of the choice between these and other products from the Community.

6. *The difficulty of harmonizing laws*

Where health or safety regulations really are necessary in trade, it may prove possible to harmonize the laws internationally. However, under the Treaty of Rome unanimity is required for Community directives of this kind (Article 100). This means that the harmonization of national protective regulations is a laborious and time-consuming business.

For the officials in Brussels it invariably proves to be a particularly hard and thankless task. No sooner has a laborious consensus been reached on particular safety requirements or food standards than the directives in question have to be updated because of some new scientific or technical development. The whole obstacle course of committees and expert-level discussions has to be gone through again.

So far the Council has adopted some 200 directives on the harmonization of legal standards of this type, 150 of them dealing with industrial products. This is not bureaucracy gone mad, for each of these items of legislation has made existing intra-Community frontiers that little bit more open.

The aim is, however — as the Commission stated in a report to the European Parliament — not to adopt as many directives as possible but to remove disruptive trade barriers. Harmonization at any price would be pointless. And yet harmonization directives do contribute towards creating a European industrial policy and towards consumer protection, job security

or energy savings. They provide Community industry with a better basis by guaranteeing it a unified market and preferential access to the Community market for Community products.

However, the trade barriers which can be removed by means of European directives account for only some of the obstacles which in fact exist. Problems of another kind arise from the ever-increasing number of industrial standards. These national arrangements are not provisions laid down by law, regulation or administrative action, nor have they been created to make trade more difficult, but in order to rationalize production, improve quality or protect the user.

Nevertheless, the way in which these arrangements originate and in particular the fact that the national associations for the industry concerned are involved in formulating them give the indigenous producers significant competitive advantages. A new procedure already given the green light by the Council will help by ensuring that information is provided in good time at Community level. It is intended to avoid the need for laborious harmonization subsequently and thereby prevent the introduction of new trade barriers.

Also, it should not be forgotten that the campaign against non-tariff barriers has to be waged with a limited number of experts. If all disruptive provisions laid down by law, regulation or administrative action were to be harmonized, thousands of directives would be necessary. And yet today there are already considerable problems involved in adequately supervising compliance with those directives that have been decided.

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The outlook: hoping for a new impetus

In June 1981 the European Council of Heads of State or Government agreed that 'a concerted effort must be made to strengthen and develop the free internal market. . .'. Since then the efforts to develop the customs union have also been given higher political priority. The dangers to European economies from the growth of worldwide protectionism have prompted a new interest in the objectives of the Community's founding fathers: today more than ever firms need to be sure that they are not producing just for the small domestic market.

A sufficiently wide basis for technological development, financing and marketing is indispensable if Community industry is to withstand the competition from its Japanese and American rivals. Of course, efforts to achieve a more smoothly functioning European internal market are — as the Commission stressed in a communication to the Council — inconceivable without a common commercial policy capable of defending the legitimate interests of European industry.

Without a large unified market the European Community is, in the Commission's view, denying itself a major opportunity of promoting economic recovery and lasting growth. National measures for sealing off domestic markets and the jockeying between governments to offer national and regional subsidies, on the other hand, are illusory as a means to safeguard threatened jobs. In reality such measures at best postpone the necessary adjustments without in the long run strengthening the competitiveness of the national industries.

Full freedom of movement of the factors of production in the European Community can, however, hardly be achieved overnight. As long as there are such wide differences in taxes and other provisions, certain border formalities cannot be avoided. All the same, as the example of the Benelux countries shows, restrictions on the movement of goods can be considerably reduced. The decisive factor is the political will to forge ahead, the willingness also to give up certain entrenched national procedures.

The Commission is trying, by means of suitably-balanced negotiating packages to get the expert-level deliberations moving again and achieve gradual progress. As regards customs procedures, this means cutting formalities and controls to a minimum and simplifying the papers needed in intra-Community trade. Proposals have been presented to the Council to replace the sheaf of documents involved in customs clearance with a single standardized Community document.

On the tax side, the Commission has proposed that VAT payments be simplified by ending tax collection at the frontier. Instead, the importer should be able to pay what is due together with his domestic tax liabilities.

The Commission is also seeking a considerable increase in tax-free allowances for travellers as another way of removing major obstacles to the development of the internal market.

If governments are in earnest, the declarations made at the Summit Conference can be gradually translated into concrete action. This would give European citizens a far stronger sense of the reality of the Community than many a spectacular decision without practical consequences. And only through determined action can the Council win back industry's confidence in the large European market. The individual Member States are simply no longer big enough.

Annex

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Trade Barriers and constraints

Indication, based on actual cases reported to the Commission, of the type of difficulties and obstacles encountered by firms or individuals wishing to trade beyond their national markets or to take advantage of a Community market.

General barriers and constraints

— *National preference:*

- campaigns to encourage the purchase of national products, origin marking; activities of bodies responsible for promoting national products;
- preference granted in the context of taxation, aid and credit;
- reserving public contracts for national products or giving preference to national products in such contracts; (discriminatory technical specifications; awarding contracts to local tenderers or tenderers using national products); splitting-up of contracts to avoid open tendering procedures; recourse to emergency procedures or restricted procedures; incorrect application or late transposition of Community rules; exemptions provided for in Community rules (transport, water, energy, telecommunications; value thresholds);
- regulation of orders of oil and gas companies.

— *Legal uncertainty resulting from:*

- the demand for general powers to control frontiers within the Community;
- the plethora of rules and regulations and the lack of transparency;
- amendments to rules and regulations without adequate transition periods;
- incorrect or late application of Community law; stagnation of Community activities;
- blacklists of complainants;
- ambiguous wording of provisions the text of which applies to products whatever their origin, but which in practice are applied only to products from third countries.

Frontier barriers

— *Formalities and inspections:*

- many complex customs, tax and statistical formalities;
- certificates and licences required without explanation (e.g. in the context of intra-Community transit);
- certificates of origin; justified or unjustified verification of origin in the context of Article 115 of the EEC Treaty;
- import declaration used as licences;
- discontinuation of the simplified procedures for steel products;
- personal checks; fuel checks.

— *Import restrictions:*

- import timetables;
- imports subject to the opinion of a committee in which national manufacturers are represented (e.g. in the case of fire-fighting equipment and solar collectors).

— *Administrative matters:*

- limited number of approved crossing points (e.g. for video recorders, textiles, clothing, steel products, animals and fruit); customs offices concentrated in ports and airports;
- shortages of staff and equipment at customs offices; many delays; infrastructure out of line with traffic requirements;
- liability of officials for amounts not collected.

— *Other:*

- requirement to go through a customs agent or a guarantor;
- methods of calculation which raise the value for customs purposes;
- excessive nature of criminal customs law.

Rules concerning technical safety and public health

— *Preparation of the rules:*

- plethora of rules, lack of transparency, frequent changes, inadequate transition periods; complexity;
- influence of national producers;
- product specifications instead of performance specifications;
- non-recognition of the rules of the other Member States; dissuasive conditions of access to quality labels.

— *Substance of the rules:*

- discriminatory effects; trade standards which penalize imports;
- complex rules (e.g. concerning fruit juice);
- provisions which require that meat products must have been cooked at 70°C (thus preventing the importation of cold sausage and dried ham);
- stringent rules (e.g. concerning construction materials, sanitary ware and the use of additives);
- incompatibility with Community rules and regulations (e.g. legislation on additives in wine and the designation thereof);
- imports of pigmeat banned because of sources of swine fever in certain areas of the exporting State;
- non-returnable packaging required (e.g. for apples and pears); requirement to market beer and soft drinks in recoverable containers approved by the authorities of the importing State; rules on the labelling of milk powder; requirement to use the language of the importing State (e.g. for foodstuffs, including tinned foodstuffs);
- beer purity law;
- rules concerning UHT milk.

— *Application of the rules:*

- limited number of check points;
- lengthy and expensive checks (e.g. bacteriological inspection of pasta);
- difficult to obtain an approval (e.g. for the importation of cars by individuals);
- special methods of analysis;
- lengthy and expensive approval procedures (e.g. for pharmaceutical products and electrical equipment);

- lengthy analyses (e.g. for perishable foodstuffs);
- elaborate inspections for imported seasonal produce (e.g. cherries and apples); barriers to imported agricultural produce; intransigent application of rules and codes (e.g. for meat, cold meat, poultry-meat, milk, dairy products, cheese and eggs); quarantine requirement for batches of imported oysters;
- non-recognition of certificates of conformity to technical standards or specifications (e.g. pressure equipment; particle-board, caravan; medical equipment; refrigerators, television sets; electrical equipment and electric tools);
- documents required which are difficult or impossible to provide (e.g. certificates of conformity and ageing certificates for certain spirits).

Other barriers and constraints

— *Transport conditions:*

- requirement to transport UHT milk by refrigerated means; rules concerning the carriage of dairy products in tanker lorries;
- exemptions from the obligation to use the tachograph, checking of driving time;
- checking the weights and dimensions of vehicles.

— *Taxation:*

- tax schemes (e.g. for alcoholic drinks; private vehicles, tyres; relief for locally-bottled mineral water, alcohol denaturing rules which can result in perfumes and toilet waters being treated in the same way as spirits; other schemes favouring local producers);
- value-added tax (e.g. differences in rates; collection procedures; flat-rate repayment rates for agriculture).

— *Aids:*

- distortion of competition; lack of transparency;
- aid made subject to the purchase of national products.

— *Price rules:*

- minimum or maximum prices (e.g. for pharmaceutical products; fixing of the price of gas); fixing of profit margins.

— *Services:*

- banking; insurance;
- air transport services (licences, professional certificates etc.; pricing system); road transport (quotas; driving time; checking the weights and dimensions of vehicles; taxation).

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The customs union

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This brochure explains the workings of the European Economic Community's customs union.

The establishment of a customs union has done away with customs duties on trade between Community Member States, but the fact that rates of indirect taxation and the national rules governing security and health precautions still differ means that frontier checks continue to be needed.

Nevertheless, the customs union has been of considerable benefit to trade between Community countries.

This publication gives an outline of the various features of the customs union, and an account of its future prospects.

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The European Community has established a customs union. Why, then, are travellers still subject to customs controls at Community frontiers? Why are we still faced with the customs posts which symbolize those frontiers? Are not customs controls and barriers a blatant denial of the customs union created between the 10 Member States of the European Community?

This brochure attempts to answer these fundamental questions raised by citizens of Community Member States.

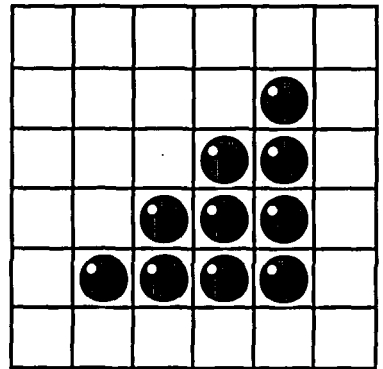
It is true that even within the customs union, customs controls have been kept in being, even though they are mostly much less stringent than they used to be.

Customs duties have long been abolished within the Community, but Member States still make indirect charges at widely differing rates, and also have different health and safety standards. This means that controls are still needed.

These controls are sometimes resented, but in a wider context the customs union has brought with it great benefits, and has boosted trade, particularly in everyday consumer goods. It is the consumer, therefore, who has derived the greatest benefit from the customs union.

Between 1958 and 1972 there was a ninefold increase in trade in manufactures between the original six Member States. Since the entry of three new members in 1973 this trend has continued, although at a slower rate.

This brochure gives an outline of the most important aspects of the customs union, its problems and its future prospects.



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