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The Brussels Report

on

The General COMMON MARKET

Note:

This is an unofficial translation of the main portions of the report on the common market prepared by the Intergovernmental Committee on European Integration. This Report will be the basis for a treaty-drafting convention to be held in Brussels beginning June 26, 1956

Unofficially referred to as the Spaak Report

TITLE I

THE FUSION OF MARKETS

CHAPTER 1 - THE CUSTOMS UNION

Section 1 - The Elimination of Customs Duties within the Common Market

The progressive elimination of customs duties among the member countries will regulate the timing of all the measures which must lead to the final realization of a common market.

Just as the common market must affect all economic activities, so too the elimination of customs duties must progress simultaneously over the whole range of production activities.

The simplest solution would have been to provide at regular intervals for an equal percentage reduction for all customs duties existing in each country. Because of its rigorous automatic nature this system would not take into account certain particular sensitive areas of production and there would be a risk of stimulating in turn a more frequent resort to safeguard clauses. The application of this solution will therefore be limited to the first general reduction. Later on, more flexibility will be introduced into the system.

This flexibility can be achieved by applying the specified rate of the reduction on the average duty of a group of products rather than on each individual product. The problem which arises, however, is how to establish these groups.

If there existed a well established international classification and statistics drawn up uniformly on the basis of a common nomenclature the grouping of products could be made within this framework. The attempts to establish an international nomenclature are only in their initial stages and statistics are based on different nomenclatures. Under these conditions a great deal of time could be lost in attempts at classification, in discussing extreme cases, and in statistical computations on entirely new bases. The proposed principle is quite different: that is, to classify the products in each country by the amount of duty which is levied on them.

In applying this principle the products on which a duty of up to 10% is levied are grouped together on the basis of five points per group and similarly if the duty is over 50%; between these two extremes there would be groups (tranches) of $2\frac{1}{2}$ points each since it is within this range that most of the present customs duties lie.

If average reductions were called for on each category thus established the system would come up against two objections. Firstly, even the lowest rates must be reduced while competing industries in question would maintain provisionally some protection. Secondly, the incentive would be lost to reduce duties more drastically in the groups with high duties in order to delay the reduction of lower duties affecting sensitive products. Consequently it is proposed that each Government be permitted in calculating the average rate of reduction, to link the groups (tranches) defined above in pairs as they see fit.

This average reduction of the tariff is determined by weighting the percentage of tariff reduction for each product according to the value of imports of this commodity from other member countries of the common market. A reference period based on one year would have only a purely accidental character. A fixed reference period is in danger of becoming meaningless at the end of the 12 or 15 years envisaged for the establishment of the market, and it would not permit countries to adjust their action on the basis of experience gained. It is thus proposed to calculate the rate of reduction at each stage on imports during the last three years for which statistics are available.

In calculating the average reduction prohibitive duties have no weight or very insignificant weight. It is necessary, therefore, to find a way to bring them into the reduction. It is therefore proposed that duties higher than 33-1/3 percent should undergo in each stage a reduction at least equal to half of the rate of reduction which must be applied on an average in each group.

The starting point of the reduction should be the effective rather than the scheduled duty rate. Otherwise the system would be meaningless since the objective is to eliminate all the duties. Nor can the base be the duty applied at the time of the first reduction because this may prompt Governments to increase the effective duties. It is therefore proposed to take as a base the average duties applied during the years 1953, 54 and 55 except for excluding from the calculation certain reductions applied during a strictly limited period; (in those cases) the most recent scheduled duty would be taken, if as a result of international negotiations, it is lower than this average level.

On certain products customs duties are applied as a tax on consumption rather than as a means of protection. This is the case for fiscal duties. These duties must be included in the general system of reduction and elimination. It is up to the Governments to establish or to increase for compensation purposes the specific consumption taxes or excises, which will be subject in international trade to the rules of exemption for export and compensation for import - to the extent that this is not rendered unnecessary by the progressive harmonization of fiscal legislation.

In the first four year period after the Treaty comes into effect the rate and timing of the reductions would be determined as follows:

At the end of the first year by 10%, followed by two more reductions by 10% at 18-month intervals so that in the first stage of four years duties would be reduced by 30%.

In the second stage the two first reductions of 10% will again be made after 18 months; a third reduction of 10% will be made at the end of the eighth year. In the third stage it would be necessary to eliminate the remaining 40%.

For the second and third stages the system could, however, be modified by proposals of the European Commission which are submitted to a vote in the Assembly and adopted by a qualified majority of the Council. This procedure would permit a possible extension of the time periods for the complete elimination of customs duties within a maximum limit of 15 years. The rule of unanimity must, in effect, be avoided lest one State by its veto power obstruct the introduction of the flexible formulae envisaged in the Treaty itself.

As against this any shortening of the timing of three stages of four years each, or any modification of the system envisaged which would in practice have the same effect cannot be applied except by unanimity, since no State can be obliged against its will to go beyond the commitments to which it has formally subscribed.

Section 2 - Establishment of a Common External Tariff

The decision to establish a customs union implies the establishment of a common tariff with respect to third countries. In this case three questions arise:

- the level of this tariff;
- the mechanism by which it is progressively established, starting from the different tariffs of the member countries;
- the conduct of negotiations by which the tariff can be modified even before finally achieved, or can evolve after the end of the transitional period.

It should be possible to avoid any doctrinal conflict on the desired level of the duties if each country recognizes the new conditions which are opened by the prospects of a real common market.

It would be contradictory to establish this common market in the name of greater productivity which will result for our economies while at the same time maintaining the previous protective measures. Besides, a high duty is, in any case, excluded by the GATT rules concerning the establishment of a customs union.

In addition, the fear of an increase in living costs in countries where the tariff would be increased would not take into account the compensation resulting from the total elimination of customs duties for important producers in the common market.

One cannot underestimate the power of negotiation which will help this powerful group to obtain compensation for the reduction of protection below the common tariff level that GATT allows it to establish, and to contribute in this way to the reduction of customs barriers in all international trade.

GATT envisages that the common tariff of a customs union in its general incidence would not be higher than the various national tariffs which it replaces. This formula does not require any special method of calculation. It requires only that once the common tariff is established the total duties levied do not represent a higher percentage of the value of imports of the customs union than the total amount of the duties charged previously by the States in relation to their total imports. This does not oblige the union to calculate the new tariff on the basis of the weighted average on past imports. Once the common tariff is established and commercial agreements are concluded on a common basis, there is no reason for imports into the territories of the different member States to have the same pattern as those resulting from the different commercial policies and distinct customs tariffs. A comparison of global consumption would perhaps better reflect the import potential that each country represents.

Do we want, however, to determine the weighted average on imports themselves? Furthermore, is it necessary to decide whether it is desirable to apply a uniform weighted average on all duties based on global imports from third countries or to make a weighted average on each commodity based on its imports.

In the first case, one runs into the paradox of giving imports of raw materials, which are generally exempt from duties, an important role in determining the common duty. Should weights be sought for each commodity? In the absence of a common nomenclature and statistics established within this framework the required accounting would take many years while a tariff thus calculated with such difficulty may be entirely distorted. In fact, even if each national tariff possesses some internal harmony an average weighted duty for each item may result either in a lower or a higher tariff according to the relative weight of the imports of the product in question in low and high tariff countries.

It is necessary therefore to adopt a simple method which avoids useless statistical exercises while at the same time ensuring an internal harmony of the common tariff and its conformity with the GATT regulations.

A solution will be sought by taking the arithmetic average of the existing duties. However, a tariff resulting from a simple arithmetic average would be higher than the level which is compatible with the GATT rules, and its internal harmony, particularly as regards raw materials, semi-finished products and finished products, would not be ensured.

This dual problem will be answered by fixing maximum rates at different levels for raw materials, semi-finished products and finished products and by substituting in the calculation of the arithmetic average the maximum rates for the duties which exceed them.

In cases in which the proposed system does not result in a satisfactory formula, a solution should be sought through negotiation among the member States with the help of proposals of the European Commission.

For the purpose of calculating the external tariff as well as the reduction and elimination of the duties within the common market, the existing duties are to be defined as the average of the duty rates effectively applied during 1953, 54 and 55 or the legal tariff if it is lower, but ignoring purely temporary reductions.

The common tariff should be put into effect progressively during the transitional period in order to permit a gradual adjustment of the economies of member states to the changes in their tariffs with respect to third countries, to prepare the basis for negotiations with third countries, and to achieve a parallelism in the establishment of the common tariff and the elimination of internal duties.

a) For items on which the unadjusted present duties do not differ by more than 15% or by more than 3 points from their arithmetic average the average duty is applied when the first reduction of 10% on customs duties takes place within the common market.

b) For other items each country, in its relations with third countries, will reduce the difference between its own duties and the common tariff by 30% at the end of the first four year period, by another 30% at the end of the second period, in order finally to adopt the common tariff at the moment when

customs duties will be completely eliminated within the common market. The schedule thus envisaged allows the common nomenclature, which is indispensable for a common tariff, to be put into effect in time; the work which is very far advanced will have to be finished in very short order.

c) Harmonization of the tariffs, however, must be carried out in advance in cases where the reduction of internal duties threatens to give rise to transshipments because of the divergence from the external duties. Whenever country "A" reduces its internal rates to such an extent that the internal rate becomes lower than the difference between its own external tariff and the external tariff applied by Country "B", the remaining difference must be shared by both countries; Country "A" will lower its external tariff and Country "B" will increase its tariffs each proportionately to the difference between the initial tariffs and the final common tariff. (1)

d) A safeguard clause must be envisaged in order to permit certain countries in particularly delicate cases to postpone either a reduction or an increase in their tariffs. Its application would require the approval of the European Commission and can only be granted for a limited period and for items which do not represent for the country in question more than 5% of the value of imports of such commodities from third countries. In such cases, either certificates of origin, tariff quotas, or agreements regarding re-exporting should be applied to the extent necessary to avoid transshipments.

If the Commission refuses to agree, the interested State could have recourse either to the Council of Ministers or to the Court.

The mechanisms described above define the level of the common tariff which will be applied in the absence of concessions obtained from third countries. Negotiations with third countries could be undertaken with a common tariff of this type in view. It should also be noted that, to the extent that the rules agreed upon among the member States result in a tariff which is lower than the limits which the GAIT allows, these duties would not be considered as consolidated. It is indispensable that the negotiations be conducted in common: the European Commission will be responsible for them on the basis of a mandate from the Council. As effective and total application of this common tariff is approached, it may become necessary to overcome the difficulty which the unanimity rule imposes in establishing these rules.

(1) Assume that for some product Country "A" has an initial duty of 40% and Country "B" 10%, so that the remaining internal duty for Country "A" will no longer make up the difference once it has reached 30% (i.e. a reduction of 25% from the initial level). Let us suppose that it is reduced to 24% (i.e. a 40% reduction for this particular item) even before the average reduction of 30% is achieved for the tariff as a whole. There is a danger of transshipment, the sum of the duties for movement across Country "B" (i.e. 10% plus 24%) being less than the external duty of "A" (which remains at 40%). The difference to be made up in 6 points. How should it be divided? Let us suppose that in applying the rule of the corrected arithmetic average, calculated on the four existing tariffs, the final common tariff for this item should be established at 20%. The external tariff of "A" diverges from it by 20 points, and that of "B" by 10 points. "A" must reduce its tariff two times as much as "B"'s is raised and the new external tariffs will be established provisionally at 36% for "A" and at 12% for "B". It may be noted that this method can be applied several times and can even be adjusted to variations in the final future tariff resulting from the negotiations which are to take place during the transition period.

For decisions on the proposals of the European Commission a qualified majority will be considered adequate after the end of the second stage and for changes in the customs duties which do not differ more than 30% or 5 points from the common basic tariff.

These detailed tariff negotiations are distinct from the overall negotiation which aims at the entry of certain European countries into the common market or establishment of a particularly close association with the Community. These negotiations, whose possible repercussions will be such that the unanimity of Governments is required, should be undertaken as soon as possible after the entry into force of the treaty.

Intergovernmental Committee created by
the Messina Conference
Brussels, April 23, 1956

ANNEX

Summary of the Proposals Concerning the Common Market in the Report to the
Ministers of Foreign Affairs

Title I

The Fusion of Markets

CHAPTER I - The Customs Union

I. Elimination of customs duties within the common market.

1. The starting point for the reduction is the average duty levied (perçu) during the years 1953, 54 and 55 or the scheduled duty (inscrit) if it is lower. The first reduction will be applied across the board on all commodities. The following reductions will be applied to the average for groups of commodities.
2. Commodities are grouped according to the duties levied on them by intervals (tranches) of 5 points for duties up to 10% and above 50%, and by intervals of $2\frac{1}{2}$ points for duties between 10% and 50%. Any two of these groups can be linked together at the choice of the Governments.
3. The average reduction applied to the groups thus established by uniting two intervals is calculated by weighting the percentage of reduction on each tariff position (poste) by the value of corresponding imports from other Community countries during the three last years for which statistical information is available.
4. During the first stage reductions take place initially at the end of the first year, and thereafter at 18 month intervals; during the second stage, they again take place at 18 month intervals and at the end of the eighth year. There remains 40% to be eliminated before the end of the transitional period.
5. Modifications in the system envisaged will require unanimous approval of the Council of Ministers if it is a question of reducing the time periods.

In other cases and on the proposal of the European Commission a majority of $\frac{2}{3}$ of the Council will suffice. However, the delays can be extended only for three years so that the transitional period will end after a maximum of 15 years.
6. After the fifteenth year certain temporary derogations can still be proposed if they are recognized as necessary to prevent fundamental and persistent troubles in the economies of the member States. These derogations would come into play only within the limits fixed in the Treaty and with the agreement of the common institutions.

II. Establishment of a Common External Tariff

A. The system for the establishment of a common external tariff will be the following:

1. The starting point for the calculation of the tariff is based either on the average of the duties levied during the years 1953-1954 and 1955 or on the scheduled duty rate if it is lower.
2. The tariff positions, classified in three categories according to a nomenclature already agreed upon, will be brought down to certain maximum levels which will differ for raw materials, semi-finished products and finished products.
3. The level of the external tariff will be established on the basis of an arithmetic average of the duties levied on each product, after the high tariffs have been brought below the maxima envisaged for each category.
4. In order to achieve the level thus defined the following schedule will be applied:
 - a) On items where the present unadjusted duties are not more than 15% above or below or more than three points away from their arithmetic average this average will be applied when the first decrease of 10% is made on customs duties within the common market.
 - b) On other items at the end of the first stage of four years each country, in its relations with third countries, will reduce by 30% the difference between its own duties and the level of the corresponding duties of the common tariff. A second reduction of 30% of the difference will be made at the end of the second stage of four years.
 - c) The application of the common tariff itself will take place at latest at the time when customs duties are completely eliminated within the common market.
 - d) Advance actions will have to be taken in harmonizing the national tariffs with the common (external) tariff whenever the reduction of internal duties threatens to bring about transshipments, because of the difference from the external duties.
 - e) If the mechanisms proposed above do not permit a satisfactory formula to be determined in certain cases, a solution will have to be sought through negotiations among the member States, and facilitated by proposals of the European Commission.

The European Commission will be able to grant a country the benefit of a safeguard clause for a limited period and for tariff positions not exceeding 5% of its imports from third countries. If this (safeguard) should not be granted, the interested State would be able to have recourse either to the Council of Ministers or the Court.

B. Negotiations with Third Countries

It is the common tariff defined above which will be applied towards third countries, except for concessions obtained from them by negotiations.

The European Commission will make proposals and conduct tariff negotiations with third countries under a mandate approved unanimously by the Council.

However, beginning with the ninth year a qualified majority will be sufficient to modify duties which do not differ by more than 30% or 5 points from the common basic tariff.

Negotiations for the establishment of associations between the Community and third countries will take place as soon as possible after the Treaty comes into effect on the basis of proposals of the European Commission approved unanimously by the Council of Ministers.

CHAPTER 2 - QUOTAS

Section 1 - Import Controls

The methods used by the OEEC for the elimination of quotas will continue to be employed until the date of the first lowering of customs duties carried out within the framework of the Treaty.

The liberalization already accomplished through application of the standards of the OEEC will be consolidated among the Six who will endeavor in addition to maintain the liberalization agreed to beyond these standards.

The liberalization which has been consolidated among the Six could be reopened only in cases where the Treaty itself would authorize the operation of a safeguard clause after liberalization.

After the first lowering of customs duties, the new mechanism proposed for the Community will be as follows:

1. All bilateral quotas open to one partner on imports from others will be added together in order to establish global quotas, by commodity, open to all the producers of the Community
2. These global quotas will be increased each year on the order of 20% above the preceding year. As a result of being progressively increased, they should become inoperative, not later than a year before the time that the customs duties themselves are to be eliminated.
3. The starting point for an increase of the very small or non-existing quotas will be, at the choice of each interested State, either 1% of the national production in question or imports corresponding to the average of the Community for the product in question.
4. When the quota takes the form of a purchasing monopoly (governmental or business), the proposed system will be replaced by proposals of the European Commission concerning the adaptation of the existing organizations which will have either to disappear, be adapted to the common market or, where necessary, be replaced by a common organization in such a way as to eliminate progressively the discriminations among the different suppliers of the common market. This procedure will be applied equally to fiscal monopolies.

Section 2 - Export Controls

During the first four-year period and after consultation with the European Commission certain export controls or export taxes having a similar effect could be maintained among the member States but they must be eliminated at the end of the fourth year.

In relations with third countries and within the framework authorized by GATT, export controls for the duration of the transitional period will remain under the responsibility of each of the States to the extent that there is, in practice, a certain autonomy in the commercial policy of the member States. At the end of the last stage, export restrictions will be subject to the common commercial policy of the Community vis-a-vis third countries.

CHAPTER 3 - SERVICES

At the moment when the Treaty comes into force a stand-still agreement will be applied consolidating the pertinent rules of liberalization adopted by the member countries within the framework of the OEEC and the GATT.

The Treaty itself will specify the principles and rules of procedure binding the member States:

- a) during the first two stages (8 years) the European Commission will make proposals for the modification of existing national regulations concerning services and the elaboration of a common regulation. The proposals of the Commission should
 1. in the first instance deal with services directly connected with the costs of production and facilitating the free circulation of goods;
 2. see to it that national regulations, as long as they are maintained, are applied without discrimination on the basis of residence and nationality;
 3. determine to what extent the national regulations correspond or not to the requirements of public order.

The proposals of the Commission will be submitted to a vote by the Assembly. In order to put them into effect a unanimous approval of the Council will be required up to the end of the second stage, and thereafter a qualified majority.

- b) At the end of the transitional period, the rules proposed by the European Commission should be uniform. Only certain national rules can be maintained which, on the proposal of the Commission, are adopted by a qualified majority of the Council of Ministers.

Transport Services

On proposals of the European Commission put forward during the transitional period and to be put into effect on the same conditions as those indicated for services in general, discriminations on the basis of nationality should be eliminated in such a way that at the end of the last stage, all the nationals of member States will be assured the right to furnish and accept freely transportation services over the territory of the member States as a whole.

CHAPTER 4 - AGRICULTURE

A. - Establishment of the Common Market for Agriculture

a) Transitional Measures

Agricultural products will be included in the groups established for the reduction of customs duties.

The general rule for enlarging quotas will, in principle, be supplied to agricultural products. If this is not possible, a system for stopping imports, which is linked to the level of selling prices, can be used for particularly sensitive agricultural products.

For certain products for which the market is organized on a national basis, trade will at first be increased through contractual commitments which should be replaced by a common organization at the end of the transitional period.

The general system for the establishment of a common external tariff will be applied to agricultural products. The quotas vis-a-vis third countries should be progressively harmonized until a common commercial policy is established.

The progressive elimination of the regulations which are destined to disappear, or the progressive establishment of a common organization which would replace them will result from the elaboration of certain standards which the differing regulations will have to approach concurrently or to which the new rules, to be adopted in common, will conform.

b) Definitive Arrangements

Products for which a common organization of the market would be justified will be chosen during the transition period. The common organization of the market for these products will be prepared by the establishment of a provisional balance sheet on resources and markets, which will include the stabilizing mechanisms that will eventually be necessary.

For products which are not under a common organization the market within the Community will be free. Protection with respect to third countries will be assured by customs duties in preference to quotas which would be seasonal rather than permanent.

In the exceptional case in which a national economy is both so limited and so little diversified that it cannot get rid of fundamental and persistent troubles affecting the agricultural sector, special solutions would have to be applied in order to complement, if necessary, the stabilizing mechanisms envisaged above.

B. - The Common Market for Agriculture and Third Countries

The common market for agriculture cannot be an entity protected against the outside world, while aligning its prices on marginal internal production.

However, it will be protected against abnormal competition from third countries that employ dumping prices. This is why certain arrangements should be applied to permit producers of the Community who up to now used low-priced raw materials to continue to export at competitive prices to third countries.

C. - Institutional Organization

The European Commission within a period of two years should make proposals for a common policy and organization of the agricultural market. Furthermore, it should be the body to make the examination which is envisaged of existing national regulations.

The proposals of the Commission will be submitted to a vote in the Assembly and should during the first stage, be adopted by a unanimous vote of the Council of Ministers. From the second stage onward a qualified majority of the Council of Ministers will suffice.

