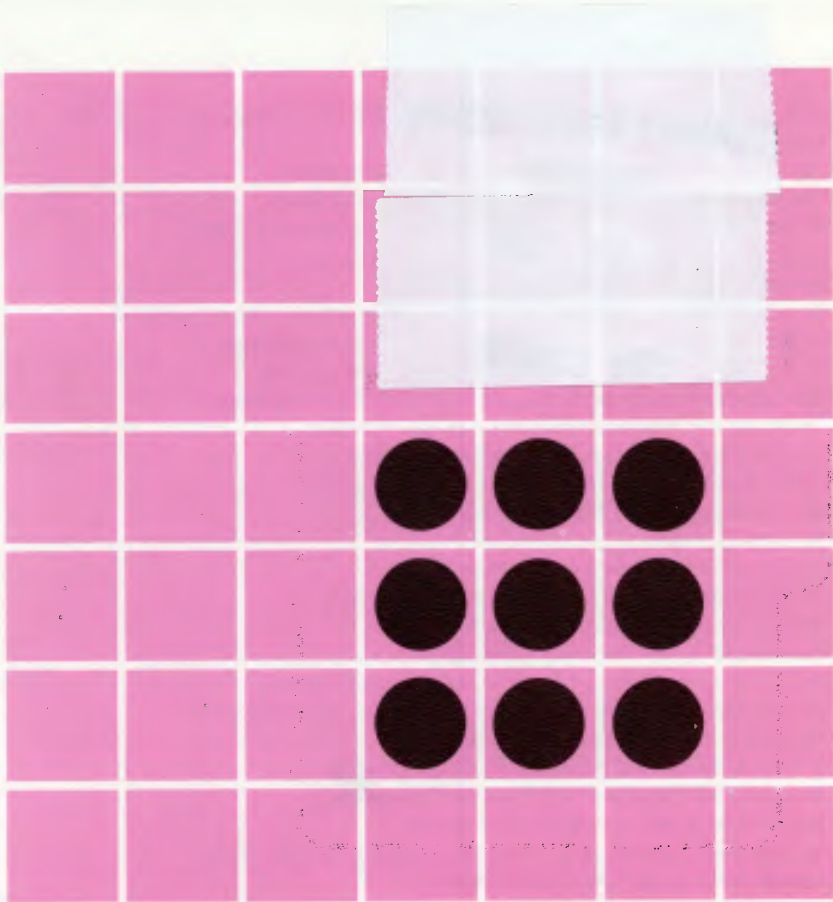


HELLMAN

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The customs union

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Introduction: No-one loves the customs

Even the Bible is not particularly charitable towards customs officials. The New Testament tends to refer to publicans, as they were called at the time, in the same breath as other varieties of sinners. Today's traveller tends to be equally unenthusiastic when involved in tiresome border formalities, or asked to open his purse strings. Customs posts still stand at the frontiers between the nine Member States of the European Economic Community, an obstacle to the free movement of people and goods. That Community was set up to dismantle customs barriers; has it succeeded in making Europeans feel that they are citizens of a continent without frontiers? More than 20 years have passed since its foundation and, undeniably, customs barriers still divide one Community country from another. They are often regarded with impatience as left-overs from pre-Community days. Over the same period, on the other hand, border crossings have become more or less a matter of routine for millions of holidaymakers and businessmen. Economic integration in Europe has attained a level undreamed of in the immediate post-war years.

Admittedly, the formalities required in trade between the Member States still cost a good deal of time and money. We cannot yet speak of a real 'domestic' market. Nevertheless, in many ways things have undoubtedly been made much simpler than they used to be, since the bulk of traffic within the Community is now subjected only to occasional spot checks by customs

officials. Even in economically troubled times, European frontiers lie open. 'Intra-Community' trade continues to grow from year to year, despite the continuing existence of obstacles to wholly free trade. And as recent membership applications show, the Community has increased its appeal for outsiders. It is the Community — not the individual member countries — that is being wooed in the negotiations.

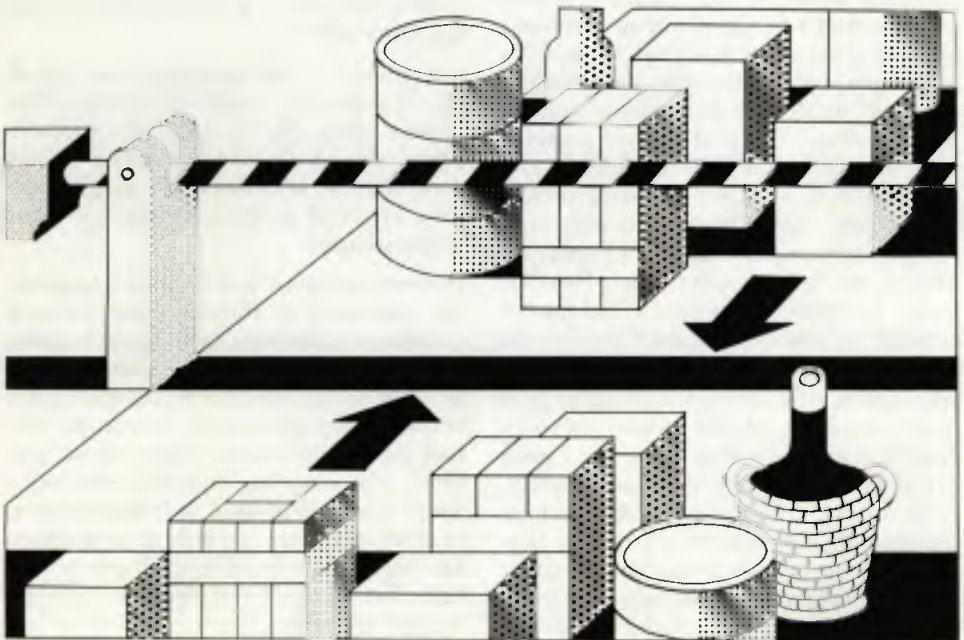
What are the achievements of this customs union of which the Community is so proud? Why, though, is it still necessary to have customs officials, and still not possible to abolish completely border controls within the Community?

Any answer to such questions must first of all emphasize the crucial significance of the customs union for the development of the Community as a whole, and make it clear that economic integration is a lengthy process, involving problems which are often underestimated.

However tedious it may be to have to queue up sometimes at frontier posts between Community countries, and however complex the remaining intra-Community trade formalities may appear, the customs union nevertheless represents an important step forward on the road to European integration. Not only has it made possible a wider economic division of labour between the Member States and laid the foundations for various common policies, it also constitutes one of the major linchpins of Community solidarity.

Of course, the problems of forging a single Community 'domestic market' have turned out to be much more complicated than simply abolishing customs duties and quantitative trade restrictions. Solving them calls for the accomplishment of Community aims in other fields as well.

All this does not detract from the importance of the customs union. Quite the reverse: if there were no Community customs legislation, it would be far more difficult to tackle the remaining obstacles to trade.



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:

- (a) to refrain from applying to each other any customs duties, charges having equivalent effect, or quantitative restrictions;
- (b) to apply a common external customs tariff to countries not within the union, and a common basic customs legislation.

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 eliminated between the member countries for goods originating in those countries. Each member retains its own external tariff and tariff policy towards countries not belonging to the group.

There is thus duty-free trade only in goods originating within the free-trade area.

2. The ambitious aims of the EEC Treaty

To achieve their far-reaching aims, the founding fathers of the EEC declared in Article 9 of the Treaty of Rome 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 could be no common commercial policy or common agricultural market; nor could the Community enjoy financial autonomy, or contemplate the establishment of economic and monetary union.

The Treaty of Rome did not aim simply at the introduction of free trade in goods produced within the Community, but called for a customs union 'which shall cover all trade in goods' within a 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.

The Treaty of Rome thus not only calls for the elimination of internal customs barriers

and other trade restrictions, but also establishes a genuine 'Community preference' in trade. This is achieved by the free movement of Community goods within the common customs territory and the application of the EEC's common external tariff to products imported into the Community from non-member countries. 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'.

From the outset, the founders of the Community had very ambitious ends in mind. They wanted to create a politically and economically united zone within which goods, capital, ideas and people would be able to move freely without any let or hindrance. In their eyes, a broad fusion of national economies not only promised benefits in the economic sphere, but was the best way of laying the foundations for the political integration of Europe. At the very least, a common market would blunt the long-standing clashes of economic interests 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 European Economic Community (the Benelux countries, France, the Federal Republic of Germany and Italy) had been abolished. The transitional period to allow the three 'new' Member States (Denmark, Ireland and the United Kingdom) to bring their tariffs into line with the Common Customs Tariff and eliminate the last duties on intra-Community trade ended on 1 July 1977, which is when the common external customs tariff became fully operational. The conclusion of free-trade agreements with the EFTA countries has made it possible to avoid a permanent economic rift within Europe. Duties on industrial trade between the Community and the EFTA countries were eliminated by mid-1977, and on 1 January 1980 surveillance of various 'sensitive' imports (with the exception of certain paper products) was lifted.

II. The instruments of the customs union

A. *The Common Customs Tariff*

1. Establishing 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. With the Common Customs Tariff (CCT), products from non-member countries can be put into free circulation throughout the territory of the Community, and need clear

customs only once, normally on entry into the customs territory of the Community.

Where imports into a Member State might lead to economic difficulties, the Commission can authorize the government of that State, under Article 115 of the Treaty, to apply such protective measures as it considers appropriate, but this is an exceptional procedure.

It is important to note that no government has the right to apply such import-restricting measures as it sees fit. Protective measures may only be taken in accordance

with a Community procedure. When the EEC Treaty entered into force in 1958, there were big differences between the customs tariffs of the six original Member States. Article 19 of the Treaty stated that the common external tariff duty would be the 'arithmetical average' of the corresponding national duties. Like the dismantling of duties between the Member States, the external duties were aligned in a number of stages. This process was completed 18 months earlier than scheduled since the strong economic growth of the 1960s provided a suitable climate for the Member States to press ahead with European integration.

Alignment demanded sacrifices, however, especially by France and Italy, whose economies had been protected by relatively high customs walls before the establishment of the Community. The tariff arrived at by this means was appreciably lowered later as a result of the multilateral trade negotiations.

2. Negotiating the CCT

When the Common Customs Tariff was introduced, the average duty level of the Community countries was already lower than that of other industrialized States. The average duty was around 11% and was thus considerably below the corresponding figure in the USA and Japan. The range between the highest and lowest duties was also narrower in the Community than in its main trading partners.

In three series of world trade negotiations (the Dillon Round 1960-62, the Kennedy Round 1964-67 and the Tokyo Round 1973-79) the Community agreed to a considerable reduction in its external protection. In so doing, it showed that it was not inward-looking, but was conscious that it shared responsibility for maintaining a liberal world-trading system.

At the same time customs duties were being discussed in the context of the agreements

with non-member States, such as the Community was negotiating with EFTA countries, almost all the Mediterranean countries, and the African, Caribbean and Pacific States. In addition, the Community has by and large unilaterally eliminated duties for its overseas countries and territories, and in the context of its generalized system of preferences.

Thus the level of duties in the Common Customs Tariff is now below that agreed on in 1960. Furthermore, it is only actually applied at this level *vis-à-vis* countries not linked to the Community by any preferential agreement.

Nevertheless, the external tariff has retained its significance as an instrument of protection and as a central pillar of the common market, though by 1987, when the duty cuts agreed in the Tokyo Round will have been implemented, the average duty of the Community will have dropped from 9.8% to 7.5%.

In most cases, the Community agricultural market is not protected by duties of the traditional type, but by variable import levies. These bring the prices for imported goods up to the minimum price level granted to European farmers. Similarly, export refunds financed by the Brussels budget bridge the gap between the Community guaranteed prices for agricultural products and the (often much lower) price levels on the world market.

The protection offered by the Common Customs Tariff cannot be increased arbitrarily to fit in with the economic interests and commercial policy objectives of the Community. As signatories of the General Agreement on Tariffs and Trade, the Community countries are obliged to adhere to the rules of the game laid down in that agreement.

The duties on products subject to a level of import protection which has been agreed on ('consolidated') internationally can be increased only if the Community grants its

trading partners corresponding compensatory concessions. The duty rates in question are then 'de-consolidated'.

Inversely, duty concessions under the GATT rules can normally only be granted *erga omnes*, i.e. to all trading partners. An exception to this 'most-favoured-nation' principle is in the tariff preferences for developing countries.

Derogations are also allowed for internal trade between GATT Member States which have formed a customs union or free trade area between themselves.

In addition to the 'conventional' duties, the common external tariff also contains 'autonomous' customs duties which do not result from international agreements. Common Customs Tariff duties may be wholly or partly suspended on particular products for specific economic reasons (e.g. where an article is not produced in the Community or is in short supply there, or to encourage Community processing industry, or to assist in the marketing of products from developing countries). Suspension of duties is temporary, and requires a Council decision. In some cases it will apply to a limited quantity of the product in question: this is known as a tariff quota.

Countervailing duties can be introduced to counter dumping in the Community; the condition for their application is that the Community industry concerned must be suffering economic injury as a result of products from non-member countries being offered at prices lower than in the country of manufacture. With such scope for adjustment to meet the Community's needs, the Common Customs Tariff is a flexible instrument of the common economic policy.

B. *Common customs law*

1. **The importance of uniform rules**

One of the customs union's aims is to remove all causes of distortion in com-

petition and deflection of trade in the customs territory. For it to be effective it is not enough simply to remove 'internal' duties between the Member States and introduce a uniform external tariff. The Common Customs Tariff only has the desired integrating effect when it is applied in all Community countries according to the same rules. The customs procedures applied at border crossings and the different practices followed by the national customs authorities must also be made as similar as possible.

If different rules were to continue governing customs clearance or release of goods, there is a danger that Community citizens or firms would not all receive the same treatment. This would run counter to the Treaty of Rome's ban on discriminatory treatment.

What use is it, for example, to establish a common external tariff, if the value of goods for customs purposes, which determines the amount of duty payable, is not defined in the same way in all the Member States? How can the preferential system be properly managed if the origin of manufactured goods is defined according to different criteria?

Customs law therefore holds considerable implications for the total cost of the operations which its application entails. Costs of this type constitute a sizeable addition to the tariff charge proper, and may even be so high as to make a particular operation no longer worthwhile. Accordingly, Community customs legislation policy is aimed at cutting down formalities throughout the Community for all operations involving any given articles from non-member countries. By following this policy, it should be possible to eliminate divergences in treatment between Community firms, deflection of trade, and distortions of competition on the internal market. For the movement of goods to be genuinely free it is also necessary for customs procedures at intra-Com-

munity frontiers to be simplified or even done away with as far as possible. There should no longer be any justification for border formalities except in certain specific circumstances. They often constitute a burden to enterprises, affecting their competitive thrust, particularly since in many cases the procedures are so complicated that those involved have to resort to customs agents.

2. A laborious process of integration

The Community can point to considerable progress in the harmonization of customs legislation. It has succeeded in finding uniform answers to the most important questions, but there is still a good deal to be done.

Approximation and simplification of the rules have not yet fully met the requirements for a genuine internal market. The main reason for this is that national customs legislation in the individual Member States has taken a great many years to develop into its present form and has been shaped according to different economic concepts. Some Member States had a long tradition as free-trading nations, while others were more keen to protect effectively their industry from foreign competition. In addition, customs legislation is closely bound up with the general legal system of each Member State (civil, criminal, commercial and administrative law), which differs considerably from country to country. In many cases, changes in customs legislation touch on other fields of law as well. For that reason, they involve wider difficulties and can generally only be enacted slowly.

The approximation of legislation has also been made more difficult by the fact that it was based initially on provisions of the Treaty which did not envisage the enactment of binding legislation. All but one of

the 19 articles which make up the chapter dealing with the customs union deal with the elimination of customs duties and the establishment of the Common Customs Tariff. Article 27 alone provides that 'before the end of the first stage, Member States shall, in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of customs matters. To this end, the Commission shall make all appropriate recommendations to Member States'.

Although the Member States complied with the recommendations, they were allowed such latitude that unacceptable divergences arose within the system. Reflecting this step-by-step process and the compromises which have had to be struck, the customs union is based on legal provisions of differing status, some having been adopted in the form of directives and others as regulations.

While Community regulations directly replace national law, directives leave the national authorities free to decide how to transpose the Community provisions into their own law. Only regulations, therefore, lay down provisions directly applicable in all Member States which ensure truly uniform application of Community customs law.

In its task of harmonization, however, the Commission has a number of useful powers and instruments in the customs field, the Council having delegated to it the responsibility for overseeing implementation of the rules it (the Council) has laid down. The Commission exercises these powers largely through various legislation committees in accordance with a novel procedure which enables it to adopt measures for implementing Council acts directly, provided the relevant committee has given its approval. If approval is withheld, the Commission must submit a proposal on the measures to the Council.

The Commission also sees to it that the rules adopted in collaboration with the legislation committees are properly applied. In short, the Commission administers the customs union and is entrusted with its successful completion.

3. Equal treatment for goods from non-member countries

The replacement of the national customs territories by a single Community customs territory has, however, made it necessary to adopt a number of Community rules covering trade with non-member countries. Without them, movement of goods could cause considerable distortions of competition and obstacles to trade. The most important of these rules govern the definition of value for customs purposes, the origin of goods, various procedures whereby customs duties are suspended (e.g. 'processing arrangements'), and customs warehouses and free zones.

The Common Customs Tariff merely gives a description of the nature of the goods (tariff headings) and sets out the individual duty rates to be applied. But how the value of the dutiable goods is to be calculated, what criteria are laid down for the customs clearance of goods which have undergone working or processing outside the country of origin, and under what conditions goods may be temporarily imported duty-free, are in many cases considerations of great economic importance.

Valuation for customs purposes involves establishing the value of goods on which the amount of duty payable will be calculated. It has an important function in tariff protection, and can have a greater effect on trade than the actual customs duty itself. In the GATT 'Tokyo Round' negotiations, the Community negotiated with its trading partners a customs valuation code which substitutes a more equitable and homogeneous system for the various sets of

rules which existed before, some of which constituted real handicaps for Community exporters. The new code introduces a 'positive' definition of value, based wherever possible on the price actually paid or payable. Where this rule cannot be applied, five alternative methods of valuation are available.

To restrict the benefit of preferential agreements to the signatory countries, rules of origin are necessary. Such rules are applied to ensure that products admitted under the preferential arrangements have been 'wholly obtained' (e.g. mined) in the beneficiary country, or that if they have been imported from elsewhere, they have at least undergone 'substantial' working or processing there — to the extent, for example, of requiring a change of tariff heading. In defining the amount of working or processing that third-country products need to undergo in a 'preferential' country to be eligible for the concessionary tariff treatment offered under the various agreements, the rules of origin have a vital economic role to play. They are complex, because percentage rules must be applied and because divergences exist between certain provisions of the agreements, despite the fact that they are based on the same principle. The Commission has started work on harmonizing the rules of origin, but this is not something that can be achieved overnight.

The Community rules governing processing arrangements are also of considerable importance. These determine under what conditions goods can enter the Community free of duty before being re-exported to non-member countries after undergoing working or processing (inward processing) or can return to the Community's customs territory after leaving it for a certain period to undergo such treatment (outward processing).

4. Opening up national markets

As far as 'intra-Community trade' is concerned, customs controls in the strict sense of the term have lost their *raison d'être*: all customs duties and charges having equivalent effect and all quantitative restrictions and measures having equivalent effect were required to be phased out by the end of the transitional period. While exceptions to this rule may still occur, it is nevertheless at the basis of the considerable progress which the customs union has made.

The application of that rule has given rise to the 'Community transit' procedure. The great significance of this is that it simplifies frontier formalities; goods may be shipped from the customs office in the country of consignment right through to the customs office in the country of destination without being subjected to any further customs formalities on crossing the frontier.

The Community transit procedure is in effect a sort of bridge by which internal frontiers can be crossed. The usual requirements of national law regarding goods entering or leaving the country are not applied at the frontier, and where the goods go straight through the country they are not applied at all.

This system has been in operation since 1 January 1970, and by streamlining intra-Community trade it has made an important contribution towards the elimination of internal frontiers.

For example, when a Danish manufacturer exports furniture to Northern France he now only has to show a single transit

document at the German and Belgian frontiers. Previously, customs officials required separate forms for each frontier crossing within the Community, which to a large extent nullified the advantages of the free movement of goods. The Community transit procedure is continually being improved, and it should soon be possible to complete all frontier formalities at the customs office of departure. The procedure also facilitates trade with non-member countries where their exports pass through more than one Member State.

The Commission and the Council are endeavouring to simplify the procedure still further. Under agreements concluded with Austria and Switzerland, those countries have been applying the Community transit system since 1 January 1974 using the same rules as the Member States. In the case of freight moving by rail, the Community customs authorities have already abandoned all transit documents, and transport operations are monitored solely by means of international waybills.

Nevertheless, discrimination in trade within the Community does arise, not only because of the survival of time-consuming and costly frontier formalities but also because there are different sanctions under customs law. Accordingly, the Commission is currently working on proposals for uniform measures to combat customs fraud, and a uniform administrative procedure for settling disputes between the customs authorities and firms still remains to be established.

III. The role of the customs union in the integration process

A. A pace-setter for a single market

1. New ways of thinking

Incomplete as it still is, the customs union has served as a point of departure and

motor for virtually all efforts to achieve integration in the Community. It covers a market of 260 million consumers in which trade barriers have been abolished, and has repeatedly provided impetus and foundation for new Community policies. The

abolition of internal tariffs and import quotas immediately injected a breath of fresh air into the economies of the Member States, causing many businessmen and industrialists radically to alter their previous concepts.

The shake-up of traditional ways of thinking and working was most marked in the Member States which had been used to high tariff walls. Instead of being able to rely on assured conditions of sale, many industrialists suddenly found themselves up against growing competition.

For many firms, new export opportunities opened up overnight.

Without the customs union, trade between the Member States would probably have expanded much less than it did. Consumers benefited from the availability of an unprecedentedly wide range of goods, and prices actually dropped in many cases. Increased economic interdependence also led the Member States to try and tackle structural economic problems together, seeking joint solutions for example in the field of energy.

2. The growth of trade

Between 1958 and 1972, intra-Community trade (imports and exports) between the six founding Member States increased nine-fold, whereas trade with the rest of the world over the same period trebled. This trend was not sustained to the same extent in the period immediately following the enlargement of the Community. From 1973 to 1978, exports in intra-Community trade rose from around 90 000 million to 185 700 million European units of account (EUA).¹ Over the same period, however, exports to non-Community countries rose from 80 700 million EUA to 173 900 million EUA.

But now that the three new Member States are more fully integrated, intra-Community trade is picking up once again in com-

parison to trade with non-member countries. In part this is due to the stabilizing influence of the European Monetary System (EMS) on exchange rate fluctuations.

Unfortunately the world economic crisis has cut back substantially both the production and the external trade growth rates achieved earlier. Unemployment and balance-of-payments problems are raising fresh calls from many quarters for the adoption of protectionist measures.

It is easy to see what the result of such a policy would be, when one considers how much the economies of the individual members of the Community already depend on one another: since the establishment of the Community, the share of intra-Community trade in goods and services as a proportion of the Community's total trade has risen from an average of 30% to nearly 50%.

The three Benelux countries and Ireland, in fact, do between two-thirds and three-quarters of their trade with their EEC partners. The growing use of Community preference is also increasingly turning the new Member States towards the Community market.

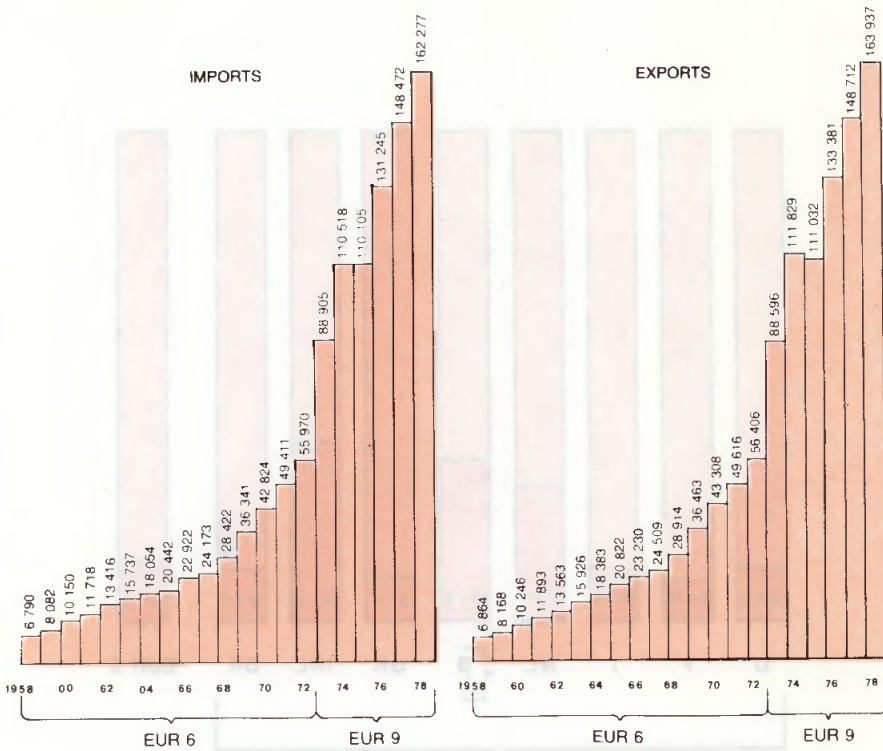
The fact that in 1979 the Member States of the Community earned between 15% and 47% of their gross national product from exports makes it easy to understand why all governments are defending the customs union: a return to compartmentalized national markets would probably alleviate the problems of struggling industries — for a time. In the longer term, however, the macroeconomic effect would only aggravate unemployment.

There is no doubt that the customs union has created new situations which must not be overlooked — despite protests from some quarters. In many industries production and investment decisions are now-

¹ EUA (1978) = BFR/LFR 40.0592/DKR 7.01941/DM 2.55589/FF 5.73996/LIT 1.081.08/HFL 2.75397/UKL/IRL 0.66394.

INTRA-COMMUNITY TRADE

(in million units of account)¹

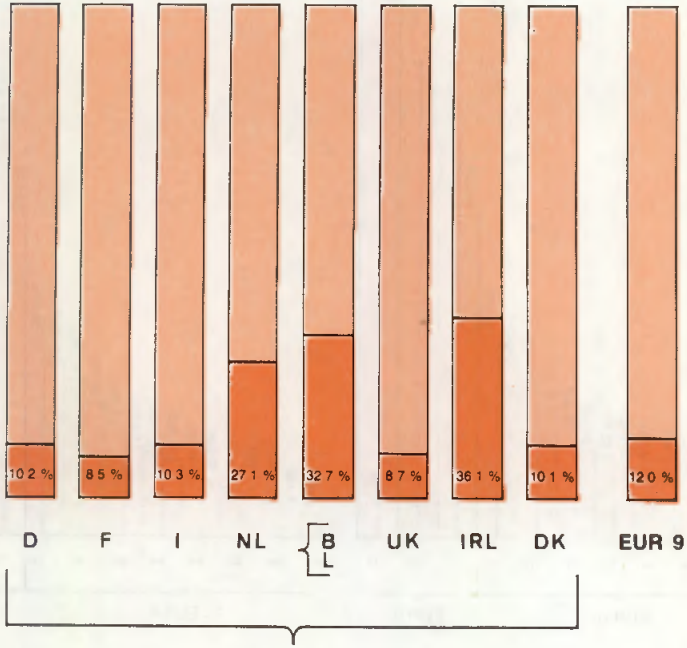


¹ The figures in this table are in units of account (1 unit of account — value 1976): DM 3.20684/FF 6.06/
LIT 1 054/HFL 3.35507/BFR 48.6572/UKL 0.437/DKR 7.57831).

Source: EUROSTAT.

INTRA-COMMUNITY TRADE AS A PERCENTAGE OF GROSS DOMESTIC PRODUCT

(1978)



Source: EUROSTAT.

days taken not on a national basis but with an eye on a bigger market. This trend could only be reversed at the price of heavy economic sacrifices.

3. Unrelenting pressure for greater unity

The development of a common tariff policy has also helped considerably in gaining international recognition for the European Community. As early as 1960 it participated as a single entity in the bodies set up under the General Agreement on Tariffs and Trade. International agreements affecting the Community's common commercial policy must take account of the Treaty provisions governing the Community's competence in this field.

The many difficult sets of negotiations conducted by the Commission have also strengthened the internal cohesion within the Community. Even in exceptionally critical situations the governments of the Member States have so far succeeded in finding a common denominator and in seeing to it that the Community operates in accordance with Treaty rules. Acting simply on their own behalf, the individual States would invariably have been able to bring much less influence to bear *vis-à-vis* their trading partners. The extent to which the Community has become a sought-after partner in discussion can be gauged from the fact that over 100 States have diplomatic representations accredited to the Community.

4. Exemptions for travellers

Tax-free allowances within the Common Market

The customs union has not yet completely done away with frontier controls for European citizens travelling from one Community country to another. However, these controls have no longer, strictly speaking,

to do with customs, being required essentially for tax and security reasons.

Border controls have been greatly simplified by the introduction of a system of tax-free allowances for travellers, which has also put an end to many instances of double taxation. Since 1979, the intra-Community turnover tax allowance for goods in travellers' personal luggage has been set at 180 European units of account (EUA);¹ the national currency equivalent is updated annually.

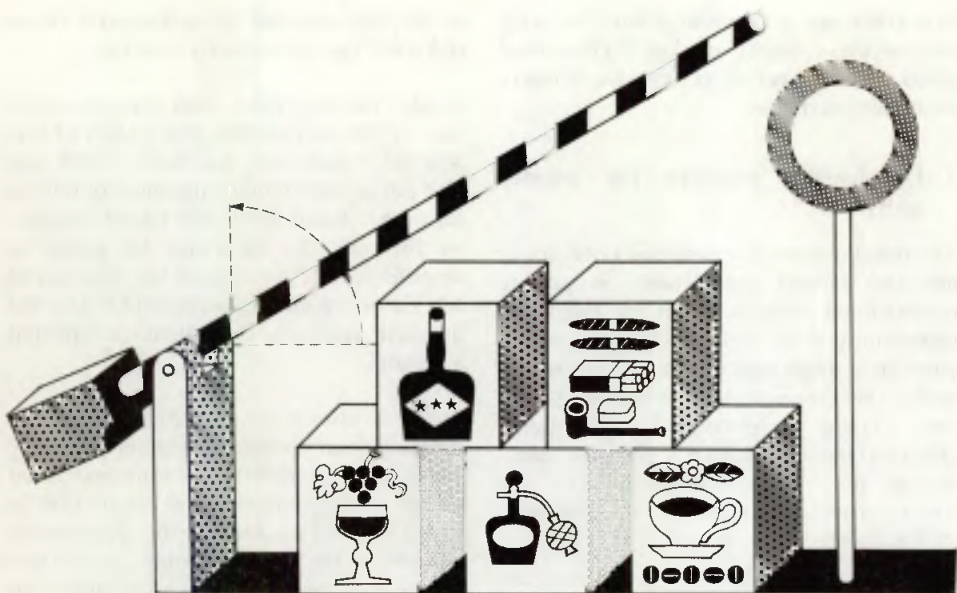
There is also a tax exemption for goods entering from another Community country in small consignments of a non-commercial nature. The allowance was set in 1979 at 60 EUA. There are specific quantitative allowances for tobacco, wine, spirits, coffee, tea and perfume, which are subject to excise duties in the Member States.

It is to be hoped that the policy of granting tax exemptions will be continued and extended, particularly with an eye to economic and monetary union, but it must be recognized that the allowances can hardly be substantially increased until there is greater coordination of VAT rates and excise duties, since any such move would create the risk of distortion.

Tax exemption for goods coming from non-member countries

The Community grants similar allowances for travellers coming into the Community from non-member countries (here the allowance is 40 EUA)¹ and for small consignments of a non-commercial nature from non-member countries (30 EUA).

¹ EUA (April 1980) = BFR/LFR 40.6050/DKR 7.86473/DM 2.53547/FF 5.84025/LIT 1 168.50/HFL 2.76893/UUKL 0.60008/IRL 0.672961.



B. *The cornerstone of the Community edifice*

The customs union is not the whole common market, although without it there would be no European Community. It is the *sine qua non* and the framework for everything else.

The customs union is to the European venture what the foundations and the structural work are to a building. The whole edifice rests on it.

1. **Mainstay of European policies**

In the first place, the customs union is vital to the Community's identity in its dealings with the rest of the world. It allows the Community to speak with one voice in international trade relations and to act as a single negotiator.

It is also a vital part of the common commercial policy.

The common tariff and the definitions of value for customs purposes and the origin of goods have a direct effect on international trade. When the Community alters (autonomously or by treaty) the scope of one or other of these customs instruments, it is inevitably influencing the volume of this trade and adapting it to the policy it is pursuing. Similarly, the development aid policy is affected by the customs union. The common agricultural policy, based as it is on a system of export refunds and import levies, is in essence nothing more than the customs union applied to agriculture with the variations needed to regulate a sector that is more complicated than industry. It is, in fact, a system within a system, since it adds a number of other principles—like the organization of markets, for example — to the traditional system of market protection. In these sectors, the Community has its own powers of management and negotiation and this highlights the major political interest of the customs union for the unification of Europe.

Moreover, since a vital Council decision of 21 April 1970 phasing out national contributions and substituting the Communities' 'own resources' the customs union has had a central role in the process of European integration. Customs duties and agricultural levies form the backbone of 'own resources'; they are supplemented by a fixed proportion (1% maximum) of Member States VAT revenue. The collection of these resources will, to a very large extent, depend, where VAT is not involved, on fair and uniform application of customs regulations.

The introduction of the European Monetary System has given the customs union added points, since the continued existence of barriers to the free movement of goods is clearly incompatible with the establishment of economic and monetary union.

While the creation of a customs union has so far settled only a proportion of the problems inherent in the free movement of goods it has at any rate performed the useful function of revealing the existence of the whole range of difficulties arising from disparate tax and monetary policies (for example, the difficult problem of compensatory amounts under the common agricultural policy) or discrepancies in company law or export aid systems. And it has also revealed the need for common policies — in the industrial or economic fields — which are not mentioned as such in the Treaty.

The customs union, then, has proved its worth not only by dismantling customs barriers but also by highlighting the shortcomings of the present system, forcing the Community to remedy the situation by moving into areas where the spirit rather than the letter of the Treaty must be its guide.

2. The importance of commercial policy

(a) GATT tariff negotiations

As pointed out above, however, it is on commercial policy that the customs union has had its biggest direct impact. Together with the common agricultural policy, it has become one of the strongest binding forces in the Community of Nine. The Commission has regularly represented the European Community in multilateral negotiations and has negotiated a network of bilateral agreements on behalf of the Community. In this regard, the agreements reached in the framework of the Tokyo Round — concluded in late 1979 — are of special importance.

The negotiations, in which more than 100 countries took part, resulted in numerous agreements laying down new rules for international trade. The rules were aimed not only at countering protectionist measures but also at liberalizing trade in addition to dismantling tariffs.

In the customs sphere, the GATT talks resulted in the major trading countries agreeing to cut their industrial tariffs by an average of one-third, which is equivalent to over USD 100 000 million worth of trade on the basis of 1976 statistics. In the process the Community came closer to its objective of approximating the different customs tariffs by making deeper cuts in the high tariffs than in the low ones.

The cuts are admittedly spread over eight years and there will be a review after five years to determine exactly how deep they are to be, but what is already certain is that they improve the chances of arriving at a better international division of labour. 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.

More important than the tariff cuts, however, are the results of the GATT negotiations in a number of other areas. They range from agreements on the removal of technical barriers to trade to a code of conduct on State subsidies and from the definition of value for customs purposes to government procurement arrangements. The Community also managed to settle the dispute with its trading partners over the arrangements for protecting its market organizations for agricultural products. The Commission considers that, at all events, the results of the Tokyo Round will make a fundamental contribution to achieving stability on world markets without jeopardizing the principles or mechanisms of the common agricultural policy.

(b) *A wide array of agreements*

The agreements signed by the Community so far add up to over 25. Obviously the number of countries concerned is much higher, as some agreements apply to a number of countries. Leaving aside their financial and non-commercial aspects, the agreements fall into a number of different categories, depending on the trade arrangements they contain.

AGREEMENTS INTENDED TO LEAD TO MEMBERSHIP OF THE CUSTOMS UNION

Agreements of this type have been concluded with Greece and Turkey. Under them the progressive reduction of duties in trade between the Community and the countries concerned is linked to step-by-step alignment of their tariffs on the Common Customs Tariff. The administrative procedures and arrangements laid down are for the most part identical to those in force when the customs union was itself established. Greece will become a member of the Community in January 1981. The agreements with Malta and Cyprus are also intended to prepare the way for possible membership in the customs union, though

their structure makes them more akin to those of the next category.

FREE-TRADE AGREEMENTS

In terms of the proportion of the Community's external trade involved, the main agreements of this type are those concluded with the seven EFTA countries (Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland).

This category also includes the agreements signed with the Mediterranean countries (Malta and Cyprus, Spain, Israel, Morocco, Tunisia, Algeria, Lebanon, Egypt, Jordan and Syria) and the Lomé Convention with the African, Caribbean and Pacific countries. Both Spain and Portugal have now applied for full membership of the Community.

All these agreements normally make provision for reciprocity in the granting of preferences, but in the case of the countries signatory to the Lomé Convention and certain Mediterranean countries this rule does not necessarily apply, in view of the gap between the respective levels of economic development of the Community and the countries concerned.

Generally speaking, the various agreements cover certain agricultural products which do not come under the common agricultural policy, processed agricultural products (where the tariff preference applies only to the customs duty component intended to protect the processing industry concerned) and — with a few exceptions — the full range of industrial products.

Whereas the agreements intended to lead to membership of the customs union lay down rules for the alignment of customs duties and commercial policy with regard to countries not signatory to the agreements, the free-trade agreements do not contain such provisions and consequently their signatories are at liberty to pursue an independent commercial policy *vis-à-vis* other countries.

THE LOMÉ CONVENTION

In 1957, when the Treaty establishing the European Economic Community was signed, certain States (Belgium and France in particular) had special relations with a number of overseas countries, and part of the Treaty covers their association with the Community. After independence, these countries signed a Convention in Yaoundé in 1963 laying down rules for their association with the Community.

The association concerned three things:

- (a) free-trade areas;
- (b) financial and technical aid;
- (c) joint institutions.

Only the first, which involves customs matters, will be dealt with here.

The Treaty by which the United Kingdom acceded to the Community made formal provisions for negotiations between the Commonwealth countries and the Community, with a view to defining special relations. On this basis, the Nine and 46 countries in Africa, the Caribbean and the Pacific (the ACP) began talks in October 1973, with the aim of concluding a further agreement which would expand and renew the Yaoundé Convention. These negotiations came to a close in Lomé on 28 February 1975, when a five-year Convention was signed.

The ACP countries, which include virtually the whole of independent Black Africa, have a combined population of almost 270 million.

The Lomé Convention took over many of the basic features of the Yaoundé Convention — zero tariff ratings, technical and financial cooperation — and improved upon them. It also contains fundamental innovations, such as the export earnings stabilization system (Stabex), which reflect the Community's new attitude to the developing countries.

Almost all products from the ACP have free access to the Community, but there need be no reciprocity, the ACP only having to guarantee the Community most-favoured-nation treatment — which bans discrimination in favour of other trading partners. Furthermore, although the duty-free entry privilege cannot be misused by developed countries channelling their products through ACP countries so as to avoid paying Community duties, the Community has considerably relaxed the rules of origin, primarily by agreeing to consider the ACP countries as a single unit.

The signing on 31 October 1979 of the new ACP Convention, known as 'Lomé II', has given a new dimension to the system: the trade provisions have been expanded, notably as regards agricultural products from the ACP, the Stabex system has been improved and extended, particularly with regard to minerals, and, lastly, industrial and agricultural cooperation will be stepped up.

PREFERENTIAL TRADE AGREEMENTS

This category covers the autonomous preferential agreements applied by the Community in its trade with the developing countries (GSP) and with the overseas countries and territories (the agreements with the latter are closely modelled on the Lomé Convention trade arrangements).

GENERALIZED PREFERENCES

The Community has always been concerned about introducing more fairness in economic relations between developed and developing countries. In addition to its aid for the African States and Madagascar, it proposed, at Geneva in 1963, to grant the developing countries preferential tariff arrangements which excluded only basic agricultural products and industrial raw materials. The idea developed and progressed, primarily at the UNCTAD (United Nations Conference on Trade and Develop-

ment) meeting in New Delhi in 1968. Finally, in 1970, agreement was reached on the components of the generalized system of preferences, which was first applied by the Community on 1 July 1971. Japan followed suit on 1 August of the same year, but the USA delayed application until 1 January 1976.

The tariff preferences provided by the system are:

- (a) *generalized*, in that all industrialized countries are supposed to apply them;
- (b) *non-discriminatory*, in that they cover all developing countries;
- (c) *autonomous*, in that they are granted without negotiation;
- (d) lastly, they do not involve any reciprocal advantages.

Manufactures and semi-manufactures, certain textile products and processed agricultural products may be imported into the Community free of customs duty up to certain limits (ceilings or quotas). CCT duties may be applied to any quantities in excess of these ceilings or quotas. The ceilings are worked out on the basis of the value of imports from the beneficiary countries during a reference year and are raised by 5% every year. The first reference year was 1971, but, from 1977 onwards, 1974 was used.

Sensitive products, in respect of which the Community is in a difficult situation, are covered by a strict system of tariff quotas. Here the volume of preferential imports is divided into quota shares allocated among the Member States and 'buffers' or maximum country amounts are set

for the most competitive developing countries so as to prevent them monopolizing preferential opportunities.

The system has produced extremely good results, although economic operators in the developing countries are not always sufficiently familiar with the system to get the best out of it.

(c) *Community policy in certain sensitive sectors*

TEXTILES

Under bilateral agreements concluded in the context of the Multifibre Arrangement, the Community subjects imports of textile products from the main exporting countries to different degrees of surveillance, so as to allow the textile industry in the Member States to adjust to changes in the world's economic situation.

STEEL

In view of the critical situation in the iron and steel sector, the Community has adopted a plan for stabilizing and modernizing production capacity in the Member States (Davignon Plan). In order to protect the Community market against imports at dumping prices, the Commission had set basic prices, non-compliance with which can under certain circumstances result in the imposition of a duty to make up the difference between those prices and import prices. In order to maintain traditional flows of trade, the Commission has negotiated arrangements on quantities and prices with a number of non-Community countries.

IV. The future of the customs union

A. *Obstacles to the free movement of goods*

1. Technical barriers

Despite the considerable progress that has been made since the common market was set up in bringing about free movement of goods, the situation today is still not satisfactory. For the officials in Brussels, harmonization of national laws often turns out to be a particularly hard and thankless job.

No sooner has a laborious consensus been reached on a particular safety regulation or food standard than it has to be updated because of some new scientific or technical development. The whole obstacle course of committees and expert working parties has to be covered again.

In the last decade the Council adopted approximately 180 directives on the harmonization of rules of this type, 130 of them dealing with industrial products. Most impressive of all is the progress achieved in harmonizing motor-vehicle standards. Nevertheless, actual achievements often fall short of what would be desirable in the interests of the common market, and in turn make it impossible to exploit to the full opportunities for a more sensible division of labour.

In some cases differences in national building regulations lead to a state of affairs which is manifestly absurd. For example, all lifts in Belgium have to have a 'Stop' button, whereas in the United Kingdom such a device is expressly forbidden. This means that exporters have to adapt their products to the particular regulations of each client's country. Domestic producers have a competitive advantage, since the bulk of their output is intended for the home market in any case. At first glance, this new type of trade barrier often may not

look discriminatory or protectionist. Almost all such rules apply to domestic as well as imported products. The purposes they ostensibly serve are usually entirely unexceptionable.

It is clear, all the same, that trade restrictions resulting from this type of regulation are only compatible with the spirit of the Treaty of Rome if they are of proven necessity and sensibly geared to official Community policy, e.g. in the field of consumer or environmental protection. Whenever alternative measures can be found which achieve the desired results without disrupting trade, they should be preferred.

2. Customs formalities

In the customs field proper, the present shortcomings are mainly caused, in the opinion of the EEC Commission, by four factors:

- (a) the numerous formalities still involved in border crossings;
- (b) the state of Community legislation to date, which handles individual areas in isolation and is often difficult to understand;
- (c) the cumbersome Community decision-making machinery;
- (d) the lack of uniform Community sanctions for breaches of customs law.

Community customs law is not always as clear-cut as it ought to be, however. At the moment it does not form a complete corpus of law, but consists simply of a number of rules governing specific procedures. Legislation adopted by the Council often represents a hard-won compromise. A variety of interests and different concepts of customs law had to be taken into account.

On average it takes the Commission two years to prepare a major piece of legislation — a proposal for a regulation or directive — for submission to the Council. Despite exhaustive prior consultations with national experts, it usually takes several more years before this draft is finally passed into law.

B. The Commission's multiannual programme

With the aim of remedying the shortcomings outlined above, the Commission produced in 1979 a multiannual programme for the attainment of the customs union.

1. Simplifications of procedures governing the movement of goods

The elimination of controls on the movement of goods within the Community will become easier as the Community progresses towards economic and monetary union, since it is largely conditional on the alignment of tax laws, monetary policies, and transport and statistical systems. Conversely, it is clear that unsatisfactory trade arrangements are detrimental to the productivity and competitiveness of Community industry and also stand in the way of common structural and employment policies.

For this reason the Commission stressed, in its multiannual programme for the attainment of the customs union published in 1979, that measures in the customs field could still contribute a great deal to streamline trade practices even if real progress was not yet forthcoming in other fields of integration. In this context, the Commission pointed out that it had put forward a whole series of specific proposals which had been in limbo for years in various Council committees. Some of the backlog has been cleared since. Indeed, the Commission considers that the decisions adopted in the course of 1979 both make for a more

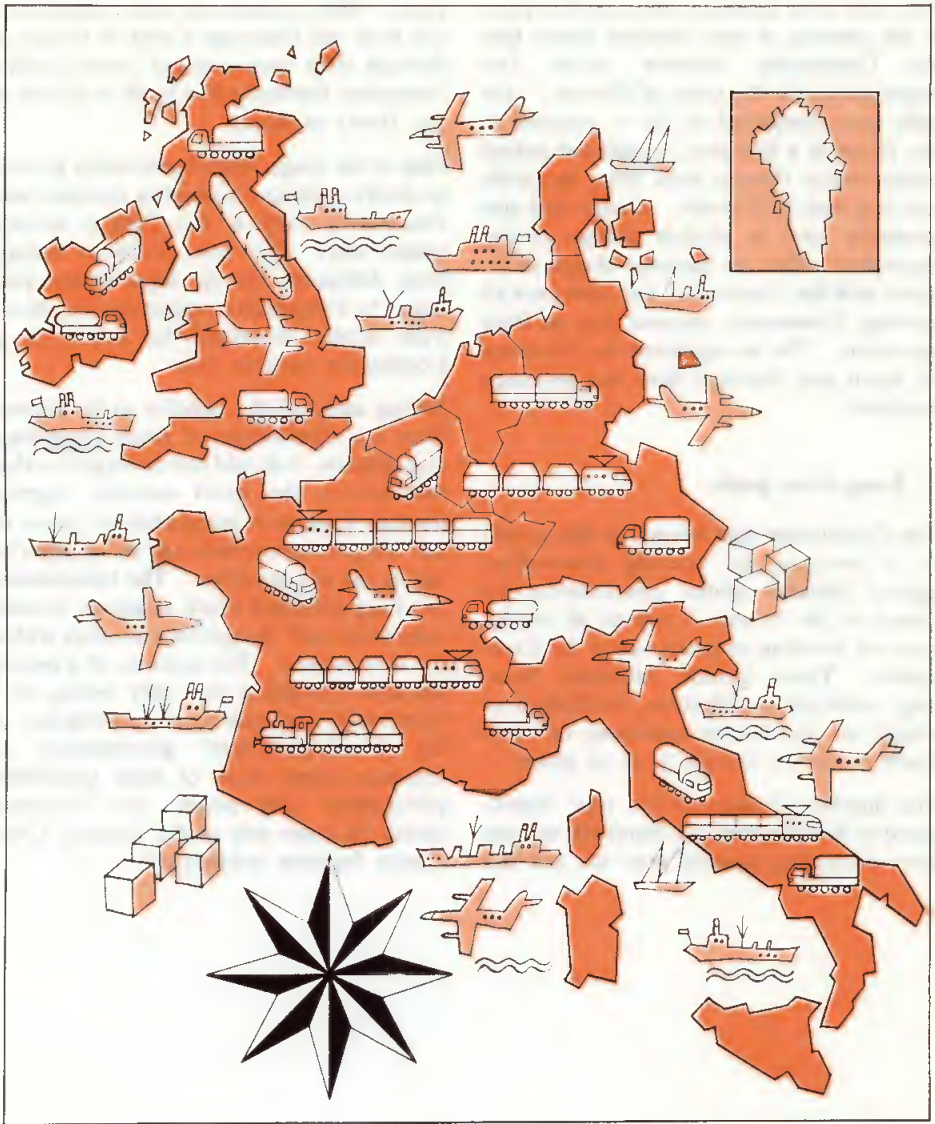
uniform application of the Common Customs Tariff and pave the way for real progress towards the attainment of a customs union.

Accordingly, the Council has adopted measures harmonizing procedures in such important fields as the release of goods into free circulation, determination of the circumstances under which a customs debt arises, becomes payable and is extinguished, the conditions governing post-clearance recovery and the repayment or remission of duties.

The priorities for further work on the extension of the customs union are mainly dictated by the need to frame a consistent set of rules for trade between Community Member States and non-member countries. The Community will, for example, have to adapt its customs valuation rules to the formula agreed in the GATT code and look for ways of simplifying its rules of origin. There are also plans to adopt uniform procedures for temporary admission of third-country goods into the Community and to harmonize rules for exports and the temporary suspension of customs duties.

Further harmonization of customs law and the formulation of consistent rules for trade with non-member countries may not in themselves be enough to bring about a genuine single European market, but they are undoubtedly needed to pave the way for it.

When Member States can be sure that the rules governing trade with non-member countries are the same throughout the Community, customs controls and formalities at frontiers within the Community lose much of their point. In other words, harmonization will allow at least the customs controls to be gradually relaxed at internal Community frontiers.



One task to be tackled in the next few years is the phasing of new Member States into the Community customs union. The negotiations for the entry of Greece — the only ones completed so far — resulted in the fixing of a five-year transitional period within which Greece must bring its tariffs into line with EEC levels. Greece will also gradually have to abolish charges having equivalent effect to customs duties in its trade with the Community and take over all existing Community customs law as from accession. The arrangements for the entry of Spain and Portugal have not yet been finalized.

2. Long-term goals

The Commission also intends to take action — if necessary by opening proceedings against Member States' governments for breach of the Treaty — against all restrictions on freedom of trade within the Community. These include automatic licensing, technical certification, certificates of origin, or mandatory minimum or maximum prices for certain types of goods.

The number of cases of this type investigated in Brussels runs into hundreds and has been increasing steadily over the last few

years. EEC citizens can seek redress directly from the European Court of Justice or through their own national courts against authorities hindering free trade in breach of the Treaty of Rome.

One of the longer-term Community goals is to codify existing Community customs law. Preliminary work in this field is already under way. Thus the problems arising from differences in the legal effects produced by Community regulations and directives should eventually be solved by a Community customs code.

Setting aside all the benefits to be derived from the elimination of trade formalities and controls, it should not be forgotten that the man in the street assesses progress towards European integration in terms of the delays he encounters and the charges he has to pay as a traveller. The Commission has long proposed more generous exemptions from such charges for travellers within the Community. The creation of a feeling amongst Europeans that they belong to a Community depends on the willingness of the Member States' governments to renounce some more of their traditional prerogatives and permit the European citizen to cross any of the internal Community frontiers unhindered.

Further reading

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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 nine Member States of the European Community?

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

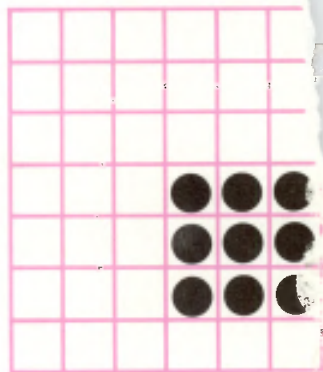
It is true that even within the customs union, customs controls have been kept in being, even though they are mostly much less stringent than they used to be.

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 the 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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