EUROPE: TRADE FORTRESS OR TRADE PARTNER? (1)

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At present, the Community imports one tenth of its GNP from outside the EC. The Member States generate one fifth of the world trade. It is feared in some parts of the world that Europe may retire within itself after the achievement of the internal market. Will Europe have changed from an active trade partner to a fortress by 1993?

Of course, some changes will occur. The Community will have to adapt its commercial policy to the requirements of the internal market. Indeed, an internal market requires a uniform trade policy vis-à-vis the third countries. Moreover the Community has to respond to the changed patterns of world trade. These changes, however, will not commercially isolate the Community, which keeps a fundamental interest in free and open world trade. They will only reshape the Community's commercial policy. By 1993, it will have the following distinctive features:

1. The scope of the commercial policy will be enlarged

Originally, the Community's commercial policy focused on the direct import and export of goods. Art. 110 ss. of the EEC Treaty clearly contemplated such a strict notion of commercial policy. The content of the commercial policy, has however developed over time: the Court of Justice has decided that it also includes commodity agreements. More recently, it has stated that development aid through reduced tariffs also constitutes an integral part of the commercial policy.
It may be expected that the Community's commercial policy will encompass other matters which go beyond the direct import and export of goods, such as equivalent taxes and Member State requirements ineffective in the intra-community trade by the Cassis-de-Dijon principle. The Community may harmonise the measures that the individual Member States apply in these matters and may negotiate on these matters with third states. For instance, as soon as the Community will have harmonised technical standards for trade within the Community, it may determine whether these standards should also be applicable to imports from third

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states and may start individual negotiations in that respect. Similarly, the Community will take action in matters related to intellectual property whenever necessary for international trade. The Community thus has banned imports of counterfeit products (art. 113 & 235) . Moreover, it has issued the Directive for the protection of the topography of semi-conductors (art. 1OO) because the United States had made such protection within the EEC a condition for EC exports of semi-conductors to the U.S.A.

The Community has the power to coordinate and even orchestrate the participation of Member States in international economic organisations, to the extent necessary for the internal market(art. 116). The Community thus will harmonise the policies of the individual Member States in areas which are under discussion in economic organisations.

For instance, the Community will probably harmonise the rules on services rendered by non-Community persons. At present, these services, which play an essential role in the national economies, are subject to different regulatory schemes in the individual Member States. It is often very difficult to separate goods from services, as, for example, it is evidenced by trade in the telecommunications and computer fields. At present, GATT is considering enlarging the scope of the General Agreement on Tariffs and Trade to services. As soon as GATT has provided for an international regulation of services, these will be incorporated into the Community's commercial policy. From there on, the Community - and no longer the Member States - will establish the regime for services rendered by persons outside the Community.

For international commitments which the Community itself has undertaken, such as non-discrimination in public procurement, the Community will request respect from the Member States.

The internal market surely would be reinforced if the Community could conduct a common policy on investments from third countries. Such policy would prevent prospective investors from pitting the Member States against each other in search of the most advantageous conditions. Moreover, a common policy on investments would enable the Community to negotiate favorable terms for EC-investments abroad. At present, however, only a few Community agreements contain but very vague references to investments (Israel, Lomé) . The detailed investment agreements are still concluded by the Member States outside the Community framework. It is not excluded though that these national investment agreements could be put under Community supervision or could even be replaced by Community agreements.

The possibility for the Community to enlarge the scope of its commercial policy has, however, its political limitations. At present, it does not appear likely that the commercial policy will be extended to the free movement of employed persons. The Member States are rather reluctant to delegate this power to the Community - as appears from the Single Act. It is similarly unlikely that the commercial policy will be extended to monetary matters and capital movements which are unrelated to investments. An external community policy on these matters, which are deeply rooted in the domestic economy, could only be foreseen after the unification of the economic policies of the Member States and the creation of the European Monetary Union - matters the implementation of which is not imminent. Finally, it is improbable that the Community will always be able to conduct a common policy on economic sanctions. In the past, economic sanctions against Argentina and the USSR were considered as part of the Community's commercial policy. This resulted in the desired uniformity. However, one may fear that economic sanctions will remain within the ambit of the jurisdiction of the individual Member States to the extent that political disagreements are inevitable.

The Community's commercial policy is by essence a changing notion. It will continue to develop as economic integration and political cooperation among the Member States increases.

2. The EEC will complete its network of trade agreements

At present, the EC has concluded trade agreements with countries in different parts of the world. It is expected that this network will be extended and that the scope of the cooperation will be intensified.

The most important trade agreement, which binds the EC, is the GATT. Although it is not concluded by the EC itself, all its Member-States are parties to this agreement. The GATT obliges every member to apply to all other fellow members the treatment of the most favoured nation. Consequently, no discrimination between members should exist. It is well known that the EC sets aside its obligations under the GATT, e.g. by imposing quantitative restrictions on imports from GATT members. In addition the EC proposed to apply the reciprocity-principle to those areas not yet covered by GATT. It is doubtful whether this principle is compatible with the agreements reached on GATT level at the Uruguay round.

Since 1973, free trade areas have been created between the Community and the EFTA-states (Austria, Finland, Norway, Iceland, Sweden and Switzerland). These free trade agreements have abolished custom duties and trade restrictions on industrial products, thus giving rise to the world's largest free trade area. The agreements moreover grant reciprocal benefits

for trade in agricultural products. In 1984, the EC and the EFTA-states decided to cooperate beyond these free trade agreements and to create a large economic space. They are now introducing cooperation in economic, monetary and industrial areas as well as in matters of environment, fisheries, steel industry and technology. Moreover, they have taken many measures to facilitate trade in view of the completion of the EC internal market. For instance, the EC Single Administrative Document has been adopted for all EC-EFTA as well as for intra-EFTA trade. Many other measures will be taken in the future.
Nevertheless, the cooperation and integration of both organizations should not be overestimated. The EC and EFTA are fully aware of its limitations. These limitations are inherent to the organization of the EFTA itself: absence of a central decision-making body, no possibility of surveillance and enforcement of agreements through institutions like the EC Commission and the Court of Justice. Furthermore, the EC advocates that her own integration prevails over cooperation with EFTA, no interference in the EC's decision-making is accepted. Consequently, Austria and Norway, conscious of the limited association of EFTA with the European 1992-goals, investigate a possible membership of the EC.

Agreements have also been concluded with twelve Mediterranean countries (Algeria, Cyprus , Egypt, Israël, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey, Yugoslavia).

A 1976 agreement concluded with Canada has created a non-preferential framework for economic and commercial cooperation. It is expected that this agreement will soon be replaced by a more substantial trade agreement.

With the United States and Japan, the EC has only concluded specific agreements on trade in particular products. Global trade agreements have not yet been concluded with these important trading nations. On multiple occasions, the United States and Japan have expressed their concern over possible EC protectionism arising with the establishment of a unified European market. They fear that only a "Europe for Europeans" is envisaged.

The EC is now extending its trade agreements network to Eastern Europe. Early 1988, it established formal relations with Comecon and envisaged further cooperation in matters of environmental protection, transport, technical standards, science and technology, energy, nuclear power, statistics and economic forecasting. The EC will also conclude trade agreements with individual Comecon countries: a first agreement on economic and commercial cooperation has already been concluded with Hungary and Czechoslovakia. Other bilateral agreements will follow. By these

agreements the EC gradually liberates the restrictions imposed on the imports of Comecon countries.In return, the Comecon countries guarantee a better access to European products and enterprises on their markets.

The EC is also extending its network of association and cooperation agreements. At present, agreements have been concluded with Latin America (Andes states, Brazil, Central American states, Mexico, Uruguay) and with Asian countries (Asean states, Bangladesh, P.R. China, North Yemen, India, Pakistan, Sri Lanka). Cooperation agreements with the Gulf States are currently being negotiated. Further agreements may be expected.

The most important cooperation agreement, the Lome Convention, has to be re-negotiated. The present Lome III Convention provides 66 countries from Africa, the Carribean and the Pacific (ACP-states) with duty- and quota-free access to the Community for all industrial products (except rum) and for agricultural products not covered by the EC's Common Agricultural Policy. Moreover, it provides the framework for substantial EC technical and financial assistance. A new convention has to replace the present Lome convention by February 1990. The re-negotiations will focus on technical points such as import quota and the present rules of origin (which penalize the ACP-states if they procure raw materials and components for industrial goods from elsewhere). Moreover the ACP-states will probably demand an increase in the subsidy funds (European Development Fund, Stabex, Minex). The EC intends to earmark subsidies for economic re-structuring and diversification.

The Single European Act will have an impact on trade agreements to the extent that it requires the European Parliament to state an opinion on the trade agreements to be concluded. In recent years, the European Parliament has refused to render its opinion when a country which did not respect human rights, was involved. It is expected that the European Parliament will continue this policy. The conclusion of new agreements thus will be conditional on the respect of human rights.

Not only the Community, but also the Member States have concluded agreements in the commercial field. Firstly, there are the trade agreements. Indeed, some trade agreements concluded by individual Member States before the EEC was created or after its creation but under its supervision, are still in force. Belgium, for instance, concluded a bilateral trade agreement with the United States in 1961 and with the USSR in 1971. It is expected that these individual trade agreements will gradually be replaced by Community agreements. Secondly, individual Member States have sometimes concluded agreements which do not concern trade in the strict sense of the term, but technical and economic cooperation. As these coop-

eration agreements may undermine the common commercial policy, they will be put under Community scrutiny or be replaced by Community agreements.

3. The Single Market will benefit non-Community firms

The Community imports one tenth of its GNP from outside the EC. Non-Community firms may therefore benefit from the achievements of the single market: they will be able to operate in a unified market of 320 million consumers, on the same basis as Community firms, instead of having to face twelve different national markets.

International rules, such as GATT or specific trade agreements, may grant a non-Community firm free access to the European market and vice versa. Imports of goods will thus very often be secured. Within the framework of the GATT, proposals have been made to extend protection to other areas such as services, intellectual property rights and investment.

For matters not covered by international rules (e.g. services, water treatment, transportation, energy, communications) the single market will only be opened on the condition of "reciprocity". For these matters, foreign firms will only benefit from the single market if their country offers EC firms equivalent access to its market.Both the United States and Japan are opposed to this standard of reciprocity. The United States fear that this standard could be applied in a discriminatory manner against firms in the United States endeavouring to enter the EC and against US-owned firms already operating in Europe. Furthermore they dread that the Commission could require countries to reflect the laws and regulations of the EEC in order to have equal access to the internal market. Japan upholds that not every nation is yet capable of reciprocating . The Commission claims that reciprocity does not equal protectionism. On the contrary, it has been accepted as a central element of trade policy. The United States for instance have adopted this standard in the field of intellectual property (US Semiconductor Chip Protection Act). Moreover, regarding financial services, for example, the Commission has declared that reciprocity would not apply to firms already established in the Community. In addition to this, only an "overall reciprocity" is required. No identical legislation or "sectoral reciprocity" is required from each trading partner. Furthermore, this reciprocity is defined for each country in function of its means. Thus, less concessions will be expected from a developing than from a developed country.

The Community will offer free access to the EC's single market to firms from countries whose market is already open or which are prepared to open it voluntarily or through negotiations. If necessary, it will secure

reciprocity through bilateral or multilateral agreements. It will thus use the reciprocity-principle to open other markets, not to close its own.

4. Consolidation of customs policy

Individual Member States have no jurisdiction over the custom tariffs for imports of goods entering their country from outside the EEC. The duties on these goods are fixed for all Member States by the Community.

Custom duties for goods from outside have to be uniform in a common market. Indeed, common customs duties are a necessary instrument to preserve the internal market: if one Member State would levy less duties on imports from third countries than another Member State, the trade within the internal market would be distorted. Besides, the Community budget relies heavily on the income from import duties.

For the Community, common custom duties will remain a very efficient instrument to promote imports of one specific type of products and limit imports from another type. Moreover, the Single Act provides that the Commission must modify its custom tariff. It may thus be expected that the Commission will make further use of custom duties as an efficient instrument to conduct its commercial policy.

The Community has in fact several tariffs. Firstly, there is the "conventional" tariff vis-à-vis GATT-countries, which reflects the multilateral GATT tariff negotiations. There are also specific tariffs from the different association agreements which the Community has concluded. Furthermore, there is the General System of Preferences which the Community establishes yearly vis-à-vis developing countries with which it has not concluded association agreements. Finally, there is the "autonomous" tariff vis-à-vis countries which are neither GATT-member, nor associated country beneficiary of General Preferences. It is expected that this difference in tariffs will remain in force throughout 1993.

As custom tariffs depend on the country from which the goods are imported, it is of crucial importance to determine the country of origin of the goods. The rules of origin for goods are an important aspect of EC customs law. There are different criteria defining the origin of goods depending on the context. Most trade agreements have a specific protocol on the concept of "origin of goods". The differences in the rules of origin complicate imports. It may be expected that the rules of origin will be streamlined by 1993.
The establishment of a common custom tariff is but a first step towards a community custom law. Its administration and interpretation are left to the Member States. The common tariff, however, has to be interpreted

uniformly and administered equally in the different Member States in order to avoid trade distorsions. The possibility of a preliminary ruling from the Court of Justice enhances the possibility of a uniform interpretation and application of the common tariff by the respective national custom administrations. Indeed, whenever an issue on interpretation of the tariff is raised in a national court, this court can put the question before the Court of Justice in Luxembourg. The interpretation by the Court of Justice will not only bind the requesting judge but will become part of the tariff as it is to be applied in further cases. The Court of Justice will keep its crucial role in the interpretation of the common tariff.

A real community customs law requires not only a uniform tariff. Other custom matters have to be harmonised as well. The Community has already introduced uniform rules on e.g. customs declaration, valuation, payment of custom duties, in-and outward processing, bonded warehouses, free zones, etc. In view of 1993, further harmonisation of custom matters is expected.

5. Elimination of national import restrictions

Most products may presently be imported without quantitative restrictions. Some quantitative restrictions are however imposed in certain cases. For example, restrictions exist on some East-European and Japanese products, on textiles and on products benefiting from reduced tariffs under the General Preferences. These and other restrictions are either introduced by the Community and allotted among the Member States or taken by the Member States themselves (see Council regulation 288/82 on common rules for imports; regulation 1765/82 on common rules for imports from State-trading countries; regulation 1766/82 on common rules for imports from the P.R. China; regulation 3420/83 on quantitative restrictions by Member States in trade with State-trading countries). Moreover in case the implementation of the common commercial policy was to lead to economic difficulties in a Member State, the Commission may authorize that state to take the necessary protective measures, including quantitative restrictions against import of goods, originating in a third country and in free circulation in the EEC (art 115). Furthermore, Member-states have always had the right to forbid the import of a foreign product when it endangers public policy, national security, public health, etc. Member-States should use restraint in resorting to such measures since they depart from the fundamental principle of the common market.

The EC's attitude towards imports from third countries can be illustrated by the way it tackles the import of Japanese cars. Generally speaking, the EC has not yet come forth with a common trade policy towards Japan. As a result approaches diverge from state to state. Some Member States have

totally liberalized their car trade with Japan (Belgium and the Netherlands). But protective measures - more particularly import restrictions - are also taken by the Member States. Italy, for example, imposes specific quota which amount to 3300 units. These quota are incorporated in the "negative list" annexed to regulation 288/82. France has never officially imposed a quota on the import of Japanese cars. Nevertheless, the share of Japanese cars cannot exceed 3% of the French market. In the end of 1988 a dispute arose over imports into France of Bluebird cars manufactured at the Nissan plant in Sunderland,United Kingdom. French rules required that the local content of cars must amount to 80 %. The Bluebirds, manufactured in the United Kingdom, were considered Japanese, because their local content only added up to 70%. The Nissan Bluebird were therefore considered to be Japanese and to fall within the 3% of the Japanese share of the car market in France. Great Britain has approached the Japanese problem in a different way: it has come to an informal agreement with Japan to limit the Japanese share in Great Britain to 10-11%. It is questionable whether the import restrictions taken by different Member States are compatible with the GATT or even the EC treaty itself.

Individual restrictions remain thus an obstacle to the full implementation of the common commercial policy. Any restriction on imports should apply on a Community-wide rather than on a national basis. Quantitative restrictions for foreign products in trade between Member States, moreover, undermine the free movement of goods within the single market and require border controls between Member States. They will no longer be workable once frontier posts within the Community are eliminated.

Some individually coined restrictions may simply disappear; others may be replaced by measures at the Community level.

The Commission has already challenged the administration of tariff quota along national lines (case 51/87, OJ 73.6,1987). Article 115 is not bound to disappear with the completion of the internal market. Article 115 is still included in the EC treaty; the Single Act did not abolish it. Nevertheless, the recourse to article 115 will become rather exceptional, because the criteria for national derogations under article 115 have been tightened. For twenty-two sensitive sectors where frequent use is made of article 115, such as the automobile and the textile sector, various solutions have been proposed. The most radical proposal is to eliminate, as a whole, quantitative restrictions in certain sectors . A second proposal is to replace the national quantitative restrictions by quantitative restrictions taken at Community level without repartition between Member States. Thirdly, national restrictions can also be replaced by alternative measures such as anti-dumping measures and sectorial aid. It is furthermore expected that national quota (e.g. on cars) could be replaced by voluntary restraint

agreements negotiated at the Community level with individual exporting countries. At present, the Community accounts for about half of the "voluntary" export restraints applied by industrialised countries to protect their markets. The number has doubled from September 1987 to April 1988. A further increase may be expected.

The replacement of national restrictions by restrictions set for the Community as a whole should not be used to restrict the overall level of access to the EC market. The Commission has insisted that the new limitations should in no event be stricter than the current arrangements, and probably less so.

The Commission itself admits, however, that there may well be considerable problems to be overcome before only common import restrictions exist. At present, the Member States do not hold the same views on foreign trade; there still does not exist any common commercial policy. The common commercial policy should already have been achieved at the end of the transitional period. Article 115, for instance, should have been abolished at that time, but it was not. Therefore, regardless of the deadline of 1992, national import restrictions will only disappear when the common commercial policy will be completed. Even then national restrictions may become part of the common commercial policy.

6. Internationalisation of technical standards

On becoming a single market, the Community will have harmonised product standards and testing procedures. Imports from outside the Community, meeting recognized EC standards, will be allowed to circulate freely within the single market. These EC standards, however, will be defined in terms of framework larger than the EC. When drawing up harmonised EC standards, the bodies involved, such as CEN and CENELEC, systematically work on the basis of international standards, prepared notably by the International Standards Organisation. The EC standards will thus probably not be an obstacle to foreign imports.

In the absence of harmonised standards, the Cassis de Dijon-principle will most probably be applicable to third country as well as to EC products: foreign products conforming to the legislation of the importing country will be entitled to free movement within the Community.

At present there is no uniform Community policy concerning certification of products coming from a third country. It may be expected that the Community will determine common standards for certification in the near future. Moreover, it will negotiate agreements for the mutual recognition

of tests and certification where needed. A first convention has already been concluded with the EFTA-countries.

7. Increased use of protective measures

The Community may apply anti-dumping measures against foreign product, which are imported into the common market at a price below their "normal value". At the present time, several procedures are initiated each year. The economic stakes in anti-dumping cases have grown considerably. The cases involve ever-increasing sums. It is expected that the Commission will make an increasing use of anti-dumping measures to protect the single market from goods imported at dumping prices. Moreover, it is quite likely that anti-dumping measures will be applied in the near future to trade in services.

Recently, the Community has introduced the possibility to apply anti-dumping measures on products, which have been assembled in "screw-driver assembly plants" within the common market, but with cheap parts and components imported from abroad. It may be feared that the "screw driver dumping" regulation may discourage some foreign companies to invest in the Community. Japan, for instance, considers this regulation incompatible with the GATT. Japan has therefore filed a complaint and a disputes panel has been set up.

Whenever third countries carry on commercial practices in violation of existing international rules or agreements, the "New commercial policy instrument" (reg. 2641/84) allows the Community to take measures against the import of products from that country. It would seem that these measures are primarily intended to serve as retaliation against impediments to Community exports. The first time the Instrument was applied, was in defense against the discriminatory treatment of a European company in the U.S. over a case of counterfeiture.

8. Exports

As the world's largest exporter, the European Community accounts for 20% of world trade (against 15 % for the U.S. and 9% for Japan). Export to third countries is generally liberalised (reg. 2603/69). Exceptionally, however, some exports may be restricted, for instance for reasons of national security (cfr. Bulk Oil v. Sun Int., 174/84).

The EC must perform an important task of harmonisation. The only matter, which has been harmonised, concerns export subsidies. The harmonisation of national export systems and the creation of a European Export Bank remain long term objectives.

9. Conclusion

The completion of the internal market will not lead to a "Europe for Europeans" ; non-community members will also benefit from it. This will be achieved by increased cooperation with third countries through elaboration and enlargement of trade agreements and also through extension of the Community's commercial policy. Nevertheless, the EC will not deal with third countries on equal terms. Standards of reciprocity, increased use of protective measures such as common quantitative import restrictions are examples of this. The integration of the European Community will be given priority.