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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 GATT 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.

