

Memorandum from the European Economic Community (17 October 1958)

Caption: On 17 October 1958, the Council of Ministers of the EEC forwards to the Intergovernmental Committee for the establishment of a free-trade area in Europe a memorandum which analyses the provisions relating to the establishment thereof.

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Introductory Note

The European Economic Community submits to the Inter-Governmental Committee the following memorandum explaining the position of the Community in regard to some of the questions raised by the negotiations for a Treaty of European Economic Association.

This memorandum should not be regarded as exhaustive, and the Community reserves the right to supplement the statement of its position at a later date during the course of negotiations on other questions, particularly the globalisation of quotas.

It goes without saying that the common positions hereinafter defined and the agreements which they imply are dependent upon the success of the current negotiations, particularly those referred to in this memorandum.

I. General Conditions

1. The European Economic Community solemnly reaffirms that it is determined, both for economic and political reasons, to arrive at an agreement which will make it possible to associate with the Community on a multilateral basis the other Member States of the O.E.E.C.

On the economic plane, the Community has set down in the Treaty itself its objective of contributing to the harmonious expansion of world trade. On the political plane, it is conscious of the special ties which unite the European countries and is resolved to make its contribution towards their mutual understanding and solidarity. It is thus determined to continue and strengthen the co-operation which has existed for many years past within the O.E.E.C.

2. The Community would like to recall certain principles which, in its opinion, should govern the negotiations and their conclusion:

— in accordance with the Decision of the Council of the O.E.E.C. of 12th February, 1957, the purpose of the Agreement under negotiation is to associate, on a multilateral basis, the other member countries of the O.E.E.C. with the Common Market of the Six. This implies, among other things, that the other members of the Association recognise that the objectives of the Treaty of Rome are valid from the point of view of the principles of international trade;

— this Agreement must not in any way prejudice either the content or the implementation of the Treaty of Rome;

— the existence and functioning of the Community cannot be regarded as involving discriminatory treatment in relation to the other partners of the Association, but they may result in differences of treatment which are inherent in the position of such countries.

3. There should be an express provision in the Treaty of Association recognising these fundamental principles. This could be inserted at the end of the Treaty and might be worded as follow:

(i) "The Member States of the European Economic Community adhere as such to the present Treaty, subject to the following provisions and with all the rights and obligations of such membership.

(ii) "The obligations of the present Treaty shall apply to the relations which the Member States of the

European Economic Community maintain with the other Contracting Parties to the present Treaty which are not members of the European Economic Community.

(iii) “The present Treaty shall not apply to the relations between the Member States of the E.E.C. which are governed by the Treaty of Rome, the implementation of which cannot be impeded by the Treaty of Association”.

4. With regard to the term “Free Trade Area” used hitherto to describe the Treaty under negotiation, it should be pointed out that, from the point of view of doctrine, the term “free trade” evokes a specific economic system. In view of the content of this Treaty as now envisaged, this term does not seem to be very appropriate and should be changed.

The Community suggests that the title “European Economic Association” should be adopted.

II. Solutions to Problems arising out of Disparities between the External Tariffs of the Member Countries of the Association and Other Problems of Competition

5. The fact that in the Association there is no common external tariff and no common trade policy with regard to third countries raises certain problems, such as deflection of trade, transfer of activities, etc., which it is important to resolve. The Community considers that the implementation by the Steering Board for Trade of the mandate assigned to it by the Inter-Governmental Committee at its 7th Session, on 25th July, 1958 [CIG(58)49(Final)], will probably result in substantial progress being made in the study of this question. While awaiting the Steering Board’s conclusions in this matter, the Community wishes to indicate the guiding principles which, in their view, should govern the settlement of questions arising out of disparities between the external tariffs of member countries of the Association.

6. In the first place, the Community wishes to recall the special importance it attaches to the conclusions in paragraph 8 (d) of the Steering Board’s report dealing with the fiscal measures which might be adopted to counteract deflections of trade and to the necessity of pursuing actively the studies undertaken in connection with the formula referred to in paragraph 3 (iii) of that report.

A detailed description of the procedure which might be used to apply this formula, if it is adopted, is given in the Annex to this memorandum.

As the Community has already told the Inter-Governmental Committee, it considers that the most adequate solutions for problems of deflection of trade will most likely be, in a number of sectors, in the application of this formula.

7. The Community, however, feels it necessary to emphasize also that the solution of questions of origin does not lie *a priori* in the application of general rules defined in abstract; only a sector study of the main branches of economic activity will provide adequate, general or specific solutions, both for questions of trade policy as well as for those arising out of disparities in tariff policies and for other problems of competition referred to in paragraphs 13 and 17 to 24 of this memorandum.

8. In order to study all these problems and to arrive at a common point of view in the principal sectors, the Six Governments have instructed the European Commission to arrange for consultations of experts within the Community.

III. Co-ordination of Trade Policies

9. The abolition of barriers to intra-European trade cannot be achieved if no account is taken of the commercial relations between each member country of the Association and third countries.

The Community considers that although a common trade policy should not be regarded as one of the objectives of the Association, it is nonetheless essential that Member States of the Community should proceed to co-ordinate their trade policies in regard to third countries. The Community attaches the same importance to solving this problem as it attaches to solving problems due to disparities between external tariffs.

10. The Treaty of Association should prescribe general objectives with regard to such co-ordination.

On the one hand, these objectives might be based on Article 110 of the Treaty of Rome and might provide that Member States of the Association intend to contribute, in conformity with the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of Customs barriers.

On the other hand, it is essential that policies should be co-ordinated in such a way that the import system applied by a member country in its relations with a third country cannot distort competition between firms within the Association.

11. With this aim in view, a flexible procedure might be arranged under which the institutions could exchange and examine information concerning trade policies of member countries of the Association; the latter would inform the institutions of any changes made in their import systems in respect of third countries (trade agreements, unilateral quotas or liberalisation of trade) and their policy in respect of anti-dumping duties vis-à-vis third countries.

If a Member State considers that the import system applied by another Member State to third countries is likely to distort competition between firms within the Association, the institutions will examine the import system of the country concerned and make such recommendations to it as may be necessary.

The escape clause which a Member State might invoke in such a case is set out in paragraph 27 (d) below.

12. Finally, consideration should also be given to the special problem which would arise if a Member State of the Association were to conclude with one or more third countries an agreement which, by the scope of its clauses, the broadness of its aims and its duration, would impede the attainment of the objectives of the Association.

The Community considers that Member States of the Association should consult together if one of them were to envisage concluding an agreement on the lines set out above. In this way, such a country could be informed of its partners' reactions to its project.

If, notwithstanding any objections made during these consultations, a Member State were to conclude an agreement of this kind, the other Member States could declare themselves released from any Treaty obligations with regard to this country. Such a decision could not, however, be taken until after further consultations within the Association.

IV. Imperial Preference

13. The Community wishes to emphasize that the existence of the sterling area and the Commonwealth is an important factor for the economic prosperity of all European countries. It is, however, a fact that the United Kingdom can thus benefit from extensive privileged markets outside Europe in countries which are economically very advanced and expanding rapidly.

There is a danger that these privileged markets may disturb conditions of competition for the partners of the Association.

In addition, countries without privileged markets are placed at a disadvantage as regards foreign investment

in their territory. For, although markets are not the only factor influencing investment, such countries are not in a position to guarantee that industries establishing themselves on their territory will find markets, not only within the Association itself, but also in Commonwealth countries.

The Community wishes to draw the attention of the United Kingdom to these problems. It considers that, in certain specific cases, appropriate solutions should be found to these problems.

The Community reserves the right to bring up the problems which, in its opinion, are raised by imperial preference in certain specific sectors, with a view to finding appropriate solutions.

V. Confrontation of Economic and Financial Policies

14. The Community believes that economic and financial policies should be brought progressively more closely into line within the Association by the standing confrontation of those policies.

15. The aims of such a confrontation should be those of the Association. The aim of the said confrontation should, therefore, be:

- to establish arrangements that ensure that competition is not distorted within the Association;
- to promote in each country overall economic expansion, development of employment, improvement of working conditions, a rising standard of living, price stability and a stable balance of payments, and to encourage a harmonious division of activities taking account of the particular potentialities of each member country.

VI. Payment Arrangements within the Association

16. The Managing Board of the European Payments Union has submitted to the Inter-Governmental Committee a report on payment arrangements within the Association [document CIG(58)41].

The Community considers that the proposals in paragraph 5 of that report should be accepted as a working basis.

The Community takes the view that there is a risk that the measures for dismantling tariffs and quotas to be taken within the framework of a European Economic Association may entail considerable fluctuations in member countries' trade, which can only be offset by a greater degree of co-ordination of economic, financial and monetary policies.

The Community considers however that, during the early years of the Association's existence, the present machinery of the European Payments Union should make it possible to overcome any difficulties that arise. It would however still be possible to decide later to strengthen this mechanism if necessary.

VII. Rules of Competition

1. Access to raw materials

17. The Community wishes to emphasize that the problem of equal access to raw materials is particularly acute in certain sectors, where appropriate solutions will have to be found. If there is no equal access to raw materials, competition between undertakings in the Association may be distorted.

The problem would be most acute in the event of a shortage affecting all member countries of the

Association. In the Community's view, the Treaty of Association should provide that, in such an eventuality, the institutions of the Association would establish in certain sectors, a system for allocating equitably the quantities available, with provisions concerning the terms on which this would be done. The existence of a shortage should be established by a unanimous decision of the institutions of the Association.

2. Quantitative restrictions on exports

18. The Community is of the opinion that quantitative restrictions on exports should in principle be abolished by the end of the first stage.

19. As to whether the Treaty of Association should contain provisions making it possible, when justified by exceptional circumstances, to maintain export restrictions after the end of the first stage, to strengthen existing restrictions or to introduce new restrictions, the Community considers that there is no need for such provisions. This question should be dealt with under a general escape clause.

20. The Community points out that when a member country imposes restrictions on exports of certain products to any countries not members of the Association, that country should also be able to control exports of such products to countries of the Association for the sole purpose of ensuring that they are not re-exported to the non-member countries to which the restrictions apply.

3. Aids granted by States

21. The Community considers that on this subject the Treaty of Association should contain provisions identical to those of Article 92 of the Treaty of Rome.

4. Restrictive trade practices in the private sector

22. The Community accepts as a basis for discussion the report of the Special Working Party presided over by Mr. Melander [CIG(58)52]. Nevertheless, it reserves the right to raise certain specific points during the discussion.

23. The Community may also ask for the adoption of stricter rules than aforesaid, should it appear during the negotiation that in certain sectors certain countries adopt positions of a restrictive nature in matters which might affect the conditions of competition of firms within the Association in these sectors.

VIII. Harmonization of Social Conditions and Rapprochement of Legislation

24. The Community's position on this point is as follows:

(i) Article 119 of the Treaty of Rome should be adopted as it stands (equal pay for male and female workers).

(ii) Article 120 should be adopted as it stands (maintenance of equivalence of paid holiday schemes); a special obligation should be envisaged for countries where paid holidays are shorter.

(iii) The provisions of Section 2 of the Protocol Relating to Certain Provisions of concern to France (payment of overtime) should be inserted in the Treaty of Association. The decision of the Commission with regard to measures of safeguard would be replaced by Government action subject to subsequent control by the Council of Ministers.

(iv) The Treaty of Association should contain equivalent provisions to those in Articles 100 to 102 of the Treaty of Rome (harmonization of laws). The procedure should be adapted to the institutional structure of the Association.

In the event of disparity in the regulations, distorting conditions of competition and resulting in a deflection which must be eliminated, Governments may, pending the harmonization as desired, take all appropriate measures of protection, subject to subsequent control by the Council of Ministers.

IX. Products within the Competence of the E.C.S.C.

25. It will be recalled that the problems raised by the inclusion in the Association of products within the competence of the E.C.S.C. are being studied by an ad hoc Working Party of the Inter-Governmental Committee as well as by the institutions of the E.C.S.C.

X. Nuclear Common Market

26. *Pro memoria.*

XI. Escape Clauses

27. The Community considers that the Treaty of Association should contain escape clauses for the following cases:

(a) Balance of payments difficulties

The Treaty of Association should contain provisions for mutual assistance, designed to avoid as far as possible any recourse to an escape clause.

Nevertheless, it is clear that the Treaty of Association should also contain an escape clause covering the cases referred to in Articles 108 and 109 of the Treaty of Rome.

(b) Disturbances in particular sectors

The Treaty of Association should contain an escape clause covering the cases referred to in Article 226 of the Treaty of Rome.

(c) Dumping

The Treaty of Association should contain an escape clause to meet cases of dumping within the Association.

(d) Other cases

There should also be an escape clause to cover deflections of trade and activities, and, in particular, difficulties arising out of disparities in the trade and tariff policies of member countries of the Association.

28. The rules of the Treaty of Rome concerning the aforementioned escape clauses could serve as models for the corresponding rules in the Treaty of Association, but they would need to be adapted to the special conditions of the Association.

29. Recourse may be had to the clauses embodied in paragraph 27 (a), (c) and (d) even after the end of the transitional period. The sectors for which recourse may be had to the clauses in 27 (b) after the end of the transitional period shall be decided before the end of that period.

30. The Community considers that Member States should be able to invoke escape clauses unilaterally. There should, nevertheless, be provision for subsequent control by the Council. This body would require a unanimous vote — subject to what is said in the second sub-paragraph of paragraph 32 below — to decide that the safeguarding measures taken by a Member State were unjustified.

The procedure indicated in paragraph 33 below will apply when one of the six Member States of the E.E.C. invokes an escape clause in the Association. The adoption of this procedure might in certain cases lead to collective action being taken within the Association by the Member States of the Community, with a view in particular to ensuring the operation or maintaining the unity of the Common Market, as indicated in paragraph 2 of this memorandum.

XII. Institutional Problems

31. The Community considers that the institutions of the European Economic Association could be analogous to those already existing in the O.E.E.C.

Provision should be made for:

— a Council, meeting either at Ministerial level or at Permanent Representative level, and assisted by a Secretariat.

The Commission of the European Economic Community should be represented at the Council, and similar arrangements should be made for the High Authority of the E.C.S.C. and the Euratom Commission;

— one or more Boards which should be objective and independent bodies responsible for giving considered opinions and taking decisions only when specifically instructed to do so.

The question whether a Court of Justice will be necessary cannot be settled until the terms of the Treaty are finally settled.

32. As regards the procedure for taking decisions in the Council, the Community considers that for practical reasons it will be necessary at the outset to adopt the unanimity rule.

The question whether and how far provision should be made for majority decisions in the future will be considered during the transitional period, and particularly on passing from the first to the second stage.

33. The Community intends to act as a unit within the Association. The attitude of its members towards Association matters will be determined within the Community by an internal procedure based on the provisions of the Treaty of Rome.

XIII. Procedure for the Transitional Period: Date of Coming into Force — Termination — Passage from One Stage to the Next

(a) Date of coming into force of the Association

34. The Community considers that the date of coming into force of the Association should coincide with the date on which the first steps are taken by the European Economic Community to dismantle tariffs and quotas

(1st January, 1959).

(b) Fixing a limit to the transitional period

35. The Treaty of Association should moreover provide for fixing a limit to the length of the transitional period, and this limit would determine the latest date for the coming into force of all the rules laid down and for the setting up of the whole structure involved in the establishment of the Association.

The length of the transitional period of the European Economic Association should, in principle, correspond to the length of the transitional period of the E.E.C. It could not exceed the latter by more than three years.

(c) Procedure for passing from one stage to the next

36. Passage from one stage to the next will require a unanimous decision by the Council of the Association, as laid down in paragraph 32 above.

37. The fact that the agreement in preparation is designed to associate the other member countries of the O.E.E.C. with the Community of the Six entails, in the opinion of the Community, the following two consequences as regards passage from one stage to the next:

— the Association cannot develop at a faster pace than the Common Market: if passage from one stage to the next is delayed in the Community, the corresponding stage in the Association would have to be delayed too,

— on the other hand, the fact that the Community has moved on to the next stage would not preclude the prolongation of a stage in the Association.

XIV. Countries in Process of Development

38. The Community would recall that at the 7th Session of the Inter-Governmental Committee it agreed to take as a basis of discussion the proposals by the Chairman of Working Party No. 23 for rules on tariff reductions [FTC(58)2].

The Community will also take up a position regarding the proposals on financial problems which are awaited from the Chairman of Working Party No. 23.

XV. Free Movement of Workers

39. The Treaty of Association should contain provisions on this subject similar to those of the Treaty of Rome.