During the first three months of 1964 the external development of the European Communities has been largely conditioned by the preparations for the coming important conferences, the first the G.A.T.T. negotiations on the American proposals for tariff reductions (the Kennedy round), and the second the United Nations Conference on Trade and Development.

The commencement of the G.A.T.T. discussions in May now seem sufficiently certain, and as far as *industrial* products are concerned agreement has been reached among the Six on the major guide lines for the negotiations. There is to be (a) a linear tariff reduction of 50 per cent, with (b) a very restricted provisional list of excepted products to which the reductions in whole or in part are not to apply, and (c) a reasonably simple method of resolving the tariff disparities. The method to be applied is invoked as soon as (1) there is a divergence of 100 per cent in the tariffs on a particular product, and (2) this divergence reaches 10 points or more, at any rate for raw materials and finished products. The solution provided is that the full linear reduction of 50 per cent will be applied to the higher tariff, whereas the average reduction of the lower tariff will amount to not more than one half of the linear reduction. Whether this method of resolving the disparities will be used, will however depend on economic circumstances *i.e.* the production in and import into the country with the lower tariff, a substantial import into the country with the higher tariff, and possible interests of third countries.

On *agricultural* products the field of agreement has not been so wide. It appears to be contemplated by the United States that there should be a specific E.E.C guarantee in respect of the sale of U.S. products within the Community. The purpose of this guarantee is to facilitate trade in agricultural products so as to correspond with the 50 per cent tariff reduction in the industrial sector. The Community has however proposed a totally different procedure which involves taking into account the total amount of government subsidies for each agricultural product and using these amounts in the negotiation in the same way as the import duties on industrial products. It is contemplated that these subsidies may in the result be consolidated or even diminished, but an increase would only be permitted upon an equivalent concession being granted on another product. It is clear that these two conceptions have little in common, and numerous difficulties may therefore once again be predicted in the field of agriculture.

The U.N. Conference on Trade and Development wil start with

objectives which are far less precise, but once more it is certain that the problems of agricultural products will receive a high priority. It is however less important at this conference to find a technically well-balanced point of departure than it is to create a common desire among the industrial countries to reduce the disequilibrium in their trade with developing countries. It is impossible to say whether this common desire exists, but it is difficult to see any good omens in the currently prevailing uncertainties. One thing however is clear: this conference represents a challenge by the developing countries to the West. The Soviet countries will put forward their proposals for a world trading organisation, and if the West intends to outbid this by the advantages of the free trading system, then a necessary preliminary will have to be some solid achievements in the G.A.T.T. negotiations.

One comment must however now be made. According to Article 116 (2) of the E.E.C. Treaty it is provided that in any action in international organisations of an economic character, the member States "shall consult together with a view to concerting the action they take and to adopting as far as possible a uniform attitude". In the light of this provision is it not clear why the French government alone has submitted a memorandum containing certain proposals to the secretariat of the conference.

Both inside and outside the E.E.C. European countries are waging a battle against inflation with a variety of instruments. To this end a number of governments have recently enacted or adopted new competition laws. In France a law of July 2, 1963[1] on the maintenance of economic and financial stability has expanded the legislation against unfair competition and restraints on competition. *Inter alia*, the well-known Article 59bis of the Price Ordinance of June 30, 1945 has been complemented by Article 3(1) which prohibits activities by monopolies or firms possessing dominant economic positions designed to prevent the normal functioning of the market or having this effect. In the Netherlands the government endeavours to increase its powers to regulate prices. The government has already power to regulate prices in any particular branch of industry, and it has now introduced new legislative proposals to Parliament to enable it to regulate prices for individual enterprises. Furthermore the government is now using its powers—previously granted to it by the Law on Economic Competition of 1956/8[2]—to declare void collective vertical price-fixing agreements. This legislation corresponds in many instances to the recent development in the United Kingdom. Here the government has

1. Financial Law no. 63—628, *Journal Officiel* of July 3, 1963 (reprinted in French and German in *Wirtschaft und Wettbewerb* 1964, p. 221).
2. Official Gazette *(Staatsblad)* 1958, no. 413.

also proposed legislation to prohibit vertical price-fixing. The Resale Prices Bill is intended to make sweeping changes in the practice of retail price maintenance, but the procedure it establishes for adjudication by the Restrictive Practices Court[3] of existing price maintenance agreements makes it likely that price maintenance may continue for some months to come

In accordance with the provisions of the Bill as presented to Parliament any term in a contract fixing the minimum price of goods on resale shall be void (without affecting the validity of the rest of the agreement), and to include in any agreement in the future for minimum prices to be charged shall be unlawful. This applies to all goods including articles which are protected by patents or registered designs, but does not affect the validity of patent licensing agreements, where the selling prices of the goods manufactured under the patent and sold by the licensee may be fixed by the licensor. In order to make this enactment effective, it is provided that it is unlawful for any supplier to withhold supplies from a dealer seeking to obtain them for resale in the United Kingdom on the grounds that such dealer has sold them below the resale price or has supplied them to a third party who has done so, or where the dealer is likely to do so. The "resale price" means any published or recommended price, which is still permitted under the terms of the Bill. The withholding of supplies is deemed to include treating the dealer on terms as to credit, discount etc., which are significantly less favourable than those available to other dealers, or discrimination against him in respect of deliveries and other matters in the performance of the contract. Where there has been a course of dealing for six months between the supplier and that dealer or similar dealers and supplies are withheld, it is to be presumed that supplies have been unlawfully withheld unless the supplier is able to prove the contrary. Where the goods have been sold at any time during the last six months by the dealer at a price at or below the price paid by him (including purchase tax and delivery charges), then the supplier is justified in withholding supplies. This exception is aimed at the prevention of "loss leaders". The most important part of the Bill is undoubtedly the provision contained in section 5 for the adjudication by the Restrictive Practices Court on any agreement for the maintenance of resale prices which is referred to the Registrar by any supplier within three months of the clause taking effect. In such a case the Restrictive Practices Court will have the power of exempting any class of goods from the provisions of the Act, thereby enabling resale price maintenance to be continued, provided that the

3. This Court was set up under the Restrictive Trade Practices Act, 1956, to determine whether the restrictive practices required to be registered under that Act were in the public interest as defined by that Act.

supplier can satisfy the court in one of three "gateway" provisions and the requirements of the "tailpiece". The gateways consist in showing that if resale price maintenance were removed, then

(a) that the quality of the goods or the varieties available would be substantially reduced to the detriment of the consumers and users, *or*

(b) that the number of retail outlets would be substantially reduced to the detriment of consumers and users, *or*

(c) that any "necessary services" (such as after-sales service) actually provided would either cease or be substantially reduced to the detriment of consumers or users. In any event it will always be necessary to satisfy the Court of the requirements of the "tailpiece" that there would be greater detriment to the public as consumers or users by the abandonment of resale price maintenance than by its continuance. Where an order is made by the Court, either allowing or rejecting an application in respect of any particular class of goods, a fresh application may be made to discharge or to make an order exempting such goods, provided that two years have elapsed since the Court last adjudicated upon the matter. The Bill provides that no criminal proceedings shall be brought in respect of any breach of the provisions, but any person affected by a contravention may bring a civil action for breach of duty. Civil proceedings may also be brought by the Crown for an injunction, or other appropriate relief. Section 5 will come into force one month after the Act is passed, and the earlier provisions not less than three months thereafter as the Board of Trade may appoint. Thus there will in all probability be no practical results to be seen from this Bill, even if it is passed, before the general election.

Gradually the law of competition of the Community is also being developed. Since the recommendation concerning the "Fayence Convention" to which reference was made in the previous Editorial Comment[4], the Commission has taken its first formal decision, granting a negative clearance under Article 2 of Regulation No. 17, on March 11, 1964.[5] The case concerned an exclusive dealing agreement between a French manufacturer of plastics ("Grosfillex") and a Swiss sole selling agent ("Fillistorf"). The Commission found that the agreement was not designed to prevent, restrict or distort competition within the Common Market nor did it have that effect. Its reasons were (1) that the prices of the Grosfillex products in Switzerland were not lower than those for the same products within the Common Market, (2) that there existed a large number of competing manufacturers in this industry, and (3) that no objections had been raised by third parties.

4. 1 C.M.L.Rev. 1963-4, p. 254. Reprinted in *Wirtschaft und Wettbewerb* 1964, p. 54-60

5. The application for this negative clearance was published in the *Official Gazette*, July 4, 1963 (cf. *1 C. M. L. Rev. 1963-4*, p. 114).

Furthermore the Commission has submitted a draft regulation to the Council, to enable it to be empowered to grant exemptions under Article 85(3) E.E.C. from the prohibition of Article 85(1) E.E.C. for certain types of cartel agreements. This proposal undoubtedly constitutes a welcome addition to the possibilities of removing the present uncertainties in this field for a greater number of enterprises. Although it is understandable that the Commission wishes to consider its first decisions very carefully, nevertheless the fact that no decisions have been forthcoming becomes rather oppressive: e.g. no decision has yet followed the communication by the Commission of June 15, 1962 at the request of the plaintift on appeal in the Consten-UNEF case,[6] that it had initiated action pursuant to Article 3 of Regulation No. 17, although this communication was given more than a year and a half ago. Not only precision but alsos peed of decision may, however, invoke certain minimum demands.

According to the Official Gazette of March 13, 1964 (p. 709/64) a lower court in Milan, Italy, has requested the Court of Justice in Luxembourg to give a preliminary ruling (case 6/64). The case concerns the question whether an Italian law of December 6, 1962 has violated the provisions of the E.E.C. Treaty, in particular Articles 37, 53, 93 and 102. This question touches upon an extremely sensitive and vital point of Community law, to wit the relationship of supra-national law to the internal law of the member States. Community law prevails over national law in three of the member States: in France, according to Article 55 of the Constitution of 1958 (but only on the basis of reciprocity), in The Netherlands, pursuant to Articles 65-67 of the Constitution of 1956 and in Luxembourg where a judgment of the Court of Appeal of July 14, 1954 established this priority. In Belgium no constitutional provision exists. Here case-law and literature accord to all treaties—and so also to the Treaties establishing the European Communities—the same status as national laws. However, some time ago *Procureur-Général* (Attorney General) Hayoit de Termicourt subjected this doctrine to a critical analysis.[7] In Germany and Italy the view prevails in literature as well that Community law has no precedence over posterior national law,[8] although judicial decisions on the relationship of Community law to national law were lacking until recently. The Finanz-gericht of Rheinland-Pfalz had addressed itself to the Bundesverfassungsgericht with a request for a preliminary ruling

6. Cf. *1 C. M. L. Rev. 1963-4*, p. 221-222. Cour d'Appel Paris, January 26, 1963. with annotation Jean Robert.
7. Cf. Survey of Literature, *1 C. M. L. Rev. 1963-4*, p. 376.
8. Cf. Survey of Literature in this issue, p. 473-474.

("Vorlagebeschluss") on November 14, 1963.[9] Most recently the Constitutional Court in Italy has granted precedence to a later law over provisions of the (older) E.E.C. Treaty.[10] It goes without saying that a serious situation in respect of the application of Community law has thereby been created. Should a national law be able to set aside regulations under Article 189 E.E.C., which are binding in every respect and are directly applicable in each member State, uniformity in interpretation and legal certainty within the Community can only be assured by means of the detour of the procedure of Articles 169 or 170 E.E.C. against member States for breach of their obligation. It is to be hoped that the question referred by the said Court in Milan will grant the Court of Justice the opportunity to pronounce clearly on this difficult question.

9. Cf. Case Law in this issue, p. 462. See also *Aussenwirtschaftsdienst* 1964, p. 26 and pp. 60-61.

10. Sentenza no 14/1964 of February 24, 1964 rendered on the request of the same court in Milan in the same case in which a preliminary ruling has been requested of the Court of Justice in Luxembourg.