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July 1, 1967 marks another milestone on the road to European integration. On that day the Treaty for the merger of the executives of the European Communities was put into effect, and the new single Commission, consisting of fourteen members took office. At the same time President Walter Hallstein, his most senior colleague Mr. Robert Marjolin, a Vice-President of the E.E.C. Commission, and some others retired from office.

The departure of Walter Hallstein marks the end of an era. For the last ten years since the inception of the Community in 1957, he has been the head of the Commission of the E.E.C. No more effective example could there be of the requirement under the Treaty that members of the Commission should act completely independently in the performance of their duties in the general interest of the Community. The Commission is the guardian of the Treaty, and no man could have been more alert in its defence. He defended the Treaty with firmness, yet not without finesse, against all assailants. A victim of personal attack from some quarters, he nevertheless survived the Agreement of Luxembourg which left the legal provisions of the Treaty unimpaired. If he seemed distrustful at times of British membership, this was largely because he saw a possible danger in it to the integrity of the Communities, which it was his first duty to preserve. Furthermore in all his acts he was acutely conscious that the decisions to be taken in the Communities were of an essentially political nature, even though their substance might be economic. Through all the maze of the relationships of the Community with the member States themselves, with the African Associated States, and with the rest of the world he never lost sight of the fact that the decisions taken inside the Community would have a political consequence. "We're not in business, we're in politics", said Walter Hallstein, and he will deserve a place of recognition in history as one of the great political leaders of Europe.

The new Commission which has taken office under the distinguished presidency of Mr. Jean Rey has drawn its members either from the old executives or from outside. Dr. Mansholt remains, in charge of Agriculture. Dr. Hellwig and Mr. Albert Coppé come in from the Coal and Steel Community, and Mr. Sassen from the Euratom Commission. One of the new members to be especially welcomed is Mr. Jean-François Deniau, who as an official headed the Commission's delegation during the first negotiations with Britain and now returns as Commissioner to take charge of external relations.

Under the new Commission there will be twenty-five general directorates covering all the functions of the three executives which are now vested in the single Commission. Dr. Ernst Albrecht, former *chef de cabinet* of Mr. von der Groeben, takes over the general directorship for rules of competition which deals with restrictive agreements and monopolies, in place of Mr. Ver Loren van Themaat who has been called to a chair at Utrecht University.

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Among other lawyers we are happy to notice that Dr. Theodor Vogelaar, former Director-General of the Legal Service with special responsibility for Euratom becomes director-general for the Internal Market, a post of great significance.

One of the new changes will be that the presidency of the Commission will rotate among the members of the Commission every two years, but it yet remains to be seen whether the new President will be any less a decisive figure than his predecessor.

The primary internal task at home of the new Commission will be to prepare the way for the merger of the three Communities, the terms of which are still to be negotiated. The Commission will, however, be increasingly taken up with the issue of British membership, whose application has been reinforced by other applications from Denmark, Ireland, Norway and Sweden.

On May 10, 1967 the British Prime Minister addressed a letter to the President of the Council of the E.E.C. in the following terms

"I have the honour, on behalf of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, to inform Your Excellency that the United Kingdom hereby applies to become a member of the European Economic Community under the terms of Article 237 of the Treaty establishing the European Economic Community."

Similar letters were sent in appropriate terms to the two other Communities. On the same day the Prime Minister of the Republic of Ireland, Mr. John Lynch, also applied by letter to join the E.E.C. under Article 237, as well as the other two Communities. He hoped that in view of the close economic relationship between Ireland and the United Kingdom, and in particular of the creation of the Anglo-Irish Free Trade Area, it might be possible for the Irish and British negotiations to be taken concurrently.

On the following day, May 11, letters were sent by the Danish Minister of Trade and European Integration, Mr. Tyge Dahlgaard, requesting membership of the E.E.C. under Article 237 together with membership of the other two Communities. Similar applications were made by the Norwegian Prime Minister, Mr. John Lyng, on July 24.

Sweden has also made an approach to the Six. On July 28 the Swedish Minister for Trade, Mr. Gunnar Lange, addressed a letter to the Community in which he recalled that on December 12, 1961 the Swedish government proclaimed its determination to maintain Sweden's traditional neutrality and made an application to start negotiations for an association between Sweden and the Community. Since then, Mr. Lange declared, the constructive idea of an expanded European economic integration has made substantial progress and it was in the strong interest of Sweden to participate in a single economic solution. In this connection the Swedish government regarded it as vital that the progress made within E.F.T.A. and thereby the tariff-free Northern market should be preserved. He accordingly applied for negotiations with the Community in order that Sweden might be enabled to partici-

pate in principle in the expansion of the European Economic Community "in a form that is consistent with the continuation of Sweden's policy of neutrality". The Swedish government also expressed the wish to negotiate with the Coal and Steel Community and Euratom. At the time the letter was delivered the Swedish ambassador to the Communities explained that Sweden desired a comprehensive, close and durable economic relationship with the Community, and did not exclude any form of participation. Membership had many advantages, he declared and the only real determining factor was the desire to retain Swedish neutrality unchanged.

With these new applications the claims of the European countries including Britain to become members is greatly strengthened, and will add pressure on the Six to deal with new members as soon as possible. Whatever may be the position of Britain, it cannot be said that the Scandinavian countries are in any way "Anglo-Saxon" or that they have any particular problems which will exclude them from a place at the Council table of the Community. It is to be hoped that the Community will regard the problem of new members as its first priority and will begin by negotiating seriously with the United Kingdom. The other suppliant countries desire that all negotiations should proceed simultaneously with the British negotiations. A general negotiation might, however, take a long time and might embarrass the negotiations between Britain and the Six where a number of special problems have to be resolved. Once an accommodation with Britain has been reached it can only be a matter of time before suitable arrangements are made for all other European countries who so desire them.

Mr. George Brown, the British Foreign Secretary, in pursuit of entry, used his opportunity skilfully at the meeting of the Council of the Western European Union on July 5, 1967, although the Community itself had not agreed to discuss the conditions for British membership. The W.E.U. meeting (at which the E.E.C. Commission was also present) was an occasion when Britain and the Six could discuss their principal common interest. Mr. Brown took this opportunity to define the circumstances and the issues that the British would require to be dealt with during the course of the negotiations. He made it clear that Britain accepted all three treaties subject only to the adjustments required to provide for the accession of the new member as for example the conditions of participation and voting in the Community institutions and the contribution of Britain to its financial expenditure. He made it clear that Britain would need a transitional period to permit mutual adaptation to the circumstances of an enlarged Community. He therefore proposed that the first year of the transitional period should be a standstill period following the example at the commencement of the Treaty, which though signed in March 1957 did not impose any changes until January 1, 1958. By this he explained that the Community would be given time to conclude negotiations with other countries wishing to become members, and presumably his proposal implies that apart from provisions

already agreed upon taking effect there would be no further legislation by the Community during this stand-still period. This would seem to be difficult to insist upon as so many matters require to be decided all the time, but it might be a good working principle that during this period the entry of new members should be given priority, and that apart from decisions which become necessary from day to day which would of course be taken with Britain having a representative in the Council, major matters should not be brought forward until after this twelve months' period is over.

The matter of greatest concern to Britain is of course the agricultural policy of the Community. One of the most popular measures in British agricultural policy is the annual "price review", on which occasion the Ministry of Agriculture fixes the prices of agricultural products subject to subsidies for the coming year. Mr. Brown would like to see an annual agricultural review on a Community basis which could be held in conjunction with the producers' organisations. This, he believes, would contribute materially to a smooth running and effectiveness of the common agricultural policy. On particular products he was concerned that there should be sufficient supplies of liquid milk to meet the British demand for consumption throughout the year. And he believed that this could be done without upsetting present Community arrangements. He also wished to ensure adequate market stability for pig meat and eggs. The greatest difficulty arose over the financing of the common agricultural policy as existing financial arrangements would put an inequitable burden on the United Kingdom. But he looked forward to Britain's participation as a full member in the negotiation of the financing arrangements for the period after the end of 1969. He mentioned the question of aid to farmers in special difficulties and here the hill-farmers of Britain had held a special case for support.

With regard to Commonwealth problems which have greatly diminished in importance since the 1962 negotiations, he was concerned principally with the problem of the Commonwealth Sugar Agreement and the future of New Zealand. The Sugar Agreement runs until the end of 1974 which is only six months before the Communities own transitional arrangements for sugar are due to expire. Britain is committed to this agreement and Mr. Brown hopes that the sugar exported to Britain under it can be accommodated by a reasonable production quota under existing Community arrangements. With regard to New Zealand, her economy largely depends on her trade in butter, cheese and lamb (although probably the only real problem is butter) and special arrangements will have to be made for this as the Community had already recognized during the 1962 negotiations.

With regard to other Commonwealth countries, it had already been agreed in the early negotiations that association under Part IV of the Treaty of Rome would be appropriate and the Yaoundé Convention should be open to independent Commonwealth countries in Africa and the Caribbean. The Yaoundé Convention is due to expire in May 1969 and Mr. Brown hoped that Commonwealth countries could continue their present trading

arrangements with Britain until a new arrangement could be negotiated in which Commonwealth countries could take part. Certain trading arrangements would also be desirable in cases where association was not appropriate, e.g. in the case of India and Pakistan.

A particular aspect to be considered was the question of capital movements, for which Mr. Brown said he would like a transitional period to bring British policies into line with those of the Community. Britain proposed in particular to consult the Community under Article 70(2) if it becomes necessary to deal with a possible leak of portfolio investments from Britain to North America. Mr. Brown said that he specifically accepted the common external tariff as it stands subject to a period of adjustment. The association agreements with Greece and Turkey raised a number of points which have not been considered, and there were some matters affecting the harmonisation of laws in the agricultural and fruit field, but he thought that most of these matters were of minor importance and could be settled after Britain joined the Community. In all other fields Mr. Brown affirmed that Britain accepted the obligations of the Treaty and the regulations, directives and other decisions taken under it.

As far as Euratom was concerned, he thought nothing more than a twelve months stand-still period was required. In the case of the Coal and Steel Community Britain only required a limited period of transition.

A copy of this speech was immediately handed by Mr. Brown to the Chairman of the Council and the President of the Commission, and these matters will be dealt with in the report which Mr. Rey has promised to produce on the subject of British entry in September.

The outcome of the Kennedy Round negotiations has been generally welcomed and the achievement in Geneva is yet another justification for the Community. If there had been no Community it is inconceivable that the European countries, each negotiating on its own behalf, would have reached such a wide measure of agreement. Not only is it a triumph for the liberal policy of the Community expressed through the Commission, but a personal triumph for Mr. Jean Rey. By his consummate skill in handling his brief he succeeded in retaining the confidence of the governments of the member States and at the same time maintaining his freedom to negotiate.

The attitude of the E.E.C. in the Kennedy Round contrasts sharply with its frustrations during the Dillon Round of 1960/62 and the improvement must be seen to be largely due to the progress that has been made inside the Community with the common trade policy. Even so there are many differences, largely of a political nature, which still prevent any broad common attitude, especially towards the Eastern countries.

It is to be hoped that the increased confidence in the Commission will be shown in a common attitude at the next conference of U.N.C.T.A.D. to be held in New Delhi in February 1968. At the first conference the E.E.C. and its six member countries were each saying different things. In 1964 the

Council of Ministers had rejected the Commission's proposal that the Six should have a single representative and a common voice in U.N.C.T.A.D. France, however, has now proposed in the Council of Ministers that on the problems of sugar to be discussed in New Delhi, on which the Six now had a common policy, the Community should speak with one voice.

The same philosophy holds true in respect of agricultural policy, where the development of a full agricultural policy within the Six makes a common approach essential.

One of the disappointments of the Kennedy Round lay in the failure to achieve a comprehensive grains agreement. The E.E.C. had firmly maintained that coarse grains should be included in any cereal agreement. It hoped that in accordance with the proposal of Dr. Mansholt there might be a general step forward in imposing an international discipline on national subsidies and preventing any increases in the degree of protection thereby accorded by governments to agriculture. In spite of three years activity in G.A.T.T. in this direction, no other country has yet seen fit to accept such principles, although one may hope that discussions will be continued later in an effort to find a comprehensive solution to this vital problem.

The most critical comments on the Kennedy Round have been directed towards the concessions which have been made in favour of the developing countries. These have not been extensive, but it is to be hoped that such concessions as were made will become effective in one move rather than spread over a period of five years in the same way as the other tariff cuts between the industrial nations. The dissatisfaction felt by the developing countries in the result, although time itself could hardly have allowed for any more extensive agreement will now be transferred to the U.N.C.T.A.D. meeting in New Delhi. One of the issues there will be the problem of generalised preferences and their extension to the whole of the developing nations without discrimination. Britain and the United States have both expressed themselves in favour of generalised preferences, and so has the Commission in principle. It is now incumbent on the Community to find the best compromise between the universal approach and the interests of the associated African States. It is greatly to be hoped that the liberal views within the Community will once again prevail, and a solution might be found if the Community were ready to generalise its existing preferential system to all developing countries, provided that the other principal industrial countries agreed to do the same.

The British government has shown itself active in preparing British public opinion for membership of the Community, and two white papers of considerable importance have been presented to Parliament. The first is entitled "Legal and Constitutional Implications of United Kingdom Membership of the European Communities"¹. The purpose of this report, which was prepared by the Lord Chancellor, is to deal with the legal and constitu-

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tional problems that will arise on British entry. As soon as Britain becomes a member complex legislation will be needed immediately in the fields such as customs duties, agriculture and transport to cover all the cases where legislation is left under the Treaties or other Community instruments to the member States themselves. This causes no new problem and the necessary provisions could be enacted by Parliament, or possibly by delegated legislation under cover of Parliamentary authority which could cover future as well as present Community instruments.

The principal innovation would be legislation giving the effect of law to those parts of Community law which have an immediate binding effect within the member States. This would in effect mean making the Treaty part of the law which would have the novel effect of giving the force of law in Britain to future Community instruments without any further consent of Parliament.

The main impact of the Treaty, the report continues, would be felt in the realm of economic law, but "By far the greater part of our domestic law would remain unchanged". It is, however, to be regretted that fuller details are not published. The British government had a distinguished committee examining the question in 1962 and a great deal of work was done by it. Their findings, however, have never seen the light of day. In their conclusions there must be little that is controversial and nothing that requires secrecy.

The white paper deals with the power (contained for example in Regulation No. 17) in the Commission to order the inspection of premises and in this respect it is entitled to call on the help of the authorities of the member States. The report states that "it should be open to the United Kingdom to provide that compulsory powers should not be exercised except in pursuance of an order made by the United Kingdom court." Further clarification of this is necessary, but if it is intended thereby to vest a complete discretion in the national court it is doubtful whether this is consistent with the obligations of a member State under the Treaties.

The British government has at the same time published a second white paper on "The Common Agricultural Policy of the European Economic Community",² to which we hope to return at a later stage.

The government is also to be commended for the publication of revised translations of the texts of the three Community Treaties. The contribution of the interpreters and translators towards the integration of Europe has been a large one, as is to be seen by the great number employed in Brussels and Luxembourg. The Italian proverb *traduttori traditori* is only too often true, particularly as between English and French so many of the *faux amis* seem to have legal qualifications. The expert translators of the Foreign Office have had a second look at their first efforts and have produced a more polished and a more English version. "Jurisdiction" is now preferred

2. Cmnd. 3274. London H.M.S.O. price 2s.

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to “competence” and “abuse of power” exists on its own without any apologetic “*détournement de pouvoir*” in parenthesis. If Britain becomes a member the English version will not be merely a translation. It will be an equivalent text with English principles of law making a contribution of their own towards a broader European concept of Community law. It is, however, not permissible to give greater clarity to the Treaty than exists in the original texts. The much debated Article 17 of the Statute of the Court provided (in the French text) that parties before the Court must be represented by an *avocat inscrit à un barreau*. The first foreign office translation translated this as “a practising member of the Bar”: the revised version, more tactfully but less exactly, as “a legal representative who is appropriately qualified”.

The Editors and Publishers are pleased to announce that Mr. B. Baardman, legal adviser of Unilever; Professor Otto Kahn-Freund of Oxford University; Professor T. Koopmans of Leyden University; and Dr. K. R. Simmonds, Director of the British Institute of International and Comparative Law, have accepted invitations to join the Editorial Board.