

## EDITORIAL COMMENTS

### *The Great Debate*

The decisiveness of the majority obtained by Mr. Heath's Government in the House of Commons on October 28 has given wide satisfaction within the Community and amongst the other applicant countries. By 356 votes to 244 the Government carried their motion asking the House to approve in principle their decision "to join the European Communities on the basis of the arrangements which have been negotiated". Earlier the House of Lords had approved the same motion by a massive 451 votes to 58. Although 68 Labour M.P.s and six Liberal M.P.s voted for the motion in the Commons (and 19 other Labour M.P.s appear to have abstained) the Government can point to the fact that 282 Conservative M.P.s voted for the motion, itself giving a majority of 38, compared with the overall majority on strict party lines of 25 votes which the Conservative Government at present enjoys.

Most of the Labour M.P.s who voted with the Government can now be expected to join their colleagues in contesting the passage through the House of Commons of the legislation formalizing entry. Thus from February onwards of next year there may be a number of occasions during the various stages of the harmonization Bill when a Government majority could be in danger. However, it can be expected that some of the Conservatives who voted with the Opposition against the motion of principle (there were 39 and two abstentions) will rally to the support of the Government, if the implementing legislation gets into trouble. It is expected that the formal Treaty of Accession will be open for signature in Brussels (not in London!) before the end of the year. Thereafter Parliament will have to enact, first (and probably in February of next year) a short General Bill which will give constitutional and legal effect to the accession, and then, secondly, a harmonization Bill which will contain measures designed to fulfil and implement the obligations undertaken according to the Treaty of Accession. We shall watch the passage of the Bill, as well as its form and content, with the greatest interest. Those who are not familiar with the present conditions of British political life may find it surprising that Europe is not a uniquely distinctive cross-party issue. In present circumstances quite disparate factors may influence voting "on principle" and voting on the implementing legislation. Nonetheless, the successive phases of Britain's accession should not be regarded as if they are totally separate in terms of Parliamentary responsibility.

### *The Monetary Crisis and the World Trade System*

August 15, 1971 will stand out as a remarkable day in the history of the world trade system which has developed since the Second World War. The address of President Nixon presenting an economic programme, designed to deal with the constant deterioration of the balance of payments

position of the United States, announced three measures in the international field: the temporary suspension of the full convertibility of dollars into gold, the imposition of a temporary surcharge on imports into the United States, generally at a rate of 10 per cent., and a 10 per cent. reduction in foreign economic aid. All three measures may be of fundamental interest. The first will possibly lead to a complete reappraisal of the Bretton Woods system; the second is likely to prove that the U.S. Government has yielded to the attractions of pre-war principles of commercial policy; the third will add a new element to the frustrations of the Third World with regard to the way in which the "haves" give priority to their own problems.

Both the facts and the forces which have led to the present situation are highly complex. However, a great number of elements to be taken into account in the search for a solution have fairly little to do with the actual balance of payments problems; they relate more to the changes which have gradually occurred in world economic relations during the sixties. Besides the development of Japan, the development of the European Community and its policies have greatly fostered those changes. Symptoms announcing a change in U.S. policy, in reaction to this, have been numerous since the end of the Kennedy Round. Mr. Dahrendorf mentioned a number of them in his speech in the European Parliament on January 19, 1971.<sup>1</sup> On that occasion he recalled an interview given by Deputy Under Secretary Samuels in September 1970, when he stated:

"I don't think it's a question any more, as we viewed the matter at the creation of the Community, of trading short-term economic costs for long-term political advantages. . . . There is no reason why the United States take long-term advantages on faith. There is no reason today why we should incur short-term economic costs, particularly arising out of Community agricultural policies. The U.S. was in a position a dozen years ago to be passive about possible short-term economic costs in view of its then strong trading surplus and Europe's relatively weaker situation; today Europe is an economic giant and can stand on its competitive feet."

As a policy statement these words confirm a trend of events reaching from the chicken war in 1963<sup>2</sup> to the formal denouncement of the EEC agreements with Spain and Israel as offensive to the rules of GATT.

It is therefore not amazing that Washington should try to use the surcharge as a means to induce Brussels to make a number of unilateral concessions especially in the field of agricultural trade policy. According to a recent statement of Mr. Samuels, the United States can only conceive of abolishing the surcharge when it obtains a satisfactory arrangement at

<sup>1</sup> *Bulletin of the European Communities* 1971, No. 2, 20-30.

<sup>2</sup> See G. Daleiden in 1 C.M.L.Rev. 1963-64, 339-350.

monetary level and when tangible progress is made at trade level, both by specific short-term measures and by undertakings to re-examine the conditions of international trade at longer term. It might be easier to fulfil the latter condition than the former.

As for the trade relations between the United States and the EEC, the Community has hardly less to complain of than the United States itself: the waiver granted to the United States in 1955, which allows it to apply the Agricultural Adjustment Act 1933, contrary to normal GATT rules, is a thorn in the side of the Community. Likewise the Community's agricultural system of levies and refunds is a source of irritation for the Americans. The increase of customs duties and the introduction of certain import restrictions by the United States, thus diminishing the advantages supposed to result from the Kennedy Round, has destroyed the expectations on the Community side, just as the Community's association policy has not failed to disappoint the United States. In regard to non-tariff barriers, both powers live in a glass house, especially with regard to the maintenance of the American Selling Price system. Last summer Washington added new cause for complaint by proposing the Job Development Tax Credit of 10 per cent. of the cost of new investments, reserving the benefit of this tax exemption for capital goods "made in the U.S.A." only. It also introduced the DISC tax statute which constitutes in fact a direct subsidy to exporting, in the form of an exemption from direct taxes on activities of American export firms. Under these circumstances it can hardly be expected that "a giant that stands on its competitive feet" will be inclined to make any substantial unilateral concession, which would amount to giving up existing safeguards without any *quid pro quo*.

As for the conditions of international trade on a long-term basis, it seems that a review of the existing GATT system is highly desirable. On the one hand, the United States, which, over long years, has advocated a strict application of the GATT rules to defend its own interests, has now itself infringed these rules in such a way that letting this pass would be more dangerous to the viability of the whole system than trying to amend it in accordance with the developments of the last 25 years. On the other hand, the EEC has so often taken advantage of the pliability of GATT that the system has nearly lost coherence. The solutions envisaged for the relations between the enlarged Community and the Commonwealth countries on the one hand, and—see above—with the remaining EFTA countries on the other, cannot but add to the dangers inherent in this situation. The time has come for an overall reappraisal of GATT, adjusting it to the new conditions of world trade. All relevant factors: the situation of Japan, of developing countries, of America/Europe relations, of East/West trade, etc., should be taken into account on that occasion. One can only hope that all partners in this undertaking will show enough restraint and sense to hold out until a general conference to that end can be organized.

*The Community and the Non-Candidate-Countries*

The outcome of the parliamentary debate in Britain has brought to the foreground the question of the relationship of an enlarged Community to the rest of Europe, in particular to the so-called non-candidate-countries belonging to EFTA—Austria, Finland,<sup>3</sup> Iceland,<sup>4</sup> Portugal, Sweden and Switzerland. Started as a stop-gap operation for Britain more than ten years ago, EFTA can no longer play this role for the remaining members after three of the original seven members—including the principal one—have left the organization. The expansion of the European Communities therefore poses at the same time the problem of the need for the economic organization of a large part of Europe, as the Commission already rightly remarked in her Opinion of 1969 concerning the various membership applications.

Despite all the differences which mutually divide them, the six non-candidates have one thing in common: the importance for their economies of their trade with an enlarged Community. This is illustrated by their exports to the enlarged Community which vary from 40 per cent. (Iceland, Portugal) to 60 per cent. (Sweden) of their total exports. These figures are sufficient proof of their economic interest in free trade with the new Ten. In recognition of this fact, paragraph 14 of the communiqué of the Hague Summit Conference of December 1969 indicated that “discussions will be started with such other EFTA countries as may request them on their position in relation to the EEC”. This promise of negotiations was acknowledged by the Community at the opening session of the Conference with the candidate countries on June 30, 1970, and again confirmed during the meetings held with each of the non-candidates separately in the course of November 1970. At the same time the Community made it clear that the agreements to be reached should fully respect the independent power of decision-making of the Community, as well as preserve existing common policies and the need to develop them further.

On the basis of these general indications the Commission drafted a report<sup>5</sup> for discussion by the Council of Ministers. After a broad review of the positions of the individual countries, she proposed two alternative formulae for the Community to choose from. The first was a two-year period after accession of the new members, during which the *status quo* would be maintained in existing trade relations. In practice, this would imply a combined membership for the new members of two preferential zones for this period. However practical and attractive from a short-term viewpoint, this solution would in fact amount to delaying a choice which has inevitably to be made and would therefore create long-term uncertainties. Moreover, such a solution would clash with a desire previously

<sup>3</sup> Associated with EFTA under an agreement of March 27, 1961.

<sup>4</sup> Acceded to the EFTA Convention on December 4, 1969.

<sup>5</sup> Opinion of June 16, 1971, published as a Supplement to *Bulletin of the European Communities* 1971, No. 6.

expressed by the Council that any agreements with the non-candidates would enter into force simultaneously with the admission of new members. With this in mind the Council on July 26, 1971, in a first discussion on the arrangements to be concluded, unanimously favoured in principle the second formula of the Commission. According to this proposal an agreement on free trade in industrial goods should be the basis of the relationship with the non-candidates. On the one hand this would solve certain concrete trade problems for the member States, as well as for their neighbours with whom they maintain close relations (especially in Scandinavia); on the other hand it would assure that the autonomy of the Community would be preserved and that institutionalized economic integration would not be confused with pure commercial relations. The Council also agreed that this free trade in industrial products between the Community and the non-candidates would be achieved according to the same time-schedule as the one for the transitional period for the new members of the Community. At a second meeting last September, the Six reached agreement on two more aspects of the agreements to be concluded. In the first place on the "evolutionary character", meaning that the agreements could progressively develop into a closer relationship; secondly on the so-called "harmonization" of policies. Agreement has been reached on the point that the Community will not negotiate the contents of its policies with any third country. In order not to affect the institutional functioning of the Community, at the most "consultation mechanisms" could be envisaged. It was also agreed that safeguard clauses should be applied to certain sensitive sectors such as paper, watches, clocks and some ECSC products. The Council is of the opinion that this list must be as restricted as possible.

The most important question outstanding remains whether the agreements should contain some kind of arrangements for agriculture, as is desired by a number of member States or should be limited to industrial products, as the Commission has proposed. Whatever the solution, it would seem very doubtful indeed whether anything more could be agreed on agriculture than exists in EFTA, and this has not resulted in anything spectacular. The differences between the Six would therefore seem to be differences of principle rather than of practice. In any case it is certain that the mandate to be granted to the Commission for its negotiations with the non-candidates cannot be expected to be finalized until the end of 1971.