

EDITORIAL COMMENTS

The European Communities Bill

The European Communities Bill, which was analysed by Professor Mitchell and others in the previous number of this *Review* (at pp. 134 *et seq.*), has now safely passed through the House of Commons without amendment. In the House of Lords, where it is being debated at the time of writing, it should meet with less difficulty and with more comfortable majorities in the divisions. It may be assumed that the parliamentary process will be completed in August and that the Royal Assent will be given in the early Autumn.

In the House of Commons, the Bill was subject to no fewer than ninety-six divisions and the vital Committee stage lasted for forty days (and, in some cases, nights). The Government obtained a majority of the divisions and there were six critical divisions in which the majority was six or less. The third (final) reading of the Bill on July 13 produced a Government majority of seventeen and a debate which ended with Mr. Rippon's confident assertion that by a united effort the people of the country could secure for Britain and for Europe "not only greater security, but economic growth, a higher standard of living and a more civilized environment". The political debate will, of course, not end with the coming into effect of the European Communities Act (as it will then be) later this year. For the moment it is only possible to confirm that the British Government has indeed, as Professor Mitchell indicated in his analysis, "demonstrated proper loyalty to the Communities" throughout the legislative process and has shown its willingness to play a full part in the future constitutional evolution of the Communities. That evolution must, in the short term at least, now substantially depend upon the outcome of the crucial summit meeting to be held in the coming autumn.

The EEC and EFTA

If there is any magic in numbers, the twenty-second day of the month seems to have become the date most cherished by the Community for concluding important business. The Treaty amending certain budgetary provisions of the Community Treaties was signed on April 22, 1970. Eleven months later, on March 22, 1971, the foundations were laid for the progressive establishment of the economic and monetary union. The ceremony of signature of the Accession Treaties took place on January 22, 1972, and exactly six months later, on July 22, 1972, the Palais d'Egmont in Brussels witnessed the conclusion of the agreements between the Community and the EFTA countries which have not applied for membership of the European Communities.¹

¹ Due to the resignation of the Finnish Government on July 21, 1972, signature of the agreements with Finland has been postponed.

In many respects the vast free-trade zone which will now be achieved between sixteen European States is very different from the free-trade area contemplated in 1956 and 1958 as a move to forestall the adverse economic effects of the establishment of a common market among the Six. The most obvious difference is that today the EEC has achieved an important measure of economic integration and that cohesion between the member States has progressed to such an extent that the "point of no return" has long been reached. In retrospect, the integration method adopted by the Six appears to offer the only effective manner of achieving the kind of economic co-operation that Europe needs to meet present-day realities. In 1957 no comprehensive integration effort had been made. It is improbable that purely intergovernmental co-operation of a large number of European States towards the establishment of a free-trade zone could have brought about a dynamic process of economic reorganization similar to that developed inside the Community, whose purposes and methods have now also been embraced by three important members of EFTA. There is no doubt that the Community, if it had been part of a large free-trade area, could not have proceeded very far on the path of integration. Enormous difficulties would have arisen when major decisions should have been taken in the interest of the Community but in the face of opposition from those considering these decisions to be detrimental to or inconsistent with the requirements of the free-trade zone. The Community would have been completely diluted and the notion "unity of the Common Market" would be an empty word.

Contrary to the conditions of accession of the new member States, the relationship with the non-candidate countries has been laid down in individual agreements between the EEC and each of these countries. The common basis of these agreements is the creation of a free-trade zone for industrial goods between the enlarged Community and each of the EFTA countries.² Free trade includes processed agricultural products but trade in the agricultural goods listed in Annex II of the Treaty is excluded. Nevertheless the agreements with Portugal and Iceland contain special provisions relating to an important part of agricultural exports from these countries. With minor exceptions, tariff dismantlement will take place in five successive stages at the same place and rates as the abolition of customs duties between the present Community and the four new member States (*i.e.* a first cut of 20 per cent. on April 1, 1973, and four reductions of 20 per cent. each on January 1 of the next four years). In this manner the free trade achieved within EFTA can be maintained.

All the agreements—except for that with Finland—contain an evolutionary clause allowing a subsequent extension or deepening of the co-operation if this should become desirable or possible. A Mixed Committee

² See Editorial Comments in 8 C.M.L.Rev. 1971, 444-445.

—consisting of representatives of the Community and of the associated country concerned—is provided for in each Agreement. It shall administer the free trade (customs regulations, rules of origin) and examine any request for development of the co-operation.

It cannot be dissimulated that the operation of coupling a free-trade area to a common market involves a vast number of very technical problems. In the present case these are even enhanced by the multitude of special transitional arrangements entailed by the accession of new member States and by the fact that the free-trade agreements do not prescribe any measure of harmonization of legislation. However, the President of the Council has declared that the Community is ready to face fully the new responsibilities arising from enlargement. One of these responsibilities relates to satisfactory arrangements with countries which for various reasons cannot yet assume the consequences of full membership.

This determination of the Community will be put to a first test if Iceland does not withdraw its measures, effective from September 1, 1972, extending reserved fishing waters around the Icelandic coast to fifty miles. The Community has included a reservation in the Agreement with Iceland to the effect that the agreed concessions for fishery products from Iceland will not become effective until a satisfactory solution to the problem of fishing waters has been found. Now that the Governments of the United Kingdom and the Federal Republic of Germany have asked the International Court of Justice to indicate interim measures of protection, a shadow looms over the Agreement. Unless the Community is able to bring about a settlement of the dispute, which, in the view of Iceland, the International Court has no jurisdiction to decide, the prospect that the agreement between the EEC and this EFTA country can come into force on January 1973 appears very dim.