Report by Working Party No 21 of the OEEC Council (11 July 1957)

Caption: On 11 July 1957, Working Party No 21 of the Council of the Organisation for European Economic Cooperation (OEEC) presents its report on the establishment of a free-trade area in Europe.

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Report by the Chairman of Working Party No. 21 to the Chairman of the Council (Paris, 11 July 1957)

1. In accordance with the Decision taken by the Council on 4th June, 1957, I have prepared, for the Chairman of the Council, the present report on the work so far accomplished by Working Party No. 21. This report deals with those questions considered by the Working Party and to which an answer must be found if a free trade area is to be established in Europe, associating the European Economic Community, on a multilateral basis, with other Member countries of the O.E.E.C. For each of these questions I have tried to

— state the positions adopted by the various countries;

— bring out points of agreement and points of difference;

— assess the results so far achieved, the prospects for the future, and the lines on which subsequent work might proceed.

2. I have confined myself to describing the work in broad outline and to indicating what, in my opinion, constitutes the core of the difficulties to be solved. I have deliberately avoided introducing technical details, although I have no intention of minimising their importance. Many points which I have considered to be “technical details” — and have therefore excluded from my statement — are regarded by certain countries as fairly essential. Their solution may well give rise to lengthy discussion, but these are points which I am convinced can easily be settled as soon as more fundamental and more general problems have been dealt with.

3. In assessing the results achieved, I have, I am sure, laid myself open to the charge that my comments are somewhat optimistic. But I sincerely believe that all who share in the immense task undertaken by the O.E.E.C. must, of necessity, be optimistic. I would, however, emphasise that the proceedings of Working Party No. 21 have not yet, strictly speaking, reached the stage of “negotiations”. They have, rather, been exploratory discussions designed to clarify the scope and significance of the problems, and to set out the preliminary views of various countries on the best means of solving them. Cases in which we have tried to work out common solutions have been few. Member countries have not, in general, been in a position to commit themselves definitely on specific points. This is mainly because agreement on any one aspect of this series of problems must depend in part on whether and how agreement can be reached on connected problems.

4. I am, of course, reporting only on the discussions of Working Party No. 21. In order, however, to assess the value of the work so far accomplished, it is also necessary to take account of the activities of Working Parties Nos. 22 and 23, and to recall the conditions under which the Council entrusted the task of negotiating a Free Trade Area Convention to these three Working Parties. The conclusions reached by any one of the Working Parties may very well have to be amended in the light of the conclusions of one of the others when the time comes to synthesise the results of all three.

5. The annex to this Report covers each of a series of problems considered by Working Party No. 21. I must emphasise, however, that the problems raised by the establishment of the Free Trade Area are interdependent, and form a whole. Any conclusions which may be reached about the solution of a given question must therefore, for the time being, be regarded as provisional. They will have to be reviewed in the light of the solutions applied to other problems. Not only is it advisable to secure a certain measure of harmony within the Free Trade Area by finding balanced solutions to the various problems in matters of substance, procedure and institutional competence, but, in addition, with the widely divergent interests of the countries in the Area, reciprocity demands that due consideration should be given to the position of each country. Thus the assessment which each country will have to make for itself of the benefits and obligations arising from the Free Trade Area Convention must take account of all the elements contained in that

Convention. For the Six, in addition, this assessment must also include a study of the ways in which the establishment of the Free Trade Area will affect the balance of the mutual concessions which were made in drawing up the Rome Treaty.

6. In accordance with its terms of reference, namely, " to determine the conditions under which a European Free Trade Area, associating on a multilateral basis the European Common Market with the other Member countries of the O.E.E.C., could be brought into being", Working Party No. 21 took the rules of the Rome Treaty as a basis for its discussions and sought for possible ways of transposing them into a Free Trade Area. Its work naturally took account of the fundamental difference between the Customs Union and a Free Trade Area arising from the fact that the former has a common external tariff. The Working Party did not, therefore, consider the rules prescribed by the Six for establishing this tariff. On the other hand, the Working Party was obliged to devote a great deal of time to the question of definition of origin. No decision has yet been reached on the scope of the Area — that is to say on what range of merchandise would be allowed to circulate freely within the Area. This depends on the extent to which it is conceived that trade within the Area should be more or less free, particularly in relation to the risk of deflections of trade which might arise from the existence in different countries of different trade and tariff policies towards the rest of the world.

7. With regard to "trade" problems (other than the definition of origin), Working Party No. 21 was mainly concerned to avoid discrimination between the Member countries of the Area. As a first approach, it has considered whether this aim might not be achieved most simply by the adoption for the Area, on many points, of rules identical to those applying in the Community of the Six. For several reasons, however, this method has not so far appeared practicable in every case.

8. In the first place, the rules governing the Community are not always expressed very precisely. The main reason for this is that the Six did not provide solutions for every eventuality, but left it to their institutions to solve many problems as and when they may arise. While not wishing at the present stage to pre-judge the question of the role and powers of the institutions of the Area, several countries thought it desirable that the rules of the Free Trade Area should be stricter and more automatic than those of the Community.

9. In the second place, the Community's trading rules must be considered in the wider context of an economic union. Their application is frequently linked in the Treaty of Rome with the concomitant achievement of certain of the more general objectives of the Community. The trading rules adopted by the Six are supplemented by rules which apply to many other spheres of economic activity. Some of these rules are intended to provide the economic basis which the Six consider necessary for the formation and operation of their Customs Union. Others have been adopted in order to further the wider objective of establishing an economic union. It is not always easy to distinguish for which of these reasons particular rules have been adopted.

10. When the discussions in Working Party No. 21 began, it seemed to me that the Six considered that the institution of a Free Trade Area necessarily involved the settlement of a large number of general economic problems and that fundamentally (if I may perhaps exaggerate a little) they visualised the Free Trade Area Convention as a facsimile of the Rome Treaty. As against this, a number of other Member countries saw the Convention as a kind of trade agreement containing nothing more than a number of rules, as strictly drawn as possible, setting out the timing and method of removing trade barriers and stating a number of general principles applicable to competition between Member States. These countries did not deny that the economies of the Member countries of the area would become increasingly interdependent as the trade barriers between them disappeared, and that it would be necessary to co-ordinate their economic and financial policies more closely, but they relied on the O.E.E.C., and a gradual development of its consultation procedures, to achieve this.

11. These differences of approach go to the root of the problems before us. The object of the proposed association between the Six and the other Members of O.E.E.C. is to avoid trade discrimination in Europe. But does this require that the Convention for a Free Trade Area should reproduce the Rome Treaty more or less verbatim? If this were to be the case, what would happen to the Treaty? If, on the other hand, the Convention for the Area differs substantially from the Treaty, is there not a danger that differences may arise

between the treatment accorded by any one of the Six countries to its partners in the Community and that accorded to the other countries of the Area? Clearly, the countries which are setting up the Free Trade Area, including the Six, must seek every possible means of minimising the danger of discrimination, and, should it prove impossible to ensure complete equality of treatment in every case, to limit the effects of any differences.

12. In this connection, it should not be forgotten that the common objective of all European countries is to move towards a world system of trade liberalisation. A Free Trade Area in Europe set up and operated in accordance with the provisions of the G.A.T.T. might become a kind of connecting link between the Customs Union of the Six and the world system which it is desired to establish in due course.

13. Another aspect of the problem of avoiding discrimination, and one which has so far only been touched upon by the Working Party, is that of the institutions of the Free Trade Area. This problem, which in my view is of paramount importance, has two aspects.

— first, the administration of the Free Trade Area; to what extent will new institutions be required, as compared with the present O.E.E.C. structure?

— second, how will co-ordination with the institutions of the Six be achieved?

This latter question seems to me to be fundamental. It emerged very clearly during the discussions in the Working Party that, even if there were identical rules in the Free Trade Area and in the European Economic Community, a risk of discrimination between the two systems would inevitably arise, whenever an escape clause was invoked, because of the differences in their structures. How can we secure a degree of co-ordination sufficient to avert or limit such a risk while leaving intact the individuality and the specific features of each system? This question cannot as yet be answered; for my part I believe that the only way will be to establish close, day-to-day, co-operation between the administrative institutions of the two organisations.

14. The attached summary of our work rightly gives the impression that there are possibilities of agreement on many points. But, as I have already indicated, this impression is valid only if each of the questions is considered separately. It is clear that a number of problems stand out above the others. As soon as Member countries can agree on the solutions of these key problems, it will be relatively easy to reach a general agreement on the Convention. So long, however, as there are substantially different schools of thought it will be difficult to make much progress.

15. The key problems facing Working Party No. 21 can already be seen to include the following:

— the general conception of the scope of the Area; this will determine what solutions can be found to the problem of definition of origin and of deflections of trade;

— the method of treating some of the “general economic questions”. The settlement of these questions is vital for some countries if they are to obtain public support for the Free Trade Area. Moreover, the solution of some of them depends on whether the change from the first to the second phase of the transitional period is to be automatic or not as well as on the principles accepted for the operation of escape clauses;

— the basic principles for rules of competition;

— the kind of Convention for a Free Trade Area which is required and hence the nature of the association between the European Economic Community and other Member countries. Until this is settled we cannot determine the kinds of political and institutional solutions needed to eliminate or reduce the risk of

discrimination, especially in the event of one of the Six invoking an escape clause.

16. This list of unsolved key questions clearly demonstrates that there is, in fact, still no commonly held conception of the Free Trade Area. But negotiations as such have not yet really begun in Working Party No. 21, and there are a number of questions which have not yet been fully studied. Finally, of course, the work of Working Party No. 21 covers a part only of the questions raised by the creation of a Free Trade Area.

17. The next stage must be to continue our studies with the aim of achieving results in time to allow the Free Trade Convention and the Rome Treaty to come into force simultaneously. From the procedural point of view, I believe the following steps should be taken:

— to make a determined start with real negotiations. For this purpose we must draw a clear distinction between, on the one hand, the basic questions which I have defined above and on which a clear position must be taken as soon as possible, and, on the other, questions of a technical character. It must, however, be realised that the technical questions are very complex and that considerable time will be needed to find solutions to them;

— to tackle the problems on a wider front than heretofore. I believe that bodies such as the Committee on Invisible Transactions, the Manpower Committee and the European Conference of Ministers of Transport might be able to make contributions to the solution to some of the problems in hand. The Managing Board of the E.P.U. should go ahead quickly with its study of payment problems raised by the establishment of a Free Trade Area and in this connection might be in a position to help in solving some of the problems of economic co-operation;

— to ensure closer co-ordination and strictly parallel working between Working Parties Nos. 21, 22 and 23;

— to bring the products dealt with in the European Coal and Steel Community into the negotiations as soon as possible.

18. My conclusion is that there must be an unflagging political resolve to succeed. I said at the beginning of this report that I am, for my part, optimistic about the final result. The reason is that I believe in the political determination of the various governments, which are today facing a problem which can be expressed quite simply; to safeguard and strengthen the unity of Europe. I hope that every government will take advantage of the two months which will elapse before work is resumed in the middle of September, to clarify its own position with regard to the various problems and to provide its negotiators with instructions which will enable them to accept the necessary compromises on all points.

Annex
The problem of origin

1. Working Party No. 17 had itself already put in a lot of work on this problem. It had considered in turn how origin might be defined and verified as well as the problem raised by deflections of trade. Working Party No. 21 has also studied these questions, but it has so far only been able to study different methods of defining, determining and verifying origin. It has not yet discussed the substance of the definition of origin; namely, the amount of products which would be entitled to duty-free treatment when traded within the Free Trade Area. In addition, it has still to consider the eventuality that trade might be deflected because each Member country of a Free Trade Area would retain its own trading and tariff policy in regard to third

countries.

2. On the technical matters studied by the Working Party, a large measure of agreement has been noted. From the point of view of pure customs procedure, the differences of opinion which existed at the outset have been reconciled appreciably; the progress made may simply be recorded without it being necessary to describe in detail the subjects examined and the results achieved. Nevertheless, it must be realised that if the scheme is to work properly it will entail rather extensive administrative formalities. The future aim should be to simplify the proposed schemes as much as possible. Otherwise, as Working Party No. 17 has already noted, there may be a danger that trade within the Area will be discouraged, contrary to the aim in view.

3. But purely technical achievements do not provide a solution for the fundamental problem of the definition of origin, that is to say the determination, by this definition, of the volume of goods considered to be Area products. Admittedly, all Member countries have stated in Working Party No. 21 that this volume should be as large as possible. Some of them, however, have strongly emphasised that the more liberal the concept of origin, the greater the risk of deflections of trade. Such fears might lead these countries to put forward solutions for the definition of origin which would make the latter restrictive.

4. It also appeared, during the Working Party's discussions, that one of the solutions for countries where the trade deflection problem occurs as a result of their having higher tariffs vis-à-vis the rest of the world than their partners, would be the reduction of the tariffs concerned to the levels of the lowest tariffs. If this system were applied generally it would obviously result in throwing the Free Trade Area open to greater competition from the rest of the world, which some countries are not prepared to accept.

Comments

5. Working Party No. 21 have not yet begun any really fundamental discussion of the substance of the Free Trade Area. Many technical and economic points will have to be studied at length and in great detail before it will be possible to determine:

— the percentage of value added within the Area which will entitle a product to be recognised as originating in the Area;

— the lists of processes or raw materials to be covered;

— ways of preventing deflections of trade.

All these questions are closely linked: more precisely, they are different aspects of one and the same problem — namely the substance of the Free Trade Area. Should an attempt be made from the outset to solve the problem of deflections? This might mean adopting a restrictive concept of the Free Trade Area. Should, on the contrary, the substance of the Area be made as wide as possible from the outset and any difficulties in connection with the deflection of trade be solved gradually and empirically? The choice is important. If Working Party No. 21 itself is to study this problem thoroughly, there can be no doubt that each country will have to make individual appraisals of the situation of each of its industries and to assess the risks it is prepared to accept.

6. It would not, however, seem feasible to try to equalise all the conditions from the beginning. In addition, it would be contrary to the spirit of the Area to try and crystallise matters too precisely. The formation of the Area, like that of the European Economic Community, implies greater competition and a gradual transformation of the economy of Member countries with a view to achieving greater specialisation and lower costs of production. This fundamental aim should not be lost sight of when the scope of the Area is determined, through the adoption of a suitable definition of origin, on the understanding that any artificial

deflection of trade and activity must be avoided.

Abolition of Tariffs

7. The Working Party considers that, in general, the provisions applicable in the European Economic Community could also be applied in the Free Trade Area. This is the case in particular with regard to:

— the basic length of the transitional period (12 years);

— the division of this transitional period into three stages of four years each;

— the prohibition against introducing new duties or raising the level of those applied at the date of the coming into force of the Treaty;

— the timing of the abolition of tariffs and the manner of such abolition: i.e. 10 per cent reduction of each duty during the first year; 10 per cent global reduction at each subsequent reduction, with a minimum reduction of 5 per cent in each duty; 10 per cent reduction of each duty at each reduction for duties higher than 30 per cent.

8. There were differences of opinion with regard to the points enumerated in paragraphs 9 to 13 below.

9. Article 8 of the Rome Treaty provides for the possibility of prolonging the first stage of the transitional period. The total length of this period cannot, however, exceed 15 years. Most countries other than the Six consider that in the Free Trade Area the transitional period should definitely be fixed at 12 years. They are of the opinion that it should be possible neither to prolong the transitional period, nor to increase the length of any one of the stages.

10. Two countries have proposed that, in order to reduce the tariff disparities existing at the beginning of the transitional period, duties below a certain level should, for a time, remain outside the system for the abolition of tariffs. They would begin to be reduced only after a part of the transitional period had elapsed, by which time tariff disparities would have been diminished as a result of successive reductions of the higher duties.

11. The Rome Treaty does not lay down the rate at which the duties still in force at the end of the second stage will be reduced during the third stage. This timing must be determined by the Council of the Community, deciding by a prescribed majority, on a proposal of the European Commission. Several countries consider that, for a Free Trade Area, specific rules covering the third stage should be laid down in the Convention. In their opinion a system of automatic reductions, by which all duties would be completely abolished at the end of the transitional period should be envisaged.

12. In the Rome Treaty, the objective of Member countries of the Community is to have reduced each duty by 25 per cent at the close of the first stage and by 50 per cent at the close of the second. Several countries consider that, in the Free Trade Area, this objective should be replaced by a firm obligation.

13. Finally, the basic duty adopted in the Rome Treaty for the calculation of tariff reductions is that applied on 1st January, 1957. Certain countries have difficulty in accepting this date. Some of them are at present revising their tariffs or tariff schedules and they have asked that their new tariff duties should be taken as a basis for calculation; others would like the special problems arising in the case of certain products to be taken into account.

Comment

14. There is already a large measure of agreement regarding the method of eliminating tariffs. Unanimous agreement would probably depend in the first place on the answers given to the two questions raised in paragraphs 9 and 10 above. The other points are far from being unimportant; they involve however technical rather than political questions, and will have to be considered from this point of view. The first two problems, on the other hand, are of a more fundamental character.

Revenue Duties

15. All countries consider that, in a Free Trade Area, it should be possible for Governments to levy non-discriminatory revenue duties on imported products, but that the protectionist element which at the present time may be included in the revenue duties should be eliminated.

16. The problem is how to eliminate this protectionist element. The Six found a solution by providing that revenue duties must be abolished between the States of the Community but that they may be replaced by internal taxes not of a protectionist character. In this connection, it should be pointed out that, if they abolish revenue duties among themselves, the Six will probably be obliged to abolish them also in respect of countries outside the Community since it is clearly desirable for administrative reasons to maintain uniformity within each country in the revenue systems applied to each product.

17. Several countries consider that, in a Free Trade Area, it should be possible to retain revenue duties levied on imports, provided that the protectionist element contained in duties at present in force can be reduced. These countries also feel that, in a Free Trade Area, it is conceivable that different countries should apply different systems of revenue duties.

18. The other countries, particularly the Six, consider that it is difficult — if not impossible — to discover the protectionist element in a revenue duty. They consider that the same system should be applied by all countries in the Free Trade Area.

Comment

19. The solution of the problem of revenue duties involves considerations which are purely technical. If, as has been stated in paragraph 15, general agreement exists on the principles, it should be possible to resolve these difficulties in a manner acceptable to all countries.

Abolition of Quantitative Restrictions on Imports

20. The Working Party has reached unanimous agreement on the following points:

— quantitative restrictions on imports should be completely abolished in the Free Trade Area by, at the latest, the end of the transitional period;

— existing quotas should be made global at the end of the first year of the transitional period;

— it should be possible to apply within the Free Trade Area the method laid down in the Rome Treaty for achieving progressive liberalisation, namely the gradual increase of quotas according to percentages fixed in advance;

— the rules laid down for the Free Trade Area should in no case affect the obligations which Member countries have already accepted in the G.A.T.T., the I.M.F. or the O.E.E.C.

21. The Rome Treaty lays down that all quantitative restrictions should be abolished by the end of the transitional period. Several countries, in view of the progress already achieved in O.E.E.C. in this field, wonder whether a shorter period should not be envisaged in the Free Trade Area. In this connection, some countries are not sure that the rate of annual increase in quotas laid down in the Rome Treaty is adequate to ensure effective liberalisation for all products at the close of the transitional period. Other countries, however, support the view that the processes of abolishing tariffs and quantitative restrictions should be co-ordinated; they fear that the rate of annual increase of quotas laid down in the Rome Treaty is too high and might in fact lead to complete liberalisation before the end of the transitional period. They ask that appropriate measures should be taken to avoid this risk.

Finally, other countries wish that measures should be adopted to encourage outright liberalisation.

22. While all countries agree that obligations undertaken by Member countries in other international Organisations should be respected, a special problem arises in connection with the obligations in O.E.E.C. To the extent that the establishment of a Free Trade Area within the framework of O.E.E.C. involves modifications of the existing rules, it might be necessary to consider how the present trade liberalisation obligations in O.E.E.C. should be brought into harmony with those of the Free Trade Area. Certain countries think that the existing obligations should be maintained. This would mean, in particular, that a country that had to derogate from its obligations in O.E.E.C. at the beginning of the transitional period would have to observe these obligations once the reason for the derogation had disappeared, while in the meantime applying the quota increases provided for under the rules of the Area. Other countries consider that efforts should rather be concentrated on the carrying out of the new obligations arising from the Free Trade Area Convention.

Comment

23. Although agreement has already been reached in principle, and the difficulties to be overcome are therefore mainly of a technical character, it will be necessary to pay considerable attention to these difficulties in order, in particular, to ensure that the principle of non-discrimination in the Free Trade Area should not be endangered by the arrangements adopted. Co-ordination with the obligations arising out of the Rome Treaty will certainly be a delicate matter, all the more so since that Treaty gives the institutions of the Community wide powers of discretion respecting the abolition of quantitative restrictions. Moreover, questions such as those relating to the rate of increase of quotas will affect major interests in Member countries. It is to be expected that this point (and the basis on which rates of increase are to be calculated in the case of minimum quotas) will form essential questions in the negotiations.

Escape Clauses

24. Consideration by the Working Party has already shown that agreement is possible on a number of points relating to the escape clauses to be provided for in the Free Trade Area; however, having regard to the corresponding provisions of the Rome Treaty, it is difficult at the moment to find a common principle for reaching agreement. This follows, in particular, from the fact that problems relating to escape clauses are linked with those relating to institutions; moreover, there is the danger that discrimination, which it should be possible to avoid when provisions for the abolition of obstacles to trade operate normally, might reappear in the absence of appropriate provisions in the case of resort to escape clauses.

25. The Rome Treaty entrusts the institutions of the Community with the task of taking such measures as they consider appropriate for overcoming the difficulties encountered by a particular country invoking an escape clause. Whereas the rules of procedure in this connection are laid down in the Treaty, the evaluation of the difficulties of the country concerned and the determination of appropriate action to be taken by the country or by its partners are left to the institutions.

26. The work of Working Party No. 21, which broadly followed that of Working Party No. 17, was based on a different approach. Without pre-judging the question of the functions and powers of the institutions, the

Working Party sought to define more precisely the operation of escape clauses in the Free Trade Area, the type of difficulties which countries might encounter, the nature of the examinations to which they would be subjected, the circumstances justifying resort to the escape clauses, types of measures which various countries could adopt, conditions for the intervention by the institutions, time limits for resorting to escape clauses, conditions for and frequency of re-examinations of the circumstances under which they were invoked, measures of co-operation between countries, protective measures which might be taken by the countries suffering injury, etc.

Provisions Relating to Balance of Payments Difficulties

27. The members of Working Party No. 21 were generally in agreement on the extent of the periodical examinations to which the countries of the Free Trade Area would be subjected with the object of revealing situations which might develop in such a way as to oblige a country to invoke an escape clause. The procedure existing within O.E.E.C., which has been strengthened over the years, the obligations of countries in this respect and the powers of the organs of O.E.E.C. to intervene, etc., would seem to offer an excellent basis for such examinations. There does not appear to be any difference between the provisions of the Rome Treaty and those to be adopted for the Free Trade Area, with respect to the principle of such examinations. On the other hand, problems may arise concerning conclusions to be drawn from these examinations and, in particular, on the assistance which could be given to a country in difficulties by the other countries of the Free Trade Area. It is also necessary to consider the conditions to which such assistance might be made subject, according to whether the country in question was or was not a Member of the European Economic Community.

28. While pointing out that the active co-operation to which such examinations should give rise might render resort to the escape clause less frequent, Working Party No. 21 admitted that, in the case of payments difficulties, it should be possible to invoke this clause unilaterally, in an emergency, in the Free Trade Area. On this point again, it will be necessary to ensure co-ordination with the operations of the European Economic Community.

29. As regards the nature of the derogations permitted, the Rome Treaty leaves the freedom of choice entirely to the institutions. In the case of the Free Trade Area the discussions disclose a strong tendency in favour of including in the Convention a list of prohibited measures, particularly those which might affect the process of abolishing customs tariffs.

30. The Rome Treaty leaves to the institutions the task of determining the period during which a country may invoke an escape clause and the conditions for its return to normal procedure. In the case of the Free Trade Area, following the rules of O.E.E.C., Working Party No. 21 appeared to favour more precise provisions. The problem of the intervention of the institutions also arises in this connection.

31. Finally, insofar as the right of countries of the Free Trade Area to resort to unilateral action would be fairly extensive, the members of the Working Party raised the question of the protective measures which could be taken by countries suffering damage as a result of the safeguarding measures adopted by their partners. The Rome Treaty makes no provision for such protective measures.

Escape clauses to be invoked in the case of difficulties affecting a particular sector of activity

32. The Rome Treaty entrusts the institutions with the task of examining cases of this kind and of finding appropriate solutions, since the countries of the Community are not entitled to resort to unilateral action.

33. In an attempt to formulate more precise rules, Working Party No. 21 examined in detail the various aspects of resorting to a clause of this type within the Free Trade Area. Its discussions disclosed, however, fairly considerable differences of opinion. Some members were in favour of the right to resort to this clause unilaterally. Others considered that such resort should be subject to the previous agreement of the institutions. Some members were in favour of the establishment of strict criteria for determining the

circumstances in which such clauses could be invoked and of making such actions subject to strict conditions (nature of the derogations allowed, period during which the clause may be applied, readjustment programme). Others preferred that the right to invoke such a clause should be limited by the power of the institutions rather than by written rules. The Working Party at the present stage could only note the various views expressed.

Comment

34. The problem of escape clauses is one of the most difficult ones to be faced. There was no difference of opinion between the members of Working Party No. 21 regarding the principles involved, namely:

— the need for clauses of this type;

— the nature of the difficulties which they are intended to overcome;

— the general nature of the measures which the various countries would have to undertake and the co-operation to which they would have to agree;

— the need for evolving methods for inducing countries to carry out the necessary adjustments and to make resort to escape clauses as infrequent and of as short duration as possible.

35. At the present stage, however, the application of these principles is the subject of discussions, the outcome of which is linked with other considerations such as the length of the transitional period, the extent of obligations under the Free Trade Area, the forms and methods of co-operation within the Area and the nature, power and rules of intervention of the institutions.

36. Moreover, it was clearly apparent that the operation of the rules of the Rome Treaty and those of the Free Trade Area will give rise to delicate problems which it will be possible to solve only by permanent co-operation between the countries and the institutions if discrimination is to be avoided. Even if the substantive provisions of the two Treaties were identical, their application could result in divergent solutions being adopted in view of the different composition of the European Economic Community and the Free Trade Area. It will therefore not only be necessary, when drafting the Convention of the Free Trade Area, to avoid provisions which differ from those of the Rome Treaty; it will also be essential to ensure by means of adequate co-operation, that the carrying out of the provisions is synchronised.

Rules of Competition

37. The question of rules of competition is a very complex one, and Working Party No. 21 did not have an opportunity of going into it thoroughly. It is therefore difficult to say, at the present stage, how far agreement has been reached.

Government aids

38. All the members of the Working Party are agreed on the principle that any form of government aid which distorts competition between Member States is incompatible with the Free Trade Area.

The Working Party considers that this is similar to that set out in the Rome Treaty; but whereas the latter draws no distinction between government aid at the production and at the export stages, Working Party No. 21 has hitherto examined these two categories separately.

39. As far as export aids are concerned, there seems to be a large measure of agreement on how they should be treated in a Free Trade Area. They should, in principle, be prohibited. There remains, however, the question of drawing up an agreed list of aids of this type, and of working out procedures which would make it possible to eliminate them.

40. The discussions on aids to production have not yet entered a decisive phase. While all members of the Working Party are agreed that governments should avoid distorting the forces of competition within the area through aids to production, the degree of severity with which this principle should be applied is still an open question. The complete application of the principle of non-discrimination — that is to say, the avoidance of distinctions between the nationals of a particular country and those of other Member countries — implies a movement towards the merging of markets and a harmonisation of policies which not all Member countries are at present prepared to accept. The Six have themselves, moreover, been obliged to declare a number of government aids compatible with membership of the Community. But other countries consider it sufficient, for the satisfactory functioning of the area, that each Member country should apply complete equality of treatment to its partners, while retaining the right to grant certain advantages to its own consumers or producers, in the light of considerations of internal economic and social policy. Nonetheless, it should endeavour to limit the effects of such advantages on its trade with other Member countries.

Quantitative restrictions on exports

41. The members of the Working Party are all agreed on the abolition of quantitative restrictions on exports to countries inside the area within a time limit similar to that of the Rome Treaty.

42. There is still some difference of opinion with regard to the conditions in which a country could reintroduce restrictions of this kind, whether they could be reintroduced unilaterally or would require the previous approval of the institutions, rules for intervention by the institutions, provisions for the sharing of goods in case of shortage, etc.

43. The reintroduction of export restrictions constitutes, in effect, an invocation of an escape clause. The problem of discrimination between the Six on the one hand and the other countries of the area on the other therefore arises in this connection, just as it arises in the case of reintroduction of obstacles to imports.

Public undertakings and State monopolies

44. Unanimous agreement was reached that principles similar to those contained in the Rome Treaty should be introduced in the Free Trade Area, under which States may not lay down or retain any rule in favour of these undertakings which is contrary to the rules of the Convention. It was, however, understood that, in the case of public utility services and revenue monopolies, this principle should not interfere with the accomplishment of their special purposes.

45. At the same time, in order to appreciate the full scope of this agreement, it would be as well to wait until the rules for government aids (see paragraph 40 above) and restrictive practices in private trade (see paragraph 46 below) have been defined. The conditions in which the institutions could intervene would also need to be settled.

Restrictive trade practices in the private sector

46. The Working Party has only been able to hold one general discussion on this question, for which no solution is at present in sight. The Rome Treaty goes very far in prohibiting these practices and lays down strict rules to be applied within the Community, which is regarded as a single market. While the Members of Working Party No. 21 are agreed on the need to prevent restrictive trade practices from prejudicing the establishment and operation of the area, there is some apparent difference on the scope of this principle and

the conclusions to be drawn, both as to rules of substance and rules of procedure.

Remarks

47. The benefits which are hoped for from the removal of tariffs and quantitative restrictions should not be frustrated through the existence of artificial or restrictive trade practices, whether governmental or private. To avoid this happening, it is clear that the Free Trade Area must adopt a group of measures covering rules of competition. The operation of such rules may require some harmonisation of the legislative provisions of individual countries. The wider the range of prohibitive measures under the rules of competition, the more far-reaching will be the effect which the creation of the Free Trade Area will have on the internal policies of Member countries.

48. It is not yet possible to determine whether the rules of competition of the Free Trade Area should be identical with those provided in the Rome Treaty. On the other hand, if they were markedly different, they might give rise to divergencies in other fields (for example the elimination of trade barriers) where it has already been acknowledged that parallel treatment is necessary.

Problems Arising from the Existence of the Coal and Steel Community

49. Working Party No. 21 has noted that Article 232 of the Rome Treaty states that the provisions of that Treaty do not alter those of the E.C.S.C. This means that, for coal and steel, the obligations on the Six regarding the abolition of obstacles to trade amongst themselves are determined, not by the Rome Treaty, but by the E.C.S.C. Treaty. For example, in the field of quantitative export restrictions, the High Authority can take the decisions which the six governments require. Working Party No. 21 has recognised that it would be impossible to envisage the exclusion of coal and steel from the Free Trade Area But the question arises as to how it will be possible to set up a Free Trade Area in coal and steel, having regard to the existence of the High Authority.

Remarks

50. The High Authority should be invited, at the appropriate time, to participate in the negotiations.

General Economic Questions

51. The declarations made at the Ministerial Council on 12th and 13th February as well as those made in Working Party No. 21 have emphasised the importance of some of the very miscellaneous questions grouped together under the heading of “General economic questions”. Working Party No. 21, however, has so far only held preliminary discussions on this subject. There have been exchanges of views during which one country or another has emphasised the importance which it attaches to the inclusion in the Convention on the Free Trade Area of rules on some particular subject. The questions which have been raised in this way include the problems of payments, the liberalisation of invisible transactions, particularly tourism and transport, the liberalisation of labour and capital movements, co-ordination of fiscal and social policy, the right of establishment, etc. …

52. Up to the present, however, the Working Party has been unable to agree whether these questions should be included in the Convention on the Free Trade Area or not. At the same time, in accordance with the instructions of the Council, the Managing Board of the E.P.U. is making a study with a view to determining the modifications in the inter-European payments system which might be necessary in order to achieve the objects of the Common Market and the Free Trade Area, while the Economics Committee is continuing its study of the disparity of prices between Member countries.

Remarks

53. Clearly, all the members of the Working Party are agreed that the economies of the different countries in the Area will become more and more interdependent as trade barriers disappear and that it will therefore be necessary to co-ordinate their economic policies more closely, and to ensure that the free flow of commodities is not hampered by restrictions on services, labour and capital movements, and by inadequate arrangements for international payments. But it is assumed that the Free Trade Area is to be based on the organic structure of the O.E.E.C., within which, for the majority of these “general economic questions”, there already exist certain obligations, or at least procedural possibilities; the Six, on the other hand, had to constitute a new organisation suitable for a more limited geographical area.

54. In view of this, it is conceivable that some of the problems which, in the case of the Common Market, are dealt with by the Rome Treaty, may, in the case of the Free Trade Area, be settled within the existing framework of the O.E E.C. For this reason, they need not necessarily be included in the Convention on the Free Trade Area, although one would have to consider in each case:

— whether the objectives laid down by the present rules of the O.E.E.C. are adequate for a Free Trade Area;

— whether the present procedures of the O.E.E.C. bodies and the way in which they reach a decision require amendment;

— whether such a procedure would satisfactorily limit the risk of intolerable discrimination within the Free Trade Area, having regard to the rules contained in the Rome Treaty.

55. Having in mind that some of the questions raised by different countries are of great importance to them from the point of view not only of economics, but also of policy, I believe a more effective discussion of “general economic questions” connected with the creation of a Free Trade Area should be resumed as soon as possible. Detailed study will most frequently be necessary to clarify these problems and to assemble the elements of a solution, taking into account the existing O.E.E.C. arrangements and the provisions of the Rome Treaty. It would perhaps be useful to entrust some of the studies on these questions to existing Committees or to organisations like the European Conference of Ministers of Transport.