Walter Hallstein, Customs Union and Free Trade Area (1959)

Caption: On 13 January 1959, in Strasbourg, Walter Hallstein, President of the Commission of the European Economic Community (EEC), outlines to the European Parliamentary Assembly the economic differences between the Common Market and the future European Free Trade Association (EFTA).

Source: Bulletin of the European Economic Community. February 1959, n° 1. Brussels: Office for Official Publications of the European Communities. "Customs Union and Free Trade Area", auteur:Hallstein, Walter , p. 5-12.

Copyright: (c) European Union, 1995-2013

URL: http://www.cvce.eu/obj/walter_hallstein_customs_union_and_free_trade_area_1959-en-98aa88e9-ee3a-4494-b11c-0646a0627692.html

Publication date: 02/12/2013

Customs Union and Free Trade Area

By Professor Dr. W. Hallstein, President of the Commission of the European Economic Community

To plan for the complete removal of customs and quotas in a modern economic system would seem to be realistic only if the five following main conditions are fulfilled:

- if a general equilibrium, reflected in the balance of payments, is maintained between the countries; to this end currency and economic policies must be co-ordinated;
- if the fresh competition that inevitably ensues is not distorted by private or government measures;
- if special aid is given to any underdeveloped partners, as otherwise the differences between the member states would be aggravated;
- if a joint policy is designed for markets which are not subject to free competition (our Treaty takes this into account in the fields of agriculture and transport);
- if a joint external trade policy is pursued, preventing in particular the distortion of competition between member states.

One might, therefore, sum up in saying that a customs union pure and simple, a union which is a customs union and no more, would not be realistic in a modern economy.

Can any lessons be learned from this for the Free Trade Area? The definition of the Free Trade Area which by now has acquired a kind of canonic force is to be found in Article 24, paragraph 8 (b) of GATT and reads as follows: "... a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories." A comparison of paragraph (a) with sub-paragraph (a) of this paragraph shows that the distinguishing mark of a customs union is that it applies a joint external trade traffic.

This definition is a product of the negotiations which took place before the Havana Charter, and little has been published on its history. It seems to have been embodied in the Havana Charter, from which it later moved into GATT, at the instigation of Europeans seeking to keep all possibilities open for the OEEC negotiations which were going on at the time. The euphemistic heading seems to have been chosen in order to find at least some language which would meet the American Government, who were pressing hard for European economic integration in 1947 and 1948.

How do we put life into this formula? That is the great problem facing us. Will we find that here again is an indestructible link between the lowering of customs and quotas and the conditions I have just enumerated as I spoke of a customs union? Will the absence of a joint external tariff lead on the one hand to shifts in the transport system and distortion of competition, and on the other to a general twist in favour of countries with low customs rates? After all, high customs walls lead to a relatively high rate of exchange. If then, within a free trade area, there is a partial reduction of customs duties while high customs rates are maintained vis-à-vis non-member countries, the rate of exchange is bound to drop. A new equilibrium is established. There will develop a surplus of exports to non-member countries and a surplus of imports from the free trade area. This equilibrium will then mainly favour the countries with low customs rates; they will have a net surplus of exports to the countries with high customs rates. If all these consequences are expected, how can they be counteracted where they are undesirable?

In this dilemma we are tempted to turn to past experience for an answer. Unfortunately it leaves us somewhat in the lurch. The most closely comparable precedent is that of the joint Swedish-Norwegian legislative arrangements, and these came to grief after many years of unending disputes, not least because after the opening of an overland rail connection between the two countries attempts at circumvention and the falsification of certificates of origin had reached an intolerable level. I am not aware of a free trade area ever having been put to the test amongst industrial countries, - that is under conditions comparable to ours. It would, therefore seem that the concept of a free trade area is not an abstract of commercial experience, that in fact it is not an abstract at all, but a theoretical invention still waiting to be tried out.

The method adopted in the conference of OEEC Governments would seem to confirm these remarks. In default of any-precedent - and what person drafting a law or treaty does not first of all seek a model? - that practice was adopted of going through the Treaty establishing our Economic Community, in order to see which parts of it would be suitable for incorporation in a free trade area treaty. A somewhat paradoxical procedure, if we remember that these negotiations were undertaken for the very reason that the other Member States of OEEC were not prepared to subject themselves to the sort of discipline characteristic of an economic union. If the conditions on which I have based my argument do indeed apply, then the fact that the Free Trade Area will have neither a common external tariff nor a common trade policy postulates a strengthening of the community discipline to make up for this defect.

The reason why the procedure of adhering to the model set by our Community was adopted is psychological rather than logical. This brings me - much to my regret - to the theory of discrimination. The other eleven Member States of OEEC wish to be treated in the same way as the six Member Countries of our Community, but they do not, in return, wish to submit to the same community rules, notwithstanding the fact that the door of our Community is open to all European countries. It is not we who have fixed membership at six, this is due to the countries who do not join. However, we do not intend to bring this up now as a reproach.

How many more times must it be said that the theory of discrimination is quite untenable as an argument for the demands which are attached to it. Anyone who claims the advantages offered by a community without making the sacrifices it imposes, is asking for discrimination; not the other way about. Thus the resolution passed by the European Parliament on 27 June of last year points to solutions which differ from those adopted by the Community. I admit that in order to understand this fully, it is necessary to embrace the whole of the life of our Community at one glance; it is essential to be able to envisage this Community in its fully developed state at the end of the transition period. At that stage it will be a unit in the commercial sense, just like any one of the other eleven states. If two people marry, that too constitutes an act of discrimination against all others. If, then, this so-called discrimination is to be eliminated, there is only one way of doing it, namely by removing the institution of marriage. However, economic union as an institution is legal. It is an arrangement which the world economic order permits and even desires and encourages. Therefore, there is no truth in the argument that this order contains but one, universal, principle- namely that of non-discrimination. To this principle there is opposed a regional principle, which favours customs unions and free trade areas.

It may not be amiss to quote the text of the relevant provision:

Article 24 of GATT says, in paragraph 4:

“The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free trade area should be to facilitate trade between the constitutent territories and not to raise barriers to the trade of other contracting parties with such territories.” And paragraph 5 reads as follows: “Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free trade area.” Specific conditions are then laid down for the formation of such a customs or free trade area.

Again, Article 8 of the OEEC Code of Liberalisation says:

“Two or more Member countries forming part of a special customs or monetary system may apply to one another, in addition to measures of liberalisation of trade taken in accordance with Article 2, other measures of liberalisation of trade without extending them to the other Member countries.”

Nor have we yet heard of the BENELUX Customs Union, or the plans for a Nordic Customs Union, being

charged with the offence of discrimination. Not to mention the fact that any such reproach, if it were justified, would also apply to the Free Trade Area itself; as recent discussion of the subject in the press has pointed out, this reproach would be the more bitter because the Free Trade Area is not an economic union.

I propose to limit myself to these few remarks on the subject of discrimination and would only point out once more that the confusion which has arisen is largely due to the element of time having been disregarded. Had it been given to us to establish our Community at one stroke, without any transition period, or if the question of the Association had not arisen before the end of the transition period, the danger of such confusion would have been less great. I may also draw attention to all I said on this subject when addressing the Parliamentary Assembly in March of last year.

From what I said then I should only like to repeat that we regard the reproach of splitting Europe as unjust in view of the fact that, as a result of the establishment of our Community, thousands of kilometres of customs frontiers will disappear from the pattern of trade in Europe and that the number of entities of commercial policy, both in bilateral relations and in multilateral associations, is considerably reduced through the Community having been set up as a common authority on trade policy.

Since, however, we have touched on emotional arguments, let me turn to the reproach of protectionism which is levelled against the Community. That reproach, too, is unfounded. The Community's external tariff adheres to the conditions laid down by GATT for such purposes, namely that the general incidence of the duties on imports into the Community shall not be higher than it had previously been in respect of imports into the constituent Member States. Since the arithmetical mean of the existing customs burden has been adopted, this customs tariff will, in fact, mean a lessening of the burden as compared with the previous situation. The low customs rates of the Benelux countries have as much effect as those applicable in the so-called large Member States, although the Benelux area represents no more than a population of 20 million out of a total of 165 million in the Community as a whole. This means that there will be increases of customs rates for the Benelux countries; to some extent there will also be increases for Germany, while on the other hand there will be reductions - in some cases considerable - on raw materials, foodstuffs and mineral oils. Major reductions of customs rates will apply to the 95 million Frenchmen and Italians. It must also be remembered that all this represents no more than the initial tariff, which will serve as a basis for customs negotiations. Our great dependence on imports and the need of markets for our expanding output will further encourage a liberal trade policy[1].

1 From the speech delivered 13 January 1959 by President Walter Hallstein before the European Parliamentary Assembly