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Treaty instituting the European Economic Community

Report¹

Committee on Economic Affairs and Development

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A. Draft Resolution

The Assembly,

Reaffirming its frequently expressed conviction that it is only by combining their human and material resources that the countries of Western Europe can ensure the stability and growth of their economies,

1. Congratulates the six Governments participating in the Intergovernmental Committee upon the conclusion of the Treaty instituting the European Economic Community ;
2. Expresses its confidence that the Treaty will be carried out in such a way as to promote the economic integration of free Europe as a whole within an increasingly interdependent world economy;
3. Urges that in preparing the implementation of the Treaty all possibilities be explored that may facilitate the association of other Members of the Council of Europe, whether within the framework of a European Free Trade Area or by any other arrangement, and that, in particular, special regard be given to differences in degree of economic development;
4. Emphasises the acute need for vigilance to avoid tendencies towards a closed protectionist economy by the increase of restrictions *cis-à-vis* non-member countries;
5. Notes with satisfaction that the Community extends in principle to all sectors of the economy, including agriculture; and stresses the fact that in this particular sector the very elastic provisions of the Treaty call for determined implementation so as to achieve a more efficient use of European agricultural resources;
6. Notes the association with the Community of the overseas countries and territories with which participating countries are linked and calls attention to the necessity for finding ways and means of reconciling this association with the creation of a Free Trade Area including the Community;
7. Urges the Governments and Parliaments of the six countries to make every effort to ensure the speedy ratification of the Treaty.

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1. The Treaty instituting the European Economic Community

1.1. The main features of the Treaty

1. On 25th March 1957, the Foreign Ministers of the six ECSC countries signed in Rome the Treaty instituting the European Economic Community. Broadly speaking, the Treaty follows the lines of the " Spaak Report "² drawn up by the heads of delegations of the Intergovernmental Committee set up by the Messina Conference.

2. The core of the Community is the customs union established between the six signatory countries. For this the Treaty lays down a detailed scheme—both for the removal of obstacles to trade within the Community and the introduction of a common tariff vis-à-vis non-member countries. But while it is the customs union

2. Important differences between the Treaty and the Spaak Report are noted below.

which is the basis of common action by the Member States, such action will also extend to many other spheres of their economic and social life. In this respect the Treaty is really—perhaps inevitably—a "framework- Treaty " in the sense that it formulates the principles and the terms and conditions governing this joint action without laying down precisely what the action is to be.

3. The Community itself will be responsible for setting up the customs union and carrying out joint action in the economic and social fields. It will perform these tasks through its four institutions, whose powers are defined in the Treaty: an Assembly, a Council, a Commission and a Court of Justice. The Council and the Commission will be assisted by an Economic and Social Committee. The Member States undertake, by means of administrative or legislative measures, to ensure that the obligations arising out of the Treaty are observed and that the decisions of the Community's institutions are implemented.

1.2. The institutions - (Articles 137-192)

4. The Assembly will be composed of 142 delegates appointed by the parliaments of Member States from among their members. It will have powers of decision and control. It will, by statutory right, examine the annual general report of the Community submitted by the Commission. It may put questions to the Commission. On a motion of censure on the Commission's operations, it may, subject to certain conditions, force its collective resignation. It will also give its views on the draft budget of the Community transmitted to it by the Council and may propose amendments.

5. The Assembly of the European Economic Community will be combined with the Euratom Assembly into a single body, which, as soon as it begins to operate, will supersede the Common Assembly of the E. C. S. C.

6. The Council will be composed of the representatives of Member States. Each Government will be represented by one of its members. The Council will be responsible for the co-ordination of the general economic policies of Member States and will have powers of decision.

7. During the first and second stages of the transitional period (described below), most of the important decisions of the Council will require unanimous agreement. During the third stage many important decisions may be taken by a specified majority.

8. The votes of members will be weighted as follows : Germany : 4, Belgium : 2, France : 4, Italy: 4, Luxembourg: 1, Netherlands : 2. In dealing with a proposal of the Commission, the requisite majority is 12 votes; in other cases it is 12 votes cast by at least 4 members.

9. The Commission will be composed of 9 members selected for their general qualifications and jointly appointed by the Governments for a term of 4 years. They will enjoy complete independence in the exercise of their functions.

10. The Commission will see to the implementation of the Treaty. For this purpose it will make recommendations to the Council. It will have its own powers of decision in respect of certain matters specified in the Treaty and will exercise the functions assigned to it by the Council.

11. Each member will have one vote. Decisions will be taken by a majority of the members.

12. The Court of Justice will comprise 7 judges, assisted by two advocates-general, jointly appointed for 6 years by the Governments of the Member States. It will ensure observance of the rules of law in the interpretation and application of the Treaty.

13. If a Member State is considered by the Commission or by another Member State to have failed to carry out its obligations under the Treaty, the matter may be brought before the Court. The rulings of the Court will be binding on all Member States.

14. It will be seen that the treaty setting up the European Economic Community envisages the same quartet of institutions as the European Coal and Steel Community. The division of competence between the Council and the Commission is, nevertheless, very different from that between the ECSC Council and the High Authority. The latter has much wider powers of decision than the Commission will have and also acts as an administrative body. In the European Economic Community almost all important decisions will be taken by the Council, where the Member States are represented by Government representatives. Further, the decisions of the Council and the directives of the Commission will be executed and administered by the competent national authorities.

15. The Economic and Social Committee (Arts. 193-198) will consist of 101 members, appointed for 4 years by the Council from lists submitted by Governments; the number of candidates submitted by each Government will be twice the number of seats allotted to it. Members must represent all branches of economic and social life. The Committee will be consultative. It will only meet at the request of the Council or the Commission, but consultation of it will be obligatory in certain cases provided for in the Treaty.

1.3. The transitional period - (Article 8)

16. The establishment of the customs union and the implementation of the rules of the Treaty relating to the free movement of production factors, to competition and to certain special arrangements in agriculture and transport must be effected by the end of a transitional period. This process is the basis of the common policy of which the principles are set out in the Treaty. The common policy will be pursued beyond the transitional period by a gradual alignment of the economic policies of Member States.

17. The transitional period will be divided into three stages of four years each and so will last, in principle, for twelve years. The passage from the first to the second stage will be dependent, however, on the achievement of the objectives of the first. The Council must unanimously agree that these objectives have been attained. Failing such unanimity, the first stage will be prolonged for a fifth year, at the end of which there may be a further prolongation for a sixth year on the same basis. At the end of the sixth year the decision of the Council will require only a specified majority. If the requisite majority is not obtained, the Treaty provides for an arbitration procedure. Whatever decision is then reached will be binding on Member States, although it must be noted that the transitional period may under no circumstances exceed fifteen years. It follows that, should the arbitration award prolong the first stage beyond the seventh year, the fifteen-year maximum could only be respected by shortening the second or third stages.

18. The passage from the first to the second stage is thus the critical point of the transitional period. The system envisaged, which is a combination of a suspensive veto and an arbitration procedure, obviously represents a compromise. Since it leaves indeterminate, within certain limits, the passage from the first to the second stage and so the total duration of the transitional period, this provision will no doubt be carefully examined by G. A. T. T.

19. Although a transitional period of twelve to fifteen years may be approved by G. A. T. T. as "reasonable", i. e., not too long, we might ask, looking at the problem in the general context, whether it is not too short, too short, that is, to allow for the setting-up of a customs union without excessive dislocation of national economies, particularly in respect of employment and the balance of payments of Member States.

20. It is interesting to note in this respect that a group of experts appointed by the International Labour Office to study the social aspects of European economic co-operation came to the conclusion that a period of ten years might be considered reasonable, in this latter sense, for setting up a customs union between the six member countries of the E. C. S. C. It should be observed that this opinion is based on the assumption that the customs union will be brought about in conditions of economic expansion, but that the experts did not think it necessary, or even expedient, that the social and economic policies of the Member States should be harmonised during and after the transitional period to the extent envisaged for the Community.

2. PART I - PROVISIONS GOVERNING RELATIONS BETWEEN MEMBER STATES

2.1. Basis of the Community

2.1.1. Removal of trade barriers - (Articles 9-17, 30-37)

21. The progressive abolition within the Community of customs duties, quantitative restrictions and similar barriers will in principle cover all goods.

22. The rules governing the abolition of customs duties within the Community apply both to goods produced in Member States and to goods from "third countries" on which customs duties or other charges have been collected in a Member State and neither wholly nor partially refunded.

23. Customs duties on imports as between Member States will be reduced progressively :

24. During the first four-year stage the first reduction will be made after twelve months, the second eighteen months later and the third at the end of the fourth year. The fourth reduction will be made eighteen months after the beginning of the fourth stage, the fifth eighteen months later and the sixth a year later. The rate of reduction during the third stage will be decided by a majority vote of the Council.

25. The basic duty on which the successive reductions are calculated in respect of each product is that in force on 1st January 1957. The first reduction will be of 10 % and will be on all products. Subsequent reductions will be such as to reduce total customs receipts³ by 10 %. Thus total customs duties will be reduced by 30 % during the first stage, 30 % during the second stage and 40 % during the third stage.

26. In order to ensure a continuous reduction in all rates, while at the same time preserving a certain flexibility, the Treaty stipulates that the reduction must be—apart from the first one—at least 5 % on each product. Finally, in order that there should be a reasonable progression in the reduction of the highest rates, it is laid down that in respect of products on which the duty, after the first reduction, remains above 30 %, each reduction shall be at least 10 %.

27. The Member States will endeavour at the same time to achieve, in respect of each product, a reduction of at least 25 % during each of the two first stages.

28. The provisions referred to above also apply to duties of a fiscal nature, which will not, however, be taken into consideration in calculating total customs receipts. Member States will remain at liberty to replace these duties by an internal tax. They may secure authorisation to preserve these duties for a period up to six years, if their replacement by an internal tax meets with difficulties.

29. The Treaty did not adopt the idea put forward in the Spaak Report—that the amount of reduction should apply as an average over groups of products classified in accordance with the rate of duty they bear. The machinery provided for in the treaty would therefore appear to be more stable than that advocated in the Report, while ensuring the necessary flexibility and having the advantage of being easier to administer.

30. Customs duties and similar charges on exports must be abolished at the latest by the end of the first stage, but no provision is made for progressive abolition.

31. The elimination of quantitative restrictions between Member States is based on the OEEC Liberalisation Code. Member States undertake to consolidate as between themselves the list of products liberated in accordance with the Code one year after the Treaty comes into force. They will transform the bilateral quotas open to other Member States into global quotas and will increase these quotas as a whole by at least 20 % of their total value in comparison with the preceding year and each of the global quotas per product by at least 10 %. This procedure will be repeated annually until it is found that for two consecutive years the quota has been greater than actual imports, in which case it will be abolished.

32. When the global quota for a given product is less than 3 % of the production of the country concerned, it will be increased to 3 % of that production a year after the entry into force of the Treaty, to 4 % after the second year and to 5 % after the third year. It will subsequently be increased by 15 % annually.

33. At the end of the tenth year all quotas must be at least 20 % of the national production, and at the end of the transitional period all import quotas and similar measures must be abolished. The fact that each year the percentage will be calculated on the basis of the quota for the preceding year is designed to ensure that the increase of quotas is a gradual process.

34. Quantitative restrictions on exports, which are actually of minor importance, will be removed, at the latest, by the end of the first stage and all other measures having equivalent effect will be removed as soon as the Treaty comes into force.

35. It should be observed that this part of the Treaty does not contain the numerous escape clauses found in the chapter on the elimination of customs duties among Member States. Furthermore, the Council may raise the fixed percentages, if the Commission finds that the provisions of the Treaty do not make it possible to ensure that the removal of these restrictions is progressive.

36. With regard to national monopolies of a commercial character, the Treaty provides only for progressive adjustments which will result in the removal of all discrimination between the nationals of Member States before the end of the transitional period. With regard to monopolies accompanied by regulations designed to facilitate sales and to maintain price-levels of agricultural produce, guarantees must be provided in respect of the employment and the standard of living of the producers.

3. Total customs receipts will be calculated by multiplying the value of imports from other Member States in 1956 by the basic duties.

2.1.2. Special provisions for agriculture - (Articles 38-47)

37. The rules for the integration of the economies, in particular with regard to the reduction of tariffs, quotas and charges affecting trade within the framework of the customs union, will in principle be applicable to agricultural products (products of the soil, of stock-breeding and of fishing).

38. The gradual abolition of tariffs protecting agricultural markets will, however, be accompanied by special adjustments designed to mitigate the effects of the new competitive conditions on the agricultural economy. The chief of these measures of adaptation provided for in the Treaty are the fixing of minimum prices and the conclusion of long-term contracts. At the beginning, minimum prices may be fixed unilaterally by Member States on terms laid down in the Treaty, for the purpose of securing a greater volume of trade and nondiscrimination. The Council will, however, exercise supervision over the fixing of minimum prices; during the first three years it will lay down objective criteria for these prices by unanimous agreement. Later the Council may, by a specified majority, amend the decisions taken by Member States if they do not conform with these criteria. The minimum prices may, in certain circumstances, be maintained beyond the transitional period, no final date having been fixed for their abolition.

39. The system of long-term contracts will come into operation during the first stage. With regard to quantities, the basis taken will be the average volume of trade between Member States in the products in question during the three years preceding the entry into force of the Treaty. Prices negotiated directly between the interested parties must be progressively aligned on those paid to producers on the home market of the purchasing country. In view of the far-reaching measures in favour of agriculture which are at present applied in Member States, this provision would seem to involve the danger of an equalisation of prices at high levels. It is apparently with this danger in mind that the Treaty stipulates that the conclusion of long-term contracts must not be allowed to interfere with imports from non-member countries of raw material needed for products for export to those countries. A compensatory tax, which may be fixed by the Commission, will be levied, either on exit or on entry, on all products in respect of which the market is controlled so as to affect the competition of a similar product in another Member State.

40. These special adjustments will form part of a programme for progressively harmonising national agricultural policies during the transitional period. The programme will provide for common regulations in respect of competition and for obligatory co-ordination of the various national marketing organisations, making it possible, at the end of the transitional period, to substitute a common agricultural policy for the separate national agricultural policies.

41. The object of the common agricultural policy will be, first, to increase productivity and to ensure reasonable prices for the consumer; secondly to stabilise markets in order to raise the standard of living of the agricultural population under fair conditions and, finally, to guarantee supplies. It will also have to take into account the special social structure of agriculture and the structural and natural differences between various agricultural areas.

42. The common agricultural policy is not formulated in detail. The Treaty is content to lay down principles and to stipulate rules for gradually bringing national policies into line during the transitional period.

43. It is generally admitted that a liberalisation of trade in the agricultural sector would cause a very considerable dislocation in production and traditional (trends, largely owing to the present protectionist policies of the various countries. Measures must therefore be taken to mitigate the effects of increased competition. There is no doubt that in this respect the Treaty provides for all the necessary safeguards not only during, but also beyond the transitional period, and the question is rather whether these safeguards are not likely to delay indefinitely the rationalisation of European agricultural production. The range of products to which the regulations could be applied is very extensive, in view of the difficulties which will no doubt arise, even after the third year, when it comes to determining the objective criteria for fixing minimum prices and the quantities to be covered by long-term contracts. Again, the only concrete clause dealing with increased productivity stipulates that provision may be made for co-ordination of effort in respect of vocational training, research, and the popularisation of agronomy, and for the increased consumption of certain products. It is perhaps surprising not to find any mention of a policy of consolidation of holdings or the encouragement of greater use of fertilizers. Furthermore, the provision in the Treaty allowing for the creation of one or more agricultural guidance and guarantee funds offers little promise of a satisfactory policy for increasing agricultural credit.

44. To sum up, it must be said that the principles set out in the Treaty for the gradual alignment of national policies and for the common policy which is to replace them at the end of the transitional period are far from being precise. Wide scope is thus left for negotiation, and the extent to which the Treaty will actually ensure specialisation in European agriculture on the basis of comparative costs will consequently depend, in large measure, on the results of such negotiations.

45. It should be added that progress in this direction might well contribute to promoting the economic expansion of Southern Italy by widening the markets for its agricultural products.

2.1.3. The free movement of production factors - (Articles 48-73)

46. It is generally agreed that a rational readaptation of economies is facilitated if the removal of barriers to trade is supplemented by giving greater freedom of movement to workers, management, services and capital. In all these fields the Treaty lays down liberalisation measures and formulates principles and procedures for joint action.

47. There will be free movement of workers inside the Community at the latest by the end of the transitional period. It will entail the right to accept offers of employment, to move freely for that purpose, to reside in any Member State for the purpose of working there and to remain after having worked there.

48. As soon as the Treaty comes into force, the Council, after consulting the Economic and Social Committee, will issue all the necessary orders with a view to ensuring the gradual elimination of administrative procedures and practices which hamper the free movement of workers and any discrimination based on nationality.

49. Apart from these "negative" measures, the Treaty contains two constructive provisions of very great significance: the establishment of inter-State machinery to co-ordinate offers of employment and requests for employment and, still more important, of a system by which migrant workers and their heirs or assigns will profit from all periods of work taken into consideration by the various national laws for the granting of social security benefits.

50. The right of establishment is progressively ensured and will be fully acquired by the end of the transitional period, through the elimination of all discrimination based on nationality. This also applies to the creation of branches and agencies, particularly in the form of companies.

51. The Council will draw up a programme for the removal of restrictions, giving priority to activities which are particularly useful for the development of production and trade. During the first stage the Council's decisions will require unanimity, but later a specified majority will suffice.

52. In drawing up its programme for the removal of existing restrictions the Council is required to consult the Assembly and the Social and Economic Committee. Before the end of the transitional period, it will also have issued, after consulting the Assembly, directives designed to secure the mutual recognition of diplomas.

53. Restrictions on the free use of services in connection with industry, commerce, the crafts and the liberal professions will be governed by rules very similar to those governing the right of establishment.

54. The free movement of capital⁴. During the transitional period the existing restrictions on movement of capital will be progressively eliminated in so far as is necessary for the smooth functioning of the Common Market; so will all discrimination based on the nationality of the parties or the place in which the investments are made. For this purpose the Council will issue the necessary directives, in consultation with the Commission and the Monetary Committee. It will take its decisions unanimously during the first two stages and subsequently by specified majority.

55. The free movement of capital¹. During the transitional period the existing restrictions on movement of capital will be progressively eliminated in so far as is necessary for the smooth functioning of the Common Market; so will all discrimination based on the nationality of the parties or the place in which the investments are made. For this purpose the Council will issue the necessary directives, in consultation with the Commission and the Monetary Committee. It will take its decisions unanimously during the first two stages and subsequently by specified majority.

56. Current payments connected with movements of capital will be free of all restrictions at the latest by the end of the first stage..

57. It is clear from these provisions that Member States are determined to move very prudently in this important field⁵.

4. Reference is also made to the relevant provisions concerning; the European Investment Bank and the balance of payments problem (see pp. 23 and 21).

5. See also p. 21, on the balance of payments.

2.1.4. Transport - (Articles 74-84)

In a free market competitive conditions would obviously be to some extent distorted if the great disparities in national transport rates remained. It is particularly important to abolish discrimination based on nationality..

The Treaty provides that, within the framework of a common policy, common rules shall be made governing international transport inside the Community and conditions laid down for the admission of non-resident carriers to national transport services in a Member State. These rules must be put into force at latest by the end of the transitional period. At the same time all discrimination based on the country of origin or the destination of the products transported must be eliminated.

The Member States undertake, at latest before the end of the second stage, to eliminate any form of support and protection in the way of preferential rates that benefit a particular industry or enterprise, unless the Commission authorises it.

The provisions of the Treaty apply to transport by road, rail and navigable waterway. The Council may decide subsequently whether, to what extent, and by what procedure appropriate measures should be taken in regard to sea and air traffic. Such decisions will require unanimity.

2.2. Policy of the Community

2.2.1. Additional measures for adjustment and integration

58. As conceived in the Treaty, the merging of the markets, with the Customs Union as its core, will form the basis of a common policy entailing greater integration in a number of other fields.

59. In the first place, obstacles to international trade and transport are not the only factors which tend to distort international competition, and here the Treaty lays down common rules governing restrictive business practices. In the second place, common action is necessary in the social sphere, so as to facilitate the movement of factors of production, and workers in particular, and soften the impact of new competitive conditions.

2.2.1.1. Rules of Competition - (Articles 85-94)

60. The Treaty prohibits any kind of private agreement the purpose or effects of which is to restrict trade between the Member States or interfere with normal competition within the Community—and also forbids firms to take unfair advantage of their dominant position within the common market. These rules also apply to public enterprises, including fiscal monopolies, insofar as their application does not prevent such enterprises from fulfilling their functions.

61. This general rule is qualified by a no less general provision to the effect that it may be waived in respect of any agreement which helps to improve production or distribution or promote technical or economic development.

62. The necessary regulations and directives, particularly the introduction of fines and penalties, and the definition of the respective roles of the Commission and the Court of Justice will be a matter for unanimous decision by the Council within a period of three years.

63. The rule with regard to dumping practices contains no definition of such practices. The Commission is empowered to issue recommendations to those engaged in such practices and may authorise the injured Party to take specified protective measures in specified circumstances.

64. The Treaty also prohibits State aid which distorts competition in trade between Member States by favouring certain firms or types of production, except for aid given for social purposes or to encourage the economic development of the most backward areas or to promote the execution of large-scale projects of common interest. The Commission will supervise methods of State aid and may refer cases of infringement to the Court of Justice. The Council may nevertheless suspend proceedings in the Court and may annul the decision of the Commission by unanimous vote :

65. The definition of the principle of free competition which appears in the Treaty closely follows the text of the corresponding section of the ECSC Treaty; but, whereas that Treaty gives the High Authority very comprehensive powers in this respect, the procedures provided for in the Common Market Treaty give no

guarantee that this principle will be observed without the good will of the Governments concerned. However, in the case of dumping and export suppoits it is the Commission which takes the necessary decisions, although the absence of any definition of dumping may well lead to controversy rather than provide a remedy.

66. It is, obviously, impossible for a treaty to lay down precise rules of competition covering every branch of industry and trade, but the question remains whether an appropriate convention between the Member States would not offer a better chance of effective settlement in this important field.

2.2.1.2. Social provisions - (Articles 117-128)

67. It is well known that, in social questions, two widely differing schools of thought were represented in the negotiations which culminated in the Spaak Report, one believing that economic integration demanded almost complete harmonisation of the social legislation of the countries concerned, the other maintaining that it was more important and quite sufficient to remedy or eliminate the effects of specific distortions which benefit or handicap particular branches of activity.

68. The essence of the latter view, which was broadly the one adopted by the ILO group of experts in the Report mentioned above, is that disparities between the charges borne by the various economies do not in themselves distort competition. Thus there is no distortion when differences in wage-levels correspond to different degrees of productivity or when certain differences in costs are a result of the existing distribution of natural resources or manpower. Moreover, disparities of this kind, like those arising from different levels of public expenditure or social security benefits, are usually counter-balanced by the rate of exchange.

69. Apart from a few details, it was the latter point of view which won the day in the Spaak Report and in the Treaty itself.

70. In fact, the Treaty is based in this respect on the idea of the equalisation of living and working conditions through progress, and the relevant provisions therefore merely instruct the Commission, in consultation with the Economic and Social Committee, to further close collaboration between the Member States in the social sphere, particularly in matters connected with working conditions and social security. The only concrete provisions are those which lay down that, even during the first stage, the principle of equal pay for equal work shall be applied as between male and female workers, and that the existing equivalence of paid holiday schemes shall be maintained.

71. The solution finally agreed upon was facilitated by the decision to place at the disposal of the Community a re-adaptation fund, called the European Social Fund, financed by the Member States in proportion to total wages and social security contributions, and designed to cover 50 % of the social costs they incur by reason of industrial transformation. Assistance by the Fund is subject to certain conditions but it should be pointed out that the interventions of this fund on behalf of workers affected by the closing-down or reconversion of industries will not depend on evidence that unemployment is caused by the Common Market.

72. The solution finally agreed upon was facilitated by the decision to place at the disposal of the Community a re-adaptation fund, called the European Social Fund, financed by the Member States in proportion to total wages and social security contributions, and designed to cover 50 % of the social costs they incur by reason of industrial transformation. Assistance by the Fund is subject to certain conditions but it should be pointed out that the interventions of this fund on behalf of workers affected by the closing-down or reconversion of industries will not depend on evidence that unemployment is caused by the Common Market.

73. The Treaty contains no indication of the actual contributions to be paid to the Fund nor has any procedure been laid down for reaching decisions with respect hereto.

74. The Treaty provides that, on the expiry of the transitional period, the Council may, by a specified majority, decide to restrict the functions of the Fund; it may also, by unanimous decision, assign it new tasks.

2.2.2. Economic policy

75. In theory, it is always possible, by adjusting rates of exchange, to counter fluctuations in international trade arising from different internal price trends, whatever the system of trade between the countries concerned. It is clear, however, that the nature of the exchange system profoundly affects the problem, since countries which have set up a system of free trade—whether it be a customs union or a free trade area—will thereby have automatically renounced quotas as a means of redressing their balance of payments with their partners in the system. Assuming that such countries are unwilling or unable to restore the equilibrium of their balance of payments position by a painful contraction of their price level, they will be obliged to modify their rates of exchange in order to adjust their flow of trade with other countries in the group.

76. It is generally admitted, however, that an adjustment of exchange rates is a radical measure whose effects cannot always be clearly foreseen, and post-war experience shows that Governments are loath to resort to it. But, if such a measure is to be reserved for serious cases of general unbalance affecting the economy of a country or group of countries, it follows that countries belonging to a customs union or free trade area must find other means of placing their trade on a sound basis. There is therefore a greater need to tackle the causes of unbalance, and, above all, to work for a harmonious development of internal price levels by co-ordinating overall policies.

77. This calls for three comments. A sound trend of trade within a customs union or free trade area does not necessarily imply the maintenance of traditional patterns of trade. On the contrary, such patterns are almost invariably modified by competition based on comparative costs. Moreover, a harmonious development of standards of living implies neither absolute stability nor a movement fully co-ordinated on the basis of existing standards, since certain fluctuations in the level of prices and the volume of trade correspond to different rates of increase in productivity or population. Lastly, it is clear that the price policies of the countries of any group must always take account of the overall trade of each country, and the aim must be to attain a general state of balance.

78. Thus, there are very sound economic reasons for establishing close collaboration between the Community countries in the field of economic policy.

2.2.2.1. Trade cycle policy - (Art. 103)

79. Here the Treaty simply lays down a procedure for consultation among Member States and with the Commission, all decisions of the Council being subject to unanimous agreement.

80. The broad lines of such co-operation are then worked out in fuller detail in the chapters devoted to balance of payments problems and trading policy.

2.2.2.2. Balance of payments - (Articles 104-109)

81. In accordance with its obligations as a Member of G. A. T. T. and O. E. E. C, each Member State undertakes to ensure the stability of its overall balance of payments position and preserve confidence in its currency, while taking care to ensure a high level of employment and price stability. To facilitate the achievement of these aims, the Member States will co-ordinate their economic policies and set up for this purpose a system of collaboration between their administrative departments as well as their central banks. A Monetary Committee with advisory functions will be established to keep an eye on the monetary and financial situation of the Member States and transmit opinions to the Commission and the Council.

82. The Member States undertake to treat their exchange policy as a problem of concern to all Parties.

83. Where difficulty occurs or there is serious threat of difficulty, the Commission may recommend measures to the State in question and, if necessary, propose mutual assistance. The Council may decide by specified majority either to make a concerted approach to other international organisations, or to take measures for avoiding diversion of trade if the State in question reimposes quantitative restrictions upon trade with non-member countries, or, in the third place, to provide limited credit. During the transitional period, mutual assistance may also take the form of special tariff reductions or quota increases granted to the country in difficulty by the other Member States.

84. Should a sudden crisis occur, a Member State is authorised to take the necessary protective measures, but the Council may afterwards decide by specified majority that it must modify, suspend or cancel such measures:

85. Needless to say, any restrictions upon payments affecting a transaction freed by the Treaty must be progressively abolished within the same time-limits as the obstacles to the transaction itself.

86. Co-operation between the Member States in economic policy is to be continued beyond the transitional period as long as the Treaty remains in force, and this will undoubtedly be regarded as a most important innovation from the political and economic standpoints, although, economically speaking, its implications are difficult to assess purely on the basis of the terms of the Treaty. Cooperation in this field between the Member States is no doubt bound to increase and become gradually more concrete, but attention must be drawn to a weakness of the system—a difficulty inherent in the structure of the customs union—which does not seem to have been adequately solved in the Treaty. This difficulty really arises from the proposed trading policy, but it is discussed at this point because of its repercussions on the problem of economic co-operation, particularly as regards exchange systems and mutual financial assistance.

87. It should be noted that a country in serious difficulty may re-impose quantitative restrictions on trade with a non-member country in order to restore the equilibrium of its balance of payments position. But, if that country cannot apply the same restrictions to the Common Market countries as to "third" countries, and if the other Member States cannot simultaneously impose the same restrictions on trade with such "third" countries, the surplus demand of the country in difficulty will simply be diverted to the Common Market countries. This will have an adverse effect on the balance of payments position of other Member States without reducing the overall balance of payments deficit of the country in difficulty. To overcome this dilemma, the Treaty provides, as we have seen, that the other States may decide by a specified majority, within the framework of the mutual assistance system, to take any measures required to avoid such diversion of trade. It seems clear that such measures will raise many problems of implementation and it is noticeable that the Treaty makes no attempt to define their nature.

2.2.3. The European Investment Bank - (Arts. 129-130)

88. The Messina Resolution already provided for the creation of an Investment Fund which was to be mainly concerned with the joint development of the economic resources of Europe, with particular reference to the backward areas of the member countries. In other words, the main task of the Fund was to stimulate the economic development of Italy. This no doubt reflects a real need, for it must be remembered that the establishment of the Common Market may well accentuate the differential rate of economic progress of the highly developed and more backward countries.

89. The argument on which this conception of the Fund was based was that the injection of capital into the less prosperous areas was important as a means of promoting the balanced development of the Community.

90. In the Spaak Report the tasks of the Investment Fund were extended, in accordance with the recommendations of the Heads of Delegations, to reconversion and other projects of European character and significance. This approach has been endorsed in the Treaty.

91. The second task assigned to the Investment Bank—namely reconversion—was obviously a complement to the principal aim of the European Social Fund. Problems arising from the readaptation and re-employment of workers in an economy or group of economies undergoing rapid transformation will obviously be reduced in proportion to the possibility of a smooth reconversion of the firms or industries affected. Such rapid reconversion has its own value by directly and indirectly economising resources during the process of transformation. The system applied to reconversion will largely depend on the amount of capital available.

92. Thirdly, it has been thought advisable to provide means of financing joint enterprises of interest to more than one country.

93. Thus the task of the European Investment Bank will be to provide loans and guarantees and so facilitate the financing of the following three types of projects:

projects for developing the more backward areas,

projects for modernising or converting enterprises or for creating new activities which, by their very nature or size, cannot be fully financed by means at present available,

projects of common interest to more than one Member State confronted with the same difficulties.

94. The first thing to be noted is that the definition of under-developed areas has been extended to include any backward area in the Community. Moreover, the condition attached to the supply of credits for reconversion projects or common projects makes it clear that the financial assistance of the Bank will be complementary to private or public efforts on a national basis.

95. The Bank will have a capital of 1,000 million dollars. Member States will pay up 25 % of the subscribed capital in five equal payments spread over the first 30 months after the entry into force of the Treaty, a quarter of this being in gold or freely convertible currencies and three-quarters in national currency. In certain circumstances calls may be made upon the remaining 75 % of the subscribed capital. The Bank is empowered to apply to the money markets, particularly those of the Member States, for such loans as it requires to fulfil its tasks. The competent authorities of a Member State may not withhold their consent unless there is a danger of the local capital market being seriously disturbed. If the need arises, the Bank may also obtain special loans from the Member States up to a ceiling of 400 million dollars, at the rate of 100 millions per annum.

96. The Bank will supply credit to its members or to private or public enterprises for investment projects in the European territories of the Member States, provided that funds are not available elsewhere on reasonable terms. As far as possible the granting of loans will be made dependent on the use of other means of financing. When a loan is granted to an enterprise or collective body other than a Member State, the Bank will demand either a guarantee from the Member State on whose territory the project is to be put into operation, or other adequate safeguards. Rates of interest and other terms must be adapted to the terms prevailing on the money markets. The Bank may provide or guarantee loans only when the service of interest and amortisation is guaranteed by working profits in the case of projects carried out by enterprises in the sector of production, or by a Government pledge or some other means in the case of the projects. Another general condition is that projects financed by the Bank must contribute towards an increase in productivity and help to bring about the Common Market.

97. On the whole, therefore, there is a marked similarity between the European Investment Bank and the International Bank for Reconstruction and Development, particularly as regards their methods of financing their activities, their administrative structure and even the rules governing their credit and guarantee operations. However, the credit policy of the European Bank would appear to be less rigid than that of the I. B. R. D., since its activities are determined partly by economic considerations—contributing towards an increase in overall productivity—and partly by political considerations—helping to bring about the Common Market. It may be mentioned that the regulations of the Bank, unlike those of the I. B. R. D., lay down no system for controlling the use of its credits.

98. It is also noteworthy that the only link between the Bank and the Community Commission is that the Commission will nominate a member of its Board of Directors. The Bank will therefore communicate directly with the Member States through the authority designated by the latter.

99. The supreme authority of the Bank is the Board of Governors, which will consist of Ministers appointed by the Member States, and will take its decision by a majority vote of its members.

3. PART II - PROVISIONS GOVERNING TRADE RELATIONS WITH NON-MEMBER COUNTRIES.

100. Unlike a free trade area, in which each participating country fixes its own tariff against "third" countries, a customs union, by definition, entails common customs duties. It follows that the member countries of a customs union must also regulate, in common, other aspects of their trade with the outside world including quotas and commercial policy in general.

3.1. The common customs tariff - (Articles 18-29)

101. The Treaty lays down that the common tariff shall be the arithmetical mean of the national tariffs in force on 1st January 1957 and that the common tariff is to be in full operation by the end of the transitional period at the latest. It should be noted that this definition corresponds to the highest level authorised by Article XXIV of G. A. T. T. and that the Treaty includes the common tariff as part of a trade policy aimed at the abolition by stages of restrictions on international trade.

102. In providing for the progressive introduction of a common tariff the Treaty first lays down a method for gradually equalising national tariffs; secondly, it sets in advance a ceiling to the duties on certain classes of goods and, in some cases, actually fixes the final rates. The intergovernmental negotiations which led to the signing of the Treaty therefore involved "a very important tariff conference. The common customs duties on a certain number of products will be fixed by mutual agreement at later negotiations.

103. The general procedure for equalisation provided in the Treaty is as follows : for all tariff rates where the basic duty does not differ from the common tariff by more than 15 % either way, the latter will be introduced at the end of the first stage of the transitional period. The quantity and value of the goods affected by this provision will, of course, vary from country to country. On the same date, other duties will be adjusted to the extent of 30 % of the difference between the basic duty and the common tariff. This gap will again be narrowed by 30 % at the end of the second stage, and the equalisation of national tariffs will be finally completed during the third stage.

104. The provisions of the Treaty are supplemented by rules fixing the maximum common tariffs on certain classes of goods enumerated in the lists annexed to the Treaty (Lists B, C, D & E). The products enumerated in the first list (List B), for which the maximum rate is 3 %, are mostly raw materials (including certain fertilisers, natural and recovered rubber, and cotton and certain other vegetable textile fibres). List C—maximum rate 10 %—on the other hand, contains many semi-finished goods. Lists D & E—15 % and 25 % respectively—cover certain chemical products, both organic and inorganic. Another list—List F—fixes the

actual duties to be levied on the goods enumerated in it. Finally, a List G enumerates a number of products for which the common tariff rates will be fixed by negotiation between the Member States before the end of the first stage.

105. The implementation of the provisions governing equalisation of tariffs in respect of non-member countries may, for the goods enumerated in the lists, and subject to the permission of the Council, be given by specified majority, be modified or postponed in certain conditions, for example if the supply position of a Member State or of its processing industries makes it necessary to import a quota under a lower tariff or free of duty. Such quotas must not be so large as to risk upsetting the balance of trading activity to the detriment of other Member States

106. A very thorough study of the question would be needed in order to formulate exact conclusions on the effects of a common customs tariff on trade with non-member countries. Such an analysis would, moreover, involve very great difficulties. But it seems legitimate to say that the common tariff will establish over part of the European continent a preference area which will as a whole be not less protected than the countries of which it consists. It is equally clear that, where there are no special arrangements, the trade of the other European countries will be profoundly affected.

3.2. Trade policy (Arts. 110-115)

107. The establishment of a customs tariff common to the Community obviously presupposes a common tariff policy. The Treaty makes this part of a general programme of co-operation in trade policy.

108. Thus the Member States undertake to co-ordinate their trade relations with non-member countries by stages, starting when the Treaty comes into force, so that the conditions necessary for implementing a common policy in external trade will have been created by the end of the transitional period. On the basis of proposals by the Commission the Council will decide, unanimously during the first two stages and subsequently by a specified majority, what instructions to give the Commission with regard to tariff negotiations with "third" countries; the Council will also conclude agreements. The Commission, assisted by a Special Committee appointed by the Council, will conduct these negotiations.

109. During the transitional period Member States will also make it their aim to standardise their liberalisation lists in respect of "third" countries at the highest possible level and to harmonise progressively their arrangements for assisting exports to those countries. Unlike the rules for establishing the common tariff, the provisions specify neither the methods, nor even the principles, of a common policy regarding quantitative restrictions on imports from "third" countries. With regard to other member countries of O. E. E. C., this problem will solve itself with the establishment of the free trade area. On the other hand, the universal rules of G. A. T. T. grant considerable latitude to countries in difficulties over their balance of payments position or other matters, and the non-European member countries of that organisation will doubtless watch the policy adopted on this subject most attentively.

110. After the end of the transitional period the common trade policy will be based on uniform principles concerning tariff questions, standardising liberalisation measures, export policy and measures in defence of trade. The Commission will negotiate the necessary agreements and submit proposals to the Council, which will decide by a specified majority. Member States undertake to act in common in international organisations of an economic character. They will already consult together during the transitional period with a view to concerting their activities in these organisations.

111. The fact that the Treaty will set up yet another tariff conference, which seems likely to become permanent, is plainly one of the prices which have to be paid for a customs union. Considering the very serious difficulties which may arise in the future when the common tariff is being revised, it seems a pity that, despite the great advantage which the various countries may derive in their negotiations from the Community's existence, the Treaty does not provide for a system of arbitration. This comment, which reinforces the one made earlier on the lack of a financial body with adequate powers, amounts to saying that a customs union will always suffer from certain structural weaknesses, which could only be remedied by full economic and political union.

3.3. Association of Overseas Countries and Territories (Articles 131-136 and Annex XV)

112. One of the most important innovations in the Treaty by comparison with the Spaak Report is that the Member States have decided to associate with the Community the overseas countries and territories which are linked to them. It will be recalled that the Consultative Assembly in Resolution 101 (para. B, 6, adopted in October 1956), expressed the belief that such overseas countries and territories would benefit by belonging to the common market.

113. As for the economic considerations involved, it is clear, above all, that the application of the Community's common tariff to those countries and territories, for instance, that have special relations with France was unthinkable, since it would have delivered a mortal blow to the exports of these countries and territories to France, where their products enjoyed preferential treatment. It also seemed expedient to give these countries and territories the benefit of the common market by opening up wider outlets to their goods and guaranteeing them new sources of capital for their economic and social development.

114. The solution given to these problems was to associate those countries and territories directly with the Community. This association will primarily involve, for all Member States, extending to the countries and territories the system of free trade agreed among themselves, and conversely, for these countries and territories, extending without discrimination the preferential conditions of trade which they apply to those European States with which they maintain special relations. That amounts to saying that, at the end of the transitional period, exports coming from the overseas countries and territories will be able to enter the Common Market quite freely, while exports from all Member States to these countries and territories will enjoy the preferential treatment accorded to the metropolitan countries. At the same time the countries and territories retain the right to levy customs duties as needed for their industrialisation or for fiscal purposes.

115. The general provision governing the progressive reduction of tariffs on imports to the overseas countries and territories from Member States or from other overseas countries or territories will not be applied, however, to the Belgian Congo, Ruanda-Urundi, French Equatorial Africa, the Cameroons, Togoland or Italian Somaliland, because of the nondiscriminatory tariff regimes which these territories already apply by virtue of the Saint-Germain Convention of 1919—for the three first-mentioned territories—or of the United Nations trusteeship obligations, for the three last-mentioned territories.

116. There is also an agreement to extend to the other Member States of the Community without discrimination the right to set up in business, hitherto reserved to nationals of the metropolitan countries. As a counterpart to this agreement, the Convention contains concrete obligations regarding the financial participation of the other Member States in investment in the overseas countries and territories.

117. With regard to trading arrangements with "third" countries, it may be noted that the countries and territories associated with the Community, just like the Member States, will retain certain rights of preserving or restoring quantitative restrictions unilaterally. The measures necessary to obviate any diversion of trade which might ensue will be proposed by the Commission, but Member States seem to have reserved complete freedom of action in this matter.

118. For the participation of Member States in financing investment in the countries and territories, a Development Fund for the overseas countries and territories has been established for a period of five years; it will supplement the contribution made by the authorities responsible for these countries and territories. The latter, in agreement with the local authorities, will submit economic and social projects which the Community will be asked to finance. The Commission, which will administer the fund, will draw up a general programme every year. The assistance granted by the Fund will, on a decision of the Council by a specified majority, be devoted in principle to investment for social purposes or to financing general economic programmes directly connected with the execution of productive and practical development projects. Nationals of all Member States of the Community may tender for contracts in connection with these investments without discrimination.

119. The contributions of Member States to the Development Fund over the five years will total 581 1/4 million dollars, to be paid annually on a scale rising from 10% the first year to 38.5 % in the fifth year. They are fixed at 200 million each for Germany and France, 70 million each for Belgium and the Netherlands, 40 million for Italy and one and a quarter million for Luxembourg. The French territories will receive 511.25 million, the Belgian territories 30 million, the Dutch 35 million and the Italian 5 million. Thus the Development Fund gives France financial assistance from the other Member States, mainly Germany, on the scale of 311.25 million dollars. The conclusion of a further agreement will be subject to a unanimous decision by the Council.

120. The Commission will see to it that the resources of the Fund are used in the best way. Taken literally, this provision seems to imply that projects financed by the Fund in the countries and territories will be supervised on the spot by a European intergovernmental body. It should also be pointed out that the

procedure for extending the right to set up in business in the countries and territories to nationals of Member States which have no special relations with these countries and territories will be settled by the Council of the Community. It appears that arrangements for consulting the local authorities concerned still remain to be provided for.

121. On this matter Resolution 101 of the Consultative Assembly stated that " provision should be made for the representation of overseas countries and territories, or where appropriate, for the requisite protection of their interests... "6. In this connection, too, it should be noted that the Study Group for the Development of Africa set up in accordance with Order 77 of the Consultative Assembly in its Interim Report⁷, submitted to the Consultative Assembly in January 1957, stated : " Co-operation on a basis of equality between the African and the European countries is fundamental to the planning concerned ; while the present initiative has come from the European side, views, requirements and preferences should in the future be the subject of joint consultations between Europeans and Africans."

3.4. Relations with the Free Trade Area

122. The analysis contained in the three previous sections of Part II is an attempt to provide a general view of the rules in the Treaty which govern the relations of the Community with non-member countries and to point out some problems which they raise for the Member States and for the Community itself. These rules must now be considered from the point of view of such " third " countries, in particular of other members of the Council of Europe.

123. If the principle of non-discrimination in international trade, which is the basis of G. A. T. T., is to be applied, no preferential treatment may be reserved for any group of countries. The trade relations of the Community with other European countries will therefore be subject to the same rules as their relations with any other country or group of countries, except with regard to the OEEC Liberalisation Code. As a result there are only two ways of arranging preferential relations with countries which are not in the Customs Union from the beginning. One is for these countries to accede individually to the Community, and the other is for them to be associated with the Community within the framework of an agreement establishing a free trade area under the conditions laid down by G. A. T. T.

124. Provision is made for these possibilities in the Treaty. In the Preamble the Member States call upon the other peoples of Europe to join in their efforts, and a Common Declaration of Intent concerning the establishment of a free trade area is appended to the Treaty. In the latter, the Member States declare their readiness, after the Treaty has entered into force, to conclude agreements with other European countries for the purpose of ensuring the smooth development of trade and of promoting the prosperity and expansion of the European economy as a whole.

6. Section B, 6.

7. Doc. SG/AF (56) 6, Para. 5 (e).