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EU Enlargement and Commercial Policy: Enlargement and the Making of Commercial Policy

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This paper is the result of a Project entitled 'Challenges to EU External Economic Policy in the Next Decade'. This was funded jointly by SEI and the Directorate General for Education and Culture of the EU Commission. SEI Working Papers 40, 41 and 42 were also part of this project.

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First published in March 2001
by the **Sussex European Institute**
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EU Enlargement and Commercial Policy: Enlargement and the Making of Commercial Policy¹²

Introduction

Commercial Policy - sometimes called Trade Policy - is mainly determined by economic interest. This is not the same as economic efficiency since sectoral interests within a country or trade bloc can conflict, and government policy is always open to capture by interests which can exert the most political muscle. For that reason commercial policy is subject to complex political and bureaucratic process wherever it is made. The EU is no different except that the processes of policy-making and implementation are more complex than in most individual countries. The Union consists of 15 member states all with different interests, plus the EU Commission which under the EU Treaties has legal responsibility - or competence in the jargon - for most types of international transactions (but not all, as set out below).

The expansion of the EU perhaps by as many as 12³ new members over the next decade promises to add significantly to this complexity. To be sure the candidate states are much smaller in economic terms than the existing EU15 but they do represent significant populations which will bring to bear weight in political terms if not in economic terms.

Table 1

	Population	GDP \$bn	Value of Exports Of Goods and Services \$bn
EU-15	377	8212	2697
Central Europe 10 ⁴	105	357	154
Mediterranean 3 ⁵	65	198	54*

Source: based on World Bank data, 1999 for population and GNP and 1998 for trade

¹ Michael Johnson is responsible for the discussion of trade policy processes and Jim Rollo for the introductory section on the more directly economic issues. The Authors are grateful for comments from participants at The SEI/CEPE Conference at Sussex University on 6/7 July 2000

² the authors are grateful for financial support from the European Commission Directorate General for Education and Culture and from Sussex University

³ While the Helsinki European Council in December 1999 agreed that Turkey was a candidate for accession on the same basis as the others, and the first steps in the pre-accession process are now being taken, it is assumed for practical purposes that Turkey will not accede within the next ten years.

⁴ Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia

⁵ Malta, Cyprus, Turkey

* Value of exports of goods and services in Mediterranean only for Turkey

This paper attempts briefly to sketch what we know of the likely economic impact of EU enlargement on the candidate states using the quantitative work of Francois and Rombout (2001) as a basis of identifying some likely economic interests. It will also comment, again briefly, on impacts on third countries drawing on the same source for some quantification and looking at issues which the quantification does not cover.

More substantively the paper will describe - for it is not widely understood - the nature of the EU commercial policy making process after the Nice Treaty and then go on to discuss how enlargement - on whatever timetable - is likely to impact on the process of commercial policy making and on the balance of views and interests within the key policy making committee. This is based on interviews with relevant policy makers in the candidate states whose negotiations are most advanced, and more widely

For simplicity's sake the paper will focus on the impact of the Central and Eastern European candidates. Cyprus and Malta are likely to be part of any early enlargement but are small. Turkey which is large by any standard seems unlikely on current prospects to be a candidate for membership in the next decade, which is the time horizon of this paper.

Economic Interests

The trade structure of the Central European candidates is becoming increasingly like that of the EU (Francois and Rombout op cit section 2) but protection patterns are significantly different.

Table 2

Tariff Equivalents for all goods and for food in EU-15 and Central European Candidates

	All Goods	Food
EU	2.7	35.0
Central European Candidates	6.5	10.0

Source: Francois and Rombout (2001), Section 2

So while overall the candidates are more protectionist than the EU (but on average noticeably less so than developing countries in Asia and Latin America), particularly for heavy industry, they are currently much less protectionist for agriculture than the EU. It must be borne in mind that the candidates, under the Europe Agreements, have duty free access to EU markets for manufacturers but not for agriculture. They are also, but more slowly, opening their markets to EU manufacturing and services exports. This opening on their part is likely to be complete even before the first wave of new members join.

So two main issues follow from accession. First and amply highlighted in Francois and Rombout is a significant boost to agriculture in the new members. Given the above average agricultural populations in the candidates this is likely to shift them towards the agricultural protectionist camp from their current stance which - Poland apart - is relatively unprotectionist. Hungary, Bulgaria and Romania are, or have been, significant exporters of food products (Hungary was, during the Uruguay Round of multilateral trade negotiations in the GATT, a member of the Cairns Group of agricultural exporters who campaigned hard for agricultural liberalization).

The other point that emerges from Francois and Rombout and from other analyses of trade policy in some of the candidates (Malezweska et al (1999), Rollo (1997)) is there will be some trade creation in industrial products as tariffs against third countries fall to EU-15 levels (figure 5 *ibid* suggests significant increases in imports, but expressed in terms of value only which is ambiguous on the balance of trade creation to trade diversion). Where the EU is not already the most efficient producer this may lead to trade creation and consequent adjustment pressure on domestic industry. Francois and Rombout Table 5 gives an idea of the likely patterns with chemicals, iron and steel and on ferrous metals looking vulnerable. These sectors also appear frequently in EU instigated anti-dumping actions. Which suggests that some at least of the candidates once inside the EU are likely to be potential clients for anti-dumping actions.

Also noticeable from Table 5 of Francois and Rombout is that the services sectors analysed look vulnerable to competition from the EU. It is an open question how this will impact on candidates' preferences in trade policy once they are members. The EU is largely an open services market, which was one of the driving objectives of the Single Market programme in 1986-1992. EU-15 producers are generally efficient at a world level as demonstrated by the high share of services exports in the total. Services are however underdeveloped in the candidate states, partly reflecting the level of development of their economies and partly reflecting their (increasingly distant) communist past. This may signal some incipient protectionist pressures but given the iconic status of the Single Market it seems unlikely in the extreme that the candidates would be successful in maintaining significant barriers in services against either third countries or EU partners. Nonetheless there may be some attempt to maintain market segmentation to the extent possible under the Single Market.

Third Country Concerns

The analysis in Francois and Rombout suggests that there will be few large effects on third countries. Overall while the adoption of EU policy increases candidate GDP by between 3% and 5% (figure 3 *ibid*), the impact on the rest of the world ranges from +0.15% (the EU) to -0.2% (rest of OECD excluding EU, candidates and North America). Some of those suffering will be more substantially hit than the aggregates allow. The US and other agricultural exporters will be hit and will no doubt look for compensation under the rules of the World Trade Organisation (now the WTO), unless in the meantime further WTO negotiations have led to significant EU agricultural reform. The FSU

group also suffers. Some of these are not yet WTO members - notably Ukraine, Belarus, and Russia - and until they are their ability to claim compensation will be limited.

The quantifications referred to are significantly light on services and it is noticeable that it is in this sector that the United States has been most active in lobbying in candidate states. Audio-visual services have for many years been a source of sharp disagreement between the EU and the US, both in the Uruguay Round and subsequently. The US perceives EU cultural policies as protectionist and has mounted a concerted effort to prevent candidates from adopting EU policies ahead of membership. This is perhaps intended to enable the US to ask for compensation for reduced access to candidates' audio-visual markets, to the extent that the WTO General Agreement on Trade in Services permits that; or at least to gain some leverage over an EU policy on enlargement.

The Overall Impact of Economic Factors on the Likely Interests of New Member States

The economic changes following the adoption of EU trade policy by the candidate states in Central and East Europe suggest that

- trade creation in the industrial sector may increase demand for anti-dumping in areas such as iron, steel, chemicals, non-ferrous metals
- with the exception of Estonia, and possibly of the Czech Republic, the new members are likely to transmute pretty immediately into agricultural protectionists. This will have particular relevance for relations with the US and other agricultural exporters such as the Cairns Group. Poland is already going down this track
- services trade may also be an area of difficulty and not just in areas where trade tensions are already significant as new members adjust to the single market and a more liberal services' regime generally.

The following sections will examine the impact of enlargement on the process of EU policy making.

EU machinery for making commercial policy

The common commercial policy was, with the customs union, one of the original building-blocks of the European Economic Community as established by the Treaty of Rome of 1957.⁶ Article 110 of the Treaty⁷ laid down two trade-related objectives of the customs union, as follows:

⁶ For a full account of the history and operation of the common commercial policy, see Michael Johnson: *European Community Trade Policy and the Article 113 Committee*, Royal Institute of International Affairs, London, 1998, ISBN 1 86203 078 2

⁷ Now renumbered as Article 131 pursuant to the Treaty of Amsterdam, 1997

By establishing a customs union between themselves member states aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.

The common commercial policy shall take into account the favourable effect which the abolition of customs duties between member states may have on the increase in the competitive strength of undertakings in those states.

The language of the second paragraph is obscure, but Article 110 has always been understood as basing the common commercial policy on the dual principles of pursuit of international trade liberalisation, and of promotion through trade and liberalisation of the Community's industrial and commercial interests.

The key mechanisms for implementation of the policy were provided for by Article 113 of the Treaty, which came into full effect in February 1959. These are that while the Council of Ministers has the right to agree to launch international trade negotiations and to approve the results of those negotiations, the rights to make policy proposals to the Council and to conduct negotiations are reserved exclusively to the Commission. Council decisions on matters falling within the common commercial policy are taken by qualified majority vote.⁸

Article 113 has been amended several times. The Treaty of Amsterdam of 1997 renumbered it as Article 133 (this new numbering will be used in the remainder of this paper). However its essential provisions have survived with very little alteration. Following Amsterdam they read as follows:

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.
2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

⁸ Currently in the Community of 15 the Member States have a total of 87 votes, namely:

10 votes: France, Germany, Italy, United Kingdom

8 votes: Spain

5 votes: Belgium, Greece, Netherlands, Portugal

4 votes: Austria, Sweden

3 votes: Denmark, Finland, Ireland

2 votes: Luxembourg

A qualified majority requires a minimum of 62 votes in favour of the relevant proposal, while a proposal can be blocked by member states jointly wielding 26 votes or more.

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

The relevant provisions of Article 300 shall apply.⁹

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.
5. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on services and intellectual property insofar as they are not covered by these paragraphs.¹⁰

Apart from laying down these major principles, the wording of Article 133 is skeletal. It contains virtually no guidance as to how its provisions are to be implemented. Thus paragraph (1), which is unaltered from the original Article 113 of 1957, contains a generalised reference to “commercial policy” which can be read as implying a broad coverage for that policy. From the start however the Article was interpreted in the spirit of the (non-exclusive) list of illustrations included in its paragraph (1), as being restricted to trade in goods and related matters. Over the years, as international trade became more complex and trade negotiations in the GATT (now the WTO) embraced an increasingly wide range of topics, the common commercial policy has been much extended. It now covers matters such as industrial standards, customs procedures and the trade aspects of agricultural policy, as well as most international services trade and the trade-related aspects of intellectual property protection. This process has been reinforced by a series of decisions of the European Court of Justice (ECJ), beginning in 1971, which have extended the exclusive rights of the Commission in external trade negotiations to cover policy areas where the Community has adopted (or has the right to adopt) internal regulatory regimes in matters such as financial services.

⁹ Article 300(2) provides that the Council is responsible for deciding on the conclusion of international agreements, although normal practice is for the Commission actually to sign on behalf of the Community.

¹⁰ This obscure-looking provision was added by the Treaty of Amsterdam. It was a compromise solution to a bitter dispute between the Commission, which had demanded to have exclusive negotiating rights under Article 133 in relation to trade in services and the trade-related aspects of intellectual property rights, and the member states who had refused that demand. Following Amsterdam international negotiations on these items thus remained a matter of “mixed competence”, though the Council was empowered by unanimity to activate Article 133(5), and so to confer exclusive negotiating rights on the Commission, without recourse to a formal Intergovernmental Conference. In fact the issue was raised during the negotiations which led up to the Treaty of Nice of 2000. Following Nice (which at the time of writing has yet to be ratified) Article 133, including its provision for qualified majority voting, has been extended to cover trade in services (except, on the insistence of France, trade in cultural and audio-visual services).

These days therefore the common commercial policy and its principle of central negotiation cover a far wider range of trade-related issues than was envisaged by the six founder members in 1957. The resultant burden of analysis and policy co-ordination is heavy. The staff and the procedures to cope with it have expanded commensurately, both in the Commission and in member states' governments. Broadly however, and with the exception of the dispute over competence reflected in Article 133(5) and described in footnote (9), both Commission and member states work easily within the long-established framework of the common commercial policy.

Article 133(3) establishes a "special committee appointed by the Council to assist the Commission" in the conduct of international trade negotiations.¹¹ Reflecting the fundamental importance of the common commercial policy, this committee was the only operational body, apart from the major institutions of the Council, Commission, ECJ and the European Parliament (originally called the Assembly), to be individually specified in the original Treaty of Rome. The Treaty wording contains no guidance as to how the Committee should be constituted or operate. Its responsibilities, structure and procedures have evolved over 40 years as a result of pragmatic decisions which were politically and operationally convenient to both the Commission and the member states.

The Committee comprises trade policy officials of all the member states, sitting under the chairmanship of the current Presidency country (which is supported by the General Secretariat of the Council). The Commission attends to inform, advise, and submit policy and operational recommendations. Legally the Committee's role is only consultative: it can express an opinion, but not vote or take a formal decision. Article 133 specifies that once the Commission has made recommendations to the Council for an international trade negotiation, and once the Council has instructed the Commission to open negotiations, the Committee must then be consulted by the Commission during the course of negotiation. The intention is to ensure that as far as possible the eventual results of a negotiation, when submitted to the Council for approval, will be acceptable to the Member States.

Over the years, the Committee's practical role has developed far beyond this limited consultative function. Since it consists of the national trade officials of member states, who are generally responsible for briefing their ministers when trade decisions have to be taken by the Council, its opinions are unlikely to be overturned at the Council level.¹² Thus although the Commission has the exclusive legal right under Article 133 to make policy proposals on trade, it suits everybody for the Commission to work with the Committee in the development of trade policy proposals before they go to the Council. Member states use it to draw the attention of the Community as a whole to trade problems which worry them. As the international trade agenda has so greatly increased in scope during recent years, the Committee has been supplemented by expert groups which operate at least nominally under the Article 133 umbrella and handle more

¹¹ For a full description of the constitution and operation of this committee, see Michael Johnson, *Op. cit.*

¹² The writer cannot recall any occasion during the last 15 years when this happened.

technical issues such as trade in services, textiles policy and the trade-related aspects of environmental policy.

Where the Council needs to take formal decisions on trade matters, such as to support the launch of a new negotiation in the WTO, or to take action in an important international trade dispute, these decisions are referred to the General (or Foreign) Affairs Council.¹³ That Council meets only once a month and always has a very crowded agenda, so that even when trade issues are urgent there is generally no prospect of early or detailed discussion at ministerial level. It has therefore become the accepted (though unconstitutional) practice for a position or opinion which has been agreed by the Article 133 Committee to be treated as though it were a formal decision of the Council. This means that the Article 133 Committee wields great authority over the Community's external trade policy.

Initially the Committee consisted only of the most senior trade officials of the Member States (known as the Full Members, or *Titulaires*), advised by the Commission and the Council Secretariat. As a result of the expansion of the international trade agenda beginning in the 1970s, and the plethora of detailed and operational trade issues which have to be dealt with in addition to policy, the Committee now meets at two levels. The overall framework of trade policy, together with occasional specific items which are particularly contentious between the member states, is settled by the Full Members who meet monthly. Detailed and operational issues, together with the preparation of policy decisions, are considered by a lower-level committee known as the Deputies which meets weekly, and where necessary by the *ad hoc* specialist committees which operate within the framework of Article 133.

There are highly-developed procedures, these days depending largely on electronic transmission, for the distribution of papers between the Commission, the Council Secretariat and the member states, all of whom have developed their own internal machinery to prepare and co-ordinate their positions on the issues which arise.

In such an intensive system there is a heavy premium on good personal relations. Trade officials from the member states and the Community institutions, meet regularly and can get to know one another very well. Mutual sympathy and understanding are essential to the processes of lobbying, alliance-building and negotiating trade-offs which accompany any significant debate on policy. The formal debates in the Committee are shadowed by a constant process of bilateral discussion, *ad hoc* alliances between member states, telephone and E-mail exchanges, and visits to capitals.

¹³ Several times during the life of the Community attempts have been made to set up a separate Council of Trade Ministers, but this has always been frustrated by the Foreign Ministries of member states, who regard trade (not unreasonably) as an important element in international political relations. The most that successive Presidencies have been able to achieve is an occasional informal meeting of trade ministers when technical trade issues need concentrated discussion.

Although transitional arrangements may be negotiated for new EU member states to adapt their external trade regimes (such as tariffs) to Community policies, acceding members are bound immediately on accession by the common commercial policy. This means that those which are currently negotiating for membership must be ready on accession to participate fully in the policy-making and operational activities of the Article 133 Committee, including the informal exchanges which surround its formal work. They will need, in their own interests, to develop efficient internal arrangements to co-ordinate their national input to the policy so that it can be effectively deployed.

Basic trade policy orientations of Member States

While the impetus for establishing common European institutions, from 1950 onwards, was political, its earliest manifestations took the form of economic co-operation. The original Treaty of Rome rested on a policy compromise between the two dominant members of the original Six, between Germany's demand for a commitment to open industrial markets at home and abroad, and France's insistence above all on preserving its agriculture. In fact the contrast of interests between Germany and France was never quite so stark: Germany also had vociferous small farmers demanding protection, while in the 1950s France was rapidly rebuilding its industrial sector. Nevertheless the initial compromise established the pattern, or at least the conventional assumption, which divides Community member states into one group of liberal-trading northerners, led by Germany and the Netherlands (and later joined by the United Kingdom, the Scandinavian member states and Austria); set against a more protectionist southern group, consisting mainly of France and the Mediterranean members, which was concerned above all to maintain protection for Community agriculture and textiles.

This analysis has had some validity as a rule of thumb for predicting how individual countries might react to this or that trade proposal; but of course the position was always more complex. National interests and positions change over time (for example, the United Kingdom in the 1980s and France in the 1990s both switched from a strongly anti-Japanese position to a policy of positive economic co-operation with Japan). Ireland and Spain, both poor and largely agrarian economies at their respective times of accession, both made the development of high-technology industry and the attraction of inward investment their leading priority. Even countries with liberal trade policies like Germany and Denmark have had difficulty in facing down the protectionist demands of their farmers. Individual member states do not always live up predictably to their "liberal" or "protectionist" labels.

Contrary to much public and international perception, the overall trade stance of the Community tends to be liberal. There are of course glaring exceptions. The most obvious is the Common Agricultural Policy (CAP), which for thirty years has usually been reformable only in response to an internal financing crisis rather than to economic logic or to pressure from trading partners.¹⁴ Another is the Community's use of anti-dumping measures, particularly against Asian and Eastern European countries, in a way

¹⁴ At the time of the GATT Uruguay Round negotiations these three factors for once coincided, so that the internally-driven "MacSharry" reforms of 1992 to the CAP enabled the Community to endorse the modest but useful international agricultural trade reforms which were agreed in 1994.

that is widely seen as aggressively protectionist. On the other hand some policies that are seen by trading partners as protectionist rest on motives which are not in themselves disreputable or protectionist. For example, the Community's much-condemned quota regime for banana imports derived from a genuine concern for the position of banana producers in poor producing countries with which member states had close, often ex-colonial, links; while the Community's ban on the use of hormone growth promoters in beef (which effectively stopped imports of hormone-treated beef from the United States and gave rise to a notorious trade dispute that has now lasted for 15 years) arose in the early 1980s from a public outcry in member states about the abuse of hormones.

Otherwise, and particularly now that the WTO has much more stringent dispute settlement provisions than was the case under GATT, the Community broadly abides by its international obligations. Its formal stance that the agenda for an eventual new round of WTO trade negotiations should be comprehensive, with no elements ruled out *a priori*, is designed at least partly to accommodate, not to say fudge, the policy differences between member states in contentious areas such as agricultural reform and policy on audio-visual products. However it also reflects a conviction within the Commission, and accepted by the member states, that the only hope for significant further world-wide trade liberalisation is a broadly-based package of agreements offering real advantages to all participants.

The Treaty of Nice, 2000

This is not the place for detailed discussion of the reforms negotiated during the Intergovernmental Conference (IGC) which culminated in December 2000 in the Treaty of Nice. As adopted by the European Council meeting at Helsinki in December 1999, the IGC issues included as main topics the size and composition of the European Commission; the weighting of the votes held by Member States; and the possible further extension of qualified majority voting. The re-examination of fundamental policies was not formally on the table, though the Helsinki agenda did not rule out further amendments to the Treaties which might be relevant to the functioning of EU institutions.

The issues of voting rights and structure and size of the Commission looked technical, but actually they called in question the fundamental political equilibrium of the Union: for example, whether in future every member state in the Union would retain the permanent right to nominate a Commissioner; and whether there might be a formal move towards an essentially two-tier Union in which a core group, perhaps based on the original Six of 1957, could choose to proceed faster than the rest towards full integration. The General Affairs Council agreed on June 13, 2000 to put the principle of closer co-operation between smaller groups of countries on the IGC agenda, thus ensuring that the most fundamental issues of the structure and working of the Union must be confronted.

As regards voting rights, the larger member states were concerned that in a further enlarged Union their interests could be swamped by the votes of smaller (and in the case of the candidates, much poorer) countries. That is why the reweighting of the existing vote allocation was on the table.

The Commission raised once again its desire to be exclusive spokesman for the Union on all external matters.¹⁵ Although on this occasion the Commission's approach was more circumspect than before, its ambitions for increasing the central authority of the Union (and of course its own authority) were still more far-reaching than anything which the member states would accept.¹⁶

In the event, the outcome of several days of notoriously hard-fought negotiation at Nice was that while under the new Treaty the member states which currently nominate two Commissioners will lose one of them, all member states will continue for the foreseeable future to appoint one. On the weighting of member states' votes, there were some marginal adjustments to the relative strengths of the existing members, while the candidate states were allocated votes, country by country, on a basis broadly equivalent to the existing member states with similar populations. The 12 candidate countries (not including Turkey) were allocated 108 votes, representing 31.3% of an EU total, once they have all acceded, of 345. By comparison they currently represent 22% of the total population of the 27 countries (EU-15 plus candidates). This disproportion in the eventual voting strength of the candidates arises not from any special generosity towards new members, but from the bias in favour of smaller member states which has always been built into EU vote allocations.

An additional safeguard in the interests of the larger member states was agreed, namely that if they wish they can insist that any majority decision must be supported by countries with at least 62% of the EU total population.

As already noted in footnote 8 above, it was finally agreed at Nice to extend the coverage of Article 133 and its associated decision and negotiating procedures to trade in services, though still excluding cultural and audio-visual services. The problems of splitting negotiating responsibility in the sensitive areas of services and intellectual property between the Commission and the Member States had been already apparent when the GATT Uruguay Round negotiations were launched in 1986. Since then operating compromises have been in effect, permitting the Commission to negotiate in the WTO on services and intellectual property as single undertakings, while recognizing (as the ECJ confirmed in its Opinion 1/94 on this issue) that the formal legal competence in these areas was shared with the Member States. The decision at Nice further to extend Article 133 was logical, even though the most currently sensitive areas of services trade are still excluded and subject to decision by unanimity, which allows one member state to block a decision which it opposes.

¹⁵ This Commission ambition was raised in the negotiations leading up to both the Maastricht and the Amsterdam Treaties and was firmly rebuffed by the Member States, although the Maastricht Treaty did of course make a significant move in the direction of central policy co-ordination through the incorporation of formal provisions on the Common Foreign and Security Policy.

¹⁶ In a speech at the Royal Institute of International Affairs, London, on 16 June, 2000 the EU External Affairs Commissioner Chris Patten underlined the need for much closer co-ordination both in the preparation and in the presentation of EU foreign policy, particularly in the face of enlargement; and for a central role for the Commission.

These decisions directly affect the acceding member states and the influence which they will be able to exert when they join the Union. Though they had no formal standing in the IGC, the candidate countries made their views on IGC-related issues clear. None argued for fundamental changes in the structure of the Union, but they demanded, in the words of a Hungarian representative, to be part of an efficient and democratic Union which fairly represents the views of the populations of Europe, and to be treated on a basis of equality with other member states of comparable size to themselves.

The outcome at Nice met these basic demands of the candidates. The relative voting strength which together they will eventually be able to exercise may affect the arithmetic of trade policy decisions in future, but whether such effects are significant will depend on whether they take a more or less liberal stance on trade policy.

Economic and trade policy priorities of the “first wave” candidate countries

Immediately on their accession the new member states will have to fit into the EU’s trade negotiating structures and procedures, as revised at Nice. This section discusses what their economic and trade policy priorities are likely to be, and what influence they may be able, or seek, to exercise over the common commercial policy. It concentrates on the six “first-wave” candidates whose accession negotiations opened on 31 March 1998, namely the Czech Republic, Estonia, Hungary, Poland and Slovenia, plus Cyprus¹⁷. Five of them share a decade of intensive reform of economies which were formerly centrally planned. Cyprus approaches EU membership with a long-established market economy.

In its Strategy Paper on Enlargement, published on November 8, 2000, the European Commission reported that virtually all of the 31 topic chapters in the accession negotiations had been opened with all the first-wave candidates, and that in some cases half of these had been provisionally closed (meaning that agreement on terms had been reached). Nevertheless all the hardest problems remain to be tackled, including a total of over 500 requests for special transitional measures, of which 340 relate to agricultural policy. There is therefore no firm date for the accession of any new member state. In its Strategy Paper the Commission stuck to its view that it should be possible to conclude negotiations with the most advanced candidate countries in 2002. Realistically, that means that none can actually accede before the start of 2004, even Hungary, which is commonly regarded as being the most advanced of the candidates. Accession for at least some of the second-wave countries, let alone Turkey, may be delayed until 2010 or even later. The state of development of all the first-wave candidates – except for Cyprus – also still falls so far short of the existing EU, and the process of adapting the national laws of the Central and Eastern European (CEE) candidates to EU law (“approximation”, in the jargon) is so complex, that there may in the end be no reliable empirical basis for judging when a particular candidate is “ready”. The Council of Ministers may have eventually to take political decisions that the time is ripe for certain candidates to accede.

¹⁷ Negotiations with the “second wave”, namely Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia, opened on 15 February 2000 and are not advanced enough to permit assumptions about the policy stance of these countries when they do eventually accede.

The accession of new member states is legally and administratively disruptive because of the adjustments – to the budget, voting rights, language provisions, procedures, staffing in all the institutions – which have to be made every time. Consequently it has been the practice (with the sole exception of Greece in 1981) to admit new members in groups. It is clearly impracticable for the current candidates, whatever their individual state of readiness, to be admitted singly, or even in groups of two or three, as they are judged to be ready. Taking into account the two waves of candidates, this could imply as many as four or five accession events in less than a decade. It may therefore be necessary to accelerate as far as possible negotiations with those second-wave countries (Latvia, Lithuania and Slovakia) who are more advanced in the reform process, and to work on the basis of the accession of two, or at most three, groups between now and about 2010. While this might bring forward accession for some of the second wave, it could also delay the accession of one or two of the first-wave group beyond their current aspirations.

The negotiations focus mainly on the position of the candidate countries in relation to the internal law, policies and procedures of the Union. Until the negotiations of individual candidates are much nearer to a conclusion, no-one has seen any point in preparing actively for their participation in external policy procedures. The assumption is that new Member States must accept those mechanisms as they will stand following ratification of the Treaty of Nice.

General trade policy orientation

The first-wave CEE candidates have all been undergoing intensive economic and institutional reform throughout the decade since the end of Communism, under the guidance of the IMF, World Bank, EBRD, OECD (of which the Czech Republic, Hungary and Poland are members), and of course the EU, with which all have bilateral “Europe Agreements” providing for mutual trade liberalisation on a basis which is weighted in their favour. All are adapting their laws to conform with EU models and standards, so as to meet the Union’s demand that they should be in a position upon accession to implement its legal *acquis* in full. All have redirected the bulk of their external trade towards the EU, which now accounts for more than 60% of the trade of the Czech Republic, Estonia and Hungary. With the progressive removal of trade barriers under the Europe Agreements, their economies are increasingly integrated with the Union.

Inevitably the process of economic and institutional reform has gone ahead at different speeds, and sometimes jerkily, in the different CEE countries. They do not present a uniform picture (this is hardly surprising, given that there are still marked differences between the economic and social structures of the existing EU member states). Privatisation of formerly state-owned industries in the Czech Republic is expected to be completed by 2002, and it is substantially complete in Estonia and Hungary. State holdings are still important in some sectors of Hungarian industry, though Hungary has successfully attracted much inward investment, particularly in the vehicles and high-technology sectors, so that multinationals now play a significant part in the Hungarian economy. Significant, though slower, progress with privatisation has been made in Poland, but in Slovenia the process has lagged and there are problems arising from the

short supply of land and from restrictions on the purchase of land by foreigners, which have chilled off the flow of necessary inward investment.

As regards wider economic reforms, Estonia opted immediately on independence in 1991 for a drastic programme of economic liberalisation and privatisation, such that in the context of its accession negotiations it has actually been required by the EU to reimpose tariffs on a number of agricultural imports from non-EU countries. Poland too is in some sectors now reaping the benefit of its “big bang” removal of economic controls in the early 1990s. Hungary was in the forefront of economic reform, beginning well before the ending of Communist government, and is now looking to the development of a dynamic small and medium enterprise (SME) sector to provide a growth engine as the flow of inward investment tails off from its initial levels. In the Czech Republic the economic reform process stumbled for a time over international concerns about the extent of corruption in the Czech economy; while Slovenia has been taking a deliberately gradualist approach to reform, reflecting its sense of being a small mountainous country precariously perched on the edge of Europe. The sensitivity of certain economic sectors such as steel, food processing, footwear and textiles and, of course, agriculture, leads Slovenia to seek unrealistically long transitional periods after accession for its economic adaptation.

History dictates that some of the CEE candidates are also seeking in their negotiations to preserve certain past trading relationships which still have economic, political, or even emotional, importance for them. Thus Hungary seeks special terms in its accession agreement for continuing trade relationships with former COMECON partners, Slovenia has asked for a transitional period of no less than 15 years for its free trade agreements with Croatia and the Former Yugoslav Republic of Macedonia, and the Estonians requested (but unsuccessfully) special recognition of their Free Trade Agreement with Ukraine.

While the economic reform process is in no case complete, the five CEE first-wave candidates are nevertheless likely to join the EU with much more open economies than was the case with Portugal and Spain in 1986. Both those countries, although they were formally market economies, needed lengthy transitional periods after accession to phase out a wide range of trade restrictions which had been imposed during their periods of dictatorship. Equally the wrench which has already taken place in the CEE countries’ trade from an eastward to a predominantly westward direction, and their quest for inward investment (most successful in Estonia and Hungary), implies an open economic stance, which will be further reinforced by the process of approximation to EU law.

The consequence is that with the principal exception of agriculture, which is discussed below, and subject to certain individual priorities which are also separately discussed, the Czech Republic, Estonia, Hungary and Slovenia all expect to be at the liberal end of the Community trade policy spectrum. Poland is a different case, in that apart from its difficulties over accommodating to EU agricultural policy, which are quite the worst among the first wave, it has continuing problems with obsolete and uncompetitive heavy industries for which there are vociferous demands for protection, further fuelled by its

current €12 billion trade deficit with the EU. Equally, there is an atavistic (though in the historical context understandable) resistance to any perceived foreign takeover of Polish industry. This also acts to deter the much-needed inward investment.

On the EU side, the essential preoccupation of Commission negotiators (and of the member states, in so far as they have focused on the details of negotiation at all) is that acceding countries must implement the Community *acquis* as fully and as quickly as possible. As noted above, the issues that arise in negotiation mainly relate to participation in the EU's internal procedures and law. The EU side's main external policy concern is that at the point of accession the economic terms should not entail significant increases in the external protection of the acceding countries such as to require a complex negotiation in the WTO, under GATT Article XXIV:6,¹⁸ of compensation for other trading partners whose trade would be adversely affected by increased entry barriers in the acceding countries. Negotiations with other GATT trading partners (mainly the US) for compensation under Article XXIV:6 lasted for several years after the accession of Spain and Portugal in 1986, and the EU is anxious to avoid that this time. Efforts are being made to reduce the risks by aligning the candidate countries' tariffs as far as possible on the EU tariff before accession, and by co-ordinating their trade policies and procedures with those of the Community in advance. It is not at present expected that the first-wave accessions will create difficult problems of trade compensation under WTO rules, except perhaps in the always sensitive case of agriculture (see below).

Agriculture

Agriculture is predictably one of the hardest topics in the current round of enlargement negotiations, although it is not uniformly difficult for all the first-wave applicants. Cyprus anticipates no special problems, expecting to ally itself with the stance of the existing Mediterranean member states as regards the CAP treatment of Mediterranean fruit and vegetables. Difficult issues arise however with the CEE countries, arising essentially from the budgetary ceiling imposed on Community agricultural spending by the *Agenda 2000* reforms which were agreed in March 1999. This decision aimed to stabilise total CAP spending at an average of €42.5 billion annually in the years 2000-2006. Additionally it provided for a significant shift away from classic price support schemes towards income support for farmers which is decoupled from production, to compensate them for price reductions under the CAP. The total agreed level of spending represents little or no effective reduction from recent levels. However this level of CAP spending, and whatever level is agreed for the years after 2006, will also have to cover spending in the new member states as they accede. Meanwhile the existing member states are unwilling to accept any reduction in their own CAP receipts. The result is that the candidates, who have already had to accept the exclusion of agriculture from the

¹⁸ Articles XXIV:5 and 6 require that when a customs union is formed or enlarged, the resultant level of external trade protection must not be greater than the previous level in the constituent members, taken together. If protection is increased, compensation in the form of tariff reductions or other improved market access must be negotiated with other WTO trading partners which are adversely affected by the increase. Article XXI of the WTO General Agreement on Trade in Services (GATS) contains a so far untried provision which could have a broadly similar effect in relation to services; though in practice this is unlikely to be a problem since the candidates are all likely on accession to have to adopt more liberal regimes for trade in services.

concessions which they receive under their Europe Agreements, have been told that when they accede they will not receive parity of treatment under the CAP. The Community's justification for this discriminatory treatment is that the extra decoupled payments are to compensate EU farmers for price cuts which they have suffered as a result of *Agenda 2000*, and that since new member states will not have suffered the same price cuts, they cannot expect to benefit from the compensation.

Unsurprisingly the CEE applicants fiercely resist this position, on the ground that in agricultural policy at least it would create the sort of second-class membership which on principle they reject. This is more than just a practical administrative issue. A Hungarian official told the writer that if no more than second-class membership was on offer, that would destroy the political case within Hungary for accession. A senior EU official commented that the agricultural support issue was being "dodged" by the Community at the current stage of negotiations, but that it would have to be confronted and resolved before terms could be agreed with any of the applicants.

Agriculture is not equally important for all the first-wave applicants. Most sanguine about the prospect of being able to compete successfully is Estonia, which abolished tariffs and most agricultural support after independence, and which as already noted had to reintroduce a number of agricultural tariffs in 2000 as part of the process of approximation to the EU tariff. Estonia also lays much stress on keeping open, or reopening, some at least of its former trade links to the East, particularly with Russia and Ukraine, in which agricultural produce would presumably continue to be the major element.

The Czech Republic also attaches relatively less importance to agricultural issues. Agriculture accounts in its case for only 2% of GDP and 4% of the workforce respectively (both proportions are close to the average for the existing Community). Nevertheless there is undeveloped agricultural potential in the Republic, and while the priority of the Czech nation is to secure EU accession as quickly as possible, this does not rule out the possibility of later tensions as, once within the Community, it turns its attention to agricultural development.

Hungary shows a greater interest in agriculture, noting that by July 2000 the entry into force of the second stage of its Europe Agreement and the implementation of the "zero-zero" agreement between the two sides (under which Hungary abolished quota restrictions on agricultural imports from the Community while the Community abandoned subsidies on exports to Hungary) would effectively have liberalised two-thirds of bilateral agricultural trade. The Hungarian government is examining further Commission proposals, pending accession, for "free trade within a quota system". Hungary is the only applicant country to have a surplus with the Community in agricultural trade, which leads Hungarians to be relatively confident about their ability to compete within the EU, and about the country's potential for further development of agriculture. Nevertheless Hungary is adamant that the current levels of CAP support are part of the EU *acquis* just as much as the rest of EU law which it will have to implement

on accession, and that as input prices for Hungarian farmers are similar to those in France or Germany, there is no case for applying different support levels to Hungary.

Slovenia has a small agricultural sector (4-5% of GDP and about 5% of the workforce) but it is essentially mountain agriculture, like that of Switzerland and Austria, and is protected by high internal support prices and high tariffs. Because of the lack of arable land, staples such as cereals have to be imported, but there is a highly-developed and competitive food processing industry. Slovenia accepts that in the end liberalisation will be unavoidable, but because Slovenian agriculture is not competitive with that in the Community, a substantial transitional period is sought. In addition, Slovenia argues that it should not be required to liberalise fully the import of certain products. The prospect of discriminatory treatment within the Community in the matter of agricultural support is much resented.

By far the most difficult issues on agriculture arise in the case of Poland, leading in April 2000 to an actual suspension of the accession negotiations. In a country 40% of whose population is still rural, 25% of the workforce is in agriculture. However agriculture accounts for only 5-6% of Polish GDP and this GDP proportion has halved since 1990, indicating both that farmers' incomes are only a fraction of those elsewhere in the economy, and that they have also declined steeply during the last ten years.

There are a number of particular problems in Polish agriculture. The average farm size is only 7 ha. and much of the available land is subdivided into very small units of no more than 3-5 ha., which cannot be competitive either within Europe or in wider international trade and are not intensively cultivated. In fact, the Polish tax system distorts the agricultural sector by providing tax exemptions for farmers which are available to anyone with a small parcel of land that can be described as agricultural. This means that there is little incentive for such small operators to consolidate into larger and more competitive units. The process of consolidation and rationalisation will be slow as well as costly, and any prospect of Polish agriculture's being able to compete on the world market with the United States, Australia or New Zealand is a long way off.

There is growing resentment against competition on the domestic market from agricultural imports from the EU, especially those which receive EU export subsidies. The appreciation of the zloty since 1990 has further reduced the competitiveness of Polish agriculture, raising export prices and causing a surge in imports. As a consequence Poland moved in 1998, and again in 2000, to increase a number of agricultural tariffs, which were applied at rates significantly below Poland's WTO bound rates, to the bound rates. Poland argues that while the EU has a battery of CAP measures with which agriculture can be supported, Poland's only effective measure is the external tariff. The EU side, while itself continuing to pay export restitutions on exports to Poland, objected on the grounds that such a tariff increase, although not contrary to Poland's WTO obligations, would nevertheless breach the "standstill" requirement in its Europe Agreement. After bitter exchanges Poland reduced the number of products on which tariffs were increased to only a few: some dairy products and sugar and, in 2000, malt and some grains.

Underlying these disputes is a sense that if CAP price regimes were to be fully applied in Poland, food prices to consumers would inevitably rise while more competitive EU suppliers would use the Polish market to unload European surpluses. On the other hand even if full CAP benefit payments were available to Poland (which is not currently on offer), the many small Polish farms would be unlikely to benefit significantly from them since such payments relate to area and headage. There are also serious concerns that if Polish agriculture is allowed to contract, there could be damaging social and environmental consequences. Of more than 3 million ha. of farm land which is currently set aside, most does not benefit from support payments and has effectively been abandoned.

Therefore a large proportion of the Polish population, and particularly the small farmers, sees integration into the CAP not as a development opportunity, but as a weapon that would be turned against Polish interests. This sense of vulnerability means that there is strong resistance to EU membership among the rural population, who question the value of accession should the impact on agriculture turn out to be as negative as they currently expect, and especially if Poland were denied the full extent of CAP benefits while having to pay input prices at EU levels. From the point of view of agricultural policy there is a serious debate in Poland between those who argue that the terms currently on offer are so unattractive that it would be better to delay accession, and others who argue that because of the wider political and economic benefits of accession it would be better to make the best of a bad job on agriculture, accept the best terms that can be negotiated, and then to work from the inside to improve Poland's position.

Special policy priorities

The overriding concern of all the first-wave CEE applicants is that through full membership of the EU they should consolidate their return to democracy within a unified Europe, and advance their economic and social development through access to EU resources and aid. There is no indication that the Czech Republic, Hungary or Slovenia will seek to bring a political "big idea" to EU policy, and certainly not to the common commercial policy, other than to work as effectively as possible for their own interests within the Union.

Poland's special policy priority is of course agriculture, which has been discussed above. Whatever terms are eventually agreed for Polish accession and integration into the CAP, Poland's interests will join, and sometimes collide, with the agricultural policies of other member states. Continuing tension and disputes may be expected, mainly in regard to internal agricultural policy. In international trade relations, where they concern agriculture, Poland will defend the CAP as fiercely as any existing Member State.

Estonia is the only CEE candidate which articulates a special political interest in accession. Despite its tense relationship with Russia, which still applies high and discriminatory trade barriers in retaliation for Estonia's break with the Soviet Union, Estonia looks ahead to a situation where it can rebuild and further develop its position in the markets of Eastern Europe, including Russia. More broadly it sees itself, building on

the influence of its own Russian minority population, as an important economic and political bridge between an enlarged European Union and the states of the former Soviet Union. This is not a merely moralistic or altruistic stance. In the wake of its post-independence dispute with Russia Estonia developed close political and economic relations with Ukraine, with which it has a full free trade area agreement. It is keen both to preserve this bilateral agreement once it is within the EU, and to use it as a lever to encourage the EU to carry out further trade liberalisation with Ukraine from which Estonia will be well placed to benefit.

Conclusions – role of the first-wave candidates in the common commercial policy

We need to consider separately the policy and the operational impacts of the accession of further new member states.

To take the policy issues first, apart from the case of agriculture there is little sign that the first-wave CEE applicants would try to skew the general commercial policy of the Community in a protectionist direction. They express no interest of principle in doing so. Whether they could do it in practice depends on whether issue by issue they could use the EU's revised voting arrangements to muster a qualified majority in their own support. In any event, five of the six first-wave applicants, and ten out of the twelve active candidates, are small. Even if all twelve took a protectionist stance, there is no arithmetical prospect that they could link with the existing more protectionist group to achieve the total of 255 votes which will eventually be needed to bring about a standing protectionist majority. More pertinently, the CEE applicants have all undergone a decade of intensive economic reform and liberalisation in collaboration with major international economic institutions. They will enter the EU with economies that have already been realigned on market principles, and with social and economic legislation that in all material respects will have been aligned with that of the EU.

Representatives of four of the applicants explicitly said that they expected their countries to be generally within the liberal camp. This does not rule out some tensions as new members simultaneously liberalise and try to develop their service sectors. Additionally, as the work of Francois and Rombout has suggested, there may be a stimulus for the more highly industrialized of the candidates (the Czech Republic, Hungary and Poland), once inside the EU, to take advantage of existing EU instruments and policies for anti-dumping in an attempt to protect their more traditional industrial sectors. Poland certainly has wider problems over industrial competitiveness and reconstruction, in addition to the agricultural issues discussed above.

Even so the main area in which Poland, and to a lesser degree some of the other applicants, will seek to exercise influence over commercial policy is agriculture. Whatever its eventual status within the CAP, Poland is likely to have secured enough benefits for its farmers, and will still face enough continuing problems of agricultural structure and competitiveness, to line up with those member states who are strongly protective of the CAP in international negotiations. In this area Poland could exert considerable political clout: it is comparable in population to Spain, and almost twice the

size of the other five first-wave applicants put together. Available evidence suggests that with the exception of Estonia, and maybe of the Czech Republic, these others may also gravitate towards a more protectionist stance on agriculture, though because of their smaller size and lesser voting power they are likely to exercise no more than a marginal impact on EU policy even in this area.

Operationally, the effect of enlargement will be to make the working of the Article 133 Committee (like other EU institutions) more cumbersome. Already with the 15 existing member states the processes of debate and decision within the Committee on a complex issue can take an inordinate time. The arrival of up to a dozen new recruits who are anxious to make their mark will, even if they accede in two or three groups over a decade, make those processes even harder.

This will have two immediate operational consequences for the Committee, and for the common commercial policy. First, the European Commission will find its position further strengthened in the face of the sheer number of member states which will then participate in trade policy formation, all of them bringing to the process national interests which will sometimes conflict. Second, the detailed discussion of technical issues, such as the impact on trade of industrial standards or of the regulation of financial services, will become even harder and more time-consuming. This means that there will be further proliferation of *ad hoc* or standing technical committees which work nominally under the aegis of the Article 133 Committee, but which in practice the Committee already has neither the expertise nor the time to supervise effectively. If the position of the Article 133 Committee is downgraded this necessarily means that the Council of Ministers, which is ultimately responsible for all decisions on trade, and whose members are briefed by the officials who attend 133, will find its own grip on the regular conduct of trade policy further reduced. The Community needs to give serious thought to the introduction of new procedures to tighten and co-ordinate the control of the Council and the Article 133 Committee over the full range of trade policy discussion and decision-making within the Community.¹⁹

¹⁹ For some suggestions, see Michael Johnson, *Op. cit.*, Chapter 7

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