

## The Single Market, Political geography and Anomalies<sup>1</sup>

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### Introduction

On 1 January 1993, the European Community's single internal market came into force. Article 8a of the Treaty as amended by the Single Act defines this as an area without internal frontiers, in which the free movement of goods, persons, services and capital is ensured, effectively creating a single space. It required years of effort to put the legislation into place, and even by August 1993 work remained to be done.

As previously noted in the *Boundary and Security Bulletin (April 1993)* and in the EC's own documentation, the situation has been rather more complex than the member states or the Commission had foreseen, and the outcome by the middle of 1993 on internal and external border controls was far from decided. Work remained to be done, too, on the other freedoms - movement of capital, goods and services.

But one particular set of obstacles to the creation of a single internal market has been overlooked, partly because it is the result of a series of anomalies that do not seem to amount to a single problem. The EC includes within its border a number of territorial and customs oddities which do not fit neatly within the schemas decided by the Community. Beyond its frontiers, countries have links with other states and territories which have had to be accommodated. European political geography, even in the west of the continent, is not as uniform and neat as the policy makers might perhaps like. This was addressed by the Court of Auditors of the EC in a special report released in April 1993.

The problem comes about mainly because the territorial scope of the European Community and the geographical area within which Community customs rules apply are not congruent. (The territorial scope of the Community is defined in the Treaty, acts of accession and various protocols). Some areas are part of the Community and not the customs territory; others are part of the customs territory and not the Community. There are also

special arrangements, inside and outside the customs territory, with some regions.

These situations can be thought of in three main groups:

### I. In the customs territory but not in the Community

**Channel Islands.** Population 130,000, area 194 sq km. The Channel islands are not part of the Community, even though Britain has responsibility for their external relations, but are part of the customs territory.

**Isle of Man.** Population 64,569, area 572 sq km. An independent territory of the Crown, the Isle of Man has a special relationship with the UK and operates exactly the same customs laws.

**Jungholz and Mittelberg (Kleines Walsertal).** Both of these are part of Austrian national territory, with populations of 282 and 4,968 respectively. The former is virtually surrounded by German territory, which was recognised in the Customs Union Treaty of 1868 between Austria-Hungary and Bavaria. The latter is inaccessible from Austria, and was affiliated to the customs union of the German Reich in the German-Austrian treaty of 1890.

**Monaco.** Population 25,000, area 1.5 sq km. The Principality of Monaco is a sovereign state on the Mediterranean coast of France. The customs convention signed between the French Republic and the Principality of Monaco of 1963 makes France responsible for customs control, but it returns a percentage of the revenue.

**San Marino.** Population 22,000, area 61 sq km. This twelfth century republic, entirely surrounded by Italy, is an independent state in the Apennines, but has been part of Italian customs territory since 1939.

## II. In the customs territory with special arrangements:

**Pays de Gex and Haute Savoie.** Area 640 sq km. These areas together constitute a free zone, though not one within the meaning of a free zone as established by the EC and hence they constitute an anomaly. Following the treaties of Vienna (1815) and Turin (1816) both were established to create stability in the frontier region with Switzerland, by allowing for Geneva's food supply. There is, in theory, a separate customs frontier between them and the rest of France, though in every other sense they are part of France and hence the Community. This involves some major administrative work for exports and imports, especially as regards the Common Agricultural Policy. The areas have their own duty-free rules. When the court visited Gex, no duties had been collected for twelve months. The inhabitants can purchase duty free cars and motorcycles. It is a particularly bizarre arrangement.

**Mount Athos.** An administratively autonomous part of Greece, part of both the customs territory and the EC, it has the status of a "*theocratic republic*" with certain tax exemptions and customs privileges.

**Alto Adige.** Population 886,898, area 13,598 sq km. Alto Adige became part of Italy after the First World War, and was given special trading status after the 1947 Treaty of Paris to facilitate commerce with the Austrian provinces of Tyrol and Vorarlberg.

**Valle d'Aosta.** Population 120,000. This Italian alpine province is a 'free zone', set up after the 1947 Treaty of Paris. Its purpose was to stimulate the local economy after the end of the war and the accompanying border changes.

**Gorizia.** Population 45,000. This zone was set up after Italy's border with Yugoslavia changed at the end of the Second World War. It now borders Slovenia. Imports are exempt from some levies and duties, in order to give relief to the population and stimulate industry.

## III. Not in the customs territory with special arrangements:

**Andorra.** Population 62,000, area 469 sq km. Situated in between Spain and France in the Pyrenees, Andorra is a sovereign state. It is neither a part of the Community nor - unlike San Marino and Monaco - part of the customs territory. It has a customs union with the EC, however. There are 40,000 foreign residents.

**Faroe Islands.** An autonomous region within the Kingdom of Denmark, with the status of a third country.

**Greenland.** An autonomous region within the Kingdom of Denmark, with the status of a third country.

**Heligoland.** Population 1,900. The island was transferred from Great Britain to Germany in 1890, and inherited certain customs privileges. About 465,000 tourists visit every year, and the island is dependent on them.

**Busingen.** Population 1,660. A classic enclave, Busingen is German territory but entirely surrounded by Switzerland. In practical terms it is part of Switzerland, and of Swiss customs territory.

**Campione d'Italia.** Population 3,000, area 2.6 sq km. An Italian commune, completely surrounded by Swiss territory, and like Busingen is regarded for customs purposes as part of Switzerland.

**Livigno.** This alpine valley has much closer links with Switzerland than with Italy, of which it is a part. Hence it is not considered part of the customs territory, and is almost like a third country.

**Ceuta and Melilla.** These two enclaves are part of the Kingdom of Spain, and hence of the EC; but not part of the Community's customs territory.

**Gibraltar.** As a European territory of a member state - Britain - Gibraltar is part of the EC, but not of the customs territory. It was ceded to Britain by the Treaty of Utrecht (1713) and became a Crown colony in 1830. It is the subject of a sovereignty dispute between Britain and Spain.

**Vatican State.** In addition to the 600 permanent residents, some 20,000 people stay in the Vatican

for study purposes or official purposes. As a sovereign independent state that is not part of either the EC or its customs territory, but entirely surrounded by both, its customs status is governed by an agreement of 1930 and it possesses certain customs and tax privileges including an elaborate system of duty free goods for permanent residents.

There are in addition, the report notes, the overseas countries and territories of the EC which also provide some anomalous situations.

**Britain:** Overseas countries and territories are Anguilla, Cayman Islands, Falkland Islands, South Georgia and the Sandwich islands, Turks and Caicos Islands, British Virgin Islands, Montserrat, Pitcairn, St Helena and dependencies, British Antarctica Territory and British Indian Ocean Territory. Not in the customs territory or in the Community.

**Netherlands:** Aruba and the Netherlands Antilles (Bonaire, Curacao, St. Maarten, Saba and St. Eustatius). Not in the Community or the customs territory.

**France:** Departments d'Outre Mer (DOMs): Guadeloupe, Martinique, Reunion and Guiana are departments of the French Republic by French law 46-451 of 1946. They are an integral part of the Community and its customs territory, just as if they were anchored off Brittany. Territoires d'Outre Mer (TOMs). Mayotte, St Pierre et Miquelon are territorial communities; New Caledonia and dependencies, Wallis and Futuna Islands, French Polynesia and French Southern and Antarctic territories are TOMs. They are not part of the Community or its customs territory, and are treated as third countries.

## Causes

As can be seen from the indications of area and population that have been given, these cases range from the trivially small to the quite large. Taken as a whole, a significant number of people, transactions and land area is involved in one way or another, though only a tiny percentage of the overall level of each in the EC. The situation is more interesting because of what it tells us about the Community. Anomalies are more common than might be thought; they come about from a variety of factors; and they can be dealt with.

The anomalies are a function of the diverse political and economic geography of Europe, more diverse than a quick scan of the map would indicate. In particular, they result from four main types of situation. Firstly, the existence of enclaves of territory of some states within that of others, in particular where member states and non-member states have common borders. Secondly, the presence of sovereign micro-states within the borders of member states. Thirdly, customs and tax arrangements negotiated at some historical point for broadly political ends - to stabilise border regions, for example. Fourthly, the existence of European colonies, possessions and territories outside the mainland.

## Costs

The economic significance of these cases for the single market is probably quite small. One of the principle concerns of the Court of Auditors in making its investigations was to see if any of these situations "*has a significant financial impact on the traditional own resources of the Community*" - in other words, the revenue the EC collects from tariffs. It concludes that there are some important anomalies, but none are crippling.

The report notes that Andorra and San Marino are tourist spots, and that many if not most of the goods they import are re-exported to the EC. These states collect money from import duties and levies, but the goods are re-exported duty free. Andorra and San Marino use a "*duty collected system*" and make 870 Ecu and 102 Ecus per head of the population each. The Isle of Man, Monaco and Mittelberg use a situation calculated on the basis of population size and consumption: they retain only 52, 48 and 48 Ecus per head of the population. This suggests to the Court that something is wrong.

Monaco's system is based on a coefficient that is supposed to represent the difference between the wealth of its citizens and those of France. It is set at 170 per cent, and has not been reviewed since 1963, something that both the Court and the Commission in its reply deem worthy of correction. In several other cases - notably Gibraltar - the Court criticised the situation as in some way legally anomalous. But the Court makes it fairly clear that its main

concern in broader, "A great deal of progress has been made in transforming the major part of the customs territory of the Community into an area within which there is a very high degree of certainty and uniformity concerning customs rules", it notes in the final conclusion to the report. And in the introduction, it says that "the single internal market ... requires a consistent customs union with a high degree of uniformity". In other words, it is the uniformity itself that concerns the Court, not just individual anomalies. Like all EC institutions, it is always alive to the dangers of fragmentation in policy-making.

## Implications

Will anything actually happen as a result? The omens are not propitious for an all-out assault on these anomalies. The prospect of almighty Brussels picking a fight with tiny Andorra would be just too tempting for critics of the Community. On the other hand, Andorra has said that it will apply for EC membership, which would - in time, anyway - correct the problem. The EC Commission notes in its reply to the report that some discussions are already taking place to iron out the creases, notably with Italy over San Marino.

Some of these problems are easily soluble, if the countries with exclaves in the EC or the countries containing EC enclaves become EC members. The Belgian exclaves in the Netherlands and the Spanish exclave of Llívia in France are not problematical because all four countries are members of the Community. Austrian membership of the Community would remove problems, and Austria is currently negotiating with the EC, though membership is far from certain.

Many of the problem areas involve the border with Switzerland, and arise because of Switzerland's historical evolution as a state. Switzerland, however, now seems unlikely to become a member of the European Community following rejection of the European Economic Area. In the future this may pose even more problems for the Community, especially if Austria does join. Switzerland will then be entirely surrounded by the EC, something that is already causing problems in the case of the EEA.

Politically, most of these problems are far from incendiary. Anomalous situations can cause

trouble when the EC acts to close them off, as was seen in the debate over German banana imports in 1992-3. By far the most problematic of the situations raised in this article is that of Gibraltar, where a dispute over sovereignty between Spain and Britain continues to hamper progress on the internal market, notably on a convention on external frontiers. Some EC decisions that impact overseas territories can be sensitive in Britain, France and the Netherlands - over imports or taxation, for instance. It is worth noting in parenthesis that most of what has been said concerns the customs territory; as the Commission notes in its reply, the 'fiscal' territory of the EC is different again.

Perhaps the main lesson to draw from the list of anomalies is the flexibility with which these situations has been dealt with. International conflicts and local instabilities have been dealt with by ingenious solutions that have often been long-lived. It is often assumed that Western Europe is the home of the geographically compact state, and that it is only in eastern Europe or the developing countries that enclaves and exclaves, for instance, are a geopolitical problem. If the former Yugoslavia, for instance, is to become an archipelago of states, lessons may be drawn from the way in which these problems have been handled within the EC.

## Prospects

Will the situations reported by the Court of Auditors disappear, or will they increase? To some extent, as noted above, accessions to the Community could reduce the list of difficulties. Norway's membership is very much in doubt; this is likely to cause similar problems to those caused by Switzerland if Finland and Sweden do become members.

There is a slim possibility that new areas within the Community will seek similar status, opting out of part or all of the requirements of Community membership or the obligations of EC law and generating new anomalies. The very fact that some of the anomalies make cash out of their situation makes it an attractive possibility, if a highly complicated one. The Danish island of Bornholm in the Baltic, for instance, contains a small but significant movement which wants independence from Denmark under the Danish crown, including

a similar status to Greenland or the Faroes.

It is not impossible that similar situations might occur with new member states joining the Community, some containing ethnic or regional groups that require special treatment, or that have existing benefits. The Aland islands, an archipelago that is part of Finland but Swedish speaking, may generate such problems, for instance.

More likely is that new types of anomaly will arise that generate similar problems for the EC, in different ways. The customs problems analysed by the Court of Auditors result from tensions between the assumptions of undivided sovereignty and the reality of international and legal fixes through the ages. As some countries of the EC start to reconsider internal arrangements in the light of the end of the Cold War and rising centrifugal tendencies, demands for greater local autonomy and independence may generate new paradoxes.

There is one particular special case that could see a rapid proliferation of anomalies. New accessions, as the EC knows to its cost, often lead to multiple compromises and negotiated settlements that accommodate sensitivities and traditional arrangements. If a Community state were to break up - with the resulting new states reapplying for membership - what would be the result? This might seem a distant prospect, but there is some evidence that the Commission has started to consider it.

Indeed, it has already happened to the Council of Europe, which having admitted Czechoslovakia then found itself readmitting the Czech republic and Slovakia, with the latter case particularly difficult. When Belgium is no longer a single state, when Catalonia wants independence, when the Northern Leagues want Italy broken up, what price the single market? Indeed, what price the European Community?

## Notes

<sup>1</sup>This article is based on a report by The Court of Auditors of the European Community entitled "*The Customs territory of the European Community and related trade arrangements, (observations pursuant to Article 206a (4) of the treaty)*", special report 2/93. All quotations sourced to the Court of Auditors come from this report.

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