Specificities of Switzerland's Relations with EFTA and the EEA

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EFTA 1960-2010
ELEMENTS OF 50 YEARS OF EUROPEAN HISTORY

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CHAPTER 6
Specificities of Switzerland’s Relations with EFTA and the EEA

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Introduction
This article deals with the specificities of the Swiss case in comparison with other EFTA States. It emphasizes the originalities more than the similarities between Switzerland and the other EFTA countries, not in order to stress that Switzerland is in any way more important than the others but to point out what is different about it.

When dealing with the issue of the relationship between Switzerland and EFTA and the EEA, we have to keep in mind that the real issue was always its relationship with the EC/EU.

Therefore it is important to briefly return to the key characteristics of the relationship between Switzerland and the EC/EU. To put it in a nutshell: a majority of Swiss citizens did not wish to join the EC/EU. Yet they refused to allow Switzerland to be marginalized.

The uniqueness of the Swiss case would have raised fewer eyebrows if this were a country which was isolated geographically. But Switzerland is totally interdependent with its European neighbours politically, demographically, economically, culturally and scientifically.

It is worth underscoring that Switzerland shares common borders with Germany, France and Italy, three founding EC States. It is situated at the heart of Lotharingian Europe, the very territory that is considered to be the birthplace and homeland of the European construction.

Additionally, the Swiss Confederation shares the languages, cultures, traditions and religions of these three countries. Demographically the area is totally intermingled as well.
Lastly, in economic terms, Switzerland has always been profoundly integrated in the EU. Today, approximately 60% of Swiss exports go to and close to 80% of its imports come from the Community market. About 43% of Switzerland’s direct investments are made in EU member nations. Swiss enterprises employ more than 850,000 people from EU countries.

All these facts should make it logical for Switzerland to join the EC/EU as a full-fledged member. Nevertheless it never intended to do so, except for 4 out of 7 members of the Federal Council for a couple of months in 1992. The country has always preferred intermediary solutions, a third path between accession and marginalization. The relationship towards both EFTA and EEA has to be understood in this context: as instruments of this third way.

1957-60. Creation of EFTA

Concerning the period from 1957 to 1960 which led to the creation of EFTA, we first analyze the underlying economic rationale for Switzerland’s position regarding European integration, trying to underline its specificities compared to those of other countries.

Then we deal with the negotiations around the creation of EFTA in order to assess the true role played by Switzerland.

Opposition to the EC membership from the business sector

In order to comprehensively analyze the deep-rooted causes of the Swiss reticence to accession to EC/EU, it would also be necessary to examine five themes which interact: (1) identity; (2) neutrality; (3) direct democracy; (4) federalism; and (5) economic distinctiveness. Due to lack of space, however, we limit our analysis to the economic dimension and especially the role played by the business sector.¹

Whereas in other countries, the business sector is usually part of the pro-EC camp, one of the peculiarities of the Swiss case is that the employers’ group was, and still remains, the most hostile in Europe to EC/EU membership. The Swiss business sector always argued that Switzerland has more to lose than to gain by joining the EC/EU and it would be wiser to stay out.

As a matter of fact, in the 1950s, the new EEC was strongly criticized for being protectionist, interventionist, bureaucratic, supranationalist, centralist and Jacobinist. Some critics went so far as identifying the Common Market as a socialist if not a Marxist enterprise. This was the case of the Head of Vorort of the Swiss Federation of Trade and Industry,² the influential Heinrich Homberger.³

In Switzerland, the introduction of the EEC caused strong reactions for logical reasons as that meant primarily the establishment of a market sheltered behind a common tariff which discriminates against third-country exports. Moreover, the creation of a common market by the Six was seen as likely to cause a collapse of the OEEC.

The arguments against joining this new Community were rational, as a membership would have increased tariffs against third countries, especially for a country like Switzerland where tariffs on average were much lower than those of the EEC countries.

Of course, opposition to accession first appeared in Switzerland among protectionist interests that feared that their privileges would be jeopardized. This is the case for certain overly-protected, cartel-prone and subsidized sectors. The watchmaking industry was doubly protected by agreements and contracts between enterprises and a federal statute; the paper, aluminium, cement, and even textile sectors were protected by high customs barriers. The Swiss economy was cartelized in the extreme.

Moreover, agriculture was almost entirely controlled by the state. Farmers benefited from the most generous support in all of Europe. They bridled at accession to the Common Agricultural Policy (CAP), adoption of Community competition law, and the re-
moval of non-tariff barriers. For quite a while, the aim of preserving a minimal level of agricultural self-sufficiency was linked to national defence and to the myth of the "Wahlen Plan" during the Second World War. Agriculture became a sacred cow in its own right.

But the truly original aspect of the Swiss case is that opposition also came from the most open sectors. This distinctive feature is due to the fact that a broad swathe of the international sector profits from the differences between Swiss legislation and that of the EC/EU. Generally speaking, multinationals, banks and insurance companies have turned Switzerland into a haven for "special" laws and feared a spiral of interventionist Community regulations that could jeopardize them. Bankers were convinced that banking confidentiality would be endangered in the event of accession.

Switzerland in the negotiations towards the creation of EFTA

We analyze the Swiss position in the negotiations towards the creation of EFTA based on approaches developed by numerous scholars. According to these, EFTA was preponderantly a scheme envisaged by British civil servants beginning in the summer of 1957. Its objective was to avoid a situation where the Six countries of the future EEC would make bilateral agreements with the “non-Six” or even worse, an agreement with only the Nordic Common Market. What became known as EFTA was not an instrument to torpedo the EEC. It can better be analysed as a defensive balancing manoeuvre.

Within this general context, Switzerland was not the most ardent supporter of EFTA. The idea of a limited preferential agreement among the “non-Six” European States was in contradiction to the fact that this country was sending almost half of its exports to countries outside Europe. Preferential groups were perceived as inherently protectionist.

As a matter of fact, it is important to stress that in 1959 Switzerland exported only 15.3% of its goods to the area of the future EFTA, against 39.9% to the EEC, and 44.8% to the rest of the world. As for imports, they were 12.7% from the future EFTA, with 60.2% coming from the EEC, and 27.1% from the rest of the world. Consequently, the main objective of Switzerland was to get free trade through the OEEC.

In the negotiations that led to the creation of EFTA, the primary goal of the Swiss government was to exert pressure on the Six by concerted retaliatory measures, for example an embargo on capital exports to the future EEC.

It was only British insistence on an alternative FTA that made the Swiss come round and support the EFTA project. Therefore the Federal Council did not show a high profile in the EFTA negotiations. Switzerland’s government and business community only passively accepted the EFTA concept as a kind of lesser evil, as a means of avoiding being isolated between two rival European trading blocs.

*The Swiss Schaffner as “father of EFTA”?

The idea has sometimes been put forward that one high-ranking Swiss civil servant was the true driving force in the creation of EFTA. In the Swiss historiography Hans Schaffner, who directed the Division of Commerce and thus Swiss European policy, is considered as having had a particularly key role. Schaffner is often labeled as the “father of EFTA”. Schaffner himself fostered the notion that by organizing the December 1958 meeting in Geneva it was actually he who initiated the creation of EFTA.

True, the Swiss management of the whole “non-Six” affair was entirely in Schaffner’s hands. He ordered that no written records be produced within the Swiss administration and that they be only orally reported to the Swiss Foreign Minister in the process of building up a front among the “non-Six”. The Ministry of Foreign Affairs had lost control over European policy long ago and was incapable of influencing the course of events.

To qualify Schaffner as the “father of EFTA” is nevertheless an exaggeration. Schaffner’s objective in December 1958 in Geneva was not to launch the creation of a limited Free Trade Agreement, but to torpedo any bilateral agreements with the EEC and to get the commitment of the Seven to a united stance against it.

When the issue of a Free Trade Association among the Seven was mentioned during informal conversation in Geneva, Hans Schaffner attempted to elude the issue mainly because he himself did not support such an objective. Moreover, he was not a Federal Councillor at the time and did not have the competence to launch any initiative on such an important political decision. The notion that Hans Schaffner was “the father of EFTA” cannot be sustained.

Despite the British encouragement the Swiss remained non-committal throughout the winter of
1958/59. Switzerland adopted a less negative stance only at the Stockholm meeting in March 1959.

The text of the agreement establishing EFTA was approved in late 1959 by the Ministers of the Seven. The agreement focused on the liberalization of trade in goods between the Member States of the Association. EFTA had the merit of fitting in with the three principles that govern Switzerland’s foreign trade policy: free trade, the autonomy of trade policy and trade universalism. Unlike the Treaty of Rome establishing the EEC, the Convention excluded any supranationality and any common external tariff, and limited the liberalization of trade to industrial products; and it had no political aspect. Moreover, the Swiss firmly insisted that EFTA was only one stage, a means for achieving free trade within the OEEC.

Switzerland’s insistence that the OEEC should remain the ultimate goal can well be illustrated by the discussions concerning the location of the EFTA headquarters. As its first choice, Switzerland paradoxically proposed Paris as the best place for the new organization in order to be closer to the OEEC. But France refused. And it is eventually Geneva that was selected.

1961-72. Attempt at association and free trade agreement

The early 1960s were not favorable for the Swiss objectives of strengthening EFTA as a means of the building up of a large free trade area within the OEEC. Already in 1960, Switzerland’s hope to revi-
talize the OEEC was weakened. That organization had been transformed into the OECD, opening up to non-European countries (US, Canada, Japan) and giving up its objective of the reduction or elimination of tariffs on a European scale. Consequently, that involved the disappearance of the function of EFTA as a springboard towards the OEEC.

Furthermore, on 31 July 1961, the United Kingdom, followed by Denmark, announced its intention to open negotiations for membership in the EEC. The British application caused a shock in Switzerland. Even if, to a certain extent, Bern had been warned earlier that year, the announcement altered the confidence in British commitments towards EFTA.

**Attempt at association with the EEC (1961)**

But at the same time, the old hope of a settlement between all European states could be reborn. The Federal Councillors Hans Schaffner and Friedrich Wahlen stated that Switzerland intended to seize the opportunity of these applications to reach an agreement with the EEC. The primary goal was to achieve a free trade agreement. But other options were considered. And the idea of a customs union which entailed the adoption of a common external tariff equivalent to the Common Market was not excluded.

On 15 December 1961, the Swiss Foreign Minister, Friedrich Wahlen, addressed to the EEC Council of Ministers a letter in which he asked for the opening of negotiations with the Common Market in order to "find arrangements compatible with the integral preservation of neutrality". The neutral countries within EFTA had discussed together the content of their respective letters. Let us note that Switzerland already strongly insisted on the possibility of contributing to the shaping of decisions within the Common Market in order to avoid having EEC policies imposed on it on behalf of the EEC.

After having consulted the other neutral countries of EFTA, Sweden and Austria, Switzerland decided its strategy. On 24 September, the Federal Councillors Wahlen and Schaffner read a statement in front of the EEC Council of Ministers which had received the unanimous support of both Houses of the Swiss Parliament. They pleaded for an association, but while specifying that they did not want it to include agriculture. They also underlined that they desired a sufficient harmonization with the EEC external tariff, in other words, not the strict adoption of the EEC common external tariff.

They also suggested regular consultations between Brussels and Bern: these were to occur not only within the envisaged bilateral Association Council, but also at the stage of the shaping of the decisions to be taken.

This echoes a constant objective of Switzerland’s diplomacy, which remains today present in the discussions of a possible “Bilateral Framework Agreement” with the EU. In addition, they envisaged the recourse to an arbitral tribunal, acting by majority, in the event of conflicts concerning the implementation of clauses of the treaty.

The initial reactions of the EEC were rather tepid. But it was the refusal of French President Charles de Gaulle to accept the British application for EEC membership that sounded the death knell for Switzerland’s ambitions of association with the Common Market.

**Active Swiss role in the process of accelerating the elimination of tariffs**

Faced with the failure to build unity at the entire Western European level, Switzerland deferred its ambitions on trade liberalization, on the one hand, at the global level through the General Agreement on Tariffs and Trade (GATT) and, on the other hand, at the level of EFTA.

The Confederation thus played an active role in the process of accelerating the elimination of tariffs by the end of 1966 between the Member States of EFTA, which was decided by the EFTA Council of Ministers in February and May 1963. Such openness
on behalf of Switzerland was relatively easy because the country imported very few goods from the other EFTA countries and therefore only a few Swiss companies could have faced a major competition.

However, the surge of sympathy in Switzerland for EFTA was slightly cooled by the UK decision at the end of October 1964 to introduce, against all odds, an import tax of 15% to balance the growing deficit of its balance of payments. The Confederation badly clashed with the British attitude, and it immediately tried to rally the other EFTA Member States to taking a position of extreme firmness.

Free Trade Agreement (1972)
In 1973, two EFTA countries, the United Kingdom, Denmark, as well as non-EFTA Ireland, acceded to the EEC. Norway was expected to join them but when the issue was put to a referendum, the Norwegians refused to follow their government’s lead. On January 1, 1973 the most important agreement between Switzerland and the EU of the period entered into force. Tariffs on industrial goods, quotas and similar measures were eliminated. In addition, no customs duties applied to the industrial component of processed agricultural products.

Although rather limited in its objectives and relatively unspectacular, this agreement helped to intro
duce an era of trade stability during the 1970s-1980s, a period otherwise marked by great economic tension. The only body created by the agreement, the joint committee did not have supranational power. No procedure of arbitration was envisaged. The technical solutions of the EFTA Stockholm Convention inspired to a large extent the new agreement, an outcome that suited Switzerland well.\(^\text{15}\)

During the negotiations, the Swiss Secretary of State Paul Jolles referred to "gestaltende Mitwirkung" in the process of decision shaping. "It meant that both parties shape together future development with homogenous and compatible new rules. The 1989 agreement on non-life insurance policies was inspired by this approach."\(^\text{16}\)

The Free Trade Agreement was made possible largely because Switzerland was a member of EFTA. Switzerland benefited from the process launched by the applications for membership by the United Kingdom, Denmark and Norway. In fact, when these three countries decided to leave EFTA, they triggered a dilemma.

Would these countries reinstate tariffs with the remaining EFTA countries, thereby provoking conflicts with them, above all the Nordic countries such as Iceland, Finland and Sweden, which had strong economic relations with Denmark and Norway?

Or would the enlarged EU and remaining EFTA countries do away with customs duties amongst themselves, running the risk that the flow of trade would be diverted to certain EFTA countries where tariffs were, in general, lower than the EU common external tariff?\(^\text{17}\)

In the event, the second option was chosen: a free-trade area between the enlarged EU and countries choosing to remain within EFTA was instituted. In order to avoid trade diversion, it was decided that the true origin of products exported from EFTA towards the EU would be monitored.

The result of this dynamic of EFTA membership was that each agreement between the remaining countries in EFTA and the EEC was broadly similar.

The agreement with the EEC was of considerable importance for Switzerland. It enabled the country to prevent the economic isolation which would have resulted from the anticipated withdrawal from EFTA of the UK, Denmark and Norway. It gave Switzerland free market access to its main business partners (Germany, France, Italy, Netherlands). In doing so, EFTA achieved its original objectives, namely the abolition of customs barriers and the dismantling of quotas on industrial products in all Western Europe. The Swiss objective of a Western European level free trade area was thus largely reached.

The only EFTA country to have organized a referendum

So even as the Free Trade Agreement with the EEC, because of its nature, did not imply a referendum, the Federal Council and the Federal Assembly decided, for political reasons, to submit it to the popular vote. Switzerland was the only EFTA country to have organized a referendum on the Free Trade Agreement with the EEC. In no other country was such a consultation held.

In retrospect, the positive outcome was relatively easy to get as on 3 December 1972, 72.5% of the voters and all Swiss cantons came out in its favour.\(^\text{18}\) More than 75% of urban areas of German- and French-speaking Switzerland as well as Italian-speaking Ticino voted "yes" to the Free Trade Agreement. Even Schwyz and Appenzell Inner-Rhodes adopted it by a margin of 66%. At that point in time, therefore, there was no clear difference of opinion among the different linguistic regions.

1984-88. European Economic Space (EES) on a bilateral basis

In 1984, new opportunities began to open for cooperation between the EFTA countries and the Euro-
pean Community. At a meeting in Luxembourg in April, the ministers of the two blocs launched the concept of a “European Economic Space”. This concept was not yet very developed and was considered in a broad and vague way. The exact meaning of “European Economic Space” was not evident, as well the meaning of the adjectives “dynamic and homogeneous” in the expression: “to create a dynamic and homogeneous European Space”.

For most EFTA countries, it meant a readiness to follow the Community process toward the establishment of its internal market. It was already possible to anticipate a risk of their satellization.19

Switzerland was only considering bilateral negotiations, and on a case-by-case basis. Bern did not envisage the involvement of EFTA in the management of its relationship with the Community, and tried to avoid any extension of the competences of the Secretariat of the Association.

Events accelerated with the 1985 White Paper of the European Commission, the objective of completing the Internal Market by 1992 and the entry into force of the Single European Act in 1987. Then Swiss leaders began to discuss the idea of adopting the White Paper’s four freedoms of movement. For them, it was primarily a question of removing technical barriers to trade, of reducing customs formalities at the borders, of simplifying the rules of origin, and of opening up public procurement.

The method desired by Switzerland was still that

Kurt Furgler, Swiss Federal Councillor and Jacques Delors, President of the European Commission, during a meeting between EFTA Ministers and members of the EC in Vienna on the occasion of EFTA’s 25th Anniversary in May 1985.
of a bilateral arrangement on behalf of each EFTA State, even if the agreements could have been quite similar. The conclusion of an agreement on non-life insurance policies in the summer 1989 appeared to confirm the correct choice by Bern. This agreement was the “baby” of Franz Blankart, the new Secretary of State for External Economic Affairs. Both parties could shape together the future development of legislation with compatible new rules. It even included an arbitration clause. Such was the bilateral and sectoral model which was considered by the Swiss negotiators.

At the EFTA/EC meeting of 20 June 1990 in Brussels, it was decided, but only for linguistic reasons, that the English expression “European Economic Space” (EES) would be replaced by “European Economic Area” (EEA). Note that no change was necessary in French and in German for the expressions “Espace économique européen” (EEE) and “Europäischer Wirtschaftsraum” (EWR), since the words “espace” and “Raum” were being used correctly in their respective languages.

I still nevertheless find it rather useful to maintain the differentiation between “Space” and “Area”, with the first being used to characterize the concept which prevailed in Switzerland from 1984 to 1988, and the second corresponding to the period 1989-1992, even if, I repeat, the change was purely due to the semantics of the English language.

**1989-92. European Economic Area (EEA) on a multilateral basis**

On 17 January 1989 a major event occurred which completely upset the bilateral and pragmatic approach of Switzerland. This was the speech by Jacques Delors, President of the European Commission to the European Parliament in Strasbourg in which he made relatively spectacular proposals.

He hinted that he wanted no more primarily bilateral relations with each individual country of EFTA and that he preferred a new form of association which would be more structured on the institutional level. He even mentioned the possibility of “common bodies of decision and management”. He also spoke of the rules of the game: that the Internal Market also means harmonization, transposition into the national legislations of EC laws, and the acceptance of the oversight of the Court of Justice.

**Negotiations of the European Economic Area**

Jacques Delors was confronted at the same time by the problems of EFTA countries seeking access to the EC Internal Market, as well as by pressures from certain EFTA States eager to join the EC, such as Austria, although he did not want to add neutral countries to his organization.

The Swiss officials were deeply embarrassed by Delors’s proposals, which ran contrary to their bilateral approach. Neither did they want to work out a common strategy with the other Member States of EFTA. Furthermore, Austria’s intention to seek accession to the Community irritated Swiss politicians. Bern felt let down by its closest neighbour within EFTA.

However, the Swiss leaders could not do anything against the Nordic and Austrian governments, which had warmly welcomed the Commission proposals. The risk of isolation was too great. The Swiss tactic was however to convince its EFTA partners to adopt a strong bargaining position. Thus, on the particular insistence of Switzerland, on 15 March 1989, at a meeting of the heads of EFTA governments in Oslo, the Six stressed the necessity of “a balance of rights and obligations”, “joint decision making”, “consultation procedures”, “mutual recognition of equivalent legislations”, and “common mechanisms of dispute settlement”. 20

Within EFTA, the Swiss position often caused clashes. In June 1989, at the EFTA ministerial meeting in Kristiansand, the tension was palpable.
Whereas Austria and most Nordic countries saw in the EEA a kind of obligatory passage in their walk towards EC membership, the Confederation was seeking a lasting solution in order to avoid EC membership.

The above mentioned countries offered little resistance to the demands of Brussels, whereas Switzerland wanted to try more bargaining. Confronted with the spirit of compromise which prevailed among its partners, Switzerland was forced to make concessions in order to avoid being isolated within EFTA.

During the negotiations, the Commission considered the vague and ambiguous 1989 proposal by Jacques Delors of a participation of the EFTA countries in a kind of co-decision mechanism. Other setbacks occurred, as Switzerland had to give up important demands such as: (1) the principle of equal rights and obligations of the contracting parties in the development and adoption of common rules; (2) its participation in EC comitology, apart from a few cases; (3) quotas on European citizens; (4) restrictions on the sale of real estate to foreigners; and (5) a derogation in order not to adopt EC rules of competition.

Subsequently, Switzerland had to make three ad-
ditional major concessions. First, it did not obtain any permanent exceptions, only transitional clauses. Second, it had to accept the principle of a collective opting out of all EFTA countries in the taking up of the development of the relevant “Community acquis”. In other words, it did not get the individual opting out which it would have wished. Lastly, it did not get the creation of a judicial legal body for the EEA, following a negative opinion by the Court of Justice of the European Communities.

On several occasions during the negotiations, the Swiss leaders threatened to abandon everything and not to sign the EEA Treaty. For instance, on 7 September 1991 in Sils Maria, the Federal Councillor Flavio Cotti, then President of the Confederation for one year, dramatically expressed his open doubts about the EEA.

Finally, Switzerland signed the revised EEA Agreement in May 1992 and in the same month submitted a request in Brussels to begin negotiations for membership of the EC.

By forcing the EFTA countries to speak with one voice, Jacques Delors, the president of the European Commission, gave the more conciliatory states (Austria, Finland, Sweden) an advantage vis-à-vis the more intransigent states (Iceland, Switzerland).

Odd EC/EU membership application
On 22 October 1991 two French-speaking Federal Councillors, Jean-Pascal Delamuraz and René Felber, announced that the final objective of Switzerland’s European integration policy was to join the EU.

On 20 May 1992 the Federal Council decided to submit a request to open negotiations for EC/EU membership. The government agreed by a 4:3 majority. This rapid about-face was influenced by four important factors: (1) the upheavals in the wake of the end of the Cold War; (2) the institutional weakness of the EEA Treaty that had just been signed in Oporto; (3) steps taken by the main EFTA countries to join the EU; and (4) the new momentum given to the European Union following the Maastricht Treaty.

Political parties, the media and the general public were taken by surprise when this spectacular decision by the government was announced. Right-wing parties, business federations and a few high-ranking government officials reacted negatively to what appeared to be a power play by the barest majority of Federal Councillors. As a result, the nature of EEA was transformed from a lasting solution to a purely transitory agreement.

Debate was avoided, nonetheless, as the Federal Council preferred not to address the issue until the December 1992 referendum on the EEA had proved successful. Yet since the EEA was rejected, the “seven wise men” felt it would be better to leave the issue in abeyance. Consequently, the call for accession was put on hold. In other terms, it was neither withdrawn nor activated.

Referendum on the EEA (1992)
Switzerland was the only country, with Liechtenstein, to organize a referendum on the EEA. It was also the only one to refuse it. The referendum campaign was perhaps the most intense and emotional of the entire post-WWII era. On 6 December 1992, 50.3% of Swiss voters rejected membership in the EEA. This referendum was a traumatic event in Swiss history, and historically it marked a decisive step in Switzerland’s refusal to join the EU. This comment is valid, even though the issue up for a vote did not directly address accession. There is clearly a “Before December 1992” and an “After December 1992”. In fact, it was this vote that put a halt to attempts by the country’s leadership to bring Switzerland into the Union.

The emotional dimension of the event was highly significant. There might never have been anything of the kind in Switzerland’s post-war history. Retrospectively, it is, however, difficult to recall its traumatic impact on Switzerland. Young people today find it hard
to grasp how a commitment that, in fact, remained very limited could have proved to be so controversial for the Swiss people.

Even though it may not be easy today to explain the agitated state of mind prevailing at the time, the facts are there. One figure stands as proof: 78.7% of the population cast their ballots, breaking all records since the 1947 referendum on old-age and survivors’ insurance.

The electorate was, above all, deeply divided: 50.3% on the No side to 49.7% voting Yes. The two sides were only a few thousand votes apart. The rejection by 16 cantons out of 23 was certainly more clear-cut.

A significant rift between the political leadership and the rest of the population can be seen. Most of the economic, political, trade union and intellectual elite had, in effect, come out in favour of the EEA. It enjoyed the support of the employers’ group of large enterprises (Swiss Federation of Commerce and Industry) and at the same time, that of trade unions and workers, the main political parties, as well as that of the media and of intellectuals.

Opposition to it was spearheaded above all by the nationalist right wing, with the Swiss People’s Party (SPP) at its head. The “no” campaign was led, in the main, by the future SPP Federal Councillor Christoph Blocher, at the time National Councillor of the Canton of Zurich.

The group most favorable to European integration was that of high-income, university-educated, urban dwellers. Furthermore, a distinction could be drawn between, on the one hand, the losers of globalization who feared competition and lay-offs and on the other hand, the winners, who had the social capital to benefit from enhanced market openness. “Globalization’s losers” were the less dynamic can-

Santa Lucia enters the Ministerial Meeting in Geneva in December 1990, held under Swedish Chairmanship. From left: Georg Reich, Secretary-General, William Rissier, Ambassador of Switzerland and later EFTA Secretary-General, Franz Blankart, Swiss State Secretary for Economic Affairs, and Eldrid Nordbo, Minister of Trade for Norway.
tons with less well-trained people and unevenly distributed socioeconomic resources.

**Communication problems**
The Federal Council and the proponents of “yes” to the EEA were confronted with a dilemma in their communication campaign. On the one hand, they were to “sell” the Treaty on the European Economic Area by praising its merits and by stressing the need not to be marginalized from the large EC Internal Market. Moreover, they insisted on a “tailor-made for Switzerland” agreement, on the transitional measures on free movement of persons, as well as on the possibility to influence legislation through participation in the decision-shaping process.

But on the other hand, the defects of the EEA treaty were well known (see above) and the Federal Council itself had recognized them. Thus, in an official report, it highlighted the “institutional weaknesses of the EEA” and addressed severe criticism to the EEA. Some examples: “The EEA Agreement does not respect in all its elements the principle of equality of the contracting parties. In addition, it includes only in a limited extent the specific interests of each of the EFTA countries”. Moreover, “the obligation which is made to them to speak with one voice vis-à-vis the EC has the effect of further limiting their autonomy towards the EC (...)”.

**The language divide**
The deepest divisions were those seen amongst the different linguistic regions. They have been dubbed “a language divide” although language itself was not at issue. Tensions ran so high that there were even fears that the country would split. Certain Federal Councillors and senior government officials discussed this hypothesis. Suddenly Switzerland seemed to be threatened by the Belgian or Canadian syndrome of linguistic-based political division: this, right in the middle of the period of “inter-ethnic” war in the former Yugoslavia. Such a situation was very rare in the whole history of the Swiss Confederation, and unique since World War I.

French-speaking Switzerland supported the EEA enthusiastically. The Ticino, or Italian-speaking region, on the other hand, remained largely reticent, as it rejected the EEA treaty by 61.5%. The outskirts of the German-speaking regions stood in clear opposition: the so-called Röstigraben.

In hindsight, such rifts are difficult to explain. It seems no less irrational to hate the European Economic Area than to adore it. The passions roused at the time are startling, considering the limited scope of the issue at stake.

### 1992-2010. EFTA without EEA

In the period between 1992 and 2010, Switzerland became the only country to stay in EFTA without being a member of the EEA. Following the rejection of the EEA Agreement by the Swiss citizens on 6 December 1992, the Federal Council decided instead to pursue its relations with the Community on a bilateral basis, which led to the conclusion of the two packages of bilateral agreements with the European Union.

EFTA and the EEA did not play any role in this process, although as a member of EFTA, Switzerland benefited from its observer status in the EFTA pillar of the EEA. This allowed Switzerland to closely monitor and follow developments both of the EEA and the EU “acquis” although without taking part in the EU decision shaping process.

Of course, the consequence of Switzerland’s policy was that the country lost part of its influence on EFTA, as the centre of gravity of this organization shifted towards Brussels and the EEA/EFTA pillar. To be sure, symbolically, the Swiss government was successful in opposing Norwegian and Icelandic proposals to move the seat of the Secretariat of EFTA from Geneva to Brussels. But it remains that many
significant EFTA activities within the EEA/EFTA pillar were transferred to Brussels.

**Bilateral Agreements I and II**

The Federal Council engaged in long and arduous negotiations which led to the conclusion of a first package of bilateral agreements, hereinafter “Bilateral Agreements I”. Signed on 21 June 1999 in Luxembourg, the agreements were adopted by the Swiss electorate on 21 May 2000 and entered into force on 1 June 2002.

These agreements cover seven dossiers. From a legal perspective they are connected to each other: that is, if Switzerland were to reject any one of them, all of the others would automatically be terminated. This is the notion of appropriate parallelism, known as “the guillotine clause”. Five of the agreements posed no difficulty and concerned relatively secondary matters. Two others – the free movement of persons and overland transport – on the contrary, were the subject of intense debate. These two dossiers also constituted the most complex agreements and sparked the most emotional discussion.

The agreements as a whole were the subject of an optional referendum held on 21 May 2000. Discussions generally focused on the issue of the free movement of persons. These agreements were adopted, with 67.2% of the electorate voting in favour.

The EU and Switzerland also signed a second series of Bilateral Agreements (hereinafter “Bilateral Agreements II”) on 26 October 2004. These agreements cover nine dossiers, each of which took effect on different dates.

From a legal perspective, these agreements are not interrelated by cross-termination provisions, unlike
Bilateral Agreements I, and thus do not include a “guillotine clause”. Switzerland could have rejected any one of them without the others being called into question.

Seven of these agreements posed no problems and concerned secondary issues. The two others were the subject of heated debate: Schengen/Dublin and taxation of savings. The Agreement on Schengen/Dublin was subject to a referendum in June 2005 but was accepted by about 54.5% of the electorate.

Differences between the Bilateral Agreements and the EEA

In comparison with the EEA, the Bilateral Agreements enable a third-party country (in this case, Switzerland) to negotiate individually. This freedom of action was in part limited by the multilateral structure of the EEA which obliged EFTA countries to speak with a single voice. Here, Switzerland was not obliged to harmonize its position with its EFTA partners before dealing with the European Union.28

No automatic acceptance of new relevant Community legislation

The Bilateral Agreements do not entail an automatic acceptance of new relevant Community legislation. Such legislative acts must be renegotiated on a case-by-case basis. There are, however, exceptions concerning Schengen legislation and air transport competition.

Bilateral Agreements I and II differ from those of the EEA, where the EFTA countries are almost compelled to integrate developments in the relevant Community acquis.

It is true that an EFTA-pillar country of the EEA may, in principle, refuse to take on new Community legislation. Yet by doing so, it would drag along with it all the other EFTA-pillar countries that are not entitled to adopt the legislation on an individual basis. This is known as collectively opting out. Refusal by EFTA is necessarily collective. Besides, the refusal of an act may lead to the automatic suspension of the part of the EEA Agreement concerned. These conditions have the effect of making rejection less likely to occur.

The homogeneity that is established as a basic principle within the EEA, along with the Community pillar and the EFTA-states pillar, is thus not comparable to tailor-made agreements negotiated between Switzerland and the EU.

Nonetheless, the Bilateral Agreements should not
be idealized because the European Union demanded that the principle of *appropriate parallelism* be adopted for the first package. That concept is rather similar to homogeneity in the EEA Agreement.

**Differences in terms of content**

The EEA included important sectors not covered by Bilateral Agreements I and II, mainly concerning the free movement of services (including financial, telecommunications and postal services), the free movement of capital, company law and intellectual property.

Additionally, the Community rules of competition for the four types of free movement were transposed into the EEA treaty. Monitoring of competition rule compliance is carried out, on the one hand, by the European Commission and on the other, by the EFTA Surveillance Authority.

Conversely, Bilateral Agreements I and II do not make any provision for rules of competition. The only exception is in the domain of air transport where the European Commission and the European Community Court of Justice obtained exclusive jurisdiction over compliance with competition rules provided for in the agreement.

**Differences in terms of horizontal and flanking policies**

Compared to the bilateral path, the EEA added horizontal and flanking policies. These concepts included equal treatment between men and women, labour rights, participation in enterprises, consumer or environmental protection, and social policy, education and youth, tourism, civil protection, and economic and social cohesion.

The financial solidarity towards less affluent countries and regions of the EU that would have been asked for participation on the part of Switzerland as a member of the EEA would have been greater than that required under Bilateral Agreements I and II. The Federal Council estimated the relevant amount to be CHF 270 million francs yearly (Federal Council, 2006, p. 103). Added to that sum was the outlay covering EEA programs and bodies. The final bill came to almost CHF 737 million francs per annum (FC 2006, p. 103).

Joining the EEA would have clearly been more costly than Bilateral Agreements I and II, which have been estimated to cost Switzerland CHF 472 million per year. Even at this not-inconsiderable price they are significantly less expensive for Switzerland than accession to the EU (CHF 3.3 billion per year).

**Bilateral Agreements: a Machiavellian plot to come back to the 1984-1988 concept of a “European Economic Space”?**

The Bilateral Agreements are (by definition) bilateral, sectorial and pragmatic, a bit like the first European Economic Space envisaged by Switzerland between 1984 and 1988. Indeed, Switzerland did not have to first harmonize its position with its EFTA partners during the negotiation phase. Furthermore, it could retain some leeway with regard to the choice of sectors included in the negotiation. Finally, it did not have to formally accept the adoption of new EU regulations relevant to the evolution of the “EC acquis”.

In a sense, Switzerland’s position towards the EU and also EFTA (used as nothing more than just a Secretariat) was much more in the continuity of its traditional policy since 1958 than the one envisaged with the 1989-1992 EEA.

Outside Switzerland, a few people still wonder about the good faith of the Swiss leaders in the 1992 referendum. In other words hadn’t they intentionally sabotaged the 1989-1992 concept of the European Economic Area among the Swiss citizens in order to return to the 1984-1988 concept, to what I call in this text the “European Economic Space”?*

This suspicion does not appear serious to me. Admittedly, certain personalities, such as the socialist Federal Councillor Otto Stich, had advanced the idea that a negative vote would not be so dramatic and that the pos-
sibility of sectoral bilateral agreements would remain.

Other Federal Councillors had, however, genuinely supported the 1989-92 concept of the European Economic Area and considerable resources were made available for the referendum campaign of information. In their public speeches and in their private conversations, they clearly expressed their doubts about the possibility of a bilateral alternative. Thus, the Federal Council wrote in its 1992 Report: “We can not expect that an alternative policy, which would consist in refusing the EEA in order to return to the pragmatism of before the January 17, 1989 speech of President Delors, may lead to a better result than the EEA negotiation.”

It is also true that the EU membership application gave fuel to the opponents of the EEA. Without this tactical mistake, the “Yes” would have easily gotten a majority of the population, although perhaps not the majority of the cantons. There is not however the slightest indication in the statements of those political leaders that this EU membership application was a Machiavellian plot to sabotage the EEA in order to get back to bilateral negotiations.

Usefulness of belonging to EFTA in order to avoid too much marginalization in Europe

Thanks to its membership in EFTA, Switzerland benefited from its observer status in the EFTA pillar of EEA. This allowed Switzerland to closely monitor and follow the evolutions both of the “Community acquis” and the EEA, although without taking part in the EU decision shaping process.

Thanks also to its membership in EFTA, Switzerland benefitted from the European regime for rules of origin in 1993. It was also one of the first European non-EU countries to take part in the pan-European cumulation system in 1995-96.

Membership in EFTA was also useful to ensure the parallel development of the Swiss-EU Bilateral

Doris Lenthard, Swiss Federal Councillor and Head of the Federal Department of Economic Affairs; and Ambassador Lucius Wasesha, Head of the Swiss Mission to EFTA, at the Ministerial meeting in Geneva in December 2007.
Agreements with the remaining EFTA countries. As a matter of fact, on 21 June 2001 in Vaduz, the three other EFTA Member States and Switzerland signed an agreement on the revision of the EFTA Convention. The objective was to ensure the parallel development of contractual relations among themselves, as well as between the EFTA Countries and the EU (e.g. the Bilateral Agreements between the EU and Switzerland, European Economic Area).

The Vaduz EFTA Convention established legal relations between the three other EFTA countries and Switzerland comparable to those contained in the seven Bilateral Agreements between Switzerland and the EU. New provisions included, for instance, the free movement of people between Switzerland and the other EFTA countries. The Vaduz Convention also added provisions regarding the protection of intellectual property, movement of capital, and trade in services.

The Vaduz Convention came into force on 1 June 2002, the same date as the seven Bilateral Agreements between Switzerland and the EU. The Convention has been regularly amended since then in order to fit the evolution of the bilateral relations between the EU and Switzerland. So from a Swiss point of view, the fact that the EFTA framework still exists has greatly facilitated the extension of its Bilateral Agreements towards Norway, Iceland and Liechtenstein.

**Switzerland remains interested in keeping EFTA as a multiplier of influence to conclude agreements with third countries**

Switzerland is interested in keeping EFTA alive as a multiplier of influence in its relations with the rest of the world, mainly in order to facilitate the negotiation of free trade agreements. As a group, EFTA carries more weight politically and economically and is thus more attractive to potential trade partners.

Since the beginning of the 1990s EFTA has actively negotiated free trade agreements with non-EU countries (third countries in the jargon) in Europe, the Mediterranean region and overseas. Through EFTA, Switzerland first began to develop, in parallel with the European Union, free trade relations with transition economies in Eastern and Central Europe. When these partners joined the EU, the agreements they concluded with EFTA were terminated and replaced by the relevant arrangements between the EFTA states and the EU (for Switzerland, the 1972 Free Trade Agreement and Bilateral Agreements I and II). The EFTA network of FTAs was then extended to countries on the southern and eastern rim of the Mediterranean. In the third phase, EFTA reached across the Atlantic as well as into Asia.

At present, EFTA has concluded agreements with 29 countries. Negotiations are under way with important trading partners such as India and Ukraine. It should also be noted that the EFTA countries negotiated agreements with almost all other States which have concluded a free trade agreement with the EU. In the cases of Canada and South Korea, they even preceded the European Union. Between 1988 and 2008, Swiss foreign trade with free trade partners increased by an annual average of more than 10.5% during the four years following the entry into force of the FTAs, whereas it increased with the other countries by an average of only 5.7%.

Those negotiations require EFTA States to shape common negotiating positions vis-à-vis their future partners, although they have sometimes diverse economic interests. Even if this process may occasionally be time-consuming, Switzerland is relying on EFTA and the resources of its Secretariat to further its trade relations with specific partners worldwide, a process seen as complementary to the protracted WTO multilateral trade negotiations. Indeed, using the EFTA vehicle, Switzerland has been recently more efficient in developing its FTA network than its main competitors (the EU and the USA).
Conclusions

The conclusions point out some features, rather paradoxical, which differentiate Switzerland from the other EFTA countries. The goal is simply to underline some peculiarities of the Swiss case by comparing them with other states.

With Liechtenstein, Switzerland is the only EFTA State where EFTA and EEA issues were subjected to referendums. Switzerland organized the greatest number of popular votes on the European question. Swiss citizens have been called upon to express their views on European integration on no fewer than fourteen occasions.  

In 1972, the Swiss citizens were the only ones who voted on the Free Trade Agreement with the EC. Furthermore, the Swiss population was the only one who refused to take part in the European Economic Area. The referendum campaign was perhaps the most intense and emotional of the entire post-WWII era. This referendum was a traumatic event in Swiss history. There were also two referendums in Liechtenstein, but with positive results, around the issue of joining the EEA.

Switzerland is the only EFTA Founding Member State to have never seriously envisaged leaving EFTA.

Switzerland has conducted a constant European policy for 50 years. “Constant” is not a value judgment. This does not mean that its policy was better or that it was worse than that of other States which have at one time belonged to EFTA. It simply means that it oscillated less than the others. Indeed, the majority of the EFTA founding countries ended up joining the European Union and leaving EFTA.

Even the Norwegian government and most of the political and economic elites of the country have been tempted twice to make the big step. A fundamental difference is that in Norway most of the political, economic and social elite has for a long time come out in favour of accession to the EU. Furthermore, Norwegian employers clearly back accession, unlike those in Switzerland. And even Iceland, traditionally reluctant to EU membership, in 2009 decided to ask for the opening of EU accession negotiations.

In comparison Switzerland has remained relatively more constant in its policy of not joining the EU and not abandoning EFTA. The only case of Swiss hesitation occurred during a few months of 1992 when the Federal Council had filed a request to open membership negotiations. But this decision had been made by 4 ministers against 3, without any political support and without any debate.

Switzerland is the only State that has always refused to allow EFTA to limit its leeway towards the EU.

Switzerland never adopted any hostile behavior towards EFTA. But it always had a constant worry that the organization could limit its room to maneuver in general, and vis-à-vis the EU in particular.

Already in the negotiations of 1958-59, the Federal Council insisted that EFTA did not have any supranational dimension and that the autonomy of each State should be strictly maintained, especially in case of adoption of future policies. Specifically, the Federal Council stressed its desire to keep its independence in international economic negotiations by refusing to allow its treaty-making power to be limited.

In the same way, when attempting to negotiate a free-trade association agreement in 1963, the Swiss government was by far the most intransigent State regarding the risks of losing treaty-making power which would be generated by the adoption of the EC Common External Tariff. One could observe the same concern during the negotiations of the Free Trade Agreement of 1972.

This was also the case in the negotiations on the European Economic Area. The Federal Council would have preferred to preserve the first version (“European Economic Space”) that was under dis-
discussion between 1984 and 1988 and which consid-
ered only bilateral agreements between each EFTA
Member State and the EC. It was a hard shock when,
after the Delors proposals of January 1989, Switzer-
land understood that the EC wanted to align its posi-
tion of negotiation with its EFTA partners and that
it committed itself to adopt in a quasi-automatic way
the evolution of the “Community acquis” in a gen-
eral and collective way.

The bilateral negotiations which proceeded since
1994 matched better the traditional Swiss spirit. In-
deed, Bern was not obligated to align its policy with
other EFTA countries before negotiating with the
EU. And once an agreement was concluded with
Brussels, Switzerland was then solely responsible for
its implementation and the respect of the evolution
of the relevant EC legislation.

Switzerland is the only Western European State which did not
join the EEA.
Among the currently 30 members of the EEA, nine
were once part of EFTA. Indeed, six are former
EFTA countries and three still belong to EFTA. Only
Switzerland never joined the EEA. Such an observa-
tion is all the more paradoxical as Switzerland was one
of the principal craftsmen of the EEA. However, the
political leaders were so traumatized by the referen-
dum of 1992 that they did not want to seriously dis-
cuss again the possibility of an accession of
Switzerland to the EEA.

Obviously, the relative success of the bilateral
agreements did not encourage the Swiss leaders to
again propose the possibility of joining the EEA. Ad-
mittedly, the Federal Council is aware that the bilateral
agreements bring less participation in the shaping
process than the EEA. But to compensate for this de-
fi ciency, the Swiss government would today rather be
tempted by the formula of a “bilateral framework
agreement” with the EU. Such a solution, if success-
ful, would include neither EFTA nor the EEA.

Finally, Switzerland obtained, I think unintention-
ally, a kind of participation rather close to the first
conception of the European Economic Area, that of
1984-88, the “European Economic Space”.

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