CEFTA AND THE EU ENLARGEMENT PROCESS: AN ASYMMETRICAL BARGAINING EXERCISE

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INTRODUCTION

In March 1998, a majority of the CEFTA countries entered a critical stage in their journey to EU membership when they started negotiating the terms and timing for accession. At the Luxembourg summit in December 1997, the EU Heads of State and Government had decided to divide the enlargement process into a fast and slow track. In the fast track, EU would be starting the bilateral screening process with 5+1 applicant countries by the end of March 1998. This screening process would more or less automatically lead to real accession negotiations at a later, albeit, unspecified date. The four remaining applicant countries were relegated to a slow track which encompasses multilateral screening but with no automation of accession negotiations. The EU's decision effectively divided the CEFTA members into two camps: The Czech Republic, Hungary, Poland and Slovenia were selected for the fast track, whereas Rumania, Slovakia and Bulgaria (which joined CEFTA in July 1998) were chosen for the slow track.

The division of the CEFTA countries in the EU enlargement process raises a number of questions on the future coherence of the regional bloc. Most observers have pointed to the question of what will become of CEFTA when more than half of its members leave the arrangement, embarking on the first wave of EU accession which is expected to take place before the slow track countries catch up in the negotiation process. Given that the major, and more advanced economies belong to the fast track, the attractiveness of CEFTA will no doubt decrease dramatically after the first enlargement round. While this member-draining phenomenon may pose difficult and permanent problems for some of the future members of CEFTA, such as Croatia and FYR Macedonia, the present CEFTA members belonging to the slow track may regard it as a temporary problem, provided that the time span between the first and second enlargement wave is not too wide. After all, CEFTA has always been viewed as a temporary arrangement whereby Central and Eastern European countries develop and expand their mutual trade links before reaching their ultimate objective: membership in the European Union.

During the past few years, the Central and Eastern European countries have been engaged in a fierce competition to stay ahead in the race for early EU membership. The EU's decision in late 1997 to divide the applicant countries into two groups naturally created disappointment and anger in some of the countries relegated to the slow track group. But even among the fast track countries undergoing the bilateral screening and negotiation process, it seems to be an absolute priority at least to keep pace with, if not stay ahead of, the other members of the group.

This paper argues that while the anxiety and ambition of keeping pace with the fastest in the negotiation group may be rational seen from the perspective of the individual applicant country, the non-cooperative competition among the applicant countries is collectively irrational because undermines the bargaining position of the group as a whole. In other words, the applicant countries are facing a classical *collective action problem* in their accession negotiations with the EU. The basic reason is that the fierce race among the applicant countries to complete their individual accession negotiations undermines number of their most important power tactics by which they could otherwise improve their bargaining position: threat and tying hands tactics. Thus, the threat to walk away from the bargaining table unless the EU offers a better deal is likely to uphold the negotiations for an unspecified period of time. In this period, the applicant country will get further and further behind in the negotiation process. Tying hands tactics work in the same direction. In order to utilise the already narrow scope for negotiation, it is important that the CEFTA group co-ordinate their EU bargaining processes in a mutually beneficial way. This may however be difficult because powerful forces hamper co-operation.

In order to understand the hypothesis, it is necessary to outline the main features of the unusual asymmetrical bargaining process which characterises the EU's accession negotiations

with applicant countries, including some of the tactical ploys EU makes use of when seeking to exploit its preponderant structural power *vis-á-vis* applicant countries. These features will be described in the first section. The second section outlines some the most important bargaining tactics which applicant countries may use in order to improve their relatively weaker bargaining position. On the basis of the analysis provided in the two first sections, the final section explains why the CEFTA countries should cooperate, aiming at synchronising their EU accession negotiations and why such cooperation may be difficult to achieve.

1. THE EXTRAORDINARY ASYMMETRICAL BARGAINING PROCESS BETWEEN EU AND APPLICANT COUNTRIES: "THE ACQUIS, AND NOTHING BUT THE ACQUIS"

Accession negotiations in the EU are an extraordinary asymmetrical exercise compared with other international negotiations. Typically, the EU has an unusually strong structural power position due to economic and political-institutional factors. In accession negotiations, these factors are translated into behavioural power by means of various bargaining tactics. The main features of the EU-s structural and behavioural power will be outlined in the following.

Structural economic power asymmetries

The economic reasons are well-known in the international political economy literature: Asymmetrical structural power is simply a matter of relative market access.¹ Ever since the first enlargement negotiations took place in the early 1970s, the European Community has always negotiated with countries whose economic size was smaller than the EC group as a whole. The reason was simple: leaving the very long-term potential of the Russian economy aside, no European country matches the EC/EU block in terms of market potential. This asymmetry in market access has grown over time as several EC/EU accession rounds have been completed and the outsider group has steadily been drained of middle-sized and big economies. As Baldwin (1993) has pointed out, each EU accession leaves the outsiders relatively worse off. This may change the minds of countries which were otherwise happy to stay outside the EU. In other words, each accession tends to have a "domino effect" on neighbour countries, making the queue of applicant countries ever longer, and, eventually, the number of EU member countries ever bigger. Baldwin's "domino hypothesis" seems, at least partly, to explain the competition among the CEFTA countries for rapid EU accession.

Enlargement in terms of economic size (quantity) is, however, only one dimension of market access. Another dimension is the quality of market access. After all, there would be no point in joining the EU if this regional arrangement was no different or even less efficient than alternative arrangements. With the implementation of the Single European Act in the late 1980s and 1990s, the EU has attempted to create an economic arrangement which goes far beyond other regional arrangements in the world. The establishment of a truly single market facilitates stronger competition, specialisation and utilisation of economies of scale which ultimately will lead to higher economic growth and prosperity. For this reason, it is not surprising that the requests for EU membership really started to accumulate after the EC implemented the Single European Act in the late 1980s. The sweeping events in Central and Eastern Europe which took place in the same time enforced this trend. The fact that alternative solutions to EU membership have become less and less attractive for outsiders, leaves the EU with one of its most fundamental structural power resources in accession negotiations. According to Habeeb (1998) who has written influential books on asymmetrical bargaining, the relative attractiveness of status quo (a.k.a. BATNA = best alternative to no agreement) is the most important source of structural power in any asymmetrical negotiation. This view is supported by Moravscik (1993) in his application of bargaining theory to the EU negotiations.

Political-institutional factors

Asymmetric market access is, however, but one important source of the EU's extraordinary

¹ In fact, they were spelled out in one of the earliest books on modern international political economy, namely Hirschman (1945)

strong bargaining position vis-a-vis applicant countries. A number of political-institutional factors add to this position.

First, it should be borne in mind that when an applicant country gains access to the EU, it joins a club. The policies and the rules of the game of this club (in eurospeak: the *acquis communautaire and politique*) have been developed over time through normally very difficult and protracted negotiations between the present members of the club. The negotiations leading to the Rome Treaty (1957), the SEA (1985), the Maastricht Treaty (1991) and the Amsterdam Treaty (1998) have typically implied major institutional changes of the co-operative framework. Since these "grand bargaining" negotiations have operated under the consensus rule, it has been necessary to make complicated issue-linkages and side-payments (swaps and concessions) in order to facilitate a positive negotiation result.

The accession of new members potentially threatens to upset the fragile political equilibrium obtained by the present members of the club. If accession negotiations were open-ended in the sense that everything might be a negotiation issue, the EU members would have to reopen the very difficult agreements accomplished in the past. In this event, further accession rounds might not take place.

Behavioural power: Terms for membership

In the past negotiations rounds, the EU has exploited its inflexibility vis-a-vis the opening of internally negotiated policy packages to impose on applicant countries a number of tough terms for membership. Based on the experience from the preceding enlargement rounds, Avery (1994) mentions four principles guiding the terms for accession:

- No institutional changes: new members are fitted into the institutional framework using existing allocation keys such as the number of votes in the Council of Ministers, number of Commissioners, and seats in the European Parliament.
- No changes of the EU budget, including the major policies financed by the budget (i.e. Common Agricultural Policy and Structural and Regional Policy).
- Accession rounds have tended to take place in waves with more than one applicant country (the EC's first southern expansion is a notable exception).
- Applicant countries have to accept "all the acquis and nothing but the acquis". In other words, changes in the existing EU policies are not topics for negotiation. Applicant countries can only negotiate the transition period leading up to the full adoption of the existing acquis.

In the future accession rounds with the Central and Eastern European countries, it has been necessary for the EU to compromise on the first two principles. Thus, at the Essen summit in 1994, it was agreed that the main objective of the 1996-1997 intergovernmental conference was to make the EU institutionally fit for enlargement. This involved changes in the decision making procedures (including voting procedures), reform of the Commission, a cap on the number of seats in the European Parliament, and most importantly a re-weighting of votes in the Council of Ministers favouring the larger member countries. Furthermore, it was agreed that the EU should reform its budget, including the agricultural (CAP) and structural policies throughout 1997-99.

The reasons for the necessity of institutional reforms are ascribed to the sheer number of applicant countries, the majority of which are rather small in terms of population size. As has been shown in a number of studies, throughout the preceding accession rounds since 1973 the balance of power within the Council of Ministers has systematically been tilted in favour of the smaller countries (see e.g. Kirman Widgren (1995) and Hosli (1996)).² The sheer number of

² It is interesting to note that all the five major EU countries (France, Germany, Great Britain, Italy, and Spain), despite their differences, put up a united front in the 1996-IGC demanding a re-weighting of votes in the Council of Ministers.

applicant countries has also made it necessary to change the institutional procedures, reform the Commission, and so on. At the 1996-IGC, however, the member states failed to reach a compromise of the re-weighting of votes in the Council of Ministers and the size and distribution of seats in the Commission. These decisions have been postponed until a later mini-conference which is scheduled to take place in 2000-1.

The reasons for the necessity of budgetary reforms are even better known: the fact that the applicant countries are less affluent than the poorest present member states, and that a majority of the applicant countries have relatively large agricultural sectors, makes it impossible to fit new members into the existing budget. Instead of increasing the budgets, the member states decided to reform the CAP and structural policies. The reforms reached at the budget negotiations which were completed in March 1999 were at best partial as was the case with the institutional reforms. In fact, the EU might have to renegotiate the CAP after the new WTO trade round opens in Seattle in November 1999. The rather disappointing results obtained so far in the EU's internal reforms underline how difficult it is to re-open existing packages.

Among the four principles, the latter is clearly the most important and inflexible. In fact, in the ongoing accession round, the EU has even attempted to make the terms for transition periods more inflexible than in previous rounds. First, by adopting the so called pre-accession strategy the EU asked the applicant countries to start adopting the acquis before the selection of applicant countries for the fast-track was made. Although the applicant countries were left with a choice of whether or not to adopt the acquis, and in particular the speed with which they wanted to progress, they had de facto no other options if they wanted to be selected for the fast-track group. Second, the pre-accession strategy has recently been enhanced by the socalled Accession Partnerships³. According to this scheme, every applicant country receives a "training plan" which highlights the parts of the acquis the applicant country should fulfil in the short-and medium term, i.e. in the years up to accession. As with the pre-accession strategy, the applicants are free to ignore the advice, but again this is a hollow freedom because lack of compliance may slow the speed of the applicant's accession negotiations (Friis and Jarosz. 1999). Finally, the EU has repeatedly made clear that the duration of transition periods will be very limited for the Central and Eastern European applicant countries. For instance, Nikolaus van der Pas, the Director-General of the Task Force for Accession Negotiations of the European Commission has pointed out that the applicant countries should be aware that their margin of negotiation is very narrow (World Economic Forum, 1998). Transition periods granted to the applicant countries will be at a maximum of five years, and in no case will the EU accept extraordinary long transition periods such as the 17 1/2 year transition period granted to Spain for fisheries. On the same occasion, van der Pas also warned the applicant countries against "the trap of easy discussions of transitional periods".⁴ Furthermore, van der Pas has repeatedly underlined the standard EU position that the timing of accession depends principally on the speed at which the applicants make themselves ready to become members and to apply the EU rules fully in practise.⁵

EU power tactics in the screening and negotiation stage

The actual conduct of the accession process underlines these remarks. On the surface, the current accession talks is business as usual guided by the "acquis, and nothing but the acquis"-principle. The accession process is divided into two stages: a screening phase which constitutes a pre-negotiation stage, and an actual negotiation stage.

In the screening stage, the 5+1 members of the fast track group is explained the content, extent, and point of 31 characters or areas of EU legislation. The purpose of this didactic phase is to identify issues for negotiations. It involves two kinds of enquiries: the first is to ascertain, chapter by chapter, whether the applicant country is prepared to accept the acquis (if it does not, then that is immediately identified as a negotiation issue). The second is to ascertain to what extent a candidate has the legislative and institutional arrangements already in place to

³ See European Commission (1998)

⁴ European Report, 21 January 1998, EU Enlargement; Questions Over Mechanisms Before Negotiations.

⁵ See e.g. European Report, 28 July 1998, EU Enlargement: A November 1998 Start For Accession in 2002?

implement the acquis, or to identify what programmes and calendars are in place or planned to be so. The applicant countries are left with there possible responses:

- a) the relevant legal norms exist in its legislation and are applied in practise;
- b) the applicant lacks the equivalent legislation; the government has, however, committed itself to amending the legislation within a certain period of time, but no later than the planned date for accession to the EU;
- c) the applicant lacks the equivalent legislation, and the government requests a transition period.

The second type of enquiry is clearly the most important because of "the acquis, and nothing but the acquis"-principle.

So far, that is until May 1999, the screening process has proceeded quite well from an EU point of view. In order to get the talks off the ground, the screening process started in April 1998 with seven "easy chapters", including science, research, telecommunications, information technology, education, training, culture, and audio-visual policy. In its report accompanying the Commission's draft proposal for EU Common Positions for negotiation of September 1998, the Commission noted an overall impression that the applicant countries were well-prepared, well-informed and "fully aware of the conditions for negotiations". The applicant countries had so far declared their willingness to take over the acquis and they sought for few and limited transition periods.⁶ In fact, Estonia (the only non-CEFTA country in the fast-track group, excluding Cyprus) did not ask for any transitional periods on the seven chapters.⁷ Later on, the screening process has mowed to the more difficult areas including agriculture and freedom of labour movement, and this has naturally made the screening process more complex and protracted. Nevertheless, the process is expected to be completed in June 1999.

While the screening process has progressed better than expected, it has taken somewhat longer than originally planned. This is not so much due to unforeseen difficulties encountered in the process, but rather because of a change in the EU Task Force's approach. Instead of merely explaining the EU policy rules and asking whether the applicant countries can accept and adopt them, the Task Force has gone further this time examining in-depth the candidates' individual achievements and deficiencies. This new approach underlines the EU's ambition of keeping tight control on the accession process, and it confirms van der Pas's remarks that the applicant countries should avoid falling into "a trap of easy discussions on the length of transitional periods." While the new approach may be defended as a more efficient way of conducting the accession process in the sense that it aims at avoiding problems in the real negotiations stage, it may also be seen as another tactical ploy by the EU to maintain a strong power position in the negotiations: the objective is to ensure that the candidate countries comply with the short transitional periods granted, and that the negotiations do not proceed too fast and easy. The candidates' ability to take on the acquis shortly after accession must be thoroughly examined. As van der Pas has noted: "If applicants say they can accept the acquis, but they cannot actually apply it, then there is not point in letting them accede".8

The actual negotiations of the first seven chapters completed in the screening process started in Autumn 1998. In the meantime, the applicant countries had competed intensively on who would be the first to submit its bargaining positions on the seven chapters to the Commission and Council of Ministers. Poland won this prize. Based on the papers of the applicant countries, the Commission submitted its proposals for the EU's Common Positions which were to be agreed on unanimously by the Council.⁹

⁶ European Report, 3 October 1998, EU Enlargement: Technical Input From Commission on Negotiation Prospects.

⁷ European Report, 28 October 1998, EU Enlargement; Negotiation Process Edges One Step Further Forward.

⁸ European Report, 30 June 1998, EU Enlargement; Screening Is Slower But Than Anticipated.

⁹ Note that this very restrictive voting rule adds to the EU's power position. In reality, an applicant country is not conducting bilateral negotiations. It is in fact negotiating with 15 countries which have to agree on a common position by consensus. Using Putnam's metaphoric approach, the unanimity rule limits the win-set of the EU which in turn strengthens its external bargaining power.

It is far too early to review the actual negotiations which have taken place so far. The reason for this is to be found in two other sets of power tactics, the EU employs in accession negotiations. First, the EU makes use of a "nothing is decided until everything is decided"-principle. This has also been confirmed several times during the present negotiation round. The motive behind this principle is to maintain room to manoeuvre once the negotiations enter the final stage. This makes it possible to reshuffle concessions made in the initial stages of negotiating with countries in transition, the principle seems even more rational from an EU point of view. The fact that almost all the applicant countries are in transition makes it necessary to carefully monitor the progress in adopting the acquis. If the adoption of the acquis has for some reason slowed down or encountered problems during the negotiation process, the principle makes it possible to recast the preliminary agreements at a later stage. Provided that the EU is in no hurry to complete the negotiations, such re-negotiations are likely to lead to worse terms for the applicant countries because their credibility in complying with the terms would be damaged.

In the final stage of negotiation, the EU has often employed a very subtle bargaining device called the battering ram tactic (Friis and Jarosz, 1999). The strategy works like this: Assuming that the several applicant countries have unclosed chapters when the negotiations enter the final stage, the EU strikes a final package deal, including concessions and issue-linkages on transition phases, with one applicant country. This deal is then presented to other applicant countries. Under conditions of asymmetrical information (no information exchange and coordination between the remaining applicant countries), this creates a lot of uncertainty among the other applicant countries. If a few of the latter accept the terms for accession modelled after the deal struck with the first country, there may be sufficient candidates for proceeding with the final accession. This will leave the rest of the applicant countries, unable or unwilling to close their chapter, out in the cold. For these reasons, applicant countries often compete intensively on closing their chapters in order to be singled out by the EU for its battering ram tactic. When a country is singled out, the other countries tend to accept the compromises offered by the EU. Thus, the battering ram tactics tends to be an extremely important source of behavioural power. It makes it possible for the EU to enforce the terms of accession in an even more definitive way. Unless the CEFTA countries start to coordinate their bilateral negotiations with the EU, there is every reason to expect that they will collectively obtain less favourable terms in the accession negotiations.

2. POWER RESOURCES OF THE CEFTA COUNTRIES

As noted by Habeeb (1988), countries that find themselves in an extremely asymmetrical dependence situations can make up for the weaker structural power position by skillfully utilising various bargaining devices. The recent and most advanced literature on international bargaining (a.k.a. double-edged diplomacy literature, see Putnam (1988), Evans, Jacobson and Putnam (1993)) lists a number of such tactics; tying hands (commitment), threat, reverberation, synergistic issue linkage, collusion among governments etc. A review of these tactics applied to the eastern enlargement round goes beyond this paper. It is, however, doubtful that applicant countries can exploit the majority of these tactics efficiently. For instance, the two most well-known tactics — tying hands and threat — are bound to be inefficient as long as the applicant countries do not possess a credible alternative to accession and as long as the applicant countries compete for closing their negotiations chapters. No one wants to be left behind. Because tying-hands and threat strategies stall the negotiations, they tend to be counter-productive from an applicant perspective, and thus non-credible.

Although it is clear that the bargaining space is very limited in EU accession negotiations, I suggest two tactics, not mentioned in the double-edged diplomacy literature, by which the applicant countries may, at least marginally, improve their terms of accession.

The first tactic is *cooperation* between the applicant countries, in particular in the end-stage of

the negotiations.¹⁰ Although it is vital that individual countries do not have too many unclosed chapters when the negotiations approach the end-stage, it is equally important that the applicant countries synchronise their accession negotiations in a more cooperative way. The noncooperative race for staying ahead of the accession game is undermining the already weak power position of the applicant countries since it compels them to accept the terms of the EU on a more non-conditional basis. Cooperation in the stages before the end game makes it possible for the group of applicant countries as a whole to obtain more favourable preliminary agreements with the EU. When the negotiations reach the end game, it is absolutely vital that the applicants cooperate, exchanging information about their bargaining positions and tactics on their unclosed chapters. The objective is to avoid that some of the applicant countries concede too easily to the battering ram tactic used by the EU. It may be sufficient that the CEFTA countries in the fasttrack group cooperate. Provided that none of the slow-track candidates catch up, the EU would then not have sufficient candidates for launching enlargement if it was to pick a non-CEFTA country, e.g. Estonia, for the battering ram tactic. Although the CEFTA countries should not attempt to stall the negotiations indefinitely (using tying-hands and threat tactics that, as indicated, only work if the countries cooperate), they should coordinate their terms for closing their remaining chapters. Only in this case can they improve their bargaining situation.

The second tactic is *aspiration*. As mentioned by Habeeb (1988), a weaker country may improve its bargaining power by allocating more resources to the specific issues on which it has strong preferences for a favourable agreement. In other words, the applicant countries should prioritise among the individual chapters. This is a standard tactic in international negotiation that is basically a give-and-take situation. In EU grand bargaining negotiation, smaller countries are often able to influence the process by picking a few prioritised issues, which are then traded in the end game. However, it is important to stress once again that accession talks are qualitatively different. Unless the applicant countries cooperate, they cannot afford to wait until the last minute to reach a deal on their prioritised objectives. Because of the battering-ram strategy, applicant countries may want to reach such a deal at an earlier stage. This asymmetrical time pressure works to the advantage of the EU. For this reason, the bargaining tactic of aspiration also presupposes cooperation among the applicant countries.

Finally, it should be noted that the accession agreements reached by the CEFTA countries belonging to the fast-track group might set a precedent for the accession negotiations with the CEFTA countries in the slow-track group. This is because of the so-called *dead-weight catching tactic* the latter group can employ to ensure that their bargaining position does not deteriorate compared with that of the fast-track group. In their accession negotiations, the candidates of the slow-track group can credibly argue that they will not accept less generous terms than those offered to the fast-track group. It is also in the interest of the EU that the future membership of the applicant countries becomes pleasant. When the slow-track group eventually joins the club, the EU members risk obstructive behaviour on behalf of the new members if they were to be offered less favourable terms at the time of accession. Thus, the better the terms for accession obtained by the fast-track CEFTA-group, the more benevolent one should expect the bargaining environment to be for the slow track CEFTA-group.

3. CONCLUSION

EU accession negotiations are an exceptional asymmetrical exercise. In enlargement negotiations, the EU typically possesses a preponderant economic and political-institutional power base, which it exploits by means of various bargaining tactics. A number of these tactics have been discussed in depth in this paper, in particular the "acquis, and nothing but the acquis principle" (a tying hands-tactic) and the battering ram tactic (a threat tactic).

¹⁰ This tactic is affiliated with the collusion of governments mentioned in the double-edged diplomacy literature, but it is, nevertheless, qualitatively different. Collusion of governments in this literature is thought to be cooperation between the negotiators on both sides of the table. The objective is to *expand the win-sets* to obtain an agreement. Here, collusion of governments is thought to be cooperation between the one end of the table — the applicant countries. The objective is to *prevent* an expansion of the applicant win-set, when the EU seeks to employ its battering ram tactics.

In the international relations literature, it is often pointed out that structurally weaker nations can improve their bargaining position by skilfully exploiting the instruments of bargaining tactics available to them. This paper has argued that the normal set of available tactics (tying-hands, threat, aspiration etc.) is very limited for EU applicants *unless* they cooperate. The reason is that the efficiency of these tactics liked with the tactics used by the EU. The paper has pointed out that the battering ram tactic is often so powerful that it undermines the efficiency of the bargaining tactics available to applicants. The main reason is that the battering ram as a threat tactic introduces an asymmetrical time-factor, which compels the applicant countries to compete to stay ahead in the race for closing the negotiation chapters. For various reasons spelled out in the paper, the power of the battering ram tactic can only be counterbalanced if the applicant countries to countries to countries to countries the applicant countries to countries to counterbalanced if the applicant countries to counterbalanced.

Unfortunately, it is, however, doubtful whether the applicant countries will be able to follow this policy recommendation. First, the Central and Eastern European countries, including the CEFTA countries have little tradition of cooperating. For instance, with the Visegrad group, political cooperation has only resumed recently after years of impasse.¹¹ Second, the CEFTA group, and the group of applicants in the fast-track group, may be too heterogeneous in terms of their economic readiness for EU accession and their political priorities to cooperate. It is doubtful that some of the fastest applicants in the group will want to synchronise their accession negotiations with the slower applicants. Third, and related to this aspect, cooperation involves a moral hazard problem in the sense that it presupposes a high degree of trust within the group that some members will not attempt to slow down the enlargement process. Likewise, the group will have to overcome the *prisoner's dilemma situation* in which one country defects by rapidly closing its negotiation chapters in order to be picked for the battering ram.

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