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# Swiss Multinationals versus the French Welfare State? The Social Security Deficit, European Integration, and the Battle for ‘Fair’ Drug Prices (1970–1990)

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Drawing on corporate and business association archives, this contribution investigates how Swiss multinational enterprises from the pharmaceutical industry (Ciba, Geigy, Hoffmann-La Roche, Sandoz) navigated governments’ interventions in France to preserve their profitability. Our analysis shows how diplomatic talks were crucial for Swiss firms having to cope with rising inflation and the freezing of drug prices, as well as increased customs controls targeting multinationals’ transfer prices. In particular, promises of future R&D were used as a tool in negotiations, and secrecy about prices and profits formation was key in maintaining pressure on the French government. The article also highlights that from the mid-1980s onwards, pharmaceutical multinationals promoted the creation of the Single Market, since it had the potential to enforce supranational rulings over national discretionary pricing policies.

## Introduction: Multinationals and the Political Economy of Drug Pricing

Drug pricing is of major economic, social and political significance, especially since the Second World War and the establishment of national healthcare systems which consolidated mass markets for pharmaceuticals.<sup>1</sup> While the provision of affordable drugs became a quintessential function of states, drug development and commercialisation largely remained the prerogative of private companies, resulting in an intrinsic tension between public health aims and for-profit objectives.<sup>2</sup> This article provides an empirical investigation of such conflict and the negotiations around drug pricing that have occurred between Swiss pharmaceutical companies and the French state since the 1970s, in the context of both the increasing deficit of the French social security system and the demise of the pharmaceutical industry’s golden age of molecular discoveries and market expansion. It then analyses the unfolding of such power relations after the 1981 accession of Mitterrand to the French presidency and considers the European Economic Community’s (EEC’s) attempts to increase price transparency in the pharmaceutical sector while improving the competitiveness of European firms through market integration and harmonisation. Thanks to the availability of rich private archives and by focusing on economic and diplomatic relations, this article makes a valuable contribution to our understanding of the political economy of drug pricing in Europe since the 1970s and of the specific and complex challenges that arose from capital mobility and the international organisation of pharmaceutical production.

<sup>1</sup> For a general historical overview of the main issues related to the development and commercialisation of pharmaceuticals, see Viviane Quirke and Judy Slinn, eds., *Perspectives on Twentieth-Century Pharmaceuticals* (Oxford: Peter Lang AG, 2010); Christian Bonah and Anne Rasmussen, eds., *Histoire et médicament: Aux XIXe et XXe siècles* (Paris: Editions Glyphe, 2005).

<sup>2</sup> Philippe Abecassis and Nathalie Coutinet, *Économie du médicament* (Paris: La Découverte, 2018), 7–30; Ajay Bhaskarabhatla, *Regulating Pharmaceutical Prices in India: Policy Design, Implementation and Compliance* (Cham: Springer International Publishing, 2018), 19.

In doing so, this article builds on and complements the literature that has studied the evolution of drug pricing regulation in Europe, as well as the business history scholarship that has analysed the strategies of multinational companies. Indeed, the rich history of drug regulation provides detailed accounts of the evolution of public policies regarding pharmaceutical pricing in several countries, as well as of the increasing Europeanisation of the market for pharmaceuticals.<sup>3</sup> This body of research highlights the difficulties that governments faced to keep drug prices in check and implement the approved policies, and it stresses how public officials continuously faced resistance from business in this matter.<sup>4</sup> In the case of France, several studies have detailed the state's goals and subsequent policy implementation.<sup>5</sup> Remarkably, France was able to keep drug prices comparatively low by international standards, although it struggled to control drug consumption. France also pursued a variety of so-called 'dirigist' policies after 1945 to support the pharmaceutical sector, ranging from providing incentives for R&D to the partial nationalisation of the industry under Mitterrand. Most accounts mention the historical controversies on the consequences of low drug prices on the French industry's competitiveness<sup>6</sup> and the symbiotic national public-private relations that developed in the research field.<sup>7</sup> Accounts of the role and impact of foreign firms are rather meagre in the literature analysing pharmaceutical pricing regulation in the 1970s. There is also a paucity of information in an international context, especially regarding how attempts to strengthen European market integration in the pharmaceutical sector modified business-government dynamics. Although not explicitly focused on the pharmaceutical sector, recent works on the responses to 'Eurosclerosis' up until the completion of the Single Market in 1992 have shown the general willingness of European political elites to promote the industry's competitiveness through increased market integration.<sup>8</sup> Consequently, in addition to the narrative on national pricing dynamics, it would be relevant to simultaneously consider European attempts to enforce transparency rules regarding pricing, as well as the impact of capital mobility and MNEs' political strategies.<sup>9</sup>

<sup>3</sup> Abecassis and Coutinet, *Économie du médicament*; Elias Mossialos, Monique Mrazek and Tom Walley, *Regulating Pharmaceuticals in Europe: Striving for Efficiency, Equity and Quality* (New York: McGraw-Hill Education, 2004); Fernand Sauer, 'Les grandes étapes de l'Europe du médicament', *Revue d'Histoire de la Pharmacie* 101, no. 381 (2014): 61–74.

<sup>4</sup> Dominique A. Tobbell, *Pills, Power, and Policy: The Struggle for Drug Reform in Cold War America and Its Consequences* (Berkeley: University of California Press, 2012). Difficulties in regulating drug prices and in assessing real cost and return, as well as R&D costs, have been analysed by economists for the recent period; see for an overview: Patricia M. Danzon and Sean Nicholson, eds., *The Oxford Handbook of the Economics of the Biopharmaceutical Industry* (Oxford: Oxford University Press, 2012).

<sup>5</sup> Étienne Nouguez and Cyril Benoît, 'Gouverner (par) les prix. La fixation des prix des médicaments remboursés en France', *Revue française de sociologie* 58, no. 3 (2017): 399–424; Valérie Paris, 'La régulation du prix du médicament en France', *Regards croisés sur l'économie* 5, no. 1 (2009): 215–25; Nathalie Grandfils, 'Fixation et régulation des prix des médicaments en France', *Revue française des affaires sociales* 3, no. 4 (2007): 53–72.

<sup>6</sup> On the hesitation of the French government between securing low prices and promoting the industry in the 1970s, see Sophie Chauveau, *L'invention pharmaceutique* (Le Plessis-Robinson: Empêcheurs de penser rond, 2000), 667–87.

<sup>7</sup> Jean-Paul Gaudillière, 'Une marchandise pas comme les autres. Historiographie du médicament et de l'industrie pharmaceutique en France au XXe siècle', in *Histoire et médicament: Aux XIXe et XXe siècles*, eds. Christian Bonah and Anne Rasmussen (Paris: Editions Glyphe, 2005), 115–58; Muriel Le Roux and Françoise Gueritte, *Navelbine\* and Taxotère\*: Histories of Sciences* (London: ISTEPELS, 2016).

<sup>8</sup> Bastiaan van Apeldoorn, *Transnational Capitalism and the Struggle over European Integration* (London: Routledge, 2003); Grace Ballor, *Agents of Integration: Multinational Firms and the European Union* (Los Angeles: UCLA, 2018); Laurent Warlouzet, *Governing Europe in a Globalizing World: Neoliberalism and Its Alternatives Following the 1973 Oil Crisis* (London: Routledge, 2018). For an exception on the pharmaceutical sector, see Chauveau's chapter based on EEC archives and secondary literature: Sophie Chauveau, 'L'Europe de l'industrie pharmaceutique. Entreprises, marchés et institutions', in *Milieus économiques et intégration européenne au XXe siècle: La relance des années quatre-vingt (1979–1992)*, eds. Éric Bussière, Michel Dumoulin, and Sylvain Schirmann (Vincennes: Institut de la gestion publique et du développement économique, 2018), 297–314.

<sup>9</sup> Warlouzet, *Governing Europe*, 57–77; Francesco Petrini, 'Demanding Democracy in the Workplace: The European Trade Union Confederation and the Struggle to Regulate Multinationals', in *Societal Actors in European Integration: Policy-Building and Policy-Making 1958–1992*, eds. Wolfram Kaiser and Jan-Henrik Meyer (Basingstoke: Palgrave

As business giants, many pharmaceutical companies have produced their own histories that mainly concentrate on their drug inventions and commercial success and from which political matters are notably absent. Following the work of leading figures such as Chandler, Galambos, Sewell and Kobrak, the business history literature has devoted its attention to drug development and commercialisation as well as firms' organisational structures, internationalisation, and concentration processes.<sup>10</sup> Such observation is also valid for the historiography on foreign direct investments in the European market and on Swiss companies.<sup>11</sup> Some studies in the history of medicine detail specific cases where companies imposed either their cheap generic drugs or overly-expensive orphan drugs.<sup>12</sup> Both in histories of business and pharmaceutical regulations, multinationals' resistance to price caps as well as their lobbying strategies and use of transfer pricing are acknowledged, but extensive empirical evidence that would allow an in-depth study of how power relations unfold over time is scarce, with many authors underlining the difficulty of accessing corporate archives and relevant material.<sup>13</sup> Studies of business interest associations,<sup>14</sup> as well as essays on the recent period drawing on anonymised interviews or the sociological observation of negotiations in international organisations, help grasp the complexity of business-government power dynamics and the intertwined national and international involvement of the pharmaceutical giants.<sup>15</sup>

Thanks to its detailed assessment of the evolution of Swiss-French business-government relations and diplomatic negotiations regarding drug prices, this article is therefore a useful addition to the existing literature. Indeed, it highlights the specific political role of multinational pharmaceutical companies whose interests might not only be antagonistic to those of social security, but also to governments' industrial policy targets. In particular, it provides documentation of the following mix of economic and political tactics that multinationals used to fight price controls: employing diplomacy

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Macmillan, 2013), 151–72; Sabine Pitteloud, 'Unwanted Attention: Swiss Multinationals and the Creation of International Corporate Guidelines in the 1970s', *Business and Politics* 22, no. 4 (2020): 587–611.

<sup>10</sup> Alfred D. Chandler, *Shaping the Industrial Century: The Remarkable Story of the Modern Chemical and Pharmaceutical Industries* (Cambridge, MA: Harvard University Press, 2005); Louis Galambos and Jane Eliot Sewell, *Networks of Innovation: Vaccine Development at Merck, Sharp and Dohme, and Mulford, 1895–1995* (Cambridge: Cambridge University Press, 1997); Christopher Kobrak, *National Cultures and International Competition: The Experience of Schering AG, 1851–1950* (Cambridge: Cambridge University Press, 2002).

<sup>11</sup> Sophie Chauveau, 'Entre mondialisation et régionalisation: les multinationales de la pharmacie en Europe', *Entreprises et histoire* 33, no. 2 (2003): 76–90; Christian Marx, *Wegbereiter der Globalisierung Multinationale Unternehmen der westeuropäischen Chemieindustrie in der Zeit nach dem Boom (1960er–2000er Jahre)* (Göttingen: Vandenhoeck & Ruprecht, 2023); Christian Zeller, *Globalisierungsstrategien – Der Weg von Novartis* (Berlin: Springer, 2001). Many contributions have also focused on the development of the Swiss pharmaceutical industry from the perspective of the history of science: Andrea Rosenbusch, Christian Simon, and Thomas Busset, eds., *Chemie in der Schweiz: Geschichte der Forschung und der Industrie* (Basel: Christoph Merian Verlag, 1997); Tobias Straumann, *Die Schöpfung im Reagenzglas. Eine Geschichte der Basler Chemie (1860–1920)* (Basel: Helbing & Lichtenhahn, 1995). Some chapters in collective volumes analyse Swiss companies' political and social impacts in the Basel region; see: Georg Kreis and Beat von Wartburg, eds., *Chemie und Pharma in Basel*, Vols 1 & 2 (Basel: Christoph Merian Verlag, 2016).

<sup>12</sup> Jeremy A. Green, *Generics: The Unbranding of Modern Medicine* (Baltimore: Johns Hopkins University Press, 2014); Mikami Koichi, 'Orphans in the Market: The History of Orphan Drug Policy', *Social History of Medicine* 32, no. 3 (2019): 609–30.

<sup>13</sup> Quirke and Slinn, *Perspectives on Twentieth-Century Pharmaceuticals*, 5.

<sup>14</sup> Paul Turberg, 'Le patronat ouest-européen et américain et la structuration internationale de l'industrie pharmaceutique, 1963–1971', *Relations internationales* 180, no. 4 (2019): 75–89.

<sup>15</sup> Based on interviews and policy-statement, Nico Baljer provides an analysis of Sandoz, Ciba-Geigy and Roche policy preferences and influence between 1985 and 1995 regarding intellectual property rights, healthcare and biotechnology regulations: Nico Baljer, *Between Rent-Seekers and Free Marketeers: The Economic Policy Preferences and Political Influence of German and Swiss Pharmaceutical Multinationals and Banks* (London: London School of Economics and Political Science, 2000). On recent accounts of negotiations in international/supranational organisations, see: Constantin Brissaud, 'Les industriels contre "Big Pharma"? Conflits internes et fragmentation du patronat sur la politique du médicament défendue à l'OCDE (1996–2018)', *Critique internationale* 97, no. 4 (2022): 45–66; Pauline Londeix and Jérôme Martin, 'Prix des médicaments: dans l'arène du débat', *Vacarme* 88, no. 3 (2019): 60–67; Boris Hauray, *L'Europe du Médicament. Politique, expertise, intérêts privés* (Paris: Les presses de Sciences-Po, 2006); Sylvain Laurens, *Les courtiers du capitalisme* (Marseille: Agone, 2015), 369–405.

channels; coalescing internationally within business interest associations; giving host governments promises of further investment to gain political goodwill; taking advantage of free trade agreements and international law to undermine the sovereignty of nation-states; using transfer pricing to avoid taxation; making relocation threats; retaining relevant information on production costs and profits to hinder proper policy implementation. This article also invites a reconsideration of the public-private divide since it demonstrates that, on the one hand, conflicting goals were also incorporated into the state apparatus, while on the other, countries were divided between pharmaceuticals' home nations par excellence, such as Germany and Switzerland, and countries with no major national producers or where the pharmaceutical sector was tightly controlled by the state, such as France, Italy and Spain. This implies that far from being a purely national matter, pricing was also at the centre of diplomatic negotiations, and that attempts made to establish European governance rules had the potential to change the power dynamics between various states and multinationals.

To reconstruct diplomatic tensions around pricing practices as well as complex power relationships between multinational companies and various governmental bodies, this article relies on a variety of private archives. It builds primarily on the archives of the Swiss Federation of Commerce and Industry, which was the main peak Swiss business interest association which enjoyed formalised and extensive consultation rights regarding economic policy as well as significant influence in shaping Swiss diplomacy.<sup>16</sup> Pharmaceutical interests were very well-represented in its executive body during our period of investigation, since its presidents were Roche executive director Etienne Junod between 1970 and 1976, and Ciba-Geigy director Louis Von Planta from 1976 to 1987. As a result, the Swiss Federation of Commerce and Industry archives gathered numerous relevant documents regarding Swiss-French negotiations such as minutes of meetings and working papers, in addition to correspondence between various actors, including pharmaceutical companies, national and European business interest associations, and Swiss and French civil servants and elected officials. The analysis also draws on primary sources from the main Swiss pharmaceutical firms, namely Ciba, Geigy, Hoffmann-LaRoche and Sandoz, to assess their investment strategies in the French market and, when possible, document their tax optimisation schemes and estimate their profitability. To analyse those sources, this article embraces the sociological and political economy tradition, which considers the importance of power relations and institutional embeddedness as well as historical and cultural contexts to explain price levels.<sup>17</sup> It also responds to the recent calls in business history to study multinationals as political actors<sup>18</sup> and for international historians to revisit the history of European integration through the lens of capitalism, i.e. by documenting business preferences and political tactics to understand why some policies were implemented while other roads were not taken.<sup>19</sup>

<sup>16</sup> Pierre Eichenberger and André Mach, 'Organized Capital and Coordinated Market Economy: Swiss Business Interest Associations between Socio-Economic Regulation and Political Influence', in *Switzerland in Europe: Continuity and Change in the Swiss Political Economy*, eds. Christine Trampusch and André Mach (London: Routledge, 2011), 53–81. On the importance of Swiss business and financial interests to shape Swiss-French bilateral relations: Janick Marina Schaufelbuehl, *La France et la Suisse, ou, la force du petit: évasion fiscale, relations commerciales et financières (1940–1954)* (Paris: Presses de Sciences Po, 2009).

<sup>17</sup> Jens Beckert, 'Where Do Prices Come from? Sociological Approaches to Price Formation', *Socio-Economic Review* 9, no. 4 (2011): 757–86; Isabella M. Weber, *How China Escaped Shock Therapy* (New York: Routledge, 2021); Pauline Amard, François-Valentin Clerc and Olivier Pernet-Coudrier, 'Fixer les prix, concevoir la valeur. Éditorial', *Regards croisés sur l'économie* 32, no. 1 (2023): 7–9.

<sup>18</sup> Neil Rollings, "'The Vast and Unsolved Enigma of Power': Business History and Business Power", *Enterprise & Society* 22, no. 4 (2021): 893–920; Philippe Lefebvre, 'Penser l'entreprise comme acteur politique', *Entreprises et histoire* 104, no. 3 (2021): 5–18; Sabine Pitteloud, Grace Ballor, Patricia Clavin, Nicolas M. Perrone, Neil Rollings and Quinn Slobodian, 'Capitalism and Global Governance in Business History: A Roundtable Discussion', *Harvard Business School General Management Unit Working Paper*, 22-081 (2022): 1–49.

<sup>19</sup> Warloutzet, *Governing Europe*; Aurélie Dianara Andry, *Social Europe, the Road Not Taken: The Left and European Integration in the Long 1970s* (Oxford: Oxford University Press, 2022); Aurélie Andry, Emmanuel Murlon-Druol, Haakon A. Ikononou and Quentin Jouan, 'Rethinking European Integration History in Light of Capitalism: The Case of the Long 1970s', *European Review of History* 26, no. 4 (2019): 553–72.

The paper is structured as follows: the first section provides some historical context regarding Swiss-French economic relations in the pharmaceutical sector and reveals the political debates and pricing decisions triggered by the 1970 social security deficit crisis. The second section uncovers the establishment of the Franco-Swiss Working Party on Pharmaceuticals and sheds light on its goals and first outcomes. The third section analyses the impact of continual and shifting state interventions on Swiss pharmaceutical companies, especially during the Mitterrand years. The fourth section investigates in what respect the prospect of the Europeanisation of pharmaceutical policies and the Single Market was perceived as a resource by multinational companies, and to what extent this contributed to a reshaping of business-government relations. The fifth section concludes by underlining the main features of the European political economy of drug pricing from the 1970s to the 1990s, and especially the consequences of the international organisation of the production and capital mobility on state sovereignty.

### Swiss Subsidiaries, Transfer Prices and the Increased French Social Security Deficit (1970–1977)

France had been a large and attractive market for Swiss pharmaceutical companies. They had already invested in France at the beginning of the twentieth century, with Roche opening a first subsidiary in 1903, Ciba in 1910, Sandoz in 1924 and Geigy in 1947.<sup>20</sup> Swiss firms started to manufacture drugs on French territory, but still depended on their headquarters for the import of active substances protected by patents. During the post-war period, this trend was strengthened by the existence of a finished-drug import ban.<sup>21</sup> Pharmaceutical products therefore had to be finalised in France prior to their commercialisation. Moreover, Swiss multinationals, alongside US companies, benefited from the temporary withdrawal of German competition.<sup>22</sup> The French pharmaceutical sector depended heavily on state decisions, since the French Social Security had the power to issue drug commercialisation and reimbursement authorisations and to set drug prices.<sup>23</sup>

During the 1970s crisis, fiscal revenues were decreasing while social spending was rising, which was putting the post-war welfare system under pressure. It is in this context that the French authorities decided to implement price freezes and so-called ‘authoritarian price cuts’ to reduce the expense of social security while the inflation rate fluctuated between 5 and 7 per cent from 1970 to 1973 and peaked at 13.6 per cent in 1974.<sup>24</sup> As summarised by the head of the pharmaceutical products division of the Health Ministry, the pharmaceutical industry was not in compliance with perfect market competition and therefore needed to be regulated for the collective good:

The pharmaceutical market is not competitive for two reasons: the consumer does not choose the product he will buy from his pharmacist, since it is prescribed by a practitioner; the consumer is not the one who pays, since the pharmaceutical product is more or less reimbursed by Social Security. [This] prevents any freedom in the price of the drug. . . . We are a country of freedom, but freedom does not mean doing whatever we want: the freedom of the people must be respected.<sup>25</sup>

<sup>20</sup> Annex to a letter from Yves Dunant, Sandoz AG, to Dr. G. Winterberger, Direktor des Vororts des SHIV, entitled ‘Situation des filiales françaises des sociétés pharmaceutiques suisses- problèmes posés par la réglementation française des prix des spécialités pharmaceutiques remboursables et son application’, 28 Oct. 1976, Archiv für Zeitgeschichte Zürich [hereafter AfZ], IB Vorort-Archiv, 317.5.1.1.

<sup>21</sup> To promote industrialisation and sovereignty in the pharmaceutical sector, many countries introduced import restrictions on finished pharmaceutical goods, which was a strong incentive for Swiss multinationals to further internationalise in the 1950s and 1960s; see Zeller, *Globalisierungsstrategien*, 162.

<sup>22</sup> *Ibid.*, 143.

<sup>23</sup> Sophie Chauveau, ‘Médicament et société en France au 20e siècle’, *Vingtième Siècle. Revue d’histoire* 73, no. 1 (2002): 169–85.

<sup>24</sup> <https://www.worlddata.info/europe/france/inflation-rates.php> (last visited 12 Apr. 2023).

<sup>25</sup> M. Weber, Directeur de la pharmacie et du médicament au ministère de la Santé, Speech at the Association des cadres de l’industrie pharmaceutique meeting, 20 Oct. 1978. AfZ, IB Vorort-Archiv, 317.5.1.16.

In 1976, the French authorities announced a price-cut for 250 drugs and introduced a new evaluation system aimed at differentiating between ‘limited innovative products’ and ‘highly innovative products’. Such measures targeted minor improvements in existing products such as galenic transformation and dosage. Until the 1960s, pharmaceutical companies had chiefly relied on organic chemistry to discover and commercialise new molecules. Subsequently, it was no longer an easy task to make further breakthroughs, and minor improvements became a core feature of their post-Fordist growth model.<sup>26</sup> According to estimates of the French administration, drug prices had effectively decreased by 23 per cent between 1969 and 1974.<sup>27</sup>

From a political and administrative perspective, the opportunities for Swiss companies to contest decisions about price cutting or freezing were very limited. Indeed, they often complained about the burden of issuing a price increase request which necessitated the completion of complex and detailed forms whose examination for approval often took more than six months.<sup>28</sup> Nevertheless, the multinational structure of the companies and the resulting possibility of using transfer prices to repatriate profits to Switzerland (a known fiscal paradise), instead of being taxed in France, provided Swiss companies with some economic leeway. For example in 1970, Produits Roche SA (PRSA), Hoffmann-La Roche’s subsidiary responsible for manufacturing and selling pharmaceutical products in France, paid its Swiss-based mother company 9.1 million FF of royalties for the use of patents, 10.1 million FF for R&D activities subcontracted to its Basel headquarters, and 3 million FF for miscellaneous expenses, with the total equalling 20.7 per cent of that year’s gross sales in France.<sup>29</sup> In the following years, the increasing value of the Swiss franc and the pressure on drug prices in France led to PRSA deficits. It had to borrow money to balance its cash flow. About half of this capital was lent by the parent company, the payment of interest being another method for transferring money back to Basel.<sup>30</sup>

The situation was similar in the French subsidiaries of other Swiss pharmaceutical multinationals during the 1970s. Laboratoires Ciba-Geigy SA was constantly in deficit between 1975 and 1979.<sup>31</sup> As for Laboratoires Sandoz, between 1975 and 1980 it accumulated a deficit of 71.7 million FF while fees paid to headquarters for the use of licences alone amounted to 144.2 million FF during the same period.<sup>32</sup> Moreover, the total for the purchase of active substances from Basel was extremely high, amounting to 78 per cent of gross sales in 1976, with the remaining amount being too low to cover manufacturing and marketing expenses.<sup>33</sup>

Such transfer pricing practices naturally soon attracted the attention of the French customs who were ‘suspicious’ of the price of active substances that the Swiss parent company was charging to its French subsidiaries.<sup>34</sup> According to French customs, those prices were overly inflated, i.e. much higher than actual production costs or the price of raw materials, and contributed to artificially showing the subsidiaries as loss-making. Swiss multinationals therefore had to negotiate regularly with the French fiscal authorities, which did not allow high rates for licences. For example, PRSA made an agreement to pay additional taxes in 1970 for the years 1963–8 and again in 1976 for the years 1968–74.<sup>35</sup>

<sup>26</sup> Quirke and Slinn, *Perspectives on Twentieth-Century Pharmaceuticals*, 15.

<sup>27</sup> Annex to a letter from Yves Dunant, Sandoz AG, to Dr. G. Winterberger, Direktor des Vororts des SHIV, entitled ‘Situation des filiales françaises des sociétés pharmaceutiques suisses- problèmes posés par la réglementation française des prix des spécialités pharmaceutiques remboursables et son application’, 28 Oct. 1976. AfZ, IB Vorort-Archiv, 317.5.1.1.

<sup>28</sup> Ibid.

<sup>29</sup> Financial Report, Jahresergebnis des Marktgebietes Frankreich, 1970. Roche Historical Archives [hereafter: RHA], FR.2.2.7 101135.

<sup>30</sup> Financial Report, Finanzbericht Frankreich, 1975. RHA, FR.2.2.7 101147.

<sup>31</sup> Laboratoires Ciba-Geigy SA, 1975–1979. Novartis Historical Archives [hereafter: NHA], RD 5.05.12.

<sup>32</sup> Financial reports of Laboratoires Sandoz. NHA, Sandoz M 320.080.

<sup>33</sup> Report, Groupe Sandoz, Septembre 1977. NHA, M 320.085.

<sup>34</sup> Alexandre Jetzer, Vorort des SHIV, Note entitled ‘France: problèmes de l’industrie pharmaceutique suisse’, to Paul Veyrassat, 4 Feb. 1977. AfZ, IB Vorort-Archiv, 317.5.1.4.

<sup>35</sup> Financial reports: Jahresergebnis des Marktgebietes Frankreich, 1970 RHA, FR.2.2.7 101135; Finanzbericht 1976, Frankreich. RHA, FR.2.2.7 101148.

Moreover, in addition to price cuts and tax disputes, the general political climate towards pharmaceutical companies deteriorated in the mid-1970s. For instance, in 1977, the French Communist Party (FCP) published a 150-page book entitled *The Drug Mafia* and suggested nationalising several companies, including the Roche and Sandoz subsidiaries. The FCP stated that ‘these companies are heavily involved in transfer pricing and taking them over would result in a significant reduction in the price of many products’.<sup>36</sup> The Socialist Party also advocated for a strong state-led industrial and sanitary policy and did not dismiss the idea of the nationalisation of the largest pharmaceutical companies.<sup>37</sup> Within this context, multinationals were particularly targeted. Even some portions of the French industry participated in the criticism, stating that the pharmaceutical industry was ‘colonised by foreign companies’ which ‘drained profits’.<sup>38</sup> In 1979, the creation of the Commission des comptes de la Sécurité sociale and its first estimate of a ‘hole’ in the social security accounts of nearly 10 billion francs created a political and public outcry which seemed more than ever to justify political measures to balance the deficit.

Such welfare finance issues, anti-industry sentiment and ‘price decrease euphoria’ were particularly salient in France, but they were also valid in the rest of Europe, where many countries were implementing or studying new policies to decrease drug prices, while decolonised countries increasingly contested patent laws and Western drug monopolies.<sup>39</sup> Emblematic of such trends, the Indian government significantly strengthened its Drugs Control of Prices Order in 1970, thereby limiting pharmaceutical companies’ pre-tax profits with the aim of ensuring greater access to essential drugs.<sup>40</sup> Consequently, while multinationals could theoretically use their exit option if unhappy with government policies, it was far from obvious where they could relocate. Moreover, just behind the United States, France was one of the major drug markets worldwide in the 1970s and the European country that hosted the largest number of Swiss subsidiaries in the pharmaceutical sector.<sup>41</sup> As we shall see in the next section, it is within this context that diplomatic talks became increasingly important.

### Public-Private Negotiations (1977–1978)

To deal with the issues of authoritarian price decreases decided by the French authorities and customs litigation, the Swiss pharmaceutical companies, particularly the largest multinationals from Basel – Ciba-Geigy, Sandoz and Roche – insisted on the need to find a way to be granted consultation rights by the French authorities.<sup>42</sup> In pursuing such a goal, the pharmaceutical companies were to some extent trying to reproduce the political rights they enjoyed in their home country. Indeed, interest groups in Switzerland had been granted formal consultation rights in the 1947 constitution. Consequently, companies and their business interest associations entertained close ties with the federal administration and participated actively in policy design and implementation.<sup>43</sup> Because of such characteristics, the Swiss variant of capitalism has often been depicted as ‘coordinated’ and was at odds

<sup>36</sup> News Article, ‘French Communists Spell Out Nationalisation Plans’, *Europe*, 11 June 1977. AfZ, IB Vorort-Archiv, 317.5.1.6.

<sup>37</sup> André Dessot, ‘Le P.S. limiterait la nationalisation de l’industrie pharmaceutique aux grands groupes’, *Le Monde*, 17 May 1977. AfZ, IB Vorort-Archiv, 317.5.1.6.

<sup>38</sup> Booklet, ‘Spécial Santé-Pharmacie. Solutions pour l’industrie du médicament en France’, *Socialisme et Entreprise* no. 27, Nov. 1977. AfZ, IB Vorort-Archiv, 317.5.1.11.

<sup>39</sup> Werner Meyer, ‘Pharma-Industrie fühlt sich belagert’, *Basler Zeitung*, 6 June 1977. AfZ, IB Vorort-Archiv, 317.5.1.7.

<sup>40</sup> Bhaskarabhatla, *Regulating Pharmaceutical Prices*, 12.

<sup>41</sup> Margrit Müller, ‘La Suisse dans la division internationale du travail’, in *Histoire économique de la Suisse au XXe siècle*, eds. Patrick Halbeisen, Margrit Müller and Béatrice Veyrassat (Neuchâtel: Alphil, 2021), 446.

<sup>42</sup> Annex to a letter from Yves Dunant, Sandoz AG, to Dr. G. Winterberger, Direktor des Vororts des SHIV, entitled ‘Situation des filiales françaises des sociétés pharmaceutiques suisses – problèmes posés par la réglementation française des prix des spécialités pharmaceutiques remboursables et son application’, 28 Oct. 1976. AfZ, IB Vorort-Archiv, 317.5.1.1, 9.

<sup>43</sup> Eichenberger and Mach, ‘Organized Capital’, 53–81.

with the French ‘statist’ system in which elected officials and high-ranking civil servants had the upper hand in designing social and economic policy.<sup>44</sup>

In Switzerland, the chemical and pharmaceutical industries were, alongside the machine tool and banking industries, pillars of the national economy and, accordingly, enjoyed political power. Swiss pharmaceutical companies were well organised within the sectoral business interest associations of the chemical and pharmaceutical industries, namely the Schweizerische Gesellschaft für Chemische Industrie (SGCI) and Interpharma.<sup>45</sup> Moreover, between 1970 and 1987, the presidents of the main peak business interest organisation, the Swiss Federation of Commerce and Industry (commonly called the Vorort), were executives from Roche and Ciba-Geigy. The Vorort and Interpharma had developed particularly close ties to the Federal Division of Commerce, which was in charge of conducting bilateral and multilateral economic diplomacy.<sup>46</sup> The biggest Swiss pharmaceutical companies therefore used their privileged access to complain bitterly about the situation in France.

To protect the interests of national industry, the Federal Division of Commerce decided to inaugurate diplomatic talks with the French authorities. The Swiss willingness to engage in a regular dialogue on pharmaceutical issues was first formulated by the Federal Councillor Ernst Brugger on an official visit in January 1977.<sup>47</sup> The Swiss authorities used the existence of favourable bilateral economic relations to obtain the French delegation’s goodwill, expressly underlining that the trade balance was favourable to France and that, in terms of foreign direct investments (FDI), Switzerland was the second-largest investor in the country.<sup>48</sup> The jobs Swiss multinationals provided and the prospects of potential relocations and restructurings, given the context of economic crisis, were instrumentalised to put additional pressure on the French authorities. During his visit, Brugger pointed out that Sandoz, Ciba-Geigy and Roche employed 10,500 workers in France as well as 3,900 French commuters to their Swiss headquarters, but that ‘regarding the existing difficulties [...], the existence of the subsidiaries was increasingly called into question’.<sup>49</sup>

In response to the Swiss insistent requests, André Rossi, the French Minister of Foreign Trade, who was affiliated to the centre-right political party *Union pour la démocratie française*, agreed to establish a Franco-Swiss Working Party on Pharmaceuticals that met for the first time a month later in Paris on 10 February 1977. The Swiss delegation was composed of civil servants from the Division of Commerce, the Swiss Embassy in France, the Customs Directorate and the Tax Department, as well as three industry representatives from the Vorort, Roche and Sandoz. The strategy of the main Basel companies was to find consensus within themselves and then present it to the high-ranking civil servants in charge of the negotiations.<sup>50</sup> The French delegation gathered about twenty government representatives and high-ranking civil servants from various ministries. One of the main reasons

<sup>44</sup> Thomas David, Stéphanie Ginalska, André Mach and Frédéric Rebmann, ‘Networks of Coordination: Swiss Business Associations as an Intermediary between Business, Politics and Administration during the 20th Century’, *Business and Politics* 11, no. 4 (2009): 1–2. On the original typology and to put the Swiss model in perspective, see Peter A. Hall and David Soskice, eds., *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001).

<sup>45</sup> Internal Note entitled ‘Die Beziehung SGCI-Interpharma’, Dec. 1980. AfZ, IB Vorort-Archiv, 212.3.2.2.

<sup>46</sup> Dominique Dirlwanger, Sébastien Guex and Gian Franco Pordenone, *La politique commerciale de la Suisse de la Seconde Guerre mondiale à l’entrée au GATT (1945–1966)* (Zürich: Chronos, 2004), 26; Sabine Pitteloud, *Les multinationales suisses dans l’arène politique* (Genève: Droz, 2022), 64. To open and secure foreign markets, French industry also benefited from the French diplomacy; see: Laurence Badel, *Diplomatie et grands contrats: l’Etat français et les marchés extérieurs au XXe siècle* (Paris: Publications de la Sorbonne, 2010).

<sup>47</sup> A Federal Councillor is the equivalent of a minister (executive body) in the Swiss political system and is elected by the Parliament.

<sup>48</sup> Such strategies focusing on structural economic power had already been used previously with France; see: Schaufelbuehl, *La France et la Suisse*.

<sup>49</sup> Speech during an official visit in Paris by Conseiller fédéral Ernst Brugger, Chef du Département fédéral de l’économie publique, au sujet du point I de l’ordre du jour: problèmes concernant les filiales françaises des sociétés pharmaceutiques suisses en France, 6 Jan. 1977. AfZ, IB Vorort-Archiv, 317.5.1.3.

<sup>50</sup> Letter from H. Glättli, Sandoz, ‘Frankreich/Pharmaprobleme: Bedauerliche Uneinigkeit innerhalb der Basler Chemie’, to Y. Dunant, A. Zecca, A. Cerletti, 18 Feb. 1977. AfZ, IB Vorort-Archiv, 317.5.1.4.



for establishing a Franco-Swiss dialogue on pharmaceutical issues was to force the French to coordinate the response of a variety of ministries and offices that had to deal with the topic:

The Working Group allows us to do what the French themselves have difficulty in obtaining in Paris: to put the four ministries at the same table. We have our foot in the door; it is a question of not letting go before having obtained material satisfaction.<sup>51</sup>

Drug pricing and industrial policy were indeed managed by the Ministry of Economy and Finance, the Ministry of Industry and Research, the Ministry of Health and the Ministry of Labour.

From the start, it was quite clear to the Swiss side that the negotiations would prove challenging. A member of the Vorort indeed noted that the 'current difficulties stem from a proactive policy on the part of the French authorities', who wanted to 'lower social security costs as much as possible, attract research to France, favour French companies over foreign ones, and collect as much tax revenue as possible, both through income tax and customs duties'.<sup>52</sup> Consequently, the Swiss delegation expected 'tough' negotiation partners.<sup>53</sup> Such fears soon materialised and, while the Swiss had hoped to see the French regulations and policies evolve in a more favourable way, the French signalled that the negotiations were mainly aimed at finding compromises and solutions for specific contentious cases.<sup>54</sup>

However, it was precisely because French policy implementation was quite discretionary and its various administrative bodies were willing to negotiate on a case-by-case basis that such bilateral talks and the direct access it provided for Swiss companies was so important. The French administration did indeed have extensive power to influence prices in the pharmaceutical sector as well as huge interpretation leeway regarding existing regulations. For instance, regarding transfer prices, the headquarters should in principle be allowed to include a 5 per cent licensing fee (in comparison to the wholesale price) when selling to its subsidiaries to account for R&D. In practice, however, the Commission Coudurier, in charge of setting reimbursement prices, would systematically reject such licence fee claims.<sup>55</sup> As a result of the first two meetings, the French delegation was therefore happy to announce that potential price increases were studied for twenty-one Sandoz and forty-three Ciba-Geigy products. It also stated that the differentiation between highly innovative products and those with limited innovation allowed significant interpretative leeway on the part of the Coudurier pricing commission, which would help take Swiss interests into consideration:

Excessive formalism will be avoided, as the commission must work in a flexible and pragmatic manner. The working methods of the commission will not be defined in a binding regulatory text, but will depend on given instructions, leaving a margin of appreciation: in cases where there is some uncertainty, the commission will be able to decide in favour of the pharmaceutical industry.<sup>56</sup>

Thanks to the Franco-Swiss Working Party, the Swiss ambassador was granted a meeting with Coudurier himself and took advantage of it to urge him to evaluate multinationals' pricing requests, not only from the perspective of the health policy, but also from that of overall Swiss-French economic relations. To make his case, he underlined that the Swiss banking system had granted favourable credit

<sup>51</sup> Minutes of meeting between M. Ernst Brugger, Conseiller fédéral, Chef du Département fédéral de l'économie publique, and André Rossi, Ministre du commerce extérieur, Paris, 6 Jan. 1977, AfZ, IB Vorort-Archiv, 317.5.1.3, 17.

<sup>52</sup> Internal note from Alexandre Jetzer, Vorort, 'France: problèmes de l'industrie pharmaceutique suisse', to Paul Veyrassat, 4 Feb. 1977. AfZ, IB Vorort-Archiv, 317.5.1.4.

<sup>53</sup> Ibid.

<sup>54</sup> Letter from Paul Veyrassat, 'France: négociations bilatérales concernant les problèmes pharmaceutiques', to Louis von Planta, Président de l'USC/Ciba-Geigy SA, 22 Feb. 1977. AfZ, IB Vorort-Archiv, 317.5.1.4.

<sup>55</sup> Meeting proceedings of the Groupe de travail franco-suisse, 'France: Problème pharmaceutique', 10 Feb. 1977, AfZ, IB Vorort-Archiv, 317.5.1.4, 6.

<sup>56</sup> Meeting proceedings of the Groupe de travail franco-suisse, 27 May 1977. AfZ, IB Vorort-Archiv, 317.5.1.6.

to the French state of 83.6 billion Swiss francs.<sup>57</sup> Here again, structural economic advantages were used as a diplomatic tool. The Swiss nevertheless had no monopoly on such structural arguments so Coudurier, as well as the French delegation in general, often stressed the size of the French market and the high level of drug consumption. According to their views, the high demand therefore justified price decreases.<sup>58</sup> While the Franco-Swiss Working Party did offer access to French civil servants, changing their views on pricing nevertheless proved rather difficult, at least during the initial meeting.

In parallel to the drug pricing discussions, the other main topic that the Franco-Swiss Working Party on Pharmaceuticals addressed was the customs issue, because the French customs were using their discretionary power to assess the legitimate import price. To do so, the customs' civil servants would compare the price of a compound to prices of similar products, assess the profitability of the importers (poor profitability of subsidiaries being suspect) and the price that the exporter would charge in its own market. Moreover, the fiscal administration had commissioned the customs civil servants to 'systematically question all transactions carried out by a French enterprise in collaboration with a trade partner established in a fiscal paradise, Switzerland being specifically named'.<sup>59</sup> Such practices meant that Swiss subsidiaries could face penal litigation and, if found guilty, would have to pay huge reparations retroactively, which increased uncertainty. Most of the time, an out-of-court settlement was reached between customs and the concerned company, which again shows the French civil servants' discretionary power and the benefit for Swiss MNEs in getting various ministry representatives and high-ranking French civil servants to intercede in their favour thanks to the existing bilateral discussions.<sup>60</sup> The French delegation indeed advocated for better consultation procedures with the incriminated companies but specified that customs would also need better information on compounds' cost price and on R&D costs per product.<sup>61</sup>

During both the customs litigation and pricing discussions, the Swiss contested the ability to estimate specific R&D costs by product since many R&D efforts would not lead to a commercial success and therefore had to be considered in general.<sup>62</sup> The question of what constituted the 'right' transfer price was highly sensitive: Roche, Ciba-Geigy and Sandoz experienced coordination difficulties at the beginning of the Franco-Swiss trade talks in adopting a common position and were particularly aware of the necessity of avoiding having to provide internal data and documents that could weaken their bargaining position.<sup>63</sup> For instance, regarding a preliminary and preparatory meeting with the head of the Division of Commerce, a Sandoz executive regretted that one of its Ciba-Geigy counterparts had behaved like 'a bull in a china shop'. He added that this was no 'glorious day for the unity of the Basel chemical industry' and that it was urgent to find common ground in explaining the legitimacy of current transfer prices.<sup>64</sup> Pharmaceutical companies were very aware that knowledge and power were highly intertwined. On several occasions, the pharmaceutical business interest association would survey their members to gather data for the negotiations. Simultaneously, such data was used very

<sup>57</sup> Note written by Nordasini, 'Problèmes pharmaceutiques', 17 Nov. 1977. AfZ, IB Vorort-Archiv, 317.5.1.11, 1.

<sup>58</sup> Minutes of meeting, 'Réunion du groupe de travail restreint franco-suisse pour l'examen des problèmes des industries pharmaceutiques', Paris, 16–17 June 1977. AfZ, IB Vorort-Archiv, 317.5.1.7, 2–3.

<sup>59</sup> Speech draft, 'France: Problèmes pharmaceutiques', prepared by the Swiss Delegation for the first meeting of the Working Party in Paris, 10 Feb. 1977. AfZ, IB Vorort-Archiv, 317.5.1.4., 17. On the efforts of the French fiscal administration to fight Swiss multinationals' tax optimisation schemes see also: Vanessa Ogle, 'Governing Global Tax Dodgers: The "Group of Four" and the Taxation of Multinational Corporations, 1970s–1980s', *Business History Review* 97, no. 3 (2023): 547–74.

<sup>60</sup> Memorandum 'Annexe B, Majoration de la valeur en douane', Berne, 4 Apr. 1977. AfZ, IB Vorort-Archiv, 317.5.1.5, 1.

<sup>61</sup> Meeting Summary, 'Réunion du groupe de travail restreint franco-suisse pour l'examen des problèmes des industries pharmaceutiques', Paris, 16–17 June 1977, AfZ, IB Vorort-Archiv, 317.5.1.7, 3–4.

<sup>62</sup> Memorandum 'concernant les problèmes pharmaceutiques', Berne, 4 Apr. 1977, AfZ, IB Vorort-Archiv, 317.5.1.5, 3.

<sup>63</sup> On business obstruction regarding the collection of statistical data see: Sébastien Guex and Janick M. Schaufelbuehl, 'Les vertus de l'ignorance. Enjeux et conflits autour des statistiques sociales et économiques en Suisse au XXe siècle', *Economies & Sociétés* 44, no. 9 (2011): 1555–74.

<sup>64</sup> Letter from H. Glättli, Sandoz, 'Frankreich/Pharmaprobleme: Bedauerliche Uneinigkeit innerhalb der Basler Chemie', to Y. Dunant, A. Zecca, A. Cerletti, 18 Feb. 1977. AfZ, IB Vorort-Archiv, 317.5.1.4.

confidentially and handed to the Swiss negotiators in an aggregated manner.<sup>65</sup> The sectoral pharmaceutical business interest associations also took care to prevent individual companies from negotiating directly with the French authorities as this would weaken the bargaining power of the Franco-Swiss Working Party on Pharmaceuticals.<sup>66</sup>

During the negotiations, the question of the location of R&D was probably the Swiss delegation's most valuable asset. Since the pharmaceutical industry was considered to be a strategic one by the French government, Swiss multinationals could use the promise of new investments to argue for a conciliatory attitude in matters of custom litigation and price increase requests on the part of the French authorities.<sup>67</sup> The level of R&D carried out by Swiss subsidiaries in France had remained noticeably low. For Laboratoires Sandoz, it amounted to 8.3 million FF in 1975 and 8.8 million FF in 1976, i.e. 1.9 and 2 per cent of gross sales respectively. It was also about four times lower than fees paid for R&D outsourced to Basel.<sup>68</sup> When a representative of Sandoz had the opportunity of lunching with an official of the Ministry of Health in Paris in January 1979, he stressed 'the necessity of delivering prices that would create the climate for a research-based pharmaceutical industry and would allow it to fulfil its role within the healthcare system'.<sup>69</sup> The Swiss claims were also strengthened by the French National Syndicate of the Pharmaceutical Industry (of which the Swiss subsidiaries were also members), which regularly complained about low prices in the French market.<sup>70</sup> The R&D question was thus dividing the members of the French delegation between those of the Coudurier Commission, who mostly behaved according to public health considerations and the deficit in social security, and the Ministry of Industry and Research as well as the Ministry of Labour, which were preoccupied in strengthening the French industrial basis in the context of the economic crisis and preserving existing jobs.

After the first round of discussions, the Swiss made a point of holding the French to their commitment to these bilateral talks, since concrete results were at first 'too thin' and mainly had the effect of raising awareness of Swiss multinationals' issues.<sup>71</sup> The first tangible result regarding the customs litigation cases was delivered in October 1977. During what was cast as a 'highly confidential' oral discussion, Guy Vidal, the Director General of Customs appointed by Valéry Giscard d'Estaing in 1975 and a member of the French delegation, suggested bringing a litigation case to the Luxembourg court to enforce supranational discipline regarding the actions of the French customs service, which was highly unionised and dominated by communists.<sup>72</sup> He was indeed confident that the Luxembourg court would declare French practices illegal and rule in favour of the Swiss pharmaceutical companies and, even if it did not, that the overbilling would only lead to a fine and not a penal procedure.<sup>73</sup> Paradoxically, French customs were using an EEC directive (No. 803/68) to target price overvaluation through transfer pricing, whose original purpose was in fact to prevent the artificial reduction of customs revenues, notably by undervaluing the price of imported goods. One of Vidal's collaborators even provided legal advice to the Swiss delegation, explaining that the lawyer of an incriminated Swiss subsidiary should find a French judge willing to submit the litigation case to the court of Luxembourg for

<sup>65</sup> Letter from Schweizerische Gesellschaft für chemische Industrie, Frankreich/Pharmaprobleme, to the interessierten Firmen, 24 Nov. 1978. AfZ, IB Vorort-Archiv, 317.5.1.16.

<sup>66</sup> Summary by Dr Meyer, SGCI, Schweizerische Gesellschaft für Chemische Industrie, 'Zusammenfassung der Besprechungen in Frankreich betreffend Pharmaprobleme', 27 Nov. 1978. AfZ, IB Vorort-Archiv, 317.5.1.18.

<sup>67</sup> Report, Handelsabteilung, 'Bericht über die Pharma-Gespräche vom 10. Februar 1977 in Paris', Bern, 18 Feb. 1977. AfZ, IB Vorort-Archiv, 317.5.1.4, 14.

<sup>68</sup> AHN, Sandoz, M 320.080.

<sup>69</sup> Note, 5 Jan. 1979. AHN, Sandoz, M 320.065.

<sup>70</sup> Policy Statement by the Syndicat National de l'Industrie Pharmaceutique, 'Commentaire concernant le projet de réforme', 1977. AfZ, IB Vorort-Archiv, 317.5.1.6.

<sup>71</sup> Summary by Alexandre Jetzer, Vorort, 'Etat des travaux du groupe franco-suisse pour l'examen des problèmes des industries pharmaceutiques', 22 June 1977. AfZ, IB Vorort-Archiv, 317.5.1.8, 5.

<sup>72</sup> Summary by Yves Dunant, 'Frankreich/Pharmaintervention, Lagebesprechung im Hinblick auf das Treffen der Commission Mixte', 21 Oct. 1977. AfZ, IB Vorort-Archiv, 317.5.1.10.

<sup>73</sup> Ibid.

clarification.<sup>74</sup> Consequently, a Sandoz litigation case was brought to the Luxembourg court which decided in favour of the company, stating that France was hindering trade through its custom practices, and thereby violating the Swiss-CEE trade agreement and the spirit of the EEC directive (No. 803/68). The French customs appealed the decision, but the case was finally dismissed in 1983.<sup>75</sup> This case emblematically echoes the literature that has emphasised the ambivalent role and use of European law, and how private actors have increasingly taken advantage of European litigation procedures to limit the authority of nation-states since the 1970s.<sup>76</sup>

A second important outcome of the Franco-Swiss Working Party on Pharmaceuticals was the ratification of a joint declaration on 24 February 1978, called *Aide-mémoire concernant les problèmes de l'industrie pharmaceutique*. In this document, the French were recognising the fairness for headquarters to charge R&D and administrative costs to their subsidiaries, the need to adapt drug prices to inflation and exchange rate fluctuations between the Swiss and the French francs, and the importance of ensuring that prices were high enough to sustain R&D efforts in the future. The documents also recognised the principle of equal treatment between subsidiaries of Swiss and French companies in accordance with all the agreements or conventions binding the two countries, namely the GATT and the 1972 Free Trade Agreement between Switzerland and the EEC.

The Swiss had insisted on putting the results on paper, which would allow them to appeal to the French given commitments even in the event of political change.<sup>77</sup> The French delegation's leader and chief of the Cabinet of the French Foreign Trade Ministry, André Achard, who was sympathetic to trade relations and industrial policy issues, helped bypass the reluctance of the social security representatives. The French nevertheless insisted on keeping the deal quiet to avoid public opinion issues and not open a Pandora's box of further negotiations with other home countries of major pharmaceutical companies.<sup>78</sup> Based on this first experience with the French negotiators, the Swiss diplomacy progressively institutionalised bilateral negotiations regarding the pharmaceutical sector with Italy in 1978 and Spain in 1979.<sup>79</sup>

### Varieties of Statist Approaches

The Swiss managed to continue the dialogue after 1978, despite the reluctance of the French. The Swiss promised discretion, so that the Franco-Swiss Working Party on Pharmaceuticals would meet again in November 1979, March 1981, March 1982, October 1982, and March 1983.<sup>80</sup> Meetings took place alternately in Paris and Bern, sometimes with planned visits to the Basel headquarters and their R&D facilities. Ongoing meetings were important in perpetuating the work of persuasion and in monitoring the concrete effects of the Franco-Swiss joint declaration.

At the initiative of Prime Minister Raymond Barre in 1977, a four wise men committee, representing the various ministries involved, had been established to study and supervise the implementation of the French drug policy and the work of the Coudurier pricing commission. The new body was also

<sup>74</sup> Confidential note, 'Intervention confidentielle de l'Ambassadeur de France auprès de l'Ambassadeur Moser, Selon dictée téléphonique de l'Ambassadeur', 19 Oct. 1977. AfZ, IB Vorort-Archiv, 317.5.1.10.

<sup>75</sup> Meeting minutes by Interpharma, 'Protokoll über die Sitzung bei F. Hoffmann-La Roche & Co, Thema Frankreich', 28 Feb. 1983. AfZ, IB Vorort-Archiv, 317.5.3.3.

<sup>76</sup> Neil Fligstein and Alec Stone Sweet, 'Constructing Politics and Markets: An Institutionalist Account of European Integration', *American Journal of Sociology* 107, no. 5 (2002): 1217; Bill Davies and Morten Rasmussen, 'Towards a New History of European Law', *Contemporary European History* 21, no. 3 (2012): 305–18.

<sup>77</sup> Notes to Bundesrat Honegger, 'Frankreich: Unterzeichnung am Freitag 24 Februar 1978 eines Promemoria über die Probleme der schweizerischen pharmazeutischen Industrie in Frankreich', 21 Feb. 1978. AfZ, IB Vorort-Archiv, 317.5.1.15.

<sup>78</sup> Letter from Lusser, Handelsabteilung to Spinger, Robapahrm AG, 12 Aug. 1978. AfZ, IB Vorort-Archiv, 317.5.1.16.

<sup>79</sup> Letter from Dr A. Zocca and A. Herzog, Interpharma, 'Pharma-Preise Italien', to the Direktion der Handelsabteilung, Basel, 19 May 1978. AfZ, IB Vorort-Archiv, 317.5.1.16.

<sup>80</sup> Negotiation summary by Dr. Glättli, 'Frankreich/Pharmaprobleme, Verhandlungen vom 12 Dec. 77 in Bern', 15 Dec. 1977. AfZ, IB Vorort-Archiv, 317.5.1.12.

encouraged to develop its recommendations in consultation with the industry and assess the price policy regarding not only its effect on social security but also its overall impact on the French economy.<sup>81</sup> Such changes had been presented by the French as proof that they were sensitive to the industry's arguments, both Swiss and French. Despite such a promising signal, the first assessment of the joint declaration's implementation was, however, rather disappointing. The Coudurier Pricing Commission had not significantly changed its appraisal, often considering that the transfer prices' justification by the Swiss companies was insufficient. And when price increases were granted for Swiss pharmaceutical products, they would usually follow general price increases. Moreover, the Swiss pharmaceutical companies kept complaining that the price increases did not balance the effective inflation rate and the variation of exchange rates between the Swiss and the French franc.<sup>82</sup> Over the years, the Swiss and the French often expressed diverging appraisals and brought contradictory numbers to the negotiating table.<sup>83</sup> The Swiss also regretted that the French administration 'multiply[ed] the obstacles, use[d] all means to delay decisions, and generally seem[ed] to privilege the national industry over foreign laboratories'.<sup>84</sup>

In 1980, France allowed for a 3 per cent general increase on drug prices, which meant a partial liberalisation of the price of drugs since pharmaceutical companies could choose freely which of their products would benefit from increases if the general price increase of their product range did not exceed the allowed 3 per cent. The news made the pharmaceutical industry 'moderately optimistic' while Swiss diplomacy hoped it would be a 'breach in the monolithic system' they had been experiencing so far.<sup>85</sup> The Coudurier pricing commission was replaced in early 1981 by the Transparency Commission, which had to determine which drugs would be reimbursed while other drugs' prices would be liberalised.<sup>86</sup>

After Mitterrand came to power in 1981, the Swiss secured the recognition of the Franco-Swiss 1978 joint declaration and the perpetuation of bilateral talks. They noted that the situation was quite 'opaque' and suspenseful since 'the Ministry of Industry and the Trade Ministry want to stick to the industry-friendly line they have taken' and that 'a fierce battle within the government was to be expected'.<sup>87</sup> In 1982, Prime Minister Bérégovoy announced a tax on drug advertising costs and a decrease of between 5 and 20 per cent on certain pharmaceutical products.<sup>88</sup> Ultimately, 1,272 drugs were targeted for a price decrease, which was part of the remediation plan (*plan de redressement*) of social security, while a price adaptation for inflation was granted simultaneously.<sup>89</sup> The price decreases depended on drugs' consumption and sales volumes. For instance, Parlodel, a drug commercialised by Ciba-Geigy and approved for reimbursement by French social security to fight Parkinson's disease, was also prescribed by gynaecologists to end lactation. Therefore, instead of the 150,000 units that the social security had envisioned to be reimbursed, 800,000 doses had been prescribed.<sup>90</sup> For the French authorities, such a consumption explosion justified price decreases.

<sup>81</sup> Article, 'France: Real Power to Lie with Four Wise Men Committee', *Europe*, 1977. AfZ, IB Vorort-Archiv, 317.5.1.11.

<sup>82</sup> Internal Note, 'Besserung an der Pharmafront in Frankreich', 11 Feb.1978. AfZ, IB Vorort-Archiv, 317.5.1.15.

<sup>83</sup> Minutes of meeting by E Moser pour la délégation suisse, B. Schneiter pour la délégation française, 'Groupe de travail franco-suisse pour l'examen des problèmes de l'industrie pharmaceutiques', Paris, 23 Nov. 1979. AfZ, IB Vorort-Archiv, 317.5.1.18.

<sup>84</sup> Minutes of meeting, 'Réunion du 21 février 1980 à l'Ambassade de Suisse, présents pour l'Ambassade: Ambassadeur de Ziegler, le Ministre Mordasini, M. Bieler Secrétaire de l'Ambassade, pour Ciba-Geigy M Douaze, pour Robapharm M. Navko pour Roche', 22 Feb.1980. AfZ, IB Vorort-Archiv, 317.5.1.18.

<sup>85</sup> Telex from Ziegler, Ambassade de Suisse à Paris, to Emilio Moser, BAWI, 6 Feb.1980. AfZ, IB Vorort-Archiv, 317.5.1.18.

<sup>86</sup> Summary of meeting, by M. Lusser, Chef de la Délégation suisse, and J.L. Keene, Chef de la Délégation française, 'Compte-rendu de la réunion pharmaceutique franco-suisse', 17 Mar. 1981. AfZ, IB Vorort-Archiv, 317.5.3.1, 3.

<sup>87</sup> Internal Report, 'Pharmaprobleme Frankreich, Bericht über die bilaterale Gespräche in Paris, 23–25 Nov. 1981', 19 Dec. 1981. AfZ, IB Vorort-Archiv, 317.5.3.1, 3.

<sup>88</sup> Claire Brisset, 'Le plan de redressement de la Sécurité sociale', *Le Monde*, 1 Oct. 1982.

<sup>89</sup> Artikel, 'Keine Pille gegen Protektionismus?', *SHZ-Branchenspiegel*, 25 Nov. 1982, AfZ, IB Vorort-Archiv, 317.5.3.2.

<sup>90</sup> Summary of the meeting, by the Direction de la pharmacie et du Médicament, Ministère de la Santé, République Française, 'Compte Rendu de la réunion franco-suisse', 13 Dec.1982. AfZ, IB Vorort-Archiv, 317.5.3.2, 3.

In addition, the strengthening of the Swiss franc against the French franc once again became a matter of important concern for Swiss companies. Price adaptations caused by currency fluctuations had already been recognised in the Franco-Swiss agreement and they wanted the French government to do more in this respect. While the Swiss were still complaining about the price level, the French Health Ministry noted in 1982 that the revenues of the pharmaceutical industry had experienced a 20.4 per cent increase since 1979 and that they did not understand ‘why the results of the Swiss subsidiaries deviate from the national average’ and that it would ‘be interesting to consider both the consolidated results of the Swiss groups and the differentiated profitability according to country or business activity’.<sup>91</sup> Here again one can see antagonism towards the Swiss numbers, and it is quite striking how the pricing mechanism, throughout the years and on both sides, remained the result of state-led negotiations, intra-government rivalries between ministries, and deliberate information asymmetries created by the pharmaceutical companies themselves to systematically oppose delivering relevant data.<sup>92</sup> The Swiss ultimately considered that the French expressed the will to respect the ‘spirit of the agreement’ but at the same time had introduced so many new rules that were against it that ‘not much of its substance was remaining’.<sup>93</sup> The *Basler Zeitung* reported that the industry was still stuck ‘in the labyrinth of the price dictatorship’.<sup>94</sup>

The political climate became even less predictable due to Mitterrand’s active industrial policy. The first Mitterrand government nationalised Roussel UCLAF and SANOFI, hoping to foster R&D and strengthen French sovereignty regarding access to pharmaceuticals. A new system of individual negotiations was introduced to assess price increases according to the industry’s contributions (*services rendus*) to the national industry in terms of investments, R&D and jobs. The ‘good elements’, i.e. principally the nationalised companies, negotiated with the government.<sup>95</sup> Such individual negotiations were at odds with the Swiss pharmaceutical companies’ strategies to coordinate their political demands and with the Franco-Swiss joint statement that should have guaranteed non-discrimination.<sup>96</sup> The Swiss considered this new policy as an illustration of the French belief in ‘*pur dirigisme*’ [‘pure state planning’].<sup>97</sup>

Despite their displeasure with Mitterrand’s political agenda, Swiss multinationals could nevertheless capitalise on his desire to develop R&D in France to promote price increases. They indeed made the point that ‘the price that the producing country pays for a drug very often determines the price that the importing country will pay for the product. The current French price level is a disincentive to production for export to certain interesting markets.’<sup>98</sup> When Louis von Planta, Chairman of Ciba-Geigy, was granted a meeting with Edith Cresson, Head of the Industrial and Foreign Trade Ministry (*Ministère du Redéploiement industriel et du Commerce extérieur*), he also insisted on the need to strengthen the European industry against Japanese and US competition, appealing to neo-mercantilist sentiments.<sup>99</sup> The Swiss pharmaceutical companies invited a French delegation in 1983 to Basel to

<sup>91</sup> Summary of the meeting, Ministère de la Santé, Direction de la pharmacie et du médicament, Paris, 22 Mar. 1982. AfZ, IB Vorort-Archiv, 317.5.3.2, 6.

<sup>92</sup> On the attempts of the pharmaceutical industry to withhold data: Pierre Fournier, Cédric Lomba and Séverin Muller, ‘Introduction’, in *Les travailleurs du médicament. L’industrie pharmaceutique sous observation*, ed. Pierre Fournier (Toulouse: Érès, 2014), 7–20.

<sup>93</sup> Internal Note, Dr. Meyer, SGCI, ‘Pharma-Expertengespräche zwischen der Schweiz und Frankreich’, Bern, 18 Oct. 1982. AfZ, IB Vorort-Archiv, 317.5.3.2.

<sup>94</sup> Article, ‘Wird Frankreichs Pharmazeutik zur zweiten Stahlindustrie?’, *Basler Zeitung*, 26 Mar. 1979. AfZ, IB Vorort-Archiv, 317.5.1.17.

<sup>95</sup> Article, ‘Les prix pharmaceutiques en 1983: hausses conjoncturelles, hausses conditionnelles’, *Chimie Actualités*, 13 Dec. 1982. AfZ, IB Vorort-Archiv, 317.5.3.2.

<sup>96</sup> Minutes of meeting, Interpharma, ‘Protokoll über die Sitzung vom Montag bei F. Hoffmann-La Roche & Co, Thema Frankreich’, 28 Feb. 1983. AfZ, IB Vorort-Archiv, 317.5.3.3, 4.

<sup>97</sup> Note to Haldimann, ‘Entretiens pharmaceutiques avec la France’, Bâle, 9 Mar. 1983. AfZ, IB Vorort-Archiv, 317.5.3.3.

<sup>98</sup> Summary of the meeting, Ministère de la Santé, Direction de la pharmacie et du médicament, Paris, 22 Mar. 1982. AfZ, IB Vorort-Archiv, 317.5.3.2, 5.

<sup>99</sup> Internal note, ‘Aktennotiz über das Gespräch von Dr. V. Planta mit Madame Cresso’, Paris, 29 May 1984. AfZ, IB Vorort-Archiv, 317.5.3.3.

showcase their impressive research facilities and the consequent financial commitment that such R&D efforts created which, they argued, should be reflected in transfer prices. In order to keep insisting on financial difficulties, they exercised caution, ‘avoiding showing luxurious facilities, i.e. the meeting rooms!’<sup>100</sup>

In parallel to those R&D showcase efforts, some pharmaceutical multinationals pragmatically carried out individual negotiations. During the first part of the 1980s, Sandoz discussed with the French authorities the terms of a bilateral contract for it to benefit from price increases for some of its drugs in exchange for increased production in the Sandoz chemicals factory in Alsace. During a second negotiation in 1984, the Swiss headquarters offered to substitute some exports from the headquarters with exports from France, which would contribute to improving the French trade balance (280 million FF in three years). Sandoz also provided a 50 million FF investment to modernise production facilities and to develop R&D activities in collaboration with the French national research agency CNRS.<sup>101</sup> The outcome of this second negotiation remains unclear in the historical records, but the improvement of gross sales of Laboratoires Sandoz suggests it reached a positive settlement. The sales grew from 673 million FF in 1982 to 810 million in 1984 and 1.5 billion FF in 1990.<sup>102</sup> In a similar endeavour, in November 1989 Hoffmann-La Roche opened an international clinical research centre in Strasbourg to demonstrate its commitment to French and European industry.<sup>103</sup>

Over the years, due to their willingness to foster R&D and the related need to maintain enterprises’ goodwill, the subsequent Mitterrand governments did not repudiate their commitment to the 1978 Franco-Swiss joint declaration. Moreover, the situation significantly improved during the cohabitation period when Jacques Chirac became prime minister in 1986. He freed prices for the drugs that were not reimbursed by social security, granted a 2 per cent increase for the reimbursed specialties, and announced a move to improve drug policy coordination by creating an inter-ministerial working party. The Swiss pharmaceutical companies stated that such a new policy was a serious matter, since the ‘non-reimbursed products’ accounted for a significant part of their profits.<sup>104</sup>

Ultimately, the Swiss pharmaceutical industry recognised that the volume of sales in France had somehow balanced out the low prices. Moreover, regarding the state of their business in France and the usefulness of bilateral contacts, the Swiss stated in 1990:

The representatives of the pharmaceutical industry admit that the current market situation in France is more favourable to the Swiss industry than when the Franco-Swiss agreement was signed in 1978. Nevertheless, the Franco-Swiss pharmaceutical group remains relevant because it is a means of maintaining pressure on the French authorities. This forum is also the ideal framework within which the pharmaceutical industry can make a long-term effort to persuade the French administration.<sup>105</sup>

The Swiss had therefore navigated two decades of a variety of state interventions without seriously considering leaving French soil. On the one hand, it appeared that multinationals were willing to endure a great deal of state intervention to maintain their presence in an important market and that their perpetual complaints did not truly reflect real profitability issues. Moreover, at the beginning of the 1990s, the concretisation of the Single Market was on the horizon, which created new opportunities for pharmaceutical companies to escape states’ discretionary policies.

<sup>100</sup> Minutes of meeting by Interpharma, ‘Protokoll über die Sitzung bei F. Hoffmann-La Roche & Co, Thema Frankreich’, 28 Feb. 1983. AfZ, IB Vorort-Archiv, 317.5.3.3.

<sup>101</sup> Letter from Sandoz France SA to the Direction de la Pharmacie et du Médicament, 19 Dec. 1984. AHN, Sandoz.

<sup>102</sup> Report by Sandoz, ‘Evolution et perspectives des activités Sandoz en France’, 4 Nov. 1986. AHN, Sandoz, M 320.032.

<sup>103</sup> Report by Roche, ‘Roche en France, faits et chiffres, 1992–1993’. AHR, LG.FR 103481.

<sup>104</sup> Letter from Interpharma, ‘Betrifft Frankreich’ to the Bundesamt für Aussenwirtschaft, Basel, 6 June 1986. AfZ, IB Vorort-Archiv, 317.5.3.4.

<sup>105</sup> Internal note by OFAE, ‘14. Séance du groupe de travail OFAEE-Industrie pharmaceutique pour l’Europe occidentale’, Berne, 10 May 1990. AfZ, IB Vorort-Archiv, 212.3.3.5, 3.

### The Prospect of the Single Market: Capitalising on Supranational Ruling and European Neo-mercantilism

International trade agreements and the EEC rules had early been envisioned by Swiss pharmaceutical companies as a resource to contest state intervention in pricing policies. Indeed the Swiss diplomacy had often appealed under the Rome treaty and the 1972 trade agreement signed between Switzerland and the EEC to criticise pricing practices in France, but also in Italy, Luxembourg and Belgium.<sup>106</sup> In some cases, the EEC Commission proved to be a helpful ally. For instance, the Commission released a statement (*avis motivé*) to the Italian government in 1979, condemning its pricing practices that were forbidden under the Treaty of Rome. While acknowledging the right of any government to set drug prices, it stated that the price level set for some imported compounds was so low that it was de facto jeopardising free trade principles.<sup>107</sup> Consequently, free trade and global governance appeared to have the potential to curb state pricing policies, and it is therefore not surprising that the prospect of a progressive Europeanisation of the drug market was in this respect appraised quite positively by the industry.

In the early 1980s, business and political elites from various EEC countries shared the view that the EEC suffered from Eurosclerosis, while the European economy was afflicted by slow growth, rising unemployment and increasingly fierce competition from US and Japanese multinationals and that, in response, European integration needed to be reinvigorated.<sup>108</sup> In 1985, the full completion of the Single Market by 1992 was approved, which meant passing over 281 EEC directives with the general goal of eliminating non-trade barriers through harmonisation, favouring economies of scale and, ultimately, of improving the competitiveness of European industry. While there was a broad consensus on the merits of a Single Market, recent historical accounts emphasise the existence of diverging views regarding its concrete materialisation, with some emphasising the need for social rules to accompany it (Social Europe), others promoting the creation of European champions through active industrial policies and protectionism at the European borders (neo-mercantilism), and some advocating a general liberalisation with a focus on competition rules and the harmonisation of standards through mutual recognition (neoliberalism).<sup>109</sup> While promoting national champions in the context of globalisation seemed increasingly challenging, the French government under Mitterrand defended the idea of an active industrial policy at the European level and the possibility of privileging European companies to protect them from foreign competitors. The initial vagueness of the Single Market content and the existing diverging views regarding its final form prompted business executives of major multinational companies to play the role of promoters of European integration, while actively engaging in the political debates.<sup>110</sup> Within this context, CEE directives regarding drug regulation and market harmonisation were also discussed and increasingly attracted the attention of pharmaceutical companies, including from third country multinationals, such as Switzerland's.

Actions at the European level were mostly carried out through the European Federation of Pharmaceutical Industry Associations (EFPIA),<sup>111</sup> in which Swiss pharmaceutical companies were very active. The EFPIA's economic weight was important since it represented 2,300 enterprises, had 450,000 employees (400,000 in the EEC), and a positive trade balance of 33 billion ECU in the

<sup>106</sup> Meeting proceedings of the Working Party 'France: Problème pharmaceutique', 10 Feb. 1977, AfZ, IB Vorort-Archiv, 317.5.1.4, 2.

<sup>107</sup> Article, 'Produits pharmaceutiques: pour la Commission, le régime italien de formation des prix est illicite', *Europe*, no. 2644, 22 Mar. 1979. AfZ, IB Vorort-Archiv, 317.5.2.4.

<sup>108</sup> Neil Fligstein and Iona Mara-Drita, 'How to Make a Market: Reflections on the Attempt to Create a Single Market in the European Union', *American Journal of Sociology* 102, no. 1 (1996): 9.

<sup>109</sup> For a detailed explanation of these typologies see: Warloutet, *Governing Europe*; van Apeldoorn, *Transnational Capitalism*.

<sup>110</sup> Maria Green Cowles, 'Setting the Agenda for a New Europe: The ERT and EC 1992', *JCMS: Journal of Common Market Studies* 33, no. 4 (1995): 501–26; Ballor, *Agents of Integration*.

<sup>111</sup> On the EFPIA consultative role after 2001, see Éric Cheynis, 'Politique du médicament en Europe: La difficile constitution d'une prise de parole face à l'industrie', *Savoir – agir* 16, no. 2 (2011): 51–59.



1980s.<sup>112</sup> In addition to its actions towards European institutions, the EFPIA also helped to disseminate the views of the most internationalised companies of the pharmaceutical sector to various national governments, since it asked ‘its member associations to support at the national level the views expressed at the international level and to inform the representatives of their governments in international organisations’.<sup>113</sup> The EFPIA also cooperated with other international business interest associations such as the International Federation of Pharmaceutical Manufacturers’ Associations (IFPMA), the US Pharmaceutical Manufacturers’ Association, the Union of Industrial and Employers’ Confederations of Europe (UNICE), and the Chemical Industries Federations’ Council (CEFIC). The EFPIA was therefore a significant resource for Swiss companies, in addition to the help they received from the Swiss diplomacy to disseminate their views at the European level, and would become of increasing importance when the pace of European integration accelerated.

Regarding the 1985 Cockfield white paper to establish the Single Market, both the Swiss pharmaceutical industry and the EFPIA issued a declaration welcoming its philosophy and objectives. They advocated avoiding unnecessary duplication in regulatory compliance for researching, registering, and the marketing of products and insisted on flexible EEC rules and national deregulation to do this.<sup>114</sup> Two of the domains for which harmonisation appeared particularly realistic and beneficial, with the aim of strengthening the European pharmaceutical industry, were commercialisation authorisations and patent protection. Regarding commercialisation, France and Italy were both reluctant to acknowledge the authorisations that had been granted in other member states. The French regulation insisted particularly on independent expertise and prohibited the involvement of any expert who had ties to pharmaceutical companies.<sup>115</sup> The differences were even greater regarding patent regulations, since the time limit to protect new inventions varied among European countries, and in extreme cases like Italy, there was still no patent law in the pharmaceutical sector until as late as 1978. Moreover, patent and commercialisation issues were linked, since patents would often be issued as soon as the innovation was invented and, because the path to turn the innovation into a commercialised and authorised product could take years, the new drug was often no longer protected by the time it actually appeared on the market. Imitators could therefore immediately purloin the idea and formulation, which big pharmaceutical companies wished to prevent.

Pharmaceutical multinationals therefore wanted a generalisation of the extension of patent protection for pharmaceutical products which was already in place in some European countries, and the mutual recognition of commercialisation authorisation. They opposed, however, EEC attempts at creating a centralised authorisation procedure and register since such procedures would increase bureaucracy and, in particular, foster greater data collection and comparison possibilities with respect to medicinal properties and prices of similar products and molecules. Regarding the latter, the EFPIA stated that ‘such a system for all products would be quickly overloaded, and almost inevitably therefore become bureaucratic, ponderous, remote, unresponsive, and costly, resulting in regulatory paralysis’.<sup>116</sup> Moreover, a decentralised authorisation system would allow companies to establish themselves in the market they knew best and/or where the regulations were less restrictive or where pricing might be higher, which would allow them to set a profitable high price benchmark from the start.

In addition to commercialisation, harmonisation, and patent extension issues, the industry still hoped that supranational rulings could mitigate the state discretionary pricing policies. In 1986–7 it therefore closely scrutinised the European Commission’s elaboration of a transparency directive

<sup>112</sup> Report, Fédération Européenne des Associations de l’Industrie Pharmaceutique. AfZ, IB Vorort-Archiv, 212.3.3.4, 2.

<sup>113</sup> Annual Report, European Federation of Pharmaceutical Industries’ Association (EFPIA), 1980. AfZ, IB Vorort-Archiv, 212.3.3.1, 3.

<sup>114</sup> EFPIA, ‘Completing the Internal Market for Pharmaceuticals: A European Pharmaceutical Industry Position’, 1985. AfZ, IB Vorort-Archiv, 212.3.3.4, 8.

<sup>115</sup> Letter from R. von Werdt, Dr. R. Stamm, Ciba-Geigy, ‘Betrifft: Frankreich-Problèmes pharmaceutiques’ to Dr. H Glättli, Sandoz, 21 June 1977. AfZ, IB Vorort-Archiv, 317.5.1.7.

<sup>116</sup> EFPIA, ‘Completion of the Internal Market: Future Marketing Authorisation System, EFPIA Comments to the Commission of the European Communities’, Sept. 1988. AfZ, IB Vorort-Archiv, 212.3.3.5.

aimed at monitoring national pricing systems and evaluating their compatibility with European trade rules.<sup>117</sup> The first draft of the transparency directive nevertheless also envisioned the creation of a European databank regarding pharmaceutical properties, production and sale prices, so that, once again, the outcomes of such a directive might prove ambivalent for the industry.<sup>118</sup>

In reaction to the acceleration of the European integration process, the Swiss Federal Office for Foreign Trade created a new task force in 1987 to jointly handle all pharmaceutical issues in Europe.<sup>119</sup> Swiss negotiators also increased cooperation with countries, such as Germany, the United Kingdom and the Netherlands, that all shared common interests with respect to the pharmaceutical industry.<sup>120</sup> Swiss pharmaceutical multinationals nevertheless needed to extend their channels of influence, since, as a non-member state, it was difficult for Switzerland to weigh in on the decisions of the EEC. Consequently, they advocated further involvement in the EFPIA and national pharmaceutical business interest associations which would influence their home state and, ultimately, the EEC.<sup>121</sup> To promote their industry-friendly version of European integration, Swiss companies would often employ neo-mercantilist rhetoric, underlining the need to promote research at the European level to withstand Japanese and US competition. The Swiss pharmaceutical industry also managed to gain direct access to EEC executives such as Commissioners Davignon and Ortoli thanks to their eagerness to see the pharmaceutical industry adopt the role of driving European industry revitalisation.<sup>122</sup> In 1989, the head of the pharmaceutical service from the DGIII Commission of the EEC was also a guest of Interpharma for a full-day visit in Basel to discuss issues such as patent term restoration, the future marketing authorisation system, pharmacovigilance, the transparency directive, and cooperation between EEC and EFTA countries.<sup>123</sup> Moreover, the Swiss considered that 'Switzerland's participation in various research programs (including EUREKA) was an additional vehicle for incorporating specific Swiss interests into the EEC's opinion-forming process'.<sup>124</sup> Appealing to neo-mercantilist sentiments in Europe was quite an opportunistic ploy by Swiss multinationals since, in general, they had always criticised any type of active industrial policy and promoted global market integration over regionalisation.<sup>125</sup> It seems nevertheless that this strategy played no insignificant role in achieving the implementation of several pro-business policies.

The outcomes of European integration indeed turned out quite positively for pharmaceutical multinationals. The mutual recognition procedure (MPR) was finally implemented in 1986, simplifying the distribution of drugs in the Common Market and decreasing companies' administrative burden. The transparency guidelines finally came into effect in December 1989, mainly targeting governments'

<sup>117</sup> EFPIA, 'A brief guide to the EEC Directive concerning medicines', 1987. AfZ, IB Vorort-Archiv, 212.3.3.4.

<sup>118</sup> Article, *Europolitique*, no. 1415, 1988. AfZ, IB Vorort-Archiv, 212.3.3.5. On the ambivalence of several European policy scenarios for the industry since the 1970s, see Warloutzet, *Governing Europe*.

<sup>119</sup> Report by Gruppe BAWI-Pharmaindustrie, 'Die schweizerische Pharmaindustrie in Westeuropa, Aktionslinien für die schweizerischen Behörden und die pharmazeutische Industrie', May 1987. AfZ, IB Vorort-Archiv, 317.5.3.4, 3.

<sup>120</sup> On German multinationals facing similar price control and custom issues in Belgium, France and Italy since the 1970s, see Marx, *Wegbereiter der Globalisierung*, 99–100.

<sup>121</sup> Report by Gruppe BAWI-Pharmaindustrie, 'Die schweizerische Pharmaindustrie in Westeuropa, Aktionslinien für die schweizerischen Behörden und die pharmazeutische Industrie', May 1987. AfZ, IB Vorort-Archiv, 317.5.3.4, 8. Such strong involvement of Swiss companies regarding European policy-making and within EFPIA is also confirmed in interviews collected by Baljer: Baljer, *Between Rent-Seekers and Free Marketeers*, 235.

<sup>122</sup> On the French promotion of research projects, see Georges Saunier, 'Eurêka: un projet industriel pour l'Europe, une réponse à un défi stratégique', *Journal of European Integration History* 12 (2006): 57–74. On their neo-mercantilist vision, see Laurent Warloutzet, 'The European Commission Facing Crisis: Social, Neo-Mercantilist and Market-Oriented Approaches (1967–85)', *European Review of History* 26, no. 4 (2019): 703–22.

<sup>123</sup> Internal report, Interpharma News, no. 2, Sept. 1989. AfZ, IB Vorort-Archiv, 212.3.3.5, 15.

<sup>124</sup> Report by Gruppe BAWI-Pharmaindustrie, 'Die schweizerische Pharmaindustrie in Westeuropa, Aktionslinien für die schweizerischen Behörden und die pharmazeutische Industrie', May 1987. AfZ, IB Vorort-Archiv, 317.5.3.4, 6–7.

<sup>125</sup> On the tensions between regionalisation and global free trade, see: Benjamin Bürbaumer, 'TNC Competitiveness in the Formation of the Single Market: The Role of European Business Revisited', *New Political Economy* 26, no. 4 (2020): 1–15; Sabine Pitteloud, 'Les multinationales comme catégorie politique: les années formatrices (1970–1990)', *Entreprises et histoire* 104, no. 3 (2021): 93–110.

pricing practices rather than companies' transfer pricing strategies. Moreover, the EFPIA created a watch group to verify its implementation.<sup>126</sup> Another important step was taken in 1992 with the introduction of a supplementary protection certificate (SPC), which provided an additional five years patent protection beyond the original expiration date and was aimed at ensuring that there were sufficient benefits for European pharmaceutical companies to sustain R&D. The European Drug Agency was established in 1995, with the power of delivering commercialisation authorisation for the Single Market, and it helped to reduce the examination procedure from an average of six years to just one.<sup>127</sup> In sum, although the progressive Europeanisation of pharmaceutical policies has not to this day translated into a single market for drugs with free prices, the implemented measures moved in the direction of more control over state practices, while centralised information and better control on multinationals' transfer prices never materialised. A closer examination shows that there was nothing ineluctable in what further Europeanisation of the pharmaceutical sector would look like and that, although Swiss multinationals promoted liberal market integration, they simultaneously opposed supranational rules, not only out of a strong aversion to bureaucracy, but primarily because of the socially-oriented goals they entailed.

### Conclusions: Business Power and State Leeway

The 'fair drug prices' and 'right transfer prices' struggles that emerged in the post-war period, and especially since the 1970s' crisis of the welfare state, were just the beginning of a controversy that has found no definitive resolution up until now. Recent governments' attempts to decrease health costs through the control of drug prices still face fierce opposition from the industry, while establishing transparency regarding profits and production costs that would allow them to effectively implement their policies proves even more difficult than before due to the complex organisation of production in global value chains.<sup>128</sup> This study on these issues in the 1970s nevertheless shows that there was nothing inevitable and that to understand drug pricing dynamics, the shifting relationships between states and the industry's pricing power need to be investigated in an historical perspective. Moreover, since many pharmaceutical companies are multinationals, the political economy of drug pricing is not limited to national business-government relations but is also a matter of diplomatic negotiations at the national and supranational levels.

First, the historical analysis on the Swiss-French negotiations provided in this article shows that states might have more leeway than meets the eye in the matter, even when multinationals' power is taken into consideration. Indeed, it has illustrated the non-negligible discretionary power of the state regarding drug pricing. The French state could force multinationals to produce on its soil, decrease drug prices any time it wished to, sue companies for using transfer prices or give national companies an advantage over foreign multinationals. Despite a theoretical exit option, pharmaceutical multinationals never left the French market, enduring a variety of state interventions over the years. The French market was too important and was far from the sole market in which governments used such discretionary powers.

Nevertheless, in the context of the 1970 economic crisis, Swiss companies producing in France could use their structural power and relocation threats to obtain consultation rights through the establishment of the Franco-Swiss Working Party on Pharmaceuticals. Since civil servants enjoyed discretionary power in France, such Franco-Swiss negotiations proved quite helpful. The bilateral talks could indeed help to curb the interpretation of the existing French rules regarding, for example, particular product pricing decisions or custom litigation cases. Moreover, since the Franco-Swiss Working Party gathered negotiators from the Trade, Industry and Labour Ministries, which were usually eager to

<sup>126</sup> Summary of meeting, by BAWI, '13. Sitzung der Arbeitsgruppe BAWI-Pharmaindustrie im Bereich Westeuropa im Bern am 23. Aug. 1989', 28 Aug. 1989. AfZ, IB Vorort-Archiv, 212.3.3.5, 2.

<sup>127</sup> Sauer, 'Les grandes étapes de l'Europe du médicament', 68.

<sup>128</sup> See, for instance, for recent regulation attempts in India: Bhaskarabhatla, *Regulating Pharmaceutical Prices*, 229.

promote R&D in France, it created a favourable space for the industry to disseminate its views and to find allies. The 1978 joint statement was an important step in acknowledging the requests by Swiss multinationals regarding licensing fees, as well as the adaptation of pricing to inflation and currency fluctuations. The joint declaration was also strategic in maintaining bilateral contacts over the years and in securing French commitment despite changes of government. In addition, multinationals used transfer prices to avoid taxes, thus rendering their subsidiaries artificially loss-making and increasing political pressure on the French government.

The progressive Europeanisation of pharmaceutical policies and the prospect of the Single Market created new opportunities for the pharmaceutical industry to advocate for the primacy of trade and industrial policy over social security and health issues. Nevertheless, it was at first unclear that Europeanisation would predominantly favour the industry and, as the literature on European integration has shown, neoliberal views opposed neo-mercantilist and social conceptions, and many alternative roads could have been taken. The EFPIA therefore raised its voice to fight dirigist and social alternatives aimed at fostering administrative centralisation, and increased control over multinationals' pricing power. The industry also skilfully appealed to European neo-mercantilism and the need to strengthen European industry against Japanese and US competition to promote industry-friendly policies such as the mutual recognition of commercialisation procedures and the extension of patent protection. European neo-mercantilism was therefore helpful in bypassing national neo-mercantilism, and this is a classic example that shows the limits of the idea of creating national champions in the context of market integration and companies' increased internationalisation.

Ultimately, it appears that multinationals from the pharmaceutical industry managed to stay highly profitable and progressively improved their bargaining power over states in the European context. Despite numerous complaints, their overall operating profits increased from 20 to 30 per cent between 1973 and the mid-1990s.<sup>129</sup> *The Economist* noted in 1987 that 'so far, the stratagems the industry has employed to sustain profitability have worked. And what profits! [...] Although most of today's drug companies have existed in one form or another since the nineteenth century, the modern drug industry is a postwar beast.'<sup>130</sup>

**Acknowledgements.** The authors would like to thank Grace Ballor, Sandrine Kott, Christian Marx and Muriel Le Roux for reading and commenting on an earlier version of this article. They also appreciated comments they received from the reviewers and from the participants of the Business History Conference, Detroit, 2023, of the Geneva Lunch Seminar, 2023, of the 2e Congrès international d'histoire des entreprises en France, Paris, 2023, and of the Council for European Studies Conference in Reykjavik, 2023.

<sup>129</sup> Zeller, *Globalisierungsstrategien*, 176.

<sup>130</sup> *The Economist*, *Pharmaceuticals*, Feb. 1987.