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Trade

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

9 November 1981

The Rt Hon John Biffen MP
Secretary of State for Trade
Department of Trade
1 Victoria Street
LONDON SW1

NBPM

Dear John

REVISION OF COMMUNITY REGULATIONS ON IMPORT CONTROLS

I have seen a copy of your letter of 30 October to Peter Carrington, and Humphrey Atkins' reply of 4 November.

I very much agree with you on the importance of retaining an effective right of national action. This was the conclusion reached, as you say, at the Prime Minister's meeting on 8 September.

As to theCommission's proposals for new import Regulations, I agree that we cannot accept that controls would have to be lifted immediately if the Commission did not approve them. I therefore support the line proposed in paragraph 6 of your letter.

Copies of this letter go to the Prime Minister, other members of OD(E), Patrick Jenkin and Sir Robert Armstrong.

Yours

GEOFFREY HOWE

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Trade

Foreign and Commonwealth Office
London SW1

4 November 1981

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Dear John,

REVISION OF COMMUNITY REGULATIONS ON IMPORT CONTROLS

Thank you for your letter of 30 October to Peter Carrington.

I entirely understand your wish to retain credible powers to take national action and I agree that we must do all we can to ensure a satisfactory system. As you point out, Member States' present powers will in any case automatically be considerably reduced at the end of this year. Only the Commission can propose substitute arrangements and I agree that the proposals they have put forward are not satisfactory as they stand, since they would in practice even further reduce the scope for Member State action beyond the position which would otherwise apply automatically after 1 January.

But given the Commission's key position, I think we have to recognise that in their view, Member States cannot expect both to retain freedom to take independent action and at the same time to benefit from the fact that it is the Community as a whole which has to bear the consequences of that action, since under GATT rules supplier countries affected are entitled to seek compensation from, or to retaliate against, the Community as a whole and not just the individual Member State concerned. (In the US synthetic fibres case, for example, the Americans obtained compensation in the form of tariff cuts on US chemicals imported into all parts of the Community, not just the UK.)

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It should also be pointed out that safeguard action is rare (only one instance in the whole Community - on US synthetic fibres, at UK instigation - during the three years that the present regulation has been in force). This is not because of Community rules but because, under the GATT, safeguard action can carry heavy penalties in the shape of retaliation. And during the same period there has been no case at all of unilateral action by a Member State - indeed from 1977 to 1979 Member States lost all power to take unilateral action when the previous regulation lapsed and it proved impossible to agree on a successor. I realise the pressures are stronger now than they were three years ago (not least as regards Japan, about which I am writing separately) but the past history rather suggests that the right to take national action is of less practical importance than it may seem.

You ask whether it might be possible to use our Presidency to secure retention of the status quo by persuading the Commission to come forward with a proposal to this effect. The fact is that, as guardians of the treaty and the common commercial policy, the Commission are strongly attached to their present proposal and would regard as anathema any idea that they should put forward a proposal to maintain a situation which they believe should have ended years ago. I therefore do not think it would be realistic to suggest this to them and merely doing so might well prejudice our efforts to improve their present proposals as well as wasting much valuable time.

Against this background the 'compromise' proposed by your officials and referred to in paragraph 6 of your letter seems to me ingenious. Your officials point out that the Commission proposal as it stands could lead to a Member State being required to remove a restriction pending an investigation which might well result in its subsequent reimposition. As they say, this is quite illogical. They suggest that we should seize on this illogicality and argue in favour of Member States having the right to maintain restrictions until the investigation procedure is completed (ie for a period of some months).

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This would of course represent a considerable strengthening of our right to take unilateral action for the category of products at present subject to the weaker of the two sets of rules. At the same time we could still appear in Community terms to be taking a constructive and moderate line, consistent with our Presidency position. For all these reasons I therefore favour this course.

Like you, I am reluctant to contemplate a fall back position at the present stage, though the possibility outlined in your paragraph 7 is something that we may have to consider in the last resort. This would however be no more than a temporary arrangement while efforts to find a definitive solution continued under the Belgian Presidency.

I am sending copies of this letter to the Prime Minister, to other members of OD(E), to Patrick Jenkin, and to Sir R Armstrong.

Yours ever

Willie