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Prime Minister
You asked for this
list.

From the Secretary of State

John Coles Esq
10 Downing Street
London SW1

A.S.C. 1/11

17 November 1982

Dear John

A very useful document

GATT MINISTERIALS - MESSAGE FROM MR SHULTZ

Thank you for your letter of 8 November. I enclose a copy of an illustrative list drawn up by this Department of what we perceive as protectionist US measures and subsidies.

I am copying this letter and its enclosures to Roger Bone in the FCO.

Yours sincerely,

JOHN RHODES
Private Secretary



CONFIDENTIAL

ILLUSTRATIVE LIST OF US PROTECTIONIST MEASURES AND SUBSIDIES

Direct

a) Section 301 of the US Trade Act 1974

Gives the US President broad authority to retaliate inter alia against unjustifiable, unreasonable or discriminating acts, policies or practices which burden US commerce. It is distinct from the anti-dumping and countervailing laws embodied in the 1979 Trade Agreements Act and which broadly implement in US law the relevant Codes agreed in the Tokyo Round. Its catch-all nature, and provision for the US petitioners to secure reliefs outside the GATT framework make it particularly offensive in the eyes of the US's main trading partners. Voices in Congress are calling for S.301 to be toughened as part of the campaign for "reciprocity" in trade matters, eg by opening up services or international investment as areas where retaliation against the unfair trade practices of other countries may be directed.

b) Section 337 of the US Tariff Act 1930 (as amended by S. 341 of the Trade Act 1974)

Provides that "... unfair methods of competition or unfair acts in the importation of articles into the United States, or in their sale ... the effect or tendency of which is to destroy, substantially injure or prevent the establishment of an industry in the US, or to restrain or monopolise trade and commerce in the US, are unlawful". petitions by US industries exporting to the US, who cannot afford high legal fees to defend themselves. Often used in patent cases (relief can be obtained quicker than under existing US patent law). Notified to GATT as a non-tariff barrier by the European Commission in February 1982.

c) "Buy American" Legislation

Less of a problem since the US implemented the GATT Government Procurement Agreement in 1981, although it remains an objectionable and very effective barrier, eg in some areas of purchasing for public transport. Also the GATT Agreement effectively only covers federal purchasing. The individual states are virtually untouched by the Agreement. Many have their own "Buy American" legislation.

d) Legislation affecting shipping (Brief No 10 deals with this in more detail)

The Jones Act 1920 provides that vessels transporting merchandise or passengers in the US "coastwise" trade must be owned by a US citizen, US built and US registered. It thus affords substantial protection to US shipping and the US shipbuilding industry.

Cargo Preference Act requires that at least 50% of all Government-generated cargo subject to the law be shipped on privately owned US flag commercial vessels if such vessels are available at fair and reasonable rates. All military cargo for use by the United States must be shipped on US flag vessels. These measures afford additional protection to US shipping.

e) Manufacturing Clause in US Copyright Law

In July the Congress over-rode the Presidential veto of a bill to extend the Manufacturing Clause until 1 July 1986. The Manufacturing Clause, which dates back to 1891, effectively prohibits import into the USA of non-domestic literary works in the English Language by authors who are US nationals and which are manufactured outside the US. Certain exemptions are made, notably the first



2,000 copies of and work and an exemption in favour of Canada. During the Tokyo Round the US gave an oral undertaking to remove this provision and it was due to expire on 1 July 1982 (although this was not formally recorded). Following the extension of the Clause the Community is seeking compensation from the US and consultations are currently underway under GATT Article XXIII.1.

f) DISC (Domestic International Sales Corporation)

In operation since 1971. US manufacturing companies empowered to establish subsidiaries exclusively for the purpose of handling export business. Special tax concessions for DISCs enable US companies to defer tax on half of their export profits for 10 years or more. This is regarded by the GATT as, an export subsidy which contravenes Article XVI of the Agreement and was condemned as such by GATT several years ago. The US after years of resistance has conceded the GATT report, but is still resisting international pressure to abolish DISC.

g) Article XXV Waiver: Agriculture

Under this article of the GATT the US has been granted a waiver which enables it to protect subsidised agricultural sectors, notably dairy, cotton, sugar and peanuts.

Indirect

h) Use of procedures in US antitrust law to place obstacles in the way of acquisition of US companies by foreign companies (all proposed mergers over a certain nominal size must be notified to the US Federal Trade Commission under the provisions of the Hart-Scott-Rodino Act 1976). Such obstacles can occur where the US authorities believe that such acquisitions could be detrimental to the interests (broadly defined) of the US.

i) Excessive litigation flowing from statutory procedures, eg that under anti-dumping and countervailing laws and many different fields of regulation, eg antitrust, environment, securities controls etc. The "contingency fee" system for attorneys. Time and legal expenses tend to frighten away the small/medium foreign companies.

j) Congressional pressures on behalf of sectional interest in a particular industry or geographical area, eg against imports of Japanese cars, uranium imports (which spawned the notorious Westinghouse case in the late 1970s). Such pressures are building up again with the call for "reciprocity" legislation.

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Trade

10 DOWNING STREET

From the Private Secretary

22 November, 1982

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The Prime Minister was most grateful for your letter of 17 November enclosing a list of US Protectionist Measures and Subsidies. She found this a very useful document.

I am copying this letter to Roger Bone (Foreign and Commonwealth Office).

A. J. COLES

John Rhodes, Esq.,
Department of Trade



Sub

Trade

10 DOWNING STREET

From the Private Secretary

8 November 1982

GATT MINISTERIAL - MESSAGE FROM MR. SHULTZ

The Prime Minister saw a copy of Mr. Shultz's message to the Foreign and Commonwealth Secretary (Roger Bone's letter to you of 4 November refers). She has asked what measures of protection the United States employs. I should be grateful for an account of these as soon as possible.

I am copying this letter to Roger Bone (Foreign and Commonwealth Office).

bf

A. J. COLES

John Rhodes, Esq.,
Department of Trade.



Foreign and Commonwealth Office

London SW1A 2AH

4 November 1982

John Rhodes

Private Secretary

[Handwritten initials]

4/4

GATT Ministerial

The American Ambassador has today forwarded to Mr Pym a letter from George Shultz about the GATT Ministerial. I enclose a copy. The Department will be in touch with DOT officials to coordinate a reply.

I am copying this letter to Private Secretaries to other members of OD.

Yours sincerely,

[Handwritten signature of R B Bone]

(R B Bone)
Private Secretary

John Rhodes Esq
PS/Secretary of State for Trade

*What means
of protection does the
U.S. operate?
not*

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OS/Dr. Hund
OS/DUS
Mr. Evans
Mr. Hanney
Mr. Thomas
TREA.

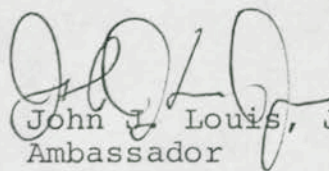
EMBASSY OF THE UNITED STATES OF AMERICA
LONDON

November 4, 1982

Dear Foreign Secretary:

I was asked to deliver the enclosed message to you from Secretary Shultz, which was received at the Embassy this morning.

Sincerely,


John J. Louis, Jr.
Ambassador

Enclosure

The Rt. Hon. Francis Pym, MCMP,
Secretary of State for Foreign and
Commonwealth Affairs,
Foreign and Commonwealth Office,
London, SW1.

Dear Francis:

The United Kingdom and the United States have a common interest in a strong and equitable multilateral trade system. In order to sustain and improve this system, particularly during the current period of serious trade tension, we also have a mutual stake in promoting effective international trade rules. The well-being of the institution we cooperatively developed to administer these rules, the GATT, is of major concern to both of us. These shared interests prompt me to request your personal assistance in assuring a productive outcome for the GATT Ministerial meeting in November.

I am encouraged that we are in general agreement on the importance of a successful Ministerial. However, with the meeting only a few weeks away, and with protectionist pressures in many countries intensifying, I am concerned that we must do more to assure a successful outcome. If the Ministerial does not achieve mutually beneficial results, which demonstrate that the GATT can address some of the trade system's pressing problems, it seems to me that the risk of a serious deterioration in world trade relations is very grave.

I am pleased at the progress we have made toward a work program on services. I know that we share a strong interest in an open international regime for services, and appreciate the support you have given to our initiative.

There are three other areas, however, in which I believe it is particularly important for the Ministerial to make progress. The first is safeguards. Without an understanding on the type of measures a country can legitimately take when one of its industries faces injury from imports, the concept of a standstill on protective measures will not find support. At the same time, it is imperative that we find a solution to the problem of selective safeguards, which developing countries perceive as a major threat to their market access. I am convinced that unless we conclude a safeguards agreement with selectivity provisions acceptable to the developing countries, we will lose the impact we need from the

political statement by the GATT Ministers. It seems to me that Secretary General Dunkel's proposal contains the elements of a solution to this problem, and I urge you to give it your support. Unilateral selectivity cannot be the basis of a viable safeguards agreement.

The second area which the Ministerial must address is agricultural trade, including in particular the use of agricultural export subsidies. The long-standing policy differences between the United States and the Community are well known to you. I appreciate that it will not be possible to resolve these differences before the Ministerial. However, it is vital that we agree on a method for discussing these issues within the GATT. In addition, we must agree to initiate GATT discussions which permit significant progress toward resolving these problems in the relatively near term. If we cannot take these steps I am concerned that the frustration of producer groups with the trading system will prove damaging to us all.

Finally, it is extremely important that we make progress toward integrating developing countries better into the trading system. One aspect of this effort is safeguards, another is the proposal which we have put forward for a round of trade negotiations with developing countries. We would like to have your active support in developing a more detailed negotiating program and in persuading developing countries with a large stake in trade that such negotiations would be strongly in their interest.

I recognize that these issues are complex and involve closely interwoven aspects of trade and foreign policy. Bill Brock, the U.S. Trade Representative has discussed these problems with Commission Representatives in Geneva and in Brussels. I have written President Thorn to express the same concerns which I am sharing with you. My purpose in writing is to suggest that we must concentrate on the political as well as the economic stakes involved in this meeting. We cannot afford the corrosive effects of a continuation of present trade tensions on our political relationships. The health of the Alliance and our relations with developing countries alike need the stability provided by a strong trade system. I hope that Great Britain's influence can be used to encourage others to make the effort necessary to assure that the Ministerial strengthens the trade system during this period of serious strain.

In this connection, I note that the Council of Ministers has as yet been unable to agree on a negotiating mandate on these and other questions. I hope that you will take a strong stand within the EC to assure a forthcoming EC position and that you will support the Commission's effort to assure pragmatic EC participation in the Ministerial.

Best regards.

Sincerely,

George

/S/ George Shultz

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