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MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

TRADE POLICY

Note by the Secretary of State for Foreign and Commonwealth Affairs

1. This Note offers some comments on the memorandum by the Secretary of State for Trade (E(82)71).

2. There are certain issues of principle, legality and feasibility which we need to keep in mind when considering measures of the kind canvassed in the memorandum.

(i) damage to the open trading and payments system

We all recognise that the open trade and payments system is under strain and that we have an overriding interest in maintaining it. The GATT, which underpins the trade element in the system, was expressly designed to prevent a repetition of the errors of the 1930s. The Agreement does not oblige any signatory to liberalise access to its market, but it encourages a process of progressive liberalisation through a balanced exchange of rights and obligations.

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These rights and obligations have been negotiated as part of global package deals. It is perhaps possible with hindsight to identify individual elements in these deals as inequitable (for instance by contrasting the EC tariff on cars with the Australian tariff). But the assessment at the end of each negotiation (most recently at the end of the Tokyo Round in 1979) has been that the package of acquired rights, taken overall, was on balance worth the obligations offered.

Against this background, a decision by the UK, which exports a higher proportion of its national product than any other major industrialised country, to abandon the global approach to trade relations, and to adopt instead a narrow product-by-product, supplier-by-supplier basis for conducting policy, would be a serious blow to the system. As the Secretary of State for Trade acknowledges, to do this in the run-up to the GATT Ministerial meeting would do particular damage.

(ii) trade retaliation

This (as the Secretary of State for Trade also acknowledges) is not a threat to be dismissed lightly. There are too many recent examples: Turkey and Malta (both 1979) and Indonesia (1980), all as a result of the UK getting out ahead of the rest of the EC in seeking restraints on textile imports - the USA (1980), in the exercise of its GATT rights and in response to safeguard action on UK imports of synthetic fibres; and Australia (1980 and again in 1981) over an EC beef import quota. Our present difficulties with the Malaysian Government, which sees action against the UK in the trade field as a means of giving vent to politically motivated resentment, illustrate how vulnerable British interests can be to this sort of

thing and how hard it is to take effective counter-measures without cutting off our nose to spite our face. A confrontational approach to the NICs, or even advocacy of such an approach, could easily exacerbate our problems with Malaysia and create new ones with Indonesia. Action against imports of cars from Australia with a higher local content than the BL Acclaim would be virtually certain to produce an aggressive reaction. In 1981, the Australians specifically picked out defence contracts in the dispute over beef. We can all too easily expose sectors of British industry which are internationally competitive to the risk of paying the price for giving protection to firms which are barely competitive in their domestic market.

(iii) illegality in the UK courts

Courts in the UK, unlike courts in some other Community countries, tend to enforce the law quickly and efficiently against the Government. This means that aggrieved importers whose goods were being illegally excluded or detained (e.g. contrary to the provisions of an EC Regulation or in defiance of a ruling of the European Court of Justice) could obtain relatively speedy redress - in a matter of weeks in a clear case. Any attempt to emulate the French and manipulate by administrative means our vehicle type approval scheme (a national measure) to keep out technically adequate Japanese cars would admittedly be more difficult to make the basis of legal action, but only provided that our motives did not become known. The limited scope for action of this kind has been shown by two major exercises in the past two years. The minutes of discussion at E(80) 21st meeting and E(82) 6th meeting confirm that the open and accountable

nature of our administration and the independence of our legal system, combine to reduce our room for manoeuvre. It could hardly fail to be damaging for action by the Government to be ruled illegal in the UK courts in a very clear case; an action for damages could not be excluded.

(iv) illegality in the European Community

One can get away with this for a bit, as for example in the case of health and hygiene restrictions on poultry. Whether measures of this sort, whatever the immediate advantages, result in net benefits when all the compensation has been paid and all the implications have worked through, is a moot point. It is even less easy to devise similarly opaque schemes for other sectors; and straightforward safeguard action generally requires the assent of the Commission and a qualified majority in the Council of Ministers if it is to be sustained for long. To use residual national powers to ban imports of cars from (say) Spain only to be told by the Commission to lift the ban a month later - and to fail to reverse this in the Council two months after that - does not seem, on the face of it an attractive proposition. The action of the Commission and the Council could lead fairly rapidly (i.e. within a matter of weeks) to interim measures by the European Court ordering us to end the ban. It is highly questionable whether such a public rebuff would be effective either as a demonstration of concern (domestically or internationally) or as a spur to Community action. On the contrary, we could be seen as having gone off at half-cock and blown our chances of achieving our objectives by less easily assailable means. It would do nothing but harm to public attitudes to EC membership; and we should have damaged relations with Spain, with our Community partners and with the Commission in the process

(not to mention the multinational companies involved in vehicle manufacture, which are of course substantial investors in the UK as well). Whatever the economic arguments, the introduction of legislation like a Trade Reciprocity Act (which would in part supplant the European Communities Act) would require careful consideration from the political point of view. It would be the first step down the slippery slope which has withdrawal from the Community at the bottom. The consequences of this both for other other objectives in the EC and in regard to domestic political opposition to the Community need no spelling out.

3. It is often said that other EC Member States are somehow better than we are at protecting their domestic industry. France and Italy are most often mentioned in this connexion. It is true that (unlike the UK) each of these countries has formal quotas which date back to before the formation of the EC, on a variety of imports from the Far East. But they would argue that retention of these quotas was the price they exacted in the 1950s for agreeing to accept the supplier countries concerned, including Japan, as Members of the GATT. Today they are no better placed than we are unilaterally to impose new quantitative restrictions on products not already subject to quota. They have to go through the Community procedure just as we do. (Our bilateral Treaty with Japan does not, incidentally, free us from our EC obligations, though it has been an important factor in securing inter-industry understandings for the UK.) So far as other forms of action are concerned, opaque administrative procedures and cumbersome legal systems may give the French and Italian Governments some advantage. So may the fact that EC membership is much less of a domestic political issue for them, with the result that they can afford to be more relaxed about being overruled by the Commission, the Council or the Court. Even so, the effectiveness of what they do must be open to question. The latest French package, for instance, seems to consist of measures

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which are either plainly illegal (such as bilateral commercial negotiations with third countries) and therefore unlikely to survive long, or of marginal influence and uncertain effect (such as compulsory origin marking on which the UK has so far also been able to maintain its own measures).

4. Effective action to remedy the genuine grievances of British industry is highly desirable. But before embarking on any course of action explicitly to restrict other countries' access to the British market, the likely costs need careful consideration. Unilateral action will seldom be profitable or sustainable. Conversely, negotiated measures, for example the SMMT/JAMA restraint arrangements for Japanese cars or the steel and textile arrangements negotiated by the European Community, can produce effective and useful results. It may be that we can equip ourselves with better weapons in such negotiations; and these are worth examining. The process of persuasion and negotiation, including the construction of the powerful international consensus which OD agreed in May (OD(82) 9th meeting) was required to deal with Japan, can be disappointingly slow and painstaking. But until and unless further analysis demonstrates otherwise, it remains the most attractive means available of promoting the overall interests of British industry. It is this conviction that lies behind the proposals for action in relation to Spain circulated to members of OD(E) on 22 October.

F.P.

Foreign and Commonwealth Office
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