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D.G.D. 1	✓
INFO. 2	CC-BD
TRADE 2	✓(EX)
AGRI.	
LEGAL 1	✓(IX)
FIN. & DEV.	
SOC. & ENT.	
ECON.	
ADEL. 1	✓(IX)
C.P.	

CBI

MEMORANDUM

441.2(103)

AVERTING A TRANSATLANTIC TRADE WAR

The Confederation of British Industry (CBI) has been concerned to note the growth of sentiment within the United States Congress and elsewhere in favour of some form of legislation to deal with the serious imbalance of US trade with Japan and other Pacific basin countries in particular. There is a risk that transatlantic trade could be affected by legislation aimed primarily elsewhere; at the same time, any bilateral arrangements on individual classes of goods could lead to further pressure on the already serious imbalance of trade between Japan and the European Community (EC). This memorandum sets out grounds for the CBI's views that:

(i) The GATT machinery must be made to work; there is no sensible alternative to a multilateral approach to the present trade problems.

(ii) The Japanese market must be as open to United States and European imports as our markets are to Japanese imports; obviously 'protectionist' measures by the Japanese must be removed, since they could well spark a 'tit-for-tat' response which could place political leaders in the West under great pressure to legislate.

The memorandum is in three parts. First it describes the background, drawing attention to the importance of US/UK trading and investment links. Next, the memorandum summarises the CBI's policy on trade matters and underlines the importance that British business attaches to free and open trade. Finally, the memorandum draws attention to some particular aspects of legislation now before the Congress.

BACKGROUND

The United Kingdom is a trading nation. Exports of goods and services contribute 30% to the Gross Domestic Product. This is somewhat higher than the comparable figure for France and Italy and well above the figures for Japan, and the United States, where it was under 8% in 1985, according to OECD figures. Any threat to the international free trade of goods and services is therefore extremely serious from the British point of view.

Total trade between the United States and the United Kingdom (excluding 'invisibles') in 1986 was worth some $26 billion, with a balance in the UK favour of just under $4 billion. This represented under 3% of the total US trade deficit for that

year. The table below sets out the OECD statistics on US trade in summary form.

Table: UNITED STATES TRADE, 1986
$ billion

	Imports from	Exports to	Balance
Rest of the World	211.9	136.0	(75.9)
Japan	80.8	27.0	(53.8)
EEC (total)	75.2	51.5	(23.7)
West Germany	24.6	9.9	(14.7)
UK	15.2	11.2	(4.0)

Of course, the United Kingdom and the United States have long enjoyed a mutually beneficial trading and investment relationship. For example:

- British business is the biggest investor in the United States, which accounts for around half of total UK overseas investment. The total investment portfolio in the United States of British business is now worth more than $40 billion; and British companies provide employment in every State and most Congressional districts.

- Similarly, United States-owned businesses have invested very heavily in the United Kingdom, which accounts for over 40% of US investment in the European community. US investments in Britain at the end of 1984 were worth over $30 billion [the CBI is proud to include among its members a number of US multi-nationals who have operated in the United Kingdom successfully for a very long time].

The CBI is concerned at any threat, however indirect it may at first seem, to the maintenance of free and open trade across the Atlantic. Any unfavourable developments could have very serious consequences, which would not easily be confined to the economic sphere alone.

CBI TRADE POSITION

The CBI shares the view, apparently held by leading members of the US Congress, that trade legislation can have no significant effect on the US trade deficit. It is impossible to consider trade balances in isolation from the influence of international

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economic and monetary forces, and relative international competitiveness. The effect on the US trade deficit of tighter provisions to counter unfair trade is dwarfed by the effects of the volumes of money that pass across exchange markets every day.

Indeed, by boosting inflationary pressures, protective trade legislation threatens the very source of funding for the current and projected US Federal Government deficit. This in turn would increase the likelihood of recession in the US, with all that implies for jobs and prosperity across the board. Moreover, artificial restraints on imports cannot be beneficial in the end, since they provide relief from the need to meet fair competitive pressures - though the competition must, of course, indeed be fair. And, when this becomes clear, dismantling legislation can often be a slow process.

The main concern of the CBI is that protectionism in the United States should not have long term detrimental effects on US/European trade relations when most of the protectionist sentiment stems from the understandable frustration with the persistent and structural Japanese trade surplus with the United States. We are also concerned that overtly protectionist measures will undermine, perhaps fatally, the Uruguay Round of multilateral trade negotiations. The Textile and Apparel Act of 1987 would, for example, be in direct conflict with the standstill and rollback agreements concluded as part of launching the Uruguay Round. This would mean a loss of credibility in the ability of the major Contracting Parties to GATT to fulfill their commitments. The view that GATT is ineffective will then become a self-fulfilling prophecy; there will be more recourse to unilateral actions and the protectionist screw will have been given another full turn.

We in Europe face similar protectionist pressures. Together with its sister federations of industry in Europe the CBI is in the forefront of efforts to prevent Europe closing in upon itself (including reform of the Common Agricultural Policy). We seek a strong and outward-looking Europe. This means the creation of a genuine internal market for Europe but one which is open to the world.

If the United States moves to resolve trade tensions unilaterally it will be difficult if not impossible to resist pressures for Europe to follow suit. With a market larger than that of the United States there are those who believe in "fortress-Europe" policies augmented with bilateral trade agreements in North-South and East-West trade. Protectionist pressures must therefore be contained on both sides of the Atlantic if we are to avoid such a serious weakening of the free world's economic and political cohesion.

All major Contracting Parties to the GATT must share responsibility for the burden of maintaining an open internat-

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ional trading system. This means that Japan must act to remove any hindrances that make it a more 'closed' economy than the United States or Europe. It also means that the leading Newly Industrialising Countries must graduate from developing country status in the GATT and assume responsibilities commensurate with their economic strength and the real benefits they reap from an open trading system. The CBI therefore welcomes provision in House and Senate legislation for granting the Executive negotiating authority for the Uruguay Round of MTNs. It is essential the United States and Europe work together to strengthen multilateral remedies for trade disputes.

CURRENT CBI CONCERNS

The CBI fully appreciates that significant progress has been made over the proposals introduced as HR4800 in 1986. We remain concerned, however, about a number of provisions in both HR3, as passed by the House and in S490 as reported by the Senate Finance Committee, which threaten long-term trade relations. In particular the following areas are of particular concern:

(i) A unilateral interpretation of "fair trade" by the United States.

(ii) Sector-specific legislation.

(iii) Restrictions on investment flows.

(i) Unilateral interpretation of "fair trade"

The area of most concern to the CBI involves a number of provisions in the draft legislation which take the US further down the path of deciding, unilaterally, what constitutes fair trade:

1 Bilateral surpluses/adversarial trade

HR3: Section 126 (commonly known as the Gephardt amendment) provides for mandatory negotiations and action regarding countries having excessive and unwarranted trade surpluses with the US. Trade deficit problems derive from a much wider range of causes than trade imbalances and trade imbalances themselves are not necessarily improper being typically evidence of comparative advantage in certain products. Specifying that action will only be taken if the surpluses are the result of "unfair" trade practices helps little if the US decides unilaterally what is unfair.

S490: Section 302 requires the President to negotiate elimination of trade barriers with countries showing consistent patterns of trade distortion. Whilst this provision is preferable to the section 126 of HR3, it

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still demonstrates a preference for unilateral solutions which we consider highly dangerous. We would urge the Senate to resist attempts to introduce an amendment styled on HR3's section 126.

2 Mandatory action

Both HR3 (s. 121) and S490 (s. 304) oblige the President to take action under s. 301 of the Trade Act of 1974 if a trade agreement is violated. It is recognized that the President would retain discretion in other cases, but we would urge Congress to allow Presidential override in all cases: we are highly concerned that s. 301 might at any stage be used against European interests and under these circumstances we believe trade negotiators need maximum flexibility. The European Community would almost certainly react sharply to the US-imposed requirement to negotiate under duress, and the likelihood of reaching negotiated solutions would recede. Mandatory retaliation will invite counter-retaliation which in turn will impact on US interests.

3 New grounds for mandatory action

The CBI is opposed to the establishment of new specific grounds for action in s. 301 cases as none has been multilaterally negotiated. In particular we would urge careful consideration of the impact of provisions in both House and Senate bills on technology transfer. Making "unreasonable insistance on the transfer of technical information as part of an export deal" actionable under s. 301 runs counter to normal practice in the agreement of defence contracts. If implemented, this provision can only harm US interests as defence trading partners would be encouraged to turn to non-US suppliers.

4 Anti-dumping and countervailing duty law: defence trade

Extension of AD and CVD provisions to governmental importations will, equally, impact on the defence trade. Existing memoranda of understanding allow exemption for the defence trade from AD and CV duties - the provision in HR3 which would oblige the State Department to renegotiate those MOUs will have a chilling effect on defence trade, which between the UK and the US, stands 2:1 in the US favour. Implementation of this provision can only lead to retaliation by European governments which will put these US exports at risk.

5 Anti-dumping and countervailing duty law: general

Provisions in HR3 on diversionary dumping, private right of action for damages and the definition of a countervailable subsidy constitute another unilateral extension

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of US trade remedies which are inconsistent with the GATT. Implementation of these provisions can only invite retaliation by Europe in the form of mirror legislation.

6 The 'Brooks' amendment

This amendment would replace application of the GATT procurement code by a unilaterally defined standard, allowing the US to judge whether trading partners are conforming to that code. This provision would undermine a multilateral agreement, already threatened, incidentally, by GATT-illegal procurement proposals in s. 303 of the State Department Authorization Bill. Retaliation by countries deemed by the US not to be "in good standing" is inevitable.

7 State Trading

Section 305 of S490 applies criteria to the commercial activities of 'state trading companies' which we consider to be unduly restrictive. Such criteria have not been negotiated multilaterally and represent another unwelcome extension to the scope of US domestic remedies against what it defines unilaterally as unfair trade.

8 Shipping

A House provision allows the carriage of more than 25% of US trade in a certain commodity by a foreign fleet as prima facie evidence of the existence of an unfair trade practice: this arithmetical approach to the problem constitutes a dangerous oversimplification, and moreover is in flagrant violation of US commitment to "standstill and rollback" on protectionism in the shipping area. Once again, this provision will almost certainly prompt mirror legislation.

9 Trade Adjustment Assistance Import Fee

The Senate provision for the unilateral imposition of an import fee to fund the TAA programme is very unwelcome, coming as it does on the heels of various "user fees" of last year (notably the customs user fee) - such a provision will again invite retaliation from US trading parters.

(ii) Sector-Specific Legislation

The CBI opposes a sector-specific approach to trade legislation - every country may identify sectors in which it is disadvantaged, but the way to resolution is through trade-off across a range of sectors not through seeking reciprocity on a sector by sector basis. This is an underlying principle of trade negotiations, which allows trade agreements to be reached

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and which allows the US, for instance, to run surpluses in sectors where it enjoys advantage, such as aircraft and information technology. For this reason we oppose provisions in both House and Senate legislation which authorize consideration of reciprocal market access as a factor in determining s. 301 violations.

Textiles and Clothing. The CBI warmly welcomes the exclusion of the Textile and Apparel Act of 1987 from the omnibus provisions of HR3. Setting import growth at 1% for the US is unacceptable when imports into the European Community from dominant suppliers, like Hong Kong, Korea and Taiwan, show increases of between 30% and 40%. It would have an adverse effect on multilateral trade negotiations and as the European Council of Ministers stated on 16 March 1987 they would respond to such legislation in accordance with the EEC's rights under GATT. Such a chain reaction would inevitably mean the end of the Multi Fibre Arrangement. For these reasons the CBI believes it is imperative that any effort to reintroduce such sector-specific legislation is resisted.

Telecommunications. Given the convergence between data-processing and telecommunications, trade regulation in one area is likely to spread to other information technology-based goods and services. Past experience in textiles, clothing and steel has clearly shown how controls on one product from a limited number of sources inevitably spread as efforts are made to counter the inevitable trade diversion that takes place. Any precedent set in telecommunications customer-premises equipment might therefore have very damaging long-term effects on trade in a major growth sector of the future.

European business, in the shape of UNICE (Union of Industrial and Employers' Federations of the EC) is urging other European countries to follow the lead in liberalisation of telecommunications taken by the United Kingdom.

The proposed legislation both HR3 and S490, which would empower the US to withdraw trade concessions if it is unable to negotiate reciprocal access to foreign telecommunications markets, is against the spirit of GATT. The GATT only provides for withdrawal of concessions if another Contracting Party prevents its trading partners benefiting from negotiated concessions. It does not provide for recourse to retaliation simply because one Party is unable to achieve its negotiating objectives.

The CBI fully supports US efforts to liberalise trade in telecommunications goods and services, as does UNICE, but ill-conceived trade protection now would seriously jeopardise these efforts. The United States liberalised its domestic telecommunications sector, over a period of some twenty years, in order to facilitate growth of information-based services. Europe cannot be held responsible for the fact that this was

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done without at the same time seeking to negotiate parallel liberalisation of other national networks.

Steel. We oppose the Pease amendment which unilaterally seeks to introduce new origin rules for VRA purposes. Any such attempt to extend the scope of restraints in a unilateral fashion is certain to invoke a sharp EEC response.

(iii) Restriction on investment

(a) Section 703 of the House Trade Bill (HR3) would require a foreign investor who invests in five percent or more of a US business enterprise or real estate to supply the Department of Commerce with additional detailed information about himself and his investment, and such proprietary information would be made fully available to the public. An identical amendment to the Senate Trade Bill had been proposed by Senator Chiles, but he withdrew this after lobbying pressure. Senator Levin will, however, propose his own amendment from the Senate floor. As far as foreign investment is concerned, the Levin and Bryant amendments are both unnecessary and counter-productive.

1 Current reporting requirements for foreign investors are more than ample. Foreign purchasers of five percent or more of the stock of a publicly traded company are required to register with the SEC. The Treasury Department collects aggregate data from brokers on foreign portfolio investment in US equities. The Commerce Department already collects voluminous data on direct foreign investment in the US. The International Trade Administration collects data on individual transactions and assesses their implications. Any direct investments which might negatively affect US national interests are reviewed by the Interagency Committee on Foreign Investment. In all, sixteen Federal agencies currently collect and analyze data on US foreign investment.

2 Imposition of additional burdensome reporting requirements would discourage new foreign investment in the US. While the proposed registration system adds little new information to that currently available for purposes of economic analysis, the public disclosure of that information - some of it proprietary - would subject foreign investors to more onerous disclosure requirements than those for domestic investors. Foreign investment, which has helped fuel US economic development, has come to this country for many reasons, not the least of which are the United States' long history of respecting private property rights and investors' basic rights to financial privacy. By limiting these rights, the Levin and Bryant

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amendments would encourage foreigners to take their money elsewhere.

3 In some cases, the new registration requirements may actually result in disinvestment. Under both amendments, a foreign person who acquired an interest in US property prior to enactment and continues to hold such interest is subject to the registration requirements. Many foreign investors may choose to liquidate their US holdings rather than submit proprietary information for public inspection. Foreign investors may also choose to sell their existing US holdings rather than run the risk of incurring civil or criminal penalties for failing to comply fully with the new registration requirements.

4 The Levin and Bryant amendments are certain to result in retaliatory measures being adopted by countries which currently welcome investment by US companies. At a time when the US is urging its trading partners, in particular at the upcoming GATT negotiations, not to discriminate against US investment, the Levin and Bryant amendments send precisely the wrong signal.

(b) Section 905 of HR3, known as the Florio amendment authorizes the President to block foreign investment activities if such activities threaten national security or impair "essential commerce".

The CBI fully appreciates the considerations of national security, but bearing in mind the UK's position as the largest foreign investor in the US, we are deeply concerned about the potential impact of the above provision. The uncertainty created by the vague "essential commerce" standard can only act to restrain productive and legitimate foreign investment. This investment brings direct economic benefits to the US and we urge the House to delete this provision, and the Senate to resist the introduction of similar provisions. Senator Exon is proposing an amendment which tightens up the vague "essential commerce" clause and which is not as damaging as the proposals in HR3.

CONCLUSION

The CBI is sensitive to the prevailing pressures for reform of trade legislation in the US and accepts that the GATT, in its present form, represents an imperfect mechanism for the resolution of trade disputes. However, the US and the EEC were prime movers in the launch of the latest Uruguay round: at a time when such imperfections are up again for discussion and when the framework itself is to be enlarged to encompass services, investment and intellectual property, legislation which subverts this process would be counterproductive. Legislation before Congress still contains features which are

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cause for concern. Structural trade imbalances are not sustainable in the long term; and the problem should eventually be self correcting through normal competitive pressures on business - provided that all markets are equally open. Indeed, US export volumes are now moving ahead sharply. In these circumstances legislation which adversely affects transatlantic trade - directly or otherwise - could both set back the self correction process that now seems in train, and have serious adverse effects on Anglo-US relations: most of the industries likely to be more directly affected by any trade legislation are in areas of particularly high unemployment.

In the long-term interests of US and world business, we urge consideration of the points made above, as legislation is debated and ultimately passes to conference Committee.

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July 1987