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AMERICAN TRADE LEGISLATION : A FURTHER WARNING BY MR DE CLERCQ

In a letter to Mr Clayton Yeutter, US Trade Representative, Mr Willy De Clercq, Member of the Commission with special responsibility for external relations and trade policy, warned that the adoption of protectionist measures by the US Congress would lead to similar measures being taken by the United States' partners and would jeopardize the new round of GATT negotiations. The letter is also being sent to the members of the Senate-House Conference which is about to debate adoption of the trade bill.

Mr De Clercq pointed out that the Community's vital interests were at stake in this legislation. The Community is the United States' biggest trading partner and together they are the main protagonists on the international trade scene. They therefore bear much of the responsibility for the preservation of GATT, which has contributed to the greatest period of prosperity in the history of the western world. Mr De Clercq added that if either the United States or the Community tried to turn the clock back to the trade restrictions and bilateralism of the thirties, the world would rapidly become much a poorer and more dangerous place. In particular, all the five million jobs which depend on United States' exports would be threatened.

Mr De Clercq specified the aspects of the Trade Bill which were of greatest concern to the Community. These included :
- the redifinition of internationally agreed trade defence rules (anti-dumping and countervailing duties),
- potential restrictions on foreign investment in the United States,
- the concept of sectoral reciprocity,
- the creation of new non-tariff barriers,
- restrictions on the power of the executive in trade matters.

Annex : details of the provisions of the Trade Bill of concern to the Community.

KOMMISSIONEN FOR DE EUROPÆISKE FÆLLESSKABER - KOMMISSION DER EUROPÄISCHEN GEMEINSCHAFTEN
COMMISSION OF THE EUROPEAN COMMUNITIES - COMMISSION DES COMMUNAUTES EUROPEENNES - ΕΠΙΤΡΟΠΗ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COMMISSIONE DELLE COMUNITÀ EUROPEE - COMMISSIE VAN DE EUROPESE GEMEENSCHAPPEN

ATTACHMENT

The European Community is concerned about the following provisions in the trade bills:

1. Unilateral action in defiance of international agreements to which the U.S. is a party

A number of amendments to the U.S. trade laws would, if enacted, amount to a unilateral re-interpretation of internationally agreed rules. They would contravene obligations entered into by the U.S. in previous rounds of negotiations. The Community would be faced with domestic pressures to take mirror action, to adopt mirror legislation, or to retaliate. It may be worth recalling in this context that in 1980-85, when the U.S. dollar favoured U.S. exports to the EC, EC industry complaints against U.S. firms led to 21 findings of dumping, notably in the chemical and textile sector.

Examples:

- The import surcharge to finance the TAA program.

- Section 301 and its variations: retaliation against trading partners who fail to eliminate so-called unfair practices without prior authorization of the GATT Contracting Parties. In such cases, the affected country would be entitled to suspend the application of concessions or obligations vis-à-vis the U.S.

- With respect to AD/CVD law:

  - the definition of countervailable subsidies (rejection of the concept of "general availability" in favor of "specificity", introduction of concept of "commercial terms" for loans),

  - the definition of "industry" and "like product" for processed agricultural products, and the calculation of a subsidy in such cases,

  - amendment to the definition of the Foreign Market Value in AD cases involving related importers,

  - expansion of the scope of the AD/CVD laws to cover dumping of input products, government imports and duty-free imports under the Florence Convention and to treat leases as sales,

  - private right of action allowing plaintiffs in dumping cases to recover damages,

  - cross-cumulation in AD/CVD injury determinations,

- Provisional relief in escape clause cases prior to a finding of injury.

- Denial of benefits of GATT Code on Government Procurement without prior GATT authorization.

- Steel - unilateral changes in the coverage of the VRAs on steel and the origin rules pertaining to such VRAs.

- Expansion of the definition of "unfair practices" to cover export targeting, or activities of State-trading firms under Section 301.

- Quota auctioning following relief under Section 201.

- Section 337 (removal of injury provision makes the use of Section 337 even more objectionable).

- Tariff reclassification - silicone, casein, steel plates.

2. Potential restrictions on foreign investment in the U.S.

Registration and disclosure requirements on foreign investors would be discriminatory, could oblige them to disclose business strategies and therefore deter foreign investments. The proposal would be contrary to OECD Agreements to which the U.S. is a party. Both the U.S. and the EC share an interest in discouraging discrimination against their firms in third markets. It would be an irony if the U.S. were to impose a surveillance on foreign investments while simultaneously seeking to open foreign markets to U.S. investments in the Uruguay Round negotiations.

3. Sector-by-Sector Reciprocity Requirements

- Telecommunications: world trade is founded on each country finding an overall balance with its trading partners; like death and taxes, sectoral imbalances are an unavoidable fact of life. In any case, it is the EC who has a deficit with the U.S. in telecommunications. Should the EC retaliate? Should the U.S take restrictive action on the basis of this bill, the EC would counter-retaliate. Furthermore, any U.S. action on the basis of sectoral reciprocity could trigger or further

encourage demands by the EC for similar action in cases where U.S. barriers to trade would be higher than ours. Would the U.S. appreciate, for example, a European Wool Textiles Reciprocity bill? Allow us to recall that in June 1987 the EC Commission published a "green paper" on telecommunication services and equipment which recommends action in the EC to effectively enhance free competition and deregulation in this sector.

- Maritime Shipping: The EC stands ready to co-operate with the U.S. in the face of unilateral restrictions by third countries. However, the U.S. should refrain from investigating foreign carriers without well-founded reasons to presume unfairness on the part of the carrier, and should not adopt measures that would lead to cargo reservation in violation of the objectives sought by both the U.S. and the EC.

4. New non-tariff barriers

- Origin labelling for foreign food ingredients: Food processors change their sources of supply, depending on availability and price. Origin labelling for ingredients would require constant changes in the labels. This is totally impractical.

5. New limitations on U.S. trade negotiating authority

The U.S. and the European Community have played a major role in launching the Uruguay Round. However, the credibility of the U.S. negotiators will be seriously hampered if they are hamstrung in their ability to reach agreements both on tariff and non-tariff matters, and if they cannot ensure that the outcome of the negotiations will be considered promptly and without amendments by the legislative branch.

6. Presidential discretion in individual trade cases

The existing international trading rules permit the U.S. to take restrictive action against imports under Article XIX (escape clause) or Article XXIII (unfair acts, for example) when this has been authorized by the Contracting Parties in cases where they consider it to be justified under GATT criteria. In Article XIX cases the affected country is entitled to suspend the application of concessions or obligations vis-à-vis the U.S. where it considers the action not to be justified. In Article XXIII cases action without authorization is GATT-illegal and the affected country would have a clear case for retaliatory action.

The existing Section 301 provisions already permit the U.S. Administration - under national law - to violate these international rules. The trade bill's limits on the President's waiver authority might oblige the Administration to do so, particularly if the timetable for reaching an agreement is unrealistically shortened.