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E.C. WARNS U.S. AGAINST PROTECTIONIST TRADE LEGISLATION

The adoption by the U.S. Congress of protectionist trade legislation would invite retaliation and "torpedo" the Uruguay trade round, the European Community warns in a letter to U.S. Trade Representative Clayton Yeutter.

The letter, written by Willy De Clercq, E.C. Commissioner for External Relations and Trade Policy, says the Community is concerned about a number of proposed trade measures that will be considered shortly by a House-Senate conference.

Mr. De Clercq notes that trade policy action "based on the assumption that the trade deficit is largely caused by perceived unfair foreign trade barriers addresses but a fraction of the real problem." The letter (attached) was also sent to members of the House-Senate conference.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

WILLY DE CLERCQ
Member of the Commission
with special responsibility for External Relations
and Commercial Policy

Brussels, 28.09.87/* 2455

The Honourable
Clayton Yeutter
US Trade Representative
Office of the US Trade Representative
600 17th Street, NW
Washington, D.C. 20506

Dear Clayton,

Trade Legislation

I thought it would be useful if I were to sketch out the main points of concern to the European Community (EC) arising from the drafts of trade legislation shortly to be considered by the House-Senate Conference. This is not meant in any way to attempt to interfere with the domestic legislative process; we fully realise that decisions on the legislation of the United States are for the Congress and the President alone. However, we do have vital interests at stake in this legislation.

Let me be more specific. First, the twelve nation EC is the United States' biggest trading partner, accounting for $53 billion worth of US exports in 1986 (compared with $45 billion to Canada and $27 billion to Japan). Second, the EC - with 20% of world trade - and the United States - with some 14% - are the biggest actors on the world trading stage. Thus we both have a major responsibility for the preservation of the one world trading system set up under the auspices of the General Agreement on Tariffs and Trade (GATT). We know that many have criticised the GATT. But the plain fact is that as the barriers to trade were reduced under the GATT world exports have risen, in volume terms, by a factor of seven, and United States' exports by a factor of five. This has meant the biggest increase in prosperity in the recorded history of the Western World.

Any trade policy action based on the assumption that the trade deficit is largely caused by perceived unfair foreign trade barriers addresses but a fraction of the real problem and would be bound to lead to retaliation by other trading partners and to a major disruption of world trade. If either of us, however well intentioned, were to seek to turn the clock back to the trade restrictions and bilateralism of the early 1930s, the world would rapidly become a much poorer and more dangerous place; in particular, many of the five million

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American jobs now dependent on exports would be lost.

The following matters are, in brief, the ones which concern the EC most:

1. Unilateral action in defiance of internationally agreed rules,

   e.g. the re-definition of what constitutes a countervailable subsidy; mandatory action under Section 301 and under provisions which would attempt to deal with trade surpluses on a sectoral or bilateral basis; the standing of petitioners in AD and CVD cases involving processed agricultural products; the mandatory imposition of an import surcharge; the provisions on diversionary input dumping; the private right of action in AD cases; and leases treated as sales. The various steel provisions which defy existing bilateral arrangements must also be mentioned in this context.

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

   e.g. detailed, discriminatory disclosure and registration requirements contrary to OECD agreements.

3. Sector-by-sector reciprocity requirements,

   e.g., the provisions on telecommunications and maritime shipping.

4. The creation of new non-tariff barriers,

   e.g. the provisions on the origin labelling of foreign foods and ingredients.

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

6. New limitations on the President's discretion in trade cases.

If provisions on these lines were to be enacted, we see two main consequences.

The first would be that the current round of trade negotiations - the Uruguay Round - which the United States has done much to support, would effectively be torpedoed. Who would want to continue with a major negotiation to improve and expand the trading rules if a major Contracting Party declared its

intention not to abide by the existing ones? And who would wish to continue serious negotiations if the United States negotiators were hamstrung by limits on their authority to enter into trade agreements and could not ensure prompt consideration by Congress of the results?

The second would be certain retaliation or the enactment of mirror legislation by others - in some cases, encouraging existing European protectionist pressures which we have so far been able to contain. Would the United States welcome it if the EC were to insist on reciprocity on, say, wool textiles (where U.S. tariffs are substantially higher than ours) and threaten retaliation if no U.S. concessions were made? The result of such actions would be a major disruption of world trade and of the prosperity of all trading partners.

This is only a thumbnail sketch of our concerns. I attach a more detailed description of the EC's main preoccupations and hope that the Administration and Congress will be able to take them into account as the work on the trade bill progresses.

Sincerely yours,

Willy De Clercq

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.