EUROPEAN PARLIAMENT

EUROPEAN PARLIAMENT DELEGATION

for relations with

THE UNITED STATES

25th meeting of delegations

19-26 June 1985

WASHINGTON, DC and WEST POINT, NY

Background note

on

EC-US trade relations: inventory of current problems

drawn up by the
Commission of the European Communities

DIRECTORATE-GENERAL FOR COMMITTEES
AND INTERPARLIAMENTARY DELEGATIONS

3 June 1985

PE 98.555

IMPORT RELIEF ACTIONS

(a) Industry

Steel pipe and tube import restrictions

Following long drawn out consultations with the US on pipes and tubes, the US decided on 27 November 1984 to enforce a complete embargo on EEC pipe and tube imports during December 1984, and to impose an import quota of 5.9% of the US apparent consumption for 1985. Negotiations between the Commission and the US led to an Arrangement which provides for an export ceiling in 1985 and 1986 of 7.6% of the US apparent consumption sets a sub-ceiling of 10% for oil country tubular goods (OCTG), but exempts products of short supply, and sets a sub-ceiling of 10% for oil country tubular goods (OCTG). The US refusal to apply the short supply provision to the deliveries for All American pipeline created a new and serious problem, which may lead the Community to reconsider the value of the Arrangement as such.

For tubes landed but not cleared through customs during the embargo period (29 November 1984-31 December 1984), the US requested the Community on 3 February to issue immediately export licences for all quantities (263,000 t) concerned, to be counted against the 1985 ceiling. An agreement was reached on 1 March. All products are cleared, out of which 60,000 t outside the ceiling, of the remaining tonnage 65% are counted against the 1985, 35% against the 1986 ceiling.

Steel pipes and fittings - origin marking

Section 207 of the Trade and Tariff Act of 1984 requires the origin marking by die-stamping, cast-in-mold lettering, etching or engraving of imported steel pipes and fittings. The measures were implemented effective 14 November 1984 with a transitional period until 14 May 1985. They constitute an unjustified non-tariff barrier to trade. The consultations requested by the Community under Article XXII of GATT, took place on 7 December 1984, with no results, but the US Administration is aware of the technical difficulties to implement the requirement and will try to take these into account in the definitive rules.

Carbon Steel Arrangement

At the request of the US, on 25/26 February consultations were held under Article 10 of the Arrangement for the so-called "consultation products" i.e. products for which no quantitative limit exists (semi-finished, free steel, black plate and mid and flat wire). The US formally requested that the EC undertake immediately to issue export licences for all consultation

products at the 1981 level. The Commission rejected this request as no trade diversion could be proved, which is a prerequisite for such a request. Despite the fact that US imports of these products from the EC have increased considerably, the overall EC steel exports taken together remain within the 1981 level (5%). During new consultations which took place on 25/26 March, both parties remained on their position.
On 26 March the Council of Ministers adopted a declaration on relations in the steel sector to the effect that the US position both as regards pipes and tubes (short supply clause) and steel products not subject to quota was clearly against the spirit and letter of the EC/US steel arrangements. The Community would react firmly against unilateral measures and the Commission was invited to study possible counter measures.

Footwear

On a Section 201 safeguard petition filed in January 1984, the US ITC voted on 4 June that there was no injury to the domestic industry.

On 30 December 1984 the Senate Finance Committee requested the opening of a new Section 201 investigation. ITC declared on 22 May 1985 that serious injury exists and will recommend appropriate remedies to the President in the week beginning 10 June.

Machine tools

US machine tool industry seeks import relief under national security provisions (Section 232 of the Trade Expansion Act of 1962). Department of Commerce initialled a confidential report, which proposes import quotas for certain types of machine tools. President has not taken decision. He is under no time limit.

A Note Verbale was delivered on 27 May 1983, letter Haferkamp to Baldrige on 8 February 1984 and Thorn-Shultz on 2 March 1984.

Arianespace

On 25 May 1984, a petition under Section 301 of the Trade Act of 1974 (unfair trade practices) was filed with USTR against alleged subsidisation of the activities of Arianespace S.A. At the request of several Member States, ESA - not EC - made diplomatic demarche.
USTR initiated investigation on 9 July, consultations took place in November, December 1984, February and April 1985. On a normal timetable, USTR's recommendations to the President should be made by July 1985.

Textiles

Since September 1984 the US applied, on an interim basis, new rules regarding the determination of origin for textiles. The final rules entered into force on 4 April. They take into account a number of Community suggestions, but are not satisfactory regarding two major concerns:

- the community request to be treated as "one" for the purpose of the declaration on the origin of textile products is not granted;

- it seems that dyeing and printing only confer origin when applied as two separate operations on the product.

Detailed examination of the rules is being pursued.

Superphosphate fertilizers

On 17 August 1984, a petition under Sectioon 301 of the Trade Act of 1974 (unfair trading practices) was filed by the US industry, contending that the EC technical standard for triplesuperphosphate is an unnecessary obstacle to trade and unlawful under the Standards Code. On 1 October 1984 USTR decided to initiate an investigation. The question was discussed in two informal meetings with USTR on 8 and 18 October 1984. Formal consultation under the GATT Code on Technical Barriers to Trade (Article 14:1) took place in Geneva on 6/7 December 1984.

(b) Agriculture

Wine - AD/CVD actions

Anti-dumping and countervailing petitions against French and Italian ordinary table wines filed on 27 January 1984. On 6 March ITC determined that there was no injury. Appeal by petitioner to the Court of International Trade was introduced on 20 April 1984, and new petitions under the new "domestic industry provisions" (see infra) are expected to be filed shortly.

Wine Equity Act

This Act, which was passed by Congress on 10 October 1984 as part of the Trade and Tariff Act of 1984, provides inter alia for action under the Trade Act of 1974 to enforce US rights or to obtain the elimination of trade barriers in the wine sector in any "major wine trading country". Such action can only be taken after designation of such country by USTR, after consultation between USTR and such country and after a USTR report to Congress.

Section 612(a)(1) of the Trade and Tariff Act redefines the term "domestic industry" so as to make it possible for wine grape growers (in addition to the wine makers themselves) to file AD and CVD petitions in respect of US imports of wine. This new definition has a life of two years and may lead to a re-opening of the Anti-dumping and Countervailing duty cases against exports of (mainly) French and Italian - but also German and Greek - table wines to the US. This new definition of "domestic industry" is contrary to Article 4.1 of the GATT Anti-dumping Code and Article 6.5 of the Subsidies Code.

The EC requested consultations under both the two GATT codes. These consultations having failed to reach a mutually acceptable solution, the Community requested the establishment of a panel to examine the new legislation. On 15 February the GATT Subsidies Committee decided positively on this request. US continue to drag feet over composition of a panel and its mandate.

GATT - Citrus Panel

In November 1982, the United States referred to a GATT panel the question of the Community's tariff preferences to certain Mediterranean partners on citrus products. In doing so the US breached a confidential gentleman's agreement with the Community, the so-called "Casey-Soames" understanding, under which the US undertook not to attack the Community's preferential agreement adopted under Article XXIV of the GATT.

The US claimed that the Community/Mediterranean preferences breached the most favoured nation obligation of the GATT.

The panel report of 7 February 1985 calls on the Community to compensate the US for damage it alleges has been incurred to US citrus exporters, while acknowledging that the Community has not been found in breach of its GATT obligations. These conclusions raise serious economic and legal issues. Since the panel has exceeded its mandate and has given a new and highly questionable interpretation of GATT, the Community policy is to have the report "set aside".

In April 1985 Secretary of State Shultz wrote to Ministers of Foreign affairs in Member States (but not to Commission) in an attempt to pressurize them to accede to US request for compensation, failing which US would act unilaterally. Commissioner De Clercq replied on behalf of the Community pointing out the political and economic difficulty for the Community in reducing margins of preference granted to our Mediterranean partners. He also drew a parallel with US tariff preferences under Caribbean Basin Initiative. US continue to escalate problem by threatening (illegal in GATT) unilateral retaliation against Community experts.

GATT - Panel on canned fruit and dried raisins

The latest version of the panel report rejects US complaint on raisins but partly accepts their complaint on canned fruit.

Community has made proposals for resolving the issue bilaterally. Discussions continue.

GATT - Committee on Trade in Agriculture

Committee at stalemate for the moment as a result of postponed meetings, basically because of lack of consensus on how to proceed. This results in large part from US continued hard line attack on Community export refunds.

2. TRADE LAW REFORM

Trade and Tariff Act of 1984

Congress adopted on 10 October 1984 the Trade and Tariff Act of 1984. It was signed into law by the President on 30 October 1984. It is the most significant trade bill since 1979. A number of provisions are of concern to us and may lead to challenges in GATT and/or bilateral disputes.

- Amendment to Section 201 of the Trade Act of 1930 (escape clause). The criteria for injury or threat of injury are changed in that increasing profits of domestic industry do not preclude injury or threat thereof if there is closing of plants, underutilization of production facilities and large inventories (provision intended to give better chance to footwear industry in the new 201 investigation).

- Amendment to Section 303 of the Trade Act of 1974. A new "reciprocity" provision has been added. USTR must submit an annual report to Congress identifying foreign government practices that constitute significant barriers to (a) trade exports of US goods, services or property protected by trademarks, patents and copyrights, and (b) US foreign direct investment having implications for trade in goods or services. The President is authorised to retaliate against or negotiate with the foreign governments in question and to propose legislation in view of the suppressing of such barriers.

- Amendment to anti-dumping/countervailing duty laws. Action is now permitted against prospective imports (imports that have not actually entered the US) and against imports under leasing arrangements (e.g. long-term lease of aircraft). The provision on prospective sales probably violates the subsidies code, while the provision on long-term leasing probably is consistent with the Code.

CVD can now be imposed against subsidies conferred on "inputs" to imported article - upstream subsidies. Action can be taken if the upstream subsidy (a) bestows a competitive benefit, and (b) has a significant effect on the cost of producing the exported product. This is the only item left from what was known as the Gibbons' Bill. Provisions on downstream dumping and natural resource subsidies were not retained.

During the period leading up to the adoption of the trade package by Congress, the Commission made several demarches on the various issues at stake both to the US Government and to Members of Congress.

The Council of Ministers also adopted a resolution on 2 October 1984 expressing concern on a number of protectionist provisions of the Bill. The Commission reserved the Community's GATT rights on all aspects of the Trade and Tariff Act.

Export Administration Act

The Export Administration Act failed to be approved by the outgoing Congress, but a new bill will soon be enacted by the new Congress. The Community has serious problems with various provisions also of the latest version, namely their extraterritorial application, retroactivity and the proposal of an import ban where national security controls are breached.

New rules for Distribution Licences

The DOC has made a proposal to streengthen the export controls basically for high technology products to prevent re-exports to non-NATO countries. The issuance of blanket licences would be substantially restricted. The Community and the Member States submitted jointly comments to the US Authorities in March, and October 1984. The Administration is still considering the various comments received.

Semiconductor Chip Protection Act

The Semiconductor Chip Protection Act provides for protection of foreign semiconductor chips (mask work) in the US, if US mask work is given protection abroad. The legislation is based on reciprocity either via bilateral treaties or a Presidential determination that US produced mask work is sufficiently protected abroad. Neither the EC nor most of its Member States have legislation yet to that effect, which might cause problems. The US appears to have adopted ad hoc legislation which is outside the framework of multilateral consultations on copyright, particularly in the OECD. The Commission sent a Note Verbale to the State Department on 28 September 1984. No reaction has come from the US. Procedural rules for requesting protection of mask work were published in the Federal Register on 3 February 1985. A new Commission intervention was sent on 15 March.

Protection of intellectual property rights - Section 337 of the Trade Act of 1930

Procedural rules for investigation under Section 337 were published in May 1984. They fix time limits for ITC investigations, for the respondent to respond and rule on evidence to produce. They constitute a serious harassment to foreign manufacturers. The EC notified GATT in 1982 of Section 337 procedures and requested that the issue be put on the list of non-tariff measures. A Note Verbale was sent to the State Department on 26 June 1984. Final rules were published in the Federal Register on 26 November 1984.

DISC/FSC Bill

Following GATT panel report and condemnation by GATT Council of the DISC system, a bill to change it was adopted by Congress on 27 June 1984 (Foreign Sales Corporation Bill) and came into force on 1 January 1985. The Commission expressed its reservations. Our main objection is the exemption of taxes due under the DISC system (which provided only for a tax deferral rather than remission). Other doubts exist with regard to GATT compatibility of certain provisions of the new Act. The Community request on 30 October 1984 for informal multilateral consultations in GATT to examine the GATT compatibility of the new Act was refused by the United States. The Community therefore requested formal multilateral consultations under Article XXII of the GATT.

3. OTHER ISSUES PENDING

Industrial targeting

Discussions in the US as to the adverse effect of third countries' industrial policies on US industry and the appropriate remedies have led Congress, in the past, to protectionist legislative initiatives (Gibbons bill). Most of the remedies suggested have not been passed, but the new Congress may come back to them.

High Technology

The US have two apparently contradictory policy objectives: to promote further liberalisation of trade in high technology while restriction transfers of technology for reasons of national security. Thus, simultaneously they seek to include high technology trade in a new GATT round of trade liberalisation negotiations but restrict trade involving export or re-export to the Eastern Bloc of US technology. They also seek to restrict freedom of access to scientific and technical information in the US. Although the Community is reticent over GATT negotiations on high technology trade it has been willing to discuss policy issues (other than trade) in a bilateral working group set up at EC/US Ministerial meeting in December 1983, which continues to meet every six months or so.

US have not defined the term high technology, but in their view it includes at least telecommunications equipment, computers, robotics, data processing, precision instruments, semi-conductors, computer parts or software.

High priority is attached by US to telecommunications liberalisation following the deregulation of AT & T and a bill to force the pace on the issue has just been introducted into Congress by Senators Danforth and Bentsen (S.942). The bill has a two-pronjed approach: negotiations to obtain US access to major foreign markets; retaliation through higher tariffs, quotas etc. against countries not complying with existing agreements (immediately) or with which US has been unable to conclude an agreement (within two years).

Unitary tax

EC multinationals are subject to a serious risk of double taxation by 12 US States which tax them, not just on their activities within their territories, but on a percentage of their world-wide income. A Working Group was set up by President Reagan which recommended to limit the application of unitary tax to US companies and US territory. On the question of taxing dividends earned abroad, no recommendation has been made. On 31 July 1984, Treasury Secretary Regan sent a report on unitary taxation to the President, with a letter indicating that he would recommend Federal legislation if States make no progress by 31 July 1985. Final Working Group report was sent to President on 31 August 1984. Some progress has already been made since both Oregon and Florida repealed their unitary taxation system in 1984.

Community and Member States jointly made several demarches to the Federal and State Governments concerned.