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Outlets for Developing Countries in the German Market

The Scope for National Trade Policy

by Axel Borrmann, Hamburg *

As one of the biggest trade partners of the developing countries the Federal Republic of Germany is of necessity one of the states to which these countries will address their trade-political demands at UNCTAD V. An analysis shows however that, as the classic competences for trade policy decisions have been largely transferred to the EC, the Federal Republic is left with very little scope for action.

Although the general validity of a strategy of export-oriented industrialization may well be questioned, most developing countries still hold to the view that this approach offers the best chances for a fundamental and lasting improvement of their socio-economic situation. Their aspiration of integration with the world economy is applauded by the industrialized countries which owe their present economic and social prosperity undoubtedly in great measure to this concept. The developing countries are criticizing the industrialized states however for their reluctance to draw the required material consequences from their verbal support and to open their markets to export goods from the developing countries. Their demands include:

In the context of the multilateral trade negotiations (GATT):

- Special treatment for developing countries,
- Non-reciprocity,
- Tariff cuts for products involving export interests of developing countries beyond the general formula for tariff reductions,
- Linkage of preferential margins to GATT,
- Compensation for the erosion by tariff cuts of the Generalized System of Preferences (GSP),
- Equal or preferential treatment of developing countries for government contracts;

In the raw material trade:

- Multilateral long-term purchase and sales commitments,
- Improved market access for crude or processed raw materials of developing countries,

- Harmonization of the production of synthetics with the supply of raw materials from the developing countries;

In the trade in semi-finished and finished goods:

- Improvement and prolongation of the Generalized System of Preferences (GSP),
- Modifications to the Tariff Classification,
- Lowering or removal of non-tariff barriers (NTBs),
- Abstention from the conclusion and renewal of self-restraint agreements,
- Adjustments of the economic structures of the industrialised countries (adjustment assistance measures, redeployment).

At UNCTAD V the industrialised countries will again come up against demands of this kind which at a time of mounting protectionism have certainly not become any less topical but if anything more explosive. The current GATT negotiations have made little difference in this respect. During the Tokyo Round many of the developing countries' demands were either not discussed at all or left unresolved.

Being the most important trade partner of the developing countries¹, the European Community will be caught in the cross-fire of the critics in Manila. It will have to state its attitude to the demands, the more so as it has made especially wide use of protectionist practices in recent years. In this connection the Federal Republic of

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¹ The EC absorbed 27.9 % of all exports from developing countries in 1977 and was thus their biggest market. Cf. GATT, International Trade 1977/78, Geneva 1978, Appendix, Tab. L.

Germany finds itself on the horns of a dilemma. In the course of the Community's integration it has had to cede to the EC authorities a large part of its jurisdiction over the classic instruments of trade policy; to give an example, in regard to customs duties and tariff and trade agreements it cannot work for improved market access for developing countries otherwise than in consultation with its EC partners. Its basically liberal attitude encounters however opposition from other member countries which, with the structure of their own economies in mind, urge much more caution in the dosage of additional liberalization measures and call in more and more cases for recourse to further protective devices.

Faced with basic differences in the attitude to trade policy inside the EC the Federal Republic has to ask itself what scope is still left to it in negotiations and conferences like UNCTAD V for action that is independent from the policy of the Community and yet respects its principles when it wants to make own contributions to liberalization and to offer enhanced sales opportunities to developing countries in the German market. An initiative of this nature by the Federal Republic seems to make sense also because its image as a supporter of development policy has been tarnished by its rigid stance on the raw material issue at the last UNCTAD conference in Nairobi.

There are, basically, three approaches which need examining. First, those import impediments have to be identified which can still be cleared away under national jurisdiction (market-opening measures). Secondly, instruments have to be considered which will have the effect of increasing the exports from developing countries and promoting sales in industrialized countries (export and sales-promotion measures). Thirdly and finally, there are measures in the field of structural policy which require analysis.

Market-Opening Measures

In the present state of trade policy integration in the European Communities tariff legislation and tariff and trade agreements are not available as starting points for liberalization measures. Narrow limits are set also to national autonomy in regard to all instruments of trade policy insofar as they bear on agricultural products which fall under the EC's common agricultural policy (goods subject to market regulation)². Some opportunities for national measures are left however in regard to protective devices and non-tariff bar-

riers to trade as far as non-competing agricultural products and semi-finished and finished industrial goods are concerned.

The member countries of the Community are no longer free to take *protective measures* against third countries on their own but whether to yield to pressures from individual sectors or industries and to apply to the EC Commission for protectionist measures or keep the markets in question open to others is a matter for each member country. Its attitude will depend, on the one hand, upon its general readiness to advance the international integration of the national economies and, on the other, upon the circumstances in the concrete instance in which a distinction has to be made between a legitimate need for protection in the own economy (e.g. against dumping practices) and shifts in the competitive situation and the consequent structural effects.

In the sphere of *non-tariff barriers to trade* a number of interesting avenues for national liberalization measures show up at a first glance but they require a very careful demarcation of national and Community competences in the field of external economic relations and more particularly in that of trade policy.

The non-tariff barriers to trade and their removal are altogether a highly complex legal matter which is moreover subject to continuous change by the progressive activation of Community organs in this field. Hence it is intended to show here the general opportunities for national liberalization efforts rather than to present a full catalogue of concrete measures (cf. summary survey).

The EC treaty does not explicitly forbid the levying of charges similar to customs duties in trade with third countries³ provided that they do not serve the aim or purpose of an import duty. Measures of this kind are however subject to the provisions of Art. 100 of the EEC Treaty on the harmonization of national laws. There is besides some – albeit rather limited – scope for national decisions on quantitative import restrictions. This is in the case of goods which have not been included as yet in the Community liberalization list. Furthermore, the individual member countries have retained certain rights to measures which have the same effect as a quantitative restriction provided that they bear on *sales* and not on imports. Finally, the Community has not yet extended its activities to the field of import subsidies; so this is an area in which the member countries can still take action. It has to be noted however that

² These products accounted in 1977 for 39.3 % of the agricultural imports of the Community of Nine from the developing countries. The comparable figure for the FR Germany was 34.8 %. Cf. EURO-STAT, Monthly Bulletin of Foreign Trade Statistics, No. 6, 1978, p. 11.

³ Goods subject to market regulation are again excepted. Cf. Michael d'Orville, Die rechtlichen Grundlagen für die gemeinsame Zoll- und Handelspolitik der EWG (The legal foundations of the common tariff and trade policy of the EEC), Kölner Schriften zum Europarecht, Vol. 19, Cologne 1973, p. 98 ff.

State of Trade Integration in the European Communities
(Simplified Presentation)

Subject	Scope for Action by Member Countries
I. Import policy	
1. Tariff legislation	No national competence.
2. Right to quasi-duty imposts	No national competence in regard to agricultural market goods. No explicit ban on the levying of imposts which have not the purpose of customs duties and do not constitute discrimination against member countries. Far-reaching autonomy of the member states in the sphere of taxation policy (compensatory measures in regard to consumer tax differentials, consumer taxes <i>not</i> discriminating against member countries); harmonization of laws according to Art. 100 EEC Treaty.
3. Right to quantitative restrictions	Very little scope; individual state quotas still exist for a few Common Tariff items only. No scope in regard to agricultural market goods.
4. Right to measures having the same effect as quantitative restrictions	Existing measures of member countries vis-à-vis third countries may be retained provided they relate to sales and not to the process of importation. Exceptions in regard to agricultural market goods. New trade restrictions must not be introduced. Harmonization of laws according to Art. 100 EEC Treaty. No scope in regard to agricultural market goods.
5. Right to trade protection measures ^a	No national competence.
6. Right to import subsidies and promotion	National competence; but measures similar to customs rebates are not permitted. Exceptions in the agricultural field.
II. Export policy	
1. Tariff legislation	National competence. Exceptions in the agricultural field.
2. Right to quantitative restrictions	National quotas and embargoes still extant for a few kinds of goods only. Principle of freedom of exportation rules out new measures on a national level.
3. Right to export promotion	Relatively large scope. Exceptions in the agricultural field.
III. Policy in regard to tariff and trade treaties	
	Evolution of the common trade policy according to uniform principles. Little national scope as treaties require endorsement.
IV. Areas exempted from the common policy	
1. Measures for the protection of the national security	Competences for imports of war material.
2. Import, export and transit embargoes or restrictions in the meaning of Art. 36 EEC Treaty	Competence in regard to trade policy insofar as public decency, security and order, health and life of human beings, animals and plants as well as national cultural assets are at risk.

^a Protection against dumping practices, bounties and subsidies by third countries.

Source: Compiled from Michael d'Orville, Die rechtlichen Grundlagen für die gemeinsame Zoll- und Handelspolitik der EWG (The legal foundations of the common tariff and trade policy of the EEC), Kölner Schriften zum Europarecht, Vol. 19, Cologne, Berlin, Bonn, Munich 1973, p. 97 ff., and Dietrich Ehle, Gerd Meier, EWG-Warenverkehr, Außenhandel – Zölle – Subventionen (EEC goods trade, foreign trade – customs duties – subsidies), Cologne 1971, passim.

there is a risk of measures here clashing with the Community law on import tariffs and the prohibition of state subsidies under Art. 92 ff. of the EEC Treaty.

Among the numerous and diverse non-tariff barriers to trade which the Federal Republic, as others, applies directly or indirectly or preserves consciously or unconsciously are some which could be reconsidered as own contributions to liberalization and for the opening of markets. Possible would be for instance:

- Re-examination and, if warranted, renouncement of the remaining import quotas,
- Ending of possibly existing discrimination in the placing of public contracts and attempts to give preferential treatment to bidders from developing countries on grounds of development policy,
- Removal or partial withdrawal of cost relief to internal producers by grants and subsidies,
- Abolition of stipulations for use of domestic goods,
- Suspension of certain consumer taxes and charges,
- Identification and, if warranted, removal of technical barriers to trade with unnecessary discriminatory effects on supplies from third countries.

Export- and Sales-Promotion Measures

Aid by trade or, to be more precise, measures for the promotion of exports and sales offer further promising avenues for the opening of markets. By no means all the opportunities have as yet been exhausted in this area in which there is far less risk of a clash with Community law if there is any such risk at all. The aid-by-trade concept in the wider sense includes measures of a technical and financial kind which are conducive to

- the creation in the developing countries of a sufficiently elastic and competitive range of exportable products,
- the promotion of the sale of such products in industrialized countries.

As a large variety of measures can be taken in the developing countries themselves, mention is made here only of a few aid-by-trade activities capable of opening markets in the industrialized countries⁴:

- Preparation of product studies,
- Study of market conditions including analysis of distribution systems, requirements and competitive situations in individual markets,

Improved information of the developing countries about opportunities for imports on preferential terms,

Identification of specific restrictions on, or conditions for, market access in the form of NTBs (e.g. technical specifications and standards, safety requirements, directions regarding packaging, certificates of non-objection, and inspection certificates),

Feasibility studies for new or little-known products including product tests and motivation research,

Evolvement of suitable market strategies and publicity measures,

Assistance for participants in fairs and exhibitions,

Basic and advanced training programmes related to these measures.

Furthermore, consideration could be given to import assistance taking the form of⁵:

Credits from aid-by-trade funds to importing firms for goods from developing countries to be newly introduced into the market,

Tax concessions for publicity measures in aid of developing countries.

Structural Policy

Finally, there are opportunities for structural measures on the national level with the aim and effect of opening markets in the industrialized countries for products from developing countries, for the structural policy can be used as a means for improving the international division of labour. They consist of a complex of measures directed at removing acute "impediments to division of labour" (e.g. import duties, NTBs) and a complex of measures which tend to improve the environment for adjustments in individual enterprises, industries and sectors of the economy. Among measures in the second complex which has many facets and poses great problems are

- Improved information about structural adjustments required now or in the future insofar as these are induced by external economic factors,
- Evolvement of a concept for the encouragement of structural adjustments by the state,
- Precautionary measures to cope with economic and social frictions and conflicts.

⁴ Cf., e.g., Christian W i l h e l m s, Absatzwirtschaftlich orientierte Handelshilfe — ein Katalog wirksamer Exportförderungsmaßnahmen (Sales-oriented aid by trade — a catalogue of effective export-promotion measures), in: WIRTSCHAFTSDIENST, 45th year (1965), No. 7, p. 385-388.

⁵ Ibid.

Overall Assessment

The examination of the areas in which the Federal Republic of Germany is left with scope for action in regard to trade liberalization and opening of markets has shown that the surrender of a very large part of the classic autonomy in the field of trade policy leaves it with few opportunities only in regard to barriers to trade. On the other hand, the prospects for aid by trade and in the field of structural policy are auspicious.

A removal of extant *non-tariff barriers to trade* is feasible and practicable although it would be wrong to expect too much. The repeal of certain taxes on consumption for instance would entail substantial revenue shortfalls. On the 1977 figures the Federal Republic would lose DM 100 mn of tax revenue from sugar, DM 1,300 mn from coffee, DM 9,400 mn from tobacco and DM 18,100 mn from mineral oils⁶. Moreover, a tax relief-induced expansion of demand would be undesirable in some cases, for instance for reasons of health and energy policy (tobacco, mineral oils); in others (e.g. sugar) the demand is probably rather inelastic, so that abolition of the tax is unlikely to have a great material effect. Manipulation of consumer taxes has also the drawback that only a limited number of developing countries would derive benefits from any widening of the market.

As for the removal of other NTBs (national quotas, public contracts, subsidies, mandatory use of domestic supplies), it is open to question whether the developing countries are interested in exporting the particular products or even capable of supplying them. Removal of the few existing German import quotas for such articles as porcellain insulators, household utensils and coal would hardly create suitable outlets. Moreover, some of the national quotas relate specifically to imports from Eastern bloc countries. Nor would a market be opened to developing countries if, for instance, the obligatory admixture of domestic grains were to be ended.

⁶ Cf. Statistisches Bundesamt, Statistisches Jahrbuch 1978 für die Bundesrepublik Deutschland (Statistical Yearbook 1978 for the Federal Republic of Germany), Stuttgart and Mainz 1978, p. 418 f.

The non-tariff barriers to trade play a role in the EC's claim for a larger sphere of competence, as became evident during the current Tokyo Round negotiations. Attempts by a country to "go it alone" can create problems because they may be contrary to the "spirit of the common trade policy" or are regarded by other member states as an unrequited surrender of bargaining items. More attention should nevertheless be paid to the contribution which national removal of NTBs can make to liberalization. A much more detailed analysis of the many facets of the problem is desirable.

The opportunities in the area of *aid by trade* are incomparably greater. There is probably no field in which the discrepancy between the potential for effective development aid and its utilization is more marked. This must cause the more surprise because in this sector more than in others a high degree of development efficiency can be achieved at relatively low cost. Microeconomic export and sales promotion offers a promising field for national measures without the risk of encroaching on Community competences. The low "public relations effectiveness" of such measures in the developing countries should not discourage a commitment to increased aid-by-trade efforts. Crucial is the efficiency of such measures under development aspects rather than the size of the resource transfers.

Measures which are suitable for an advancement of the *structural adaptation* of the national economy to the changes in the world economy are easier to suggest than to implement. Such measures will indeed make a remarkable indirect contribution to the opening of markets but entail vast economic, social and political problems, to say nothing of the cost of structural changes supported, promoted and/or directed by the state. Economic order issues, employment effects, financial bottlenecks and above all questions of political practicability pose problems which are still quite unresolved and widely disputed. All this leads to the conclusion that the scope for action by the Federal Republic of Germany is at present very narrowly circumscribed.

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