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# Increasing Protectionism in Europe

by Peter Korn, Bonn\*

**The EC-Commission and the European Council have both expressed their concern at the state of the internal market of the Community, which is jeopardized by trade barriers and subsidies to distressed industries. They both agree that a concerted effort must be made to strengthen and consolidate the internal market for goods and services.<sup>1,2</sup> Has the bacillus of increasing protectionism in world trade now spread to the internal trade in the EC? How can the danger be averted?**

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The concern of the EC-Commission and the European Council has led them to approve, for the first time, in detail demands that have been raised by the German side for some time, in particular in several studies carried out in the last two years by the Association of German Chambers of Commerce and Industry concerning the increase of NTBs (non-tariff barriers) and other threats to the internal market. The Council's declaration and the increased attention paid by the Commission to this topic, recently shown by a new Communication to the Council<sup>3</sup> proposing concrete measures for the strengthening of the internal market, are manifest evidence of errors in intracommunity trade policy. These errors have caused repeated grievances and complaints by the business community, but have until now not been sufficiently taken into account by national and Community administrations.

The recognition of "the establishment of a complete common market, and hence the promotion of a harmonious development of economic activities" as a central feature of the Community is to be found in every declaration concerning the realisation of the Treaty of Rome, including the Communication from the Commission to the Council on the State of the Internal Market. This document, however, criticizes for the first time that "the customs union, the implementation of which is intended to ensure the internal market, is proving to be increasingly inadequate for the achievement of this aim. The substance of what has been achieved is instead being jeopardized and undermined by the fact that old barriers have survived for too long and new barriers have been created".<sup>4</sup> The reason for the threat to the internal market is that "under

the pressure of the economic crisis during the two recessions of the past seven years Member States have not completely withstood the temptation to yield to national protectionism".<sup>5</sup>

Among the protectionist measures giving rise to concern, above all because of their accumulation, are "non-tariff and administrative barriers of all types – in particular in the field of technical specifications and standards – the tax limits, the constant overbidding in granting direct and indirect subsidies, the gaps in foreign trade policy – which often has an adverse effect on the operation of the internal market and the unity of purpose of the Community – and the increasing influence of Member States on procurement and on the general functioning of the market".<sup>6</sup> The picture is completed by the statement that "in addition, there is the anxiety about the protectionist effect of monetary policy measures and the lack of progress in the realisation of a complete common market for the free movement of services especially in the banking and insurance sector".<sup>7</sup> Little can be added to this enumeration of trade barriers.

Although criticism of certain aspects of Community policy is justified, it must be admitted that the Customs

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<sup>1</sup> Communication from the Commission to the Council: "On the State of the Internal Market", June 17, 1981, Com (81) 313 final.

<sup>2</sup> Summary of the conference of the European Council by the chairman, Luxemburg, June 29/30, 1981, item 8.

<sup>3</sup> Communication from the Commission to the Council: "Strengthening the Internal Market", October 14, 1981, Com (81) 572 final.

<sup>4</sup> Communication from the Commission to the Council, Com (81) 313 final, p. 1 ff.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

\* Deutscher Industrie- und Handelstag.

Union has brought great benefits to the members of the Community. However, these benefits are currently being offset, or even reversed, by the numerous non-tariff barriers to trade (NTBs) which are increasingly gaining in importance. Frequently camouflaged by liberal-sounding expressions such as "orderly marketing", "selective import policies" or "sector-specific free trade", or under the pretext of implementing necessary harmonization procedures, these trade-distorting measures are employed by member states, and even by the Community itself, with the real aim of affording protection to particular branches of their own economies.

In recent years the internal market problems of the EEC have increased so enormously that the Commission itself has underlined a statement frequently repeated by the German business community that "23 years after the establishment of the European Community – the elimination of frontier formalities is still lagging behind that achieved in the Nordic Union".<sup>8</sup> This statement must raise some doubts about the successful realisation of the internal market up to the present time. But protectionist practices in foreign trade are not unknown to business. It has learnt to live with them, especially in international trade where protectionism is much more in evidence than in intracommunity trade. This has been shown again in a recent poll conducted by the Association of German Chambers of Industry and Commerce (Deutscher Industrie- und Handelstag – DIHT) in connection with a hearing of the Council of Economic Advisers (Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung) for its 1981 Report. France and Italy led the list, followed by Spain, Brazil and the United Kingdom with a very considerable number of cases of protectionism. Fewer, but nevertheless important, cases have been reported from the USA, Austria, Mexico, Japan, Yugoslavia, Nigeria, India, Greece, Turkey, Belgium, Switzerland, Venezuela and Australia.

Since NTBs have recently become a subject of discussion, the DIHT, in conjunction with its constituent Chambers, conducted a survey into NTBs in intracommunity trade. Approximately 10,000 firms, active in various branches in the manufacturing, trading and service sectors, and of varying size (large, medium and small), were questioned.<sup>9</sup>

<sup>8</sup> Ibid., p. 7.

<sup>9</sup> NTBs in the EEC, Non-Tariff Trade Barriers in Intracommunity Trade, DIHT, Bonn 1981.

<sup>10</sup> Ibid., p. 10.

The survey did not produce an exhaustive list of all trade barriers. In particular, technical barriers to trade (technical norms) were excluded, as their very extent and significance merit specialist attention. However, in this connection we may mention a key decision of the European Court of Justice in respect to Articles 30 ff. of the EEC Treaty (Case 120/78). The Court set strict conditions for departing from the stipulation that any product legally manufactured and sold in a member state must in principle be admitted to the markets of other member states.

The plurality of known trade barriers can be divided into four broad groups: protective measures and import surveillance, NTBs on intracommunity transport of goods, fiscal hurdles and national prohibitions, restrictions and norms as patterns of NTBs.

### Import Surveillance

The provisions of the relevant Article (115/EEC) apply to the importation of certain goods originating in certain third countries. These goods may be excluded from Community treatment in a member state when it is experiencing economic difficulties, even though the goods are in free circulation in the rest of the Community.

In the application of Art. 115/EEC, the Commission of the European Community has to distinguish between *measures of surveillance* and *measures of protection*. The consequences of import surveillance can generally be viewed as less serious than exclusion from Community treatment as in the case of protective measures. Generally speaking import surveillance according to Art. 115/EEC has no grave effects on imports as long as surveillance is carried out correctly: import licences should be issued free within five working days from application and imports should neither be hindered nor prevented even if doubts as to the origin of the goods lead to a request for additional documents. This is laid down in the Commission's Decision 80/47 of 20th December 1979, which severely restricts the application of protective and surveillance measures. Although a previous Commission Decision of 12th May 1971 stipulated that import licences had to be issued within eight working days of application, firms complain that applications take considerably longer to process. In the case of Italy the processing of the applications took up to 4 months, in France up to 3 weeks, in Germany up to 2 weeks.<sup>10</sup>

The repercussions of a lengthy application procedure before the import licence is issued are the work load and time factor involved, the storage fees, deliveries

postponed and cancelled, goods rendered unsaleable (a quote from the textile branch: "The business of issuing licences is often so drawn out that the season is already over and therefore orders can no longer be executed") and the uncertainty when drawing up contracts.

Following Decision 80/47 the volume of cases of surveillance, which in the past were a frequent source of complaint, was reduced. Out of 2066 demands for the application of Art. 115/EEC on intracommunity trade surveillance in the years 1976 to 1980, only 1379 approvals have been given (i. e. a veto-quota of about 33 %).<sup>11</sup> It is no longer the case that surveillance procedures can be granted a general authorization; each case now requires a specific authorization from the Commission. 90 to 100 % of the authorizations for intracommunity surveillance exclusively concern the textile and clothing industry.<sup>12</sup>

### Protective Measures

Previous to the Commission Decision, which came into force on April 1, 1980, a growing tendency was to be observed from year to year regarding the application of Art. 115, as can be seen in the table.<sup>13</sup> From 1976 to 1980 there have been 1251 demands for *protective measures* (Art. 115/EEC) and 833 approvals have been given. 75.7 % of the requests in this period related to textiles and clothing. The number of decisions concerning the application of Art. 115/EEC made by the Commission has indeed declined since April 1980, which can be seen by the decline in the number of authorizations compared to 1979 (cf. Table). However, it is by no means certain that this decrease will be

maintained in the long-term, in particular when the problems of the industries concerned increase.

Whatever justification there may be for taking protective measures in each individual case, it would seem that the ensuing repercussions on the rest of the Community are hardly taken into consideration. Thus, every measure taken to protect domestic industry means the temptation to neglect necessary, if unpopular, restructuring at home, thereby ensuring an even greater use of Article 115 in the future. This shifts the burden onto the rest of the Community, stabilizing the domestic economy at the cost of others and causes other member states to take counter-measures to protect their own industries. Such a fine mesh of protective measures is woven that finally the principle of free trade as one of the chief objectives of the Customs Union is undermined, if not totally jeopardized.

Individual cases show the negative effects of applying Article 115, in particular: uncertainty in business planning, disruption or loss of markets, storage fees, depreciation in the value of goods, and employment problems.

Business firms are in favour of a more restricted application of Article 115 in order to minimize these negative effects, and they recommend that, in the interests of assessability, measures should only be authorized as of fixed dates (e. g. 1st January).

### Documentary Evidence of Origin

According to the recent Commission's Decision<sup>14</sup> the relevant authorities in the importing country may only demand documentary proof of origin within the framework of protective measures and goods surveillance, and only when considerable and justified doubt makes it indispensable to ascertain the true origin of the goods concerned. It should be noted that failure to submit certificates of origin can no longer constitute an obstacle to customs clearance. Previously, the statutory

<sup>11</sup> Federal Government of Germany, Reply to a Parliamentary Inquiry, Doc. 9/686, July 22, 1981.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Commission's Decision 80/47, December 20, 1979.

### The Application of Article 115/EEC, 1976-1980

1979																				1980									
	1976	1977	1978	EG	BNL	D	DK	F	IRL	I	UK	EG	BNL	D	DK	F	IRL	I	UK										
Requests of which :	110	121	317	347	55	6	5	146	34	32	69	356	34	7	4	125	117	44	31										
textile and clothing industry	72	75	258	269	41	5	5	101	34	18	65	273	25	1	4	78	116	20	29										
other	38	46	59	78	14	1	0	45	0	14	4	83	9	0	0	47	1	24	2										
Authorizations	74	79	197	260	44	6	3	124	33	17	33	223	25	1	4	105	57	23	7										

Source: Reply by the Federal Government ..., loc. cit., based on Data from the EC-Commission

requirement to submit certificates of origin had a restricting effect on trade, inasmuch as certain member states (particularly France in 48 % and Italy in 41 % of the cases reported to the DIHT-survey)<sup>15</sup> also demanded the submission of certificates of origin above and beyond the existing surveillance procedures, or even on goods of Community origin. Manufacturers of all sizes were affected, principally in textiles (35 %), electrical goods (16 %), machine tools and precision instruments (9 % each). The repercussions for the firms were an increase in work load, loss of time, increased costs, difficulties in despatch and lost business.

A further survey<sup>16</sup> conducted by the DIHT has revealed that France and Italy continue declining to clear goods on the ground of failure to submit certificates of origin. On the basis of the volume of complaints received from firms, the DIHT has furnished the Commission with a collection of cases concerning these inadmissible obstructions.

### Improper Use of Origin Marking

The positive step for the business community which the abolition of obligatory submission of certificates of origin was supposed to represent is being virtually entirely offset by regulations, either already in force or about to be introduced, in certain member states (France, United Kingdom), concerning the *origin marking* of particular goods. This situation is being compounded by the Commission's own proposal to transform these unilateral actions into a set of Community regulations.

Since the French decrees on origin marking of certain textiles and electromotors were announced as far back as the middle of 1979, the firms surveyed were able to include the impact of these regulations in their replies. They describe the repercussions in the following terms: additional production costs, technical difficulties, loss of turnover, the complicating of business arrangements and delays in deliveries.<sup>17</sup> Firms hit by this measure state that the ostensible reason for introducing origin marking – consumer protection by means of the compulsory identification of the goods in question – remains unsubstantiated; the proposed means are unsuitable for achieving this end; the problem will not be solved by a set of Community regulations. They unanimously reject mandatory origin marking for these reasons.

<sup>15</sup> NTBs . . . , op. cit., p. 11.

<sup>16</sup> DIHT-Informationen 26/81: "In the first quarter of 1981 France and Italy unlawfully demanded in c. 1600 cases the submitting of certification of origin."

<sup>17</sup> NTBs . . . , op. cit., p. 13.

### Barriers to Transport of Goods

The second major area highlighted by the survey concerns those non-tariff barriers which are directly connected with the transport of goods across national borders. This covers measures which, while not intended as such, nevertheless indirectly have a restricting effect on trade. Their common characteristic lies in delaying customs clearance, thereby increasing costs which lead to distortion in competition.

A general complaint is that at the borders of certain member states lengthy waiting times, frequently over 24 hours, have to be reckoned with, and for no discernible reason. 65 % of all such complaints relate to sluggish clearance in Italy.<sup>18</sup> Clearance of consignments carried by lorry can take place more quickly, and therefore more cheaply, in a third country (e.g. Austria) than in a member state. The reason for delays in clearance can be traced to: disruption due to strike action, including work-to-rule, by customs personnel; restricted or fluctuating hours of clearance at customs offices; restriction of the competence of customs offices, mainly in Italy.

Although the movement of goods in a customs union should proceed with a minimum of red tape, it is not uncommon for transportation within the Community to be subject to a greater number of documents than forwarding to a third country. Thus a consignment from Cologne, destination Paris via Belgium, must be accompanied by eight documents. In comparison, a consignment from Cologne to Prague requires only four documents.<sup>19</sup> The number of documents needed for intracommunity transportation increases when the Community Transit Operation extends only to the customs office at point of entry (e.g. United Kingdom) and additional papers are then required.<sup>20</sup>

Excluding obstructions which only affect certain classes of goods, the potential number of firms hit is still enormous. It would seem that these non-tariff barriers affect by their very nature every industrial branch and firms of all sizes. The consequences of these obstacles to clearance are higher transport costs, delays in delivery, loss of turnover, a drop in profits and compensation claims.

As an obstacle to the free movement of goods, several firms include the mandatory requirement in Belgium, France and Italy, to employ the services of an

<sup>18</sup> Ibid., p. 15.

<sup>19</sup> Ibid., p. 16.

<sup>20</sup> Ibid., p. 17.

officially accredited customs agent for clearing goods forwarded by a foreign declarant or on a foreign invoice.<sup>21</sup> Although the Community Transit Operation<sup>22</sup> has facilitated the movement of goods across the Community's internal frontiers, problems persist with regard to customs treatment and inspections at point of entry.<sup>23</sup> Since regulations governing tax, foreign trade and statistics etc. have yet to be harmonized, registration and border controls will still be necessary in future. Nevertheless these measures could be separated from the actual process of transporting goods and replaced by a simplified treatment at the customs offices of departure and destination. This could take the form of uniform export/import notifications. The DIHT presented the Commission with a set of proposals along these lines at the end of 1977, at that time stressing the necessity of overhauling the transit procedure.<sup>24</sup>

### Fiscal Hurdles

In the financial sphere various sorts of trade barriers have been reported. They either impede the movement of goods or prevent export transactions from going ahead.

*Differences in Value Added Tax:* the free movement between member states, as provided for in the EEC Treaty, cannot be brought about until VAT rates have been harmonized. The rates currently in force vary from 10 % in Luxemburg to 25 % in Ireland, thus necessitating the application of a border equalisation tax. Although this tax does not constitute a cost factor for most companies, who are entitled to deduct the full amount of input tax, the variations themselves involve firms in costly and time-consuming assessment and levying procedures. The tax affects firms for whom VAT is a cost factor<sup>25</sup>, i.e. when the consignee is not entitled to deduct input tax at the full rate or for deliveries to the end user (i.e. consumer).

Thus the wish to harmonize the rate of value added tax is perfectly understandable. However, since the Community is nowhere near reaching this objective, stop-gap solutions would at least facilitate inter-state transportation. These include transferring the responsibility for collecting VAT revenue to the tax office at which the importer is registered. Although border

equalisation tax would not be abolished as a result of this, it would still simplify intracommunity customs formalities to a significant extent.

*Concealed subsidies:* in certain Community countries simple, but economically effective, methods are used to cordon off domestic industry from foreign competition. To cite an example, the French government guarantees low interest credits to domestic companies as well as loans for purchases of capital goods inside France. The preferential interest rate which is granted lies considerably below commercial lending rates (taux base bancaire). A similar practice is current in Italy. In some countries exporting firms can also count on government aid.

In many instances, especially for large contracts, the purchaser not only wants a product, but also the most advantageous financial package (i. e. better terms than on the open market); as a result, governmental export subsidies in the shape of low interest credits have become a widespread abuse. The so-called consensus problem concerned this very subject and an attempt was made to reach an international solution by permitting certain countries to enjoy differentiated interest rates, depending on the strength of their economy and currency. Complaints regarding concealed subsidies most frequently cite France (44 %) and Italy (26 %), followed by the Netherlands (13 %) and Belgium (9 %).<sup>26</sup> Branches receiving particularly advantageous treatment in these countries include heavy machinery, shipbuilding, foodstuffs and construction.

For foreign suppliers practices such as these can have serious consequences such as a deterioration in market position or loss of contracts. Cut-throat and dumping prices are becoming increasingly common. The only solution would be a Community regulation with the objective of eliminating the above methods of subsidy. However, a uniform system of subsidies in the EEC, as has been proposed by industry on occasion, ought to be rejected, as must the call for similar techniques to be introduced in the Federal Republic. Neither of these two suggestions is compatible with the principles of a free market economy.

*Home preference in public contracts:* in many countries the state participates in business as employer and often as contractor as well. These roles give the state an opportunity to influence decisively the awarding of contracts, so that patriotic appeals such as "Buy British" and "achetez français" are successfully

<sup>21</sup> Ibid., p. 18 f.

<sup>22</sup> Ibid., p. 19.

<sup>23</sup> Ibid., p. 20.

<sup>24</sup> The recent Communication from the Commission (Com(81) 572 final) has proposed establishing one document serving several purposes in order to simplify the formalities of internal market transport of goods. This is to be welcomed, generally speaking, but there are doubts with respect to the possibility of realization. Thus, DIHT has presented more "realistic" counter-proposals to the Commission.

<sup>25</sup> NTBs..., op. cit., p. 21

<sup>26</sup> Ibid., p. 23.

translated into action in those areas where the state has direct influence, especially when certain financial incentives (concealed subsidies) are also on offer. It therefore comes as no surprise to learn that domestic firms are granted preference when contracts are awarded, although cheaper and technically superior foreign goods are also tendered. Much more striking is the state's leverage in instances where the awarding of the contract is linked to specific conditions, e.g. that subcontracting must be undertaken by domestic firms, or that eligibility for export credit guarantees is conditional on the supplying of evidence (in the form of certificates of origin) that domestic goods do not form less than a fixed percentage of the contract's total value (COFACE). The numerous repercussions are identical in kind to the consequences of concealed subsidies. An extra cost factor must also be taken into account: entering an international tender is often a costly operation (bid papers, translations, detailed specifications), which means considerable losses in every case where adjudication between foreign and domestic bidders is not carried out impartially.

The GATT agreement on the awarding of public contracts, signed by the member states in 1979, is meant to guarantee a liberal procedure, eliminating discrimination and ensuring free competition in the Community.

### National Prohibitions and Restrictions

Cases have also been reported where particular national prohibitions and restrictions, as well as norms, are viewed as non-tariff barriers. France (53 %) is by far and away the country most frequently cited of those making use to a significant extent of national regulations for protecting their domestic economy. Italy (20 %) comes second, followed by Germany (10 %), Belgium and the Netherlands (7 % each).

Despite the volume of complaints, they all concern isolated cases from which it is not possible to draw general conclusions, so that an adequate assessment is difficult to make. Nevertheless the cases reported fall into several distinct groups: non-recognition of certificates issued by other member states; lack of provision for appeals to neutral experts; refusal to issue the extra hygiene certificates required for exporting; export licences for non-ferrous metals; language and labelling problems.

The list of prohibitions could easily be extended, even if the large sphere of technical norms – and especially technical trade barriers – were excluded: these have not

only achieved international dimension, but have also been the object of intense criticism.

### Summary

The findings of the DIHT-survey highlight important NTBs, identify their instigators as well as those who are affected by them, and the extent of their negative repercussions. In a nutshell one could summarize the results as follows:

- an economy which is dependent on exports reacts particularly sensitively to trade barriers;
  - the legislation thicket is viewed increasingly as an encroaching trade barrier, and the myriad regulations constitute a barrier to the understanding of the legal situation for industry. There is a widespread incapacity amongst legislators to formulate the aims and content of their regulations in a manner which is comprehensible to all. This compels business to seek the services of expert consultants, a step entailing additional costs which are particularly burdensome to small and medium-sized firms;
  - the type and scope of NTBs reported varies from case to case depending on the recent experience of the individual firm in encountering them. But there is complete unanimity concerning their consequences – protection at the cost of others, in the domestic as well as the international sphere;
  - the variety of trade barriers and their often inassessable impact on the individual firm intensifies the desire for a return to the system of protective customs duties, which are after all clearly defined, easier to deal with and have calculable effects. The credibility of the EEC is thus at stake, when trust in an institution whose main aim is the free movement of goods, is undermined.
- To make this assertion is not to gainsay the positive development in the exchange of goods within the Community; this positive development is, however, an expression of the capacity of business to produce results in the face of difficult conditions. This judgment is shared by the Commission: "In the current difficult economic and social situation, a lasting stimulus to the revival of industrial activity and to the improvement of the labour market can be created by accelerating the process of making the internal market a reality."<sup>27</sup>
- Protectionism has no long-term advantages for anyone. And national protectionism prevents the completion of the internal market which is indispensable for Europe if it wants to cope with the challenges of today and tomorrow and to carry out the structural changes which European industry requires in the eighties.

<sup>27</sup> Communication . . . , op. cit.