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EC

National Protectionism and Common Trade Policy

by Georg Koopmann, Hamburg*

The EC recently created a new instrument of trade policy to deter illicit trade practices. A major part of its purpose is to strengthen the Community's authority in the area of trade policy and counter the spread of international protectionism within the Community. The following article demonstrates, among other things, that protectionism in the Community cannot offer a workable alternative to this course.

The EC's trade policy, under the terms of Article 113 of the EEC Treaty, is intended to follow uniform principles. The Treaty also cites the essential aims of this common trade policy:

- The policy should contribute to the harmonious development of world trade, to the progressive abolition of restrictions on international exchanges and to the lowering of customs barriers (Art. 110, EEC Treaty).
- Simultaneously, an effort must be made "to ensure that competition between enterprises within the Community shall not be distorted" (Art. 112).

Thus the overall direction prescribed for the common trade policy is a liberal one committed to fair competition, and protectionist behaviour must be seen in principle as a contravention of the Treaty.¹ Individual countries may only take action in the field of trade policy with the Community's express consent.² This would appear to tie the hands of national protectionists.

However, common trade policy as it is practised in the real world stands in sharp contrast to the norm enshrined in the Treaty. There are essentially two ways in which national protectionism can establish itself, as it has on a considerable number of occasions in the past:

- Firstly, member countries can exert pressure for a protectionist line in common trade policy at various levels in the Community's decision-making process.
- Secondly, there is still a considerable amount of opportunity for individual countries to go their own way as regards trade policy. This opportunity stems from two sources: one is the dichotomy between Community competence and national implementation in essential areas of trade policy;³ the other is the possibility of making use of "grey areas", intervening in foreign trade

with measures which are not primarily trade policy measures.

Numerous initiatives and interventions, all protectionist in their intent, have increasingly hampered efforts within the Community to establish a common will on matters of trade policy. The greater difficulty in reaching a common trade policy line is a reflection of both national egoism, which lay hidden during the period of prosperity, and greater differences between member countries, or else differences which are accentuated by the Community's general economic weakness. Considerable differences between members can be ascertained particularly in the following respects:

- the degree of economic interdependence with third countries;
- the profile of sectoral specialisation and the pattern of regional trade;
- flexibility in structural adjustment to external shocks or to changes in supply and demand conditions on world markets;
- the structure of the national "protectionism market";
- the value placed on the risks and rewards of free trade in times of crisis.

According to the above criteria, a given member state would be all the more likely to intervene in foreign trade

¹ For a legal assessment, cf. H.-P. Ipsen: *Europaisches Gemeinschaftsrecht*, Tübingen 1979, p. 821; G. Nicolaysen: *Europaisches Gemeinschaftsrecht*, Berlin etc 1979, p. 190.

² The European Court allayed any final doubts as to the Community bodies' sole authority in a judgement dated 15. 12. 76. Case 41/76 (*Donckerwolcke v. Procureur de la République*) 1976, p. 1921 ff. The Court at the same time recognised in the *Donckerwolcke* judgement that common trade policy is still incomplete.

³ Cf. M. Bronckers: A legal analysis of protectionist measures affecting Japanese imports into the European Community, in: E. Volker (ed.): *Protectionism and the European Community*, Deventer 1983, p. 60.

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the less it depended on exports to third countries, the more it depended on the competitive parameter, prices, in order to maintain its position on the world market, the more adversely it were affected by structural and regional changes in world trade, the less flexibly it were able to adapt to such developments and to external shocks, the greater the influence exerted by the protectionist lobby, and the more likely it were to take the view "that it is more important to preserve existing incomes and therefore employment than to increase total income".⁴

Member countries are not ranked in the same order under each of the criteria. When looked at as a whole, however, the criteria do offer a good explanation for the development of two opposing "camps" in the EC as regards trade policy. The interventionist camp is led by France and can count Italy, and presumably also Greece and Eire as "permanent" members. On the other side of the fence West Germany together with Denmark and, with some reservations, the Netherlands, form the liberal camp. The remaining members cannot be so unequivocally grouped, or else they change camp according to the particular matter being debated at the time. However, on the whole they are more disposed to act in concert with the interventionist group of countries.

It is clear, then, that the protagonists of liberal trade policy are in a difficult position in the EC, both in terms of numbers and, all the more markedly, in terms of voting strength. In the EC Council, for example, where decisions must be backed by a qualified majority, West Germany, the Netherlands and Denmark have 18 votes between them, whereas France and Italy alone have more than 20 votes. If they have the support of the United Kingdom, Eire, Belgium and Greece the number of votes available to the member countries which are relatively defensive in approach rises to 43.

It is often the case that the differences are not settled internally, but that they also come to light at an international level, or that the Commission must

represent the Community in international talks with a limited mandate to negotiate. The inevitable result is a weakening of the Community's negotiating position.

A well-tryed means of pressure to enforce the putting into practice of protectionist ideas is for individual countries to threaten to take measures of their own if they are not satisfied. The liberal Community members are all the more likely to yield to this pressure as they know there are still any number of ways in which national trade policy can be pursued without regard for the Community. Even if the measures in question are declared illegal, that does not necessarily mean they fail to achieve the desired effect.⁵

Independent national trade policy initiatives not only serve to apply pressure in negotiations, but also act as a substitute for Community policy wherever this is insufficient to satisfy the national protective interest. The most obvious illustration of the EC's disunity on trade policy is the variation in the extent to which different members invoke Article 115 of the EEC Treaty; this article allows member countries to take certain goods from third countries which move freely within the Community, and exclude them from Community treatment if importing them threatens to create economic difficulty. Table 1 shows that France and Eire in particular have made frequent use of this provision while West Germany and especially Denmark have seldom used it. The third countries most often involved were Hong Kong, South Korea, Taiwan and Japan.

Three manifestations of national protectionism will be dealt with below; they are as follows:⁶

- autonomous quantitative restrictions on imports,

Table 1
Use Made of Art. 115, EEC Treaty, 1977-1983

	BNL	D	DK	F	GB	IRL	IT	EC
1977	15	9	—	25	5	3	6	63
1978	47	3	—	74	14	28	16	182
1979	49	6	3	113	28	25	12	236
1980	17	1	1	83	5	55	24	186
1981	22	2	—	78	17	44	27	190
1982	19	2	—	52	11	26	28	138
1983	23	4	—	43	19	47	31	167
1977-1983	192	27	4	468	99	228	144	1162
Trading partner:								
HongKong	17	1	—	72	—	79	—	169
South Korea	5	8	2	75	18	35	15	158
Taiwan	32	1	1	82	14	20	1	151
Japan	5	—	—	61	—	—	62	128

Sources: EC Official Bulletin; Nachrichten für Außenhandel; author's own calculations.

⁴ Cf. S. Page: The Increased Use of Trade Controls by the Industrial Countries, in: INTERECONOMICS, No. 3 (May/June) 1980, p. 149

⁵ France's behaviour in the negotiations on the first extension of the Multi-Fibre Arrangement provides an example of this. For the details of Yao-su Hu: Europe under Stress, London etc. 1982, p. 61. A further example is the "Poitiers Episode" The restriction on video-recorder exports to the EC which the Community negotiated with Japan must be viewed in close association with France's earlier (illegal) solo measures (the clearance of imports at one single customs point, which was also both small and remote).

⁶ The EC's Generalized System of Preferences – not dealt with in the present article – also offers substantial scope for national protectionism. On this point, cf. R. Langhammer: Nationaler Protektionismus im Rahmen der EG-Handelspolitik, dargestellt am Beispiel der Industriegüterimporte aus ASEAN-Ländern, in: Die Weltwirtschaft, No. 1, 1981, p. 79 ff.

- other non-tariff import barriers,
- export policies which distort competition.

Unilateral National Quota Regulations

Whilst quantitative import restrictions have now been abolished in intra-Community trade, this is by no means the case in trade with third countries. Numerous national quotas are still in existence which member countries had introduced before the transition period expired, that is before 1970, and which they are permitted to maintain.⁷

The classes of goods subject to quotas are especially numerous in Italy and France, while West Germany and the United Kingdom occupy the opposite end of the scale (see Table 2). The restrictions are predominantly discriminatory in nature; their main target comprises the countries already mentioned in connection with Article 115 of the EEC Treaty, namely Japan, Taiwan, South Korea, and Hong Kong (in that order).

Adjustments to national quotas can also largely be autonomously decided upon by individual member countries. This applies especially to "extremely urgent cases", in which the reduction of a quota or the elimination of import opportunities may be brought into effect without prior consultation.⁸

Table 2
Quantitative Import Restrictions for
Industrial Products at Single Country Level
in the EC, 1982^a

	Partial restrictions (number ^b)	Full restrictions		Value of imports involved	
		Number ^b	Discriminatory	m ECU	% of total imports
West Germany	4	5	5	4.5	0.0
France ^b	111	146	55	1265.7	2.4
United Kingdom	16	8	—	30.3	0.1
Italy	16	494	399	2008.4	4.3
Benelux	31	24	16	47.3	0.1
Denmark	—	34	34	35.0	0.4
Greece	90	109	70	31.2	0.6
Ireland	—	89	89	135.0	5.9

^a Chapters 25-99 of the Common Customs Tariff, excluding chapter 27 (fossil fuels etc.).

^b Number of classes of goods (according to Nimex) affected.

Sources: Compiled and calculated from data in Official Bulletin of the EC, L 103, Vol. 26, 21. 4. 83, pp. 1-31; Eurostat: Analytical Tables of Foreign Trade, Nimex 1982

⁷ The Community does no more than to announce the classes of goods affected and the area in which the restrictions apply in the Official Bulletin. One can presume that one reason for this reticence is that some of the national quotas clearly contravene Art. XI of the GATT.

⁸ Art. 20, para. 4a of the Council's Directive No. 288/82 of 5. 2. 82 on common import regulations.

The leeway available to individual member countries in imposing autonomous quantitative import restrictions is not confined to those products still subject to traditional national quota regulations; they also have that leeway – in fact it has even been extended – with respect to "liberalised" products. The import of such goods into the Community is in principle free, yet certain developments can be used to justify temporary surveillance or protective measures.

In extremely urgent cases, according to Art. 12, para. 2 of the common regulation on imports, a member country is entitled to subject imports from third countries to national *surveillance* or, in other words, to require the presentation of import documents. The only proviso is that the country must inform the Commission in advance, at the same time justifying the need for surveillance measures.

Under certain conditions⁹, a member state may also take "precautionary" *protective measures*, i.e. make the presentation of an import licence a necessary requirement before a good is cleared for entry into the customs union. If the country can claim extreme urgency, it can immediately block the importation of the good once it has informed the Commission of the reason for introducing the measures, and the procedures involved. Should the Commission decide to take a different course, or to take no measures at all, the member country is then able to bring the matter before the EC Council. In this way, protective measures initiated at a national level which are not in agreement with the Commission's policy can have their lease of life extended by up to three months. The duration of the initial import regulation was one month at the longest.

Deficiencies in Regulations

While recourse to the "classical" type of quantitative import restriction is largely covered by Community law (even though considerable scope remains, as shown above, for the activities of individual countries), there are major regulatory deficiencies as far as *other non-tariff barriers* are concerned. Measures which are equivalent in effect, expressly referred to in Art. 30 of the EEC Treaty with regard to intra-Community trade, are not given any mention when it comes to imports from third countries, neither in the EEC Treaty's provisions

⁹ The precondition for this is that the goods in question are imported in such excessive quantities and/or under such conditions that domestic producers of equivalent and directly competing goods suffer, or are threatened with, serious damage, and that a crisis situation in which any delay would cause damage which would be difficult to redress, necessitates intervention without delay in order to protect national interests (Art. 15, para. 1 of the common regulations on imports). Single countries may also take protective measures if a safeguard clause in one of that country's bilateral agreements with third countries justifies them (Art. 17, para. 1).

on common trade policy nor in the various directives on import control. However, it should not be inferred from this that members are granted *carte blanche* for autonomous trade policies in the areas concerned. In fact the agreement to shape common trade policy according to uniform principles applies to "all positive or negative sovereign measures which specifically relate to the conduct of foreign trade".¹⁰

These further non-tariff import barriers can be observed in a wide variety of forms. They can be grouped into three categories:

- (informal) agreements at government or industry level with the trading partner concerned;
- autonomous measures expressly targeted against imports;
- autonomous measures which do not, *de jure*, apply to imports but which (are designed to) give *de facto* protection to domestic products against imported goods.

Bilateral arrangements, subjecting the competitively stronger trading partner to "voluntary" export restrictions, now exist in several industrial sectors. Virtually all member countries make use of such arrangements, though the frequency and degree of use both vary. Particular attention has been aroused by the arrangements with Japan concerning the automobile industry.

The Case of Automobile Imports

France has kept the Japanese car manufacturers' share of its market limited to a maximum of 3 % for years now, on the basis of a diplomatic agreement which is not contractually laid down in any way.¹¹ In the United Kingdom, imports of Japanese cars are controlled by agreements made between the two countries' automobile industry associations. They confine the Japanese makers to a share lying between 10 % and 11 % of total new British registrations. West Germany and the Benelux countries came to their own car market arrangements with Japan at government level in 1981.¹² These European arrangements should be seen against the background of the restrictions

¹⁰ Cf. Nicolaysen, op. cit., p. 191.

¹¹ Should there be any threat of the upper limit in the Japanese market share, officially referred to as a "prognosis", being exceeded, drastic administrative measures are taken such as delays in the granting of customs clearance and licensing of Japanese automobiles. The French administration thus benefits from the fact that the EC still does not have a uniform licensing procedure.

¹² These agreements provided that Japanese automobile exports to West Germany should be no more than 10 % higher in 1981 than they were in 1980 (in fact they remained around the 1980 level), and in the Benelux countries, they were to be "frozen" at 1980 levels.

placed on Japanese car exports to the USA. It was felt to be essential that a diversion of trade flows towards the "free" markets of the EC should be prevented.

Since then semi-annual consultations between the Commission and Japan have led Japan to exercise restraint in exporting ten "sensitive" products, the degree of restraint varying from product to product.¹³ On conclusion of the negotiations in February 1983 the Commission regarded it as a great success that the Japanese authorities in this instance had declared for the first time their willingness to take account of the interests of the Community in its entirety.¹⁴

France, Italy and the United Kingdom, however, have all maintained their national automobile import restrictions; Italy limits Japanese passenger car imports using traditional – i.e. unilaterally imposed – quota controls based on about 2,000 units per annum. All three countries' national limits prove to be disproportionately more effective, as the Community rules are not binding, and do not lay down any quotas for individual countries.

It is also worth noting that if a member country reaches a "voluntary" export-curbing agreement with a third country the Commission will cover the flank by providing protection against indirect imports. That is to say, Art. 115 of the EEC Treaty may be applied in such situations. The precondition for this is that the self-restraining measure should be based upon a written trade agreement.¹⁵

In parallel with members' *agreements* with third countries to regulate markets, an increasing number of *autonomous* non-tariff trade barriers are being established. These represent either direct or indirect, but no less effective, hindrances to imports.

Cases of *direct* intervention in foreign trade are partly a result of the customs union not having been properly realised. This leaves the members substantial scope to indulge in administrative protectionism, which they use to the full.

Governments have a powerful and direct influence on trade flows through the distribution of government contracts and via the policies of state-owned enterprises, which frequently choose (or indeed, are obliged) to give preference to domestic suppliers in their procurement. So far the Community has largely

¹³ The products involved were as follows: passenger cars, vans, motor cycles, forklift trucks, battery-operated watches, machining centres, video cassette recorders, hi-fi sets, colour TVs, colour TV tubes.

¹⁴ Cf. EC Bulletin, No. 2, 1983, p. 9.

¹⁵ Cf. Art. 1 of the Commission's Decision 80/47/EEC, dated 20. 12. 79.

confined its activity in this area to adopting the GATT code on public procurement and including it in the law of the Community. Although this code represents a definite improvement over earlier GATT regulations it nevertheless leaves a lot of questions open (such as the definition of national security) and expressly excludes certain markets. The EC's member states retain their freedom of action in their dealings with those countries which are not signatories of the code. They can also protect themselves against indirect imports thanks to the Commission's readiness to apply Art. 115 of the EEC Treaty if necessary.¹⁶

Indirect Intervention in Foreign Trade

The most important amongst the measures which *indirectly* obstruct imports are technical impediments to trade and domestic subsidies.

Technical impediments are essentially based on industrial standards and on technical regulations as well as the inspection and licensing procedures, standard marking requirements etc. which go along with them. An attempt is made in the GATT's Standards Code to clamp down on the misuse of such regulations for trade policy purposes. Rather typically, the Standards Code was not signed by the Commission alone, but also by the individual member countries who thus underlined what they see as their right to a certain amount of autonomous action in this area.

In practice, higher technical trade barriers are erected against third countries than against Community members.¹⁷ Some member countries are even unwilling to allow third countries' products unrestricted access to their markets when they have already gone through the Community certification procedure in another EC country, or else they refuse to agree to intra-Community harmonisation of national regulations wherever they feel their own scope for action in external dealings is being limited.

Domestic subsidies, which are granted to a greater or lesser extent in all member countries, "operate directly

or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory" (Art. XVI, GATT). Limits are placed on the use of this type of instrument by the GATT code on subsidies. This code, however, is still largely non-compulsory.¹⁸ The wording of the provisions on state aid in Art. 92 of the EEC Treaty and Art. 4 of the ECSC Treaty is considerably tougher. And yet this is obviously contradicted by the veritable tangle of competing national subsidies which prevails in practice. The lesson here is that Community bodies are not being strenuous enough in using the sanctioning powers at their disposal. At least, though, improvements have occurred recently, even if policy on state aid does not, as yet, have a clearly discernible line to it.¹⁹

National Export Policies

In their export policies too, the EC countries go their own ways, frequently at great expense to the tax-payer. The strongest mutual ties to which member countries are subject are still those of the OECD Consensus. In contrast, any additional harmonisation within the Community, such as that required by Arts. 112 and 113 of the EEC Treaty, became bogged down at an early stage. Instead, new means of assisting exports are continually being created and generous use is made of the leeway still available for export credit subsidies. They also have ample leeway for providing risk coverage for export business. One approach which enjoys particular popularity is to combine export subsidies and development aid in what is known as mixed financing.²⁰ Export policy is also occasionally linked together with import policy: France, for example, guarantees its exporters against any price rises in supplies occurring between the closing of the contract and final delivery; however, the guarantee is applicable only to French products.²¹ Last but by no means least, bilateral cooperative agreements, particularly with developing countries, are used to further national exporting interests. Although member countries are

¹⁹ In this connection a judgement reached by the European Court in March of this year is worthy of note, which declares invalid the Commission's decision of November 1981 to approve subsidies for the Belgian textile industry in accordance with the so-called Claes Plan. Cf. Europe, 21. 3. 84, p. 13.

²⁰ This involves combining low-interest development aid credits tied to deliveries of goods from the credit-granting country with "normal" export credits where the exporting country's treasury also makes additional payments to the extent that the market interest rate exceeds the minimum rate of interest agreed by the OECD Consensus. Examples of this practice can be found in all member countries, including the liberal ones, but the United Kingdom makes most use of it.

²¹ The Commission has intervened in opposition to this practice and has initiated action against France in the European Court. However, its protest is not directed against the guarantee as such, but only against the fact that other countries' products are excluded. Cf. Ausfuhrförderung: EG-Kommission verklagt Frankreich, in: Nachrichten für Außenhandel, 25. 1. 84.

¹⁶ For more detail, cf. J. Steenbergen: Trade regulation after the Tokyo Round, in: E. Vólkner, op. cit., p. 187 f.

¹⁷ Cf. on this point the examples in P. Nunnenkamp: Technische Handelshemmnisse – Formen, Effekte und Harmonisierungsbestrebungen, in: Außenwirtschaft, Vol. 38, 1983, No. 4, pp. 384 f. and 386 f.

¹⁸ Signatories are simply urged to avoid negative effects on the interests of other countries while essentially remaining free to grant domestic subsidies. This is intended to create greater international discipline, but without equating domestic subsidies with export subsidies, which are prohibited Cf. W. von Dewitz: Die multilateralen GATT-Verhandlungen, in: Wirtschaftsdienst, No. 7, 1979, p. 347.

obliged to consult the Community before concluding a cooperative agreement, it is not essential for the agreement to be approved by the Community bodies.

Harmful Effects of Fragmentation

The above particularism in trade policy has considerable negative consequences:

□ The EC to some extent relinquishes the influence it could have over world trading conditions from its position as the world's largest trading power. The opening up of the Japanese market provides an example: were the EC to present a solid front in this matter, it could achieve considerably more success than a disunited Community.

□ There is a detrimental effect on the EC's domestic market. Partly, national protective measures directly impair trade between member countries. Partly again, the disturbances result from controls over indirect imports under the terms of Article 115 of the EEC Treaty.²² Furthermore, different rates of protection in the different member countries exacerbate existing disparities between them, thus strengthening the likelihood of trade barriers also being erected to keep out products from countries which themselves belong to the Community.²³

□ Another consequence of differences in the degree of protection practised is that liberal countries can be forced into protectionism too. Thus in the steel industry's case it is the West German government which is particularly insistent upon import controls: its fear is that imports from third countries will concentrate on the German market, which because it is relatively lightly subsidised is in the least protected position.

The question is therefore finally posed as to how the Community's fragmentation on trade policy matters can be overcome.

One conceivable answer would be for individual countries to take initiatives in common. The Benelux

²² On the harmful effects of Art. 115 cf. also P. Korn: Increasing Protectionism in Europe, in: *INTERECONOMICS*, No. 6, 1981, pp. 263 ff. This article names a number of disadvantages from the point of view of companies stemming from the application of Art. 115, especially uncertainty in corporate planning, disruption to or loss of product markets, storage costs, depreciation in value, and problems in personnel utilisation. It is worthy of note here that a private company selling Japanese colour film in Italy filed a suit – successfully – at the European Court against the way Art. 115 was put into practice. Cf. P. Chesevri: *European Court lets in indirect imports by Ilford Italy*, in: *Financial Times*, 7. 3. 84.

²³ This danger arises in particular when the greater part of the benefit from repelling foreign suppliers accrues to companies in the more liberally disposed member countries, which then "indemnify themselves" in the event of supplies of foreign goods being diverted on to their own markets by exporting to the more protectionist-minded EC-countries.

countries have in fact already done so.²⁴ Another positive step has been the establishment of a Franco-German committee on standards. Trade policy disparities can also be diminished if research and development resources are pooled, and joint industrial projects and other similar measures are undertaken. However, any activities of this kind cannot serve as a substitute for solutions at Community level.²⁵

Hager's Hypotheses

One such Community solution, but unfortunately of the worst kind, would be to substitute Community protectionism for national protectionism. The chief protagonist to come forward in the academic world for this type of Community preference has been W. Hager.²⁶ In Hager's view the Community is under threat primarily from Japan and the newly industrialising countries (NICs): we should not see this in terms of everyday trade conflicts such as those being fought out with the USA in the steel and agricultural sectors – something more important is at stake, namely the socio-cultural identity of the Community, and indeed of Western Europe as a whole.

The new competing countries have the benefit of free labour markets (their freedom maintained if need be by imprisoning trade unionists!), so that wages settle around the subsistence level. The capital markets, by contrast, are under state control. State planners decide what will be produced, and what will be exported or imported. Their accomplices in this are the multinational corporations. They have made a decisive contribution to the undermining of Western Europe's monopoly position in world trade, for it is they who, by simultaneously transferring capital, technology and know-how, actually enabled the governments of a large number of countries to tap their reservoir of cheap, willing and increasingly well-trained labour to conquer the world's markets.

Hager paints a grim picture of the consequences for the Community: unemployment, falling real wage levels,

²⁴ The proposed cooperation applies primarily to export policy. Exports are to be supported in common, and any distortions to competition between the countries which might occur are to be avoided. Cf. *Intensivere Zusammenarbeit bei Exportförderung*, in: *Nachrichten für Außenhandel*, 13. 4. 83.

²⁵ The concept of two-tier integration can hardly be applied to trade policy. Cf. G. Koopmann: *Handelspolitik der EG: Durch Abstufung zu mehr Liberalität und weniger Verfälschungen des Wettbewerbs zwischen EG-Unternehmen?*, in: E. Grabitz (ed.): *Abgestufte Integration – eine Alternative zum herkömmlichen Integrationsrezept?*, Kehl am Rhein (to appear shortly).

²⁶ Cf. W. Hager: *Protectionism and autonomy, how to preserve free trade in Europe*, in: *International Affairs*, Vol. 58, No. 3, 1982, p. 413 ff.; by the same author *Free Trade Means Destabilization*, in: *INTERECONOMICS*, No. 1 (Jan./Feb.) 1984, p. 28 ff.

deteriorating working conditions (an example is the reintroduction of night shifts for women in the textile industry), relaxation of environmental protection regulations, ever more state intervention in economic affairs, or, in short, the Community will be forced to adapt to "best international practice" and hence put the clock back to the 19th Century. "The one real free-trade experiment in the world today: that of Western Europe" coupled with the "new economic culture" which blossomed in Western Europe in the post-war years is under threat of destruction.

Disaster, however, can still be averted if the Community at last faces up to countries like Japan with less complexes in its approach. Above all, it should no longer allow West Germany to speak for the Community as a whole, as Germany has pushed it into the role of a "guardian of liberal orthodoxy in matters of foreign trade" and blindly persists in conducting free trade in a world where foreign trade is under state control. In concrete terms, this means that strict reciprocity should be applied in public procurement and the GATT code which prohibits this should be disregarded. General tariff preferences should in future only be granted to "genuine" developing countries. Only if they exercise discipline in terms of both price and volume should the new competitors be granted "generous and steady" access to Community markets. They should also refrain from aggressive exchange rate and wage policies. Another suitable means of applying discipline to trade policy comprises local content regulations.

Hager himself refers to his ideas as horrifying for those who have yet to realise that such practices "are a

common currency in the pragmatic part of the international trading system: Asia and the Pacific Basin". Nevertheless, he has not yet provided conclusive proof that rigorous trade controls can improve the position of the Community as a whole, as distinct from the industrial sectors which are protected.

Using the criterion that a trading partner is socio-economically different in nature as a justification for intervening in foreign trade leaves the door wide open for arbitrariness in this area of policy. Because the criterion can hardly be operationally or legally defined, it subjects trade relations to the burdens of greater insecurity and repeated disputes. Ultimately, it simply serves as a pretext for preventing "disruptive" imports and holding back the processes of adaptation. That this will result in the loss of certain potential welfare gains is obvious. If, however, these gains are to be realised, the Community must first show more flexibility than it has done to date. Hager evidently sees greater flexibility ("linear adjustment") as a source of social retrogression, but in fact the reverse is more likely to be true: it will only be possible to maintain and improve the Community's "quality of life" if there is a growth in both the willingness and ability to adapt to, among other things, developments in international trade.²⁷

Hager is no better able to demonstrate convincingly that increased external protection leads to the "unchaining" of intra-Community trade. The factors he sees as signs

²⁷ On the advantages of an open Community trading system, cf. also J. Waelbroeck: *Politique commerciale commune, et théorie du commerce extérieur*, in: *Economie appliquée*, Vol. 36, Nos. 2-3, 1983, p. 349 ff.

Table 3

Share of Imports from Japan and Newly Industrialising Countries (NICs) in Total EC Demand for Manufactured Products, 1974-79

(in %)

	1974/75	Japan 1976/77	1978/79	1974/75	NICs ^a 1976/77	1978/79
Food, beverages and tobacco	0.07	0.05	0.03	0.71	0.85	0.83
Textiles	0.33	0.35	0.43	0.80	0.97	0.94
Clothing	0.24	0.26	0.25	4.45	5.95	6.12
Wood products, paper and printing	0.14	0.15	0.17	0.18	0.29	0.39
Rubber	0.38	0.48	0.56	0.07	0.13	0.19
Chemicals	0.42	0.35	0.35	0.27	0.21	0.24
Oil and coal derivatives	0.05	0.01	0.00	0.02	0.01	0.02
Non-metallic mineral products	0.21	0.25	0.28	0.04	0.08	0.10
Ferrous and non-ferrous metals	1.02	0.83	0.44	0.09	0.19	0.17
Transport equipment	1.86	2.85	2.79	0.04	0.09	0.12
Machinery, etc.	1.23	1.70	1.99	0.41	0.61	0.79
Total manufactured products	0.79	1.01	1.05	0.67	0.84	0.88

^a Hong Kong, South Korea, Singapore, Taiwan, Argentina, Brazil.

Source: UNCTAD: Handbook of International Trade and Development Statistics, New York 1983

that the Community is dissolving (the spread of financial protectionism and every conceivable form of non-tariff barrier), supposedly the result of "adjustment by imitating the practices of successful competitors", offer a curious contrast to the significance of "cheap imports" on the Community's domestic markets. In the second half of the seventies, a period when products from the new competing countries, according to Hager, penetrated the Community market in a disintegrative manner, Japan saw its share of the EC manufactured products market rise from 0.8 % to 1.1 %, and the strongest exporters among the NICs (Hong Kong, South Korea, Singapore, Taiwan, Argentina and Brazil) raised their combined share from 0.7 % to 0.9 % (see Table 3). In 1982, 2.8 % of total EC imports (internal imports included) originated in Japan, and 2.9 % in the above-named NICs. Measured in terms of domestic expenditure in the Community (GDP plus imports minus exports) the appropriate shares are 0.7 % and 0.8 % respectively, or just 1.5 % altogether. Orders of magnitude like these make attempts to establish a causal relationship between imports from "exotic" countries and the "revival in the member countries of the old protectionist spirit"²⁸ appear rather misguided.

It has also been shown by experience in those areas in which member countries have agreed upon a common defence against foreign competition that domestic protectionism can hardly be brought under control by the cordoning-off of markets from the world outside. Certainly in the *textile industry* the self-restraint agreements the Community made with the so-called strong exporting nations failed to curb the excesses of national subsidies. They also did nothing to prevent France and the United Kingdom from impeding intra-Community textile trade by making declarations of origin compulsory. Moreover, the trade has been most adversely affected by countries continually resorting to Art. 115 of the EEC Treaty in order to restrict indirect textile imports.²⁹ As far as the *steel industry* is

concerned, one could hardly claim that the agreement on a common code of subsidy was decisively influenced by third country competition having been jointly repulsed. On the *agricultural sector*, B. Hindley notes in his reply to Hager, that "it most certainly cannot be said that the very high protection against outsiders at Community level has led to intra-Community free trade. On the contrary, agriculture may be the sector worst affected by internal protectionism".³⁰

Taking the Offensive

It is obvious that the creation of quasi-domestic market conditions in the Community cannot be achieved defensively by erecting higher trade barriers against third countries, but only by taking the offensive. Some discrimination against third countries will hardly be avoidable, just as internal tariff barriers were removed rather more expeditiously than external ones, which have yet to be fully dismantled. In the same way as Art. 110 of the EEC Treaty calls for the increased competitiveness resulting from internal tariff dismantling to be reflected in a liberalisation of the Community's external relations, so too Community preference ought to be reduced once more as the common market comes increasingly to fruition.

As competitiveness improves, there is also less incentive towards national protectionism. However, the latter can be *directly* curbed, too. The Commission's proposal to the EC Council that, from 1985, member countries should lose their right to take national protective measures within the framework of common import regulations is a step in this direction. If the Council actually passes a Directive on this then, as the Commission states in support of its proposal, an anomaly within trade policy really will have been cleared away.³¹ In a similar move, it might be possible to prohibit member countries from reducing those national quotas which still exist in the non-liberalised area simply at their own discretion.³² Another most helpful point would be stricter control over indirect imports. In this respect the Commission is in a particularly strong position, being solely responsible for cases falling under Art. 115 of the EEC Treaty. It ought to make more effective use of this lever for weakening national protective measures running counter to Community interests. Meanwhile, the liberal member countries would do well to be resolute in defending their position in the Council of Ministers, exercising their right of veto if need be, even at the risk of provoking protectionist solo measures. The risks to their international trade which these countries enter by the erection of trade barriers can hardly be offset within the Community.

²⁸ Cf. EC Bulletin, No. 7/8, 1980, p. 15

²⁹ It is possible for countries to resort to Art. 115 because for each product the quotas negotiated with the textile-supplying countries are additionally divided out between individual countries within the Community. A relaxation of these internal quota rules, which basically make a farce of the common textile trade policy, is rejected outright by most member countries. Cf. R. van D artel: The conduct of the EEC's textile trade policy and the application of Art. 115 EEC, in: Volker, op cit., p. 119.

³⁰ Cf. B. Hindley: Protectionism and autonomy a comment on Hager, in: International Affairs, Vol. 59, No. 1, 1982/3, p. 79.

³¹ Cf. Commission Paper COM (83) 757 eng.

³² In effect this would be no more than a return to the old common import regulation of 8. 5. 79. This laid down a deadline of 31. 12. 81 after which autonomous deliberalising measures would no longer be permitted. There is no such provision in the regulation now in force.