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International Trade Policy at a Crucial Stage

While GATT member states prepare for the midterm review of the Uruguay Round in Montreal in early December, national and regional trade policies in the United States and the European Community show some disturbing features which are difficult to reconcile with the multilateral liberalization process.

Most important, the new American Omnibus Trade and Competitiveness Act of 1988 appears in various ways at odds with basic GATT principles and procedures. The leading philosophy behind the law, as well as behind actual US trade policies in recent years, is to open foreign markets for American goods, services and investments. This is indisputably a legitimate objective were it not for some questionable ways and means by which it is to be realized. Should negotiations fail, market opening is to be enforced by retaliation, i.e. closing the American market or restraining access to it.

In cases of "unjustifiable" foreign trade practices, which are essentially alleged violations of trade agreements, the new trade law leaves the US Trade Representative (USTR) – except in certain specified circumstances – no choice but to retaliate. With regard to other "unfair" trade practices, which the law describes as "unreasonable" and "discriminatory", retaliation remains at the discretion of the USTR. However, first, the list of "unreasonable" trade practices has been substantially enlarged, now including, without being very precise, "export targeting", insufficient protection of intellectual property rights, toleration of anticompetitive activities injuring American firms, and denial of certain workers' rights abroad. Second, and even more important, the new trade law pressures the USTR into tough bilateral negotiations. The drawbacks of bilateralism need hardly be repeated here. Bargaining among unequals tends to disfavour the less equal. It also runs, by its very nature, to the disadvantage of nonparticipating third countries, which on their part feel compelled to retaliate. The EC-South Korean patent dispute is a case in point. When the Korean authorities denied European chemical and pharmaceutical companies the same treatment which US negotiators had achieved for American firms, i.e. retroactive application of the country's new patent law, the Community responded by withdrawing trade preferences from the East Asian country. The semiconductor pact between the United States and Japan is another striking example. In this case European protests led to a GATT ruling against Japan's system of monitoring memory chip export prices which was an important element of the bilateral chips accord.

American trade negotiators prefer to deal with their foreign counterparts on a sector-by-sector basis. This narrow approach has a clear advantage for the United States. Negotiations may concentrate on critical areas where US companies lack similar commercial

opportunities abroad to those their foreign competitors enjoy in the United States. At the same time, other critical areas where the United States on its part imposes trade restrictions can be excluded from the agenda. Cases of import protection in US industries such as textiles, steel, automobiles, machine tools etc. have multiplied during the eighties, going hand in hand with efforts to break up foreign markets.

The new trade law endorses the concept of sectoral reciprocity. In various cases it makes retaliation mandatory if negotiations fail to produce satisfactory results. What is more, it takes the effective increase of American exports as the yardstick for the negotiations' success. Telecommunication trade is the most prominent example here, with the German market as the most prominent target.

Questionable trade policies in America meet with similar tendencies in Europe. Take the automobile industry as an example. Instead of simply scrapping existing national import quotas for Japanese cars, EC authorities apparently favour the idea of substituting a Community quota which would be "frozen" at the initial level until the European market share in Japan became at least half as large as the Japanese share in Europe. Close as this concept of reciprocity of market shares is to American ideas, it is certainly not compatible with an open, free-enterprise trading order.

The general thrust of European trade policy is to use the internal market, which is to be completed by 1992, as a bargaining chip in negotiations with third countries, i.e. to grant equal market access only in exchange for equivalent concessions. Most important here, besides financial services, is government procurement, where billions of ECUs are at stake.

It goes without saying that the removal of the remaining barriers to trade within the European Community does not have to be extended automatically to the outside world. Community preference is consistent with GATT. Indeed, one could even argue that the complete abolition of internal trade barriers should be a prerequisite for the application of Article 24 GATT which refers to Customs Unions and Free Trade Areas. However, there are two major problems. First, by creating the true Common Market additional external barriers may be established, if in a disguised form. For example, technical standards provide a broad scope for hidden protectionism. The same is true with industrial policies in the high-technology area, in particular electronics. As regards traditional industries, ample structural funds will be available to support restructuring. Second, it seems realistic to expect that the Community, following the American example, will provide market access preferably in an industry and country-specific way which in the final analysis means replacing unconditional most-favoured nation treatment by conditional MFN.

Conditional MFN is not necessarily bad, nor is it anathema to the GATT. After all, the Tokyo Round codes on non-tariff barriers to trade apply only to those GATT members which have acceded to them. But for conditionality to work as an engine of global trade liberalization it must be applied on a multilateral level and in a uniform way.

This points to the key role of the current multilateral trade negotiations. Somewhat paradoxically, the new US Trade Act, while emphasizing the bilateral and industry-specific approach to trade negotiations, largely leaves the US President and his principal trade negotiator a free hand to conclude multilateral agreements covering tariff as well as non-tariff trade barriers. He may cut remaining tariffs by as much as 50 percent without Congressional approval. Agreements on non-tariff barriers must be considered in Congress under "fast track procedures", that is, within prescribed time limits and without amendment.

Visible and substantial progress in the Uruguay Round along the lines of the Ministerial Declaration of September 1986 would provide the American President with strong leverage against protectionist pressures at home, enabling him to lessen the constraints which Congress wanted to impose on the administration with the Trade Act. It would also help to prevent the European Community from adopting excessively inward-looking attitudes (Fortress Europe). There is no doubt that international trade policy is now at a crucial stage.

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