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CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

NON-TARIFF BARRIERS TO TRADE

Memorandum by the Chancellor of the Exchequer

There are frequent allegations by UK industrialists and traders that other countries operate non-tariff barriers (NTBs) on a scale which seriously affects some of our exports and that the UK does less than other countries to protect its industry by NTBs. The poor outlook for world trade, the sharp decline in UK competitiveness due to the appreciation of sterling and other factors such as increased competition from the newly industrialising countries seem likely to intensify pressure on the Government to take a more vigorous line on NTBs, just as it has led to increased pressure for selective import controls. The Government needs a clear view of its attitude to NTBs if it is to deal effectively with these mounting pressures.

2. I convened a small group of Ministers comprising the Secretaries of State for Employment, Industry and Trade, the Lord Privy Seal and the Minister of Transport to examine the nature and scale of the

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problem and the policy options. Officials from the Department of the Environment also took part. This paper reports our findings and recommendations for action.

Definition and extent of NTBs

3. We took NTBs to be impediments to international trade other than explicit controls such as tariffs, quotas, licensing arrangements and import deposit schemes. NTBs include national standards, regulations, test procedures, etc. with which it is difficult or burdensome for foreign producers to comply; subsidies and price controls to benefit home producers, etc; discriminatory public purchasing policies, etc. (We have recently reviewed UK public procurement policy and follow up action is in hand.) The essential feature of NTBs is that they are capable of being justified - in some cases quite reasonably - as serving legitimate domestic policy objectives such as safety or consumer protection.

4. Because NTBs are covert it is very difficult to assess their extent in other countries or the amount of trade which may be frustrated by their existence. Allegations are most frequently made against France, Italy and Japan but are also made against such stern proponents of free trade as the FRG and the USA. Some examples of alleged NTBs are given in Annex A. Although quantification is impossible, we doubt whether NTBs have a significant direct effect on the totality of UK exports. However, they probably do have a significant localised impact on certain UK industries and in certain markets (e.g. fork lift trucks to France). There is also some suggestion that they can indirectly damage UK trade by discouraging UK companies from trying to enter foreign markets protected by NTBs and by deflecting exports from third countries from protected markets into the UK market. The Ministry of Agriculture and the Department of Trade are currently examining a number of specific complaints made by trade associations concerning NTBs in the food and drink sector, following a recent initiative to encourage greater food exports. Any recommendations will be made separately.

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General considerations

5. There are strong economic arguments against NTBs. They are inconsistent with the Government's support for free trade as the best means of maximising economic welfare, which was only recently demonstrated in the parallel field of capital movements by the abolition of exchange control. The existence of NTBs in other countries is not necessarily a justification for erecting them in the UK because for each UK supplier who manages to sell a product in the home market with the help of an NTB, there is a consumer or enterprise which is denied the benefit of buying cheaper/better products from abroad. Carried too far, this could harm industrial efficiency.

6. The economic arguments in favour of NTBs are that they can improve the terms of trade; that this gain may outweigh any loss of consumer choice and efficiency; and that NTBs may in certain circumstances help to strengthen industry - the infant industry argument.

7. The use of NTBs is also inconsistent with a number of international agreements. The multination trade negotiations (MTNs) which were completed last year contain a number of Codes whose purpose is to reduce NTBs, for example those on standards, Customs valuation, import licensing procedures and Government procurement. Members of the EEC are also bound by the Treaty of Rome not to take action which distorts competition. Practice falls short of this ideal but membership certainly curbs the use of NTBs by Member States.

8. A more general argument against the systematic use of NTBs is that it risks unleashing a competitive escalation in which the UK, because of its relatively open administration and high degree of public accountability, would lose out. The contrary view is that since other countries, many with stronger economies than our own, employ NTBs we should do the same, particularly given the present poor outlook for world trade.

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9. In the light of these general considerations we considered the scope both for intensifying the use of NTBs in the UK and for increasing our pressure on other countries to dismantle their NTBs. We did not regard these two approaches as mutually exclusive. The knowledge that the UK is willing to erect NTBs and is not a "soft touch" could help to curb action by other countries and improve the prospects for a gradual multilateral reduction of NTBs. On the other hand, we do not believe that it would generally be feasible to secure the removal of particular NTBs in other countries by threatening to erect matching NTBs in the UK. We therefore concluded that the two approaches described above should be pursued separately.

Intensified use of NTBs in the UK

10. The interdepartmental official Industrial Policy Group considered the scope for intensifying the UK's use of NTBs in a few areas. They concluded that attempts to modify existing standards, regulations and practices so that they became effective NTBs did not look very promising, but they identified four areas where it would be possible to introduce new regulations which could be presented as serving legitimate domestic policy objectives and which could be of some advantage to UK industry. In summary these are as follows:-

(a) Payment of VAT on imports

The proposal to accelerate the payment of VAT on imports is not strictly an NTB since it would be removing the present preferential tax treatment of imports as compared with domestically produced goods. There is a strong case for ending this inequity and the proposal would also produce a substantial amount of revenue in the year of introduction. I considered this proposal in the run-up to the Budget but because of administrative costs and unwelcome effects on company liquidity at the present time asked officials to study the proposal further before a decision is taken. Work is in hand.

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(b) Sperm Whale Oil

The proposal is for steps to secure an EC secondary ban on the import of leather and leather products containing sperm whale oil. The primary objective would be conservation of whales, and the move could be presented as a logical extension to the prospective EC primary ban on the import of sperm whale oil itself. Officials involved in the negotiations will aim to keep open the option of a secondary ban without holding up agreement on the primary ban.

(c) National Type Approval Scheme for Commercial Vehicles

This proposal would involve putting Britain on a similar footing to other Member States in subjecting commercial vehicles to a series of tests before being sold here. Such a scheme could have a small but beneficial effect at the margin on import penetration, in particular by making the import of specialised models in small volumes less attractive. It would involve quite significant costs to industry, since the scheme would be self-financing through fees. Whereas BL is strongly in favour, the SMMT as a body (in which the multinationals have a strong voice and which also covers the smaller manufacturers) is less keen. Details would be subject to consultation with the industry. It would require up to 20 civil servants to set up, and half that number to run. The earliest possible operational date would be the end of 1981, but a later one would be more likely. We support this proposal, particularly in view of the practices of other Member Countries in this field and as one effective answer to Sir Michael Edwardes' recent complaints about unfair trading practices.

(d) Safety standards and regulations

The Secretary of State for Trade is currently reviewing the role of standards in international trade and the

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implications for Government. This will include consideration of how far the adoption of our own national standards serves to strengthen or weaken our manufacturers in home and overseas markets bearing in mind, for example, the prestige established in international markets by German DIN standards. Officials are studying urgently the scope for developing product standards which would assist UK producers.

11. We concluded that a move to erect widespread NTBs would be inconsistent with our general economic policy and international obligations, would invite retaliatory action from which we might be net losers, and would in many cases give rise to additional staffing requirements. On the other hand, selective use of NTBs, where they could be presented and defended as being in support of other desirable objectives, would help to allay industry's anxieties about unfair competition. We therefore recommend the continuation of work on (a) and (d), the negotiating line suggested in (b), and the implementation of (c).

NTBs in other countries

12. We confined our consideration of whether more could be done to secure the dismantling of NTBs in other countries to the European Community.

13. Officials and the Official Committee on European Questions have considered the related problems of disruptive imports from other Member States at "unrealistic" prices (i.e. alleged dumping, which is not banned by the Treaties) and the frustration of exports by NTBs elsewhere in the Community. This paper considers only the NTB aspect but it should be borne in mind that action against NTBs has to be closely co-ordinated with action on other aspects of unfair competition, and take account of where the balance of our interest lies on all of these related issues since in some areas, such as the Continental Shelf, the UK is vulnerable to attack by other Member States.

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14. The Treaty of Rome provides for the free movement of goods, persons, services and capital. Considerable work has already been initiated to eliminate intra-Community NTBs - e.g. Article 100 Directives and competition rules - and case law of the European Court is accumulating, but progress is slow and at the end of last year the Commission were investigating over 400 complaints of various breaches of the Treaty.

15. A major initiative by the Government to obtain new procedures and more vigorous action against intra-Community NTBs would be a very uncertain way of trying to advance matters and would not necessarily be to the net benefit of the UK. New rules, procedures or organisations in the Commission would prove onerous to Member States and on occasions meddlesome. It would be better to concentrate our efforts on individual cases of substance, relying for the most part on a more intensive use of existing procedures. A number of options are summarised below.

(a) Technical Barriers to Trade (Standards)

i. Voluntary "standstill agreements" under which Member States delay the introduction of measures that could act as NTBs for up to ten months could be made mandatory;

ii. Continued support for the Commission Working Group examining problems arising from national approval and certification procedures. The UK should continue to press for accredited national procedures to be acceptable in other Member Countries;

iii. Acceleration of the harmonisation problem to pre-empt unilateral introduction of new standards by any Member State for the product in question. However, the Government is opposed to the Commission delegating decision-making to a sub-group or, failing agreement by qualified majority voting, at Council level. An

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alternative and preferable course would be for the Commission to concentrate activity on a limited number of priority areas. In that event, we should consult industry about which areas these should be. We note, however, that this is closely linked with the Secretary of State for Trade's review referred to above. It would be consistent that decisions should await its outcome.

(b) Administrative Obstruction

Our interest is in simplification of the procedures and documentation for the collection of VAT and statistics on imports. Some countries are unenthusiastic about this and a Ministerial initiative is needed if we are to try to move matters forward.

(c) Obstacles to Investment

The UK should press for implementation of the French promise of new non-discriminatory regulations which should reduce the room of their Administration to frustrate inward investment, e.g. Lucas Duceilier.

(d) Freedom to Provide Services

Barriers to intra-Community trade in services remain and their rapid removal would be likely to benefit the UK on balance. EQO have identified insurance as a promising area in which to press for progress. Opening up of the banking and building society sectors could also be to our benefit.

(e) Public Procurement

As agreed by E Committee when it discussed public purchasing policy on 20 February, the UK should, whilst continuing to respect its international obligations,

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seek to use public purchasing to improve the competitiveness of UK industry and to pull through high technology projects. Compliance by other Member Countries with the EEC Works and Supplies Directive has been improving, but we should continue to press for the same level of compliance as by ourselves.

16. There is room for encouraging industrial self-help - greater readiness to comply with unfamiliar but not necessary discriminatory administrative procedures; more informal contact with the Commission to increase understanding in complex cases and encourage greater transparency in the Commission's procedures; and, at the extreme, resort to the national Courts of Member States.

17. There is scope for closer liaison with MEPs, the CBI and TUC, trade associations etc in pursuing allegations of unfair competition. An interesting development is the establishment by the Economic and Monetary Affairs Committee of MEPs, of a working group on technical barriers to trade. Departments have established a channel for briefing the UK MEPs and initial results have been encouraging. It might also increase the effectiveness of the Commission, and increase confidence that they were concerned about these matters, if their proceedings were more transparent. It was recognised that action against NTBs is sometimes better handled bilaterally with other Member States.

18. We concluded that a major démarche on unfair competition in the Community, including proposals for organisation and procedural changes or any orchestrated campaign, would not necessarily be to the advantage of the UK. We agreed that an intensification of current activities on a case-by-case basis within the EC on the lines discussed above was the best approach and, subject to the views of E Committee, should be put in hand.

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Conclusions and Recommendations

19. Current economic circumstances - with on the one hand growing competitive pressures on British industry and evidence of a more protectionist stance on the part of some of our trading partners, and on the other hand the danger of a world-wide drift into protectionism - argue against exclusive reliance on either of the policies on NTBs described in paragraph 9 above (seeking the removal of other countries' NTBs, or creating more NTBs in the UK). The general preference should be for the removal of NTBs but progress on a multilateral basis is inevitably slow. The Ministerial sub-group therefore recommends that:-

- (a) We need to decide our policy in relation to the circumstances of each case.
- (b) Departments should be continually on the alert for opportunities to assist British manufacturers to deal with unfair competition arising from other countries' NTBs by seeking their removal or, where there is a water-tight justification in non-NTB terms, by introducing NTBs in the UK.
- (c) Proposals in the IPG Report, summarised in paragraph 10 above, should be pursued in accordance with our recommendations in paragraph 11.
- (d) The proposals in paragraphs 15 and 16 above for intensifying current activities to remove NTBs in the EC should be adopted.

G.H.

H.M. TREASURY
20 June 1980

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OBSTACLES TO INTRA-COMMUNITY TRADE

The following material is illustrative only. The Commission have almost 400 cases of alleged infractions of all Treaty provisions (a substantial proportion of which concern allegations of unfair competition): see table at conclusion. Our own dossiers include complaints made to Departments about some 50 different practices no doubt many of these overlapping with the Commission's dossiers.

- 1 Administrative Obstruction: runs the whole gamut from customs delays to covert Government pressure on firms. All contrary to free circulation of goods provisions (Arts 30-36). A tactic employed by all Member States in conjunction with most other category of obstacles but can be effective by itself, eg French block on Decca Navigation Limited.
- 2 Standards: existing unique national standards permitted until harmonised under Article 100; new ones subject to Standstill Agreement. Pace of harmonisation slow and national standards and accompanying certification procedures often introduced as deliberate policy to protect domestic industry, eg motor vehicles and pharmaceuticals in all producing Member States, including the United Kingdom; French industrial trucks; and toys; Italian machine tools; German caravans; boilers and heating and ventilation equipment.
- 3 Documentary Practices: eg automatic licences and certificates of origin. ECJ has declared all such practices illegal but eg France, Italy and Ireland still require certificates of origin and Italy limits the number of ports of entry for textiles. Commission have moved against French and Danish measures on origin labelling which United Kingdom is also considering.
- 4 Foreign Investment: Articles 67-68 provide for the free movement of capital. All Member States, with exception of United Kingdom since abolition of all exchange controls in February, enjoy some form of derogation which permit continued control over inward/outward investment. France most blatantly misuses derogation as an instrument of industrial policy, eg Lucas/Ducellier and as a final threat in other cases, eg Thorn/Locatel.
- 5 State Aids: Except in specified cases Articles 92-94 prohibit all which distort trade. A grey area. Our practices tend to be the most transparent but a general Commission investigation in no-one's interests, eg United Kingdom state subventions to social security are vulnerable. Community pressure has generally forced the Commission to try and control subsidies rather than prevent them, eg shipbuilding and energy guidelines.

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6 Public Purchasing: in theory discrimination prohibited under Article 7 and public procurement directives. In practice most Member States continue to pursue a national preference purchasing policy and few contracts are awarded outside the Member State concerned.

7 Abuse of Dominant Market Position: prohibited under Article 86. Abuse common but easily checked when dominance Community wide. Difficulties arise from differing national competition rules which enable companies to exploit the strength derived from dominant national position in non-dominant situation in other states.

8 Cartels and Monopolies: Article 37 prohibits discrimination on grounds of nationality in state trading monopolies. Abuses continue despite Commission attention, eg Italian and French tobacco monopoly; French alcohol monopoly. Article 85 prohibits agreements between undertakings which distort trade. But national competition rules can be more restrictive and hinder the rationalisation of Community industry, eg German block on takeover of Sachs by GKN.

9 Differential Taxation: prohibited under Article 95. With the ECJ's ruling against Denmark, Italy and France over whisky few alleged abuses remain, eg Wine/Beer in the United Kingdom; VAT on bloodstock in Ireland and France; engine capacity of cars in France; Synthetic Alcohol in Italy, Germany and France. But in addition a number of United Kingdom duties have had the side effect of NTBs eg specific duty on mechanical lighters; high specific duty on cigarettes; more onerous HP controls on cars.

10 Public Policy: the implications of public policy on the private sector can be vulnerable to the free movement of goods provisions of the Treaty (Arts 30-36) eg North Sea Oil exploration equipment contracts.

11 Freedom to Provide Services: the ECJ ruled in 1974 that barriers of nationality in rights of establishment and provision of services were illegal. But EC yet to achieve a Common Market in Services. United Kingdom would appear to stand to gain most from any greater freedom eg insurance and banking.



Commission cases of alleged infractions of all Treaty Provisions

All cases

B	DK	D	F	IRE	I	L	NL	UK	TOT
48	24	41	60	30	70	32	32	41	399

League order

3	8	4	2	7	1	6	6	4	
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of which DG III cases (including rights of establishment etc)

30	12	27	31	12	40	17	14	20	
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League order

3	8	4	2	8	1	6	7	5	
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