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NON-TARIFF BARRIERS TO TRADE AND THEIR TREATMENT IN THE GATT TRADE NEGOTIATIONS

Statement submitted to the Contracting Parties to the General Agreement on Tariffs and Trade by the International Chamber of Commerce

1. The International Chamber of Commerce welcomes the opportunity afforded by the GATT Trade Negotiations for effectively tackling the problem of non-tariff barriers to trade and is glad to note that the negotiating governments are already committed to establishing "the rules to govern and the methods to be employed in the treatment" of these barriers. This is in fact a very real issue for business firms engaged in international trade and the International Chamber of Commerce has been endeavouring for many years now to combat the cumbersome, costly, obscure and changeable restrictions and formalities which act as a brake on trade and often counteract, wholly or partly, the effect of even far-reaching tariff reductions negotiated by governments.
 2. The range of these restrictions and formalities is however so broad that it is clearly neither possible nor desirable to inject into the GATT negotiations properly so-called the whole problem of non-tariff barriers. A selection must be made of those non-tariff barriers which by their nature form part and parcel of the trade negotiations and a decision must then be made as to what action should be taken to deal with the remainder.
 3. The International Chamber of Commerce offers in this statement a certain number of suggestions designed to assist the negotiating governments in making this selection and in taking this decision.
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4. The International Chamber of Commerce suggests that as a first step it should be made clear that one of the main objects of the trade negotiations will be to remove, either immediately or within a specified time, any non-tariff barrier which:

- (a) is as restrictive of trade as a high tariff,
- (b) is of such a nature as to impair substantially or nullify the benefit of a tariff concession, and
- (c) is imposed by a country or countries taking part in the GATT trade negotiations.

5. With these distinctions in mind, the International Chamber of Commerce will now examine the main spheres in which serious non-tariff barriers appear to exist and will offer suggestions for dealing with them both within and outside the framework of the GATT trade negotiations.

Quantitative restrictions

6. Quantitative restrictions and exchange controls are clearly eligible as non-tariff barriers under criteria (a) and (b) above. The only question which arises is to what extent they are in fact imposed by countries which are going to take part in the trade negotiations (criterion (c)). The situation in this respect appears to be as follows.

7. Quantitative restrictions play an important rôle in the agricultural trade of the negotiating countries. But the GATT conference will have to deal with this problem in the broader context of agricultural policy as a whole, a subject upon which the International Chamber of Commerce is contributing a separate study.

8. As regards trade in industrial products, there remains a small residue of quantitative restrictions, not permissible under the GATT rules, affecting trade between the industrialized countries taking part in the GATT negotiations. One of the first steps of the Trade Conference should be to obtain a commitment for the immediate suppression of these restrictions without reciprocal concessions and on a non-discriminatory basis.

9. Another important issue with which the GATT Trade Conference will be faced is that of restrictions imposed by developed countries on imports of certain manufactured products from developing countries. The International Chamber of Commerce is strongly in favour of the abolition of such quantitative restrictions. It is clear, however, that the importing countries are hardly likely to abolish them unless they retain the right to protect their home industries by countervailing duties against cases of unfair competition resulting from direct or indirect government aid or by ad hoc measures in genuine cases of market disruption. There should, however, be a machinery of international consultation and conciliation for the settlement of differences and in particular for determining whether or not "market disruption" really exists.

10. The International Chamber of Commerce greatly regrets that action against quantitative restrictions will be more limited in scope than it might otherwise be, owing to the absence from the negotiations of most of the developing countries. Quantitative restrictions are used very widely by these countries both for balance of payments and for developmental reasons. The GATT Trade Conference could do much more to improve the situation as a whole, including the difficulties of the developing countries themselves referred to in the previous paragraph, if there could be a frank exchange of views on that occasion between all the parties concerned.

Customs valuation of imported goods

11. An outstanding example of a non-tariff barrier in the field of customs valuation of imported goods is the practice followed by the United States of assessing the dutiable value of a certain number of products, mainly benzenoid products of the chemical industries which are an important item in international trade, on the basis of the selling prices of similar American products in the United States (the American selling price system). This is applied as an exception to the United States Customs Simplification Act of 1956 which brought for most other products a marked improvement in valuation methods. Another exception consists in applying to the valuation of a number of other products (mainly chemicals, too) on what is called the "Final List", obsolete procedures and definitions abolished by the 1956 Act.

12. The effect of the American selling price system, and to a lesser degree of the "Final List", is to increase sharply the real incidence of the already high rate of duty levied on the products in question, to perpetuate high tariffs and disparities despite a 50 per cent cut and hence to impair substantially the beneficial effect of any linear tariff cuts that might be made.

13. The International Chamber of Commerce hopes that it will be possible from the outset for the United States Government to enter into some form of satisfactory commitment to eliminate both the American selling price system and the "Final List", which in any case do not appear to be in conformity with Article VII of the GATT. There seems to be no adequate reason today for conserving what appears to be an out-of-date method of special protection for the goods in question. It would be in the interest of a smoothly working international trade system for the United States to apply to all imported goods indiscriminately the method of valuation established by the Customs Simplification Act of 1956.

14. Other systems of valuation - in particular those of Australia, Canada, New Zealand and South Africa and the Brussels definition of value in force in more than fifteen European countries as well as Haiti and Pakistan - are also criticized by export and import circles as constituting hindrances to trade. The International Chamber of Commerce has itself recorded its opposition to the principle of the Brussels definition and has criticized its application by some of the signatory countries (ICC Brochures 198 and 228). It does not believe however that the shortcomings of these various systems could suitably be dealt with in the framework of the GATT Trade Negotiations. They could more appropriately be handled by separate action along the lines suggested in the last two paragraphs of the present statement.

Anti-dumping procedures and duties

15. From a preliminary survey of the subject, the International Chamber of Commerce is convinced that present procedures for combating dumping and levying anti-dumping and countervailing duties are unsatisfactory in a number of countries, often contrary to the principles of GATT Article VI and a definite hindrance to international trade. Whether or not these procedures are strictly speaking non-tariff obstacles according to the criteria set out above in paragraph 4, the International Chamber of Commerce would therefore urge the negotiating governments to include this question among the non-tariff barriers to be discussed at the GATT Conference.

16. The International Chamber of Commerce suggests that two approaches might be adopted. The first would be to obtain a commitment from all negotiating governments to drop practices not in conformity with Article VI of the GATT and at the same time agree upon a procedure of consultation between governments before any measures are taken by individual governments unilaterally. The second would be for the negotiating governments to decide to start work either during the trade negotiations or immediately after upon the drafting of an international code of anti-dumping procedures.

Public tenders

17. In a number of countries there exist laws, regulations and administrative practices by which preference is given to domestic over foreign enterprises in public tenders. This constitutes a real problem and a hindrance to the smooth working of international trade. The International Chamber of Commerce doubts, however, whether this is a matter for the GATT Trade Negotiations properly so-called. Discussions could however be usefully initiated on that occasion between governments, leading to separate investigation and treatment at an early date within the GATT. This would not of course preclude any negotiating government from bringing up for discussion any particularly outstanding instance of such discriminatory practices of relevance to the particular negotiations in hand.

Health regulations and standards imposed by public authorities

18. The health regulations and standards officially established in many countries have as their primary object the public welfare and the protection of the consumer and his health. But their lack of uniformity and their at times unreasonable character often turn them into real barriers to international trade.

19. The International Chamber of Commerce does not believe that the question is a suitable one for treatment in the GATT Trade Negotiations, but it suggests that the negotiating governments might be asked to consider holding a special conference at some early date for the purpose of establishing, as the International Chamber of Commerce has recommended on a previous occasion¹:

- (a) uniform criteria for the composition, the quality and the properties of products;
- (b) an international list of toxic substances which may not be included in the composition of foodstuffs and beauty products;
- (c) uniform rules for compulsory indications on foodstuffs.

Escape clauses

20. As the International Chamber of Commerce has already pointed out in the statement it issued in July 1963 on The Expansion of International Trade (paragraph 6), "the usefulness of trade concessions is substantially reduced when they can be withdrawn unilaterally". The existence of escape clauses or renegotiation procedures is not properly speaking a non-tariff barrier to trade but it may be a hindrance to negotiation. An effort should therefore be made on the occasion of the GATT Trade Negotiations to harmonize existing national "escape clause" procedures and to institute a method of consultation precluding unilateral national action.

Other non-tariff barriers

21. Although it is clear from the preceding paragraphs that the categories of non-tariff barrier suitable for treatment as part of the GATT Trade Negotiations are comparatively few, there remains a vast range of laws, regulations and administrative practices in international trade urgently calling for reform and many of which are completely obsolete in relation to modern trading conditions and policies.

¹ ICC Brochure 191: "Obstacles to the International Distribution of Goods".

22. The International Chamber of Commerce believes that the governments participating in the GATT Trade Negotiations might usefully consider holding a meeting in the near future devoted exclusively to formalities and regulations in international trade. In the meantime, they could take an immediate step forward by undertaking to apply in the spirit and in the letter, on points such as the customs classification of goods, marks of origin, treatment of samples, consular formalities, the international conventions or agreed rules already in existence but lacking universal application. In this connexion, the International Chamber of Commerce would particularly welcome the signature and ratification by as many countries as possible of the conventions drawn up by the Customs Co-operation Council to ensure temporary duty-free import of samples of value, of goods for display or use at exhibitions, fairs, or similar manifestations, and of professional equipment. It would also strongly recommend all countries that have not already done so to adopt the international Nomenclature for the Classification of Goods in Customs Tariffs known as the "Brussels Nomenclature" and to accompany their national classifications with explanatory notes sufficiently explicit to eliminate as far as possible any danger of arbitrary application.