

ARCHIVES HISTORIQUES DE LA COMMISSION

COLLECTION RELIEE DES
DOCUMENTS "COM"

COM (84) 405

Vol. 1984/0175

Historical Archives of the European Commission

Disclaimer

Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

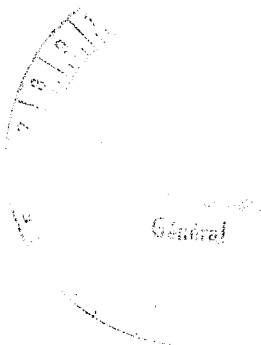
COMMISSION OF THE EUROPEAN COMMUNITIES

COM(84) 405 final

Brussels, 24th July 1984

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning the participation of the Community in the international institutional machinery established by the UNCTAD Restrictive Business Practices Code



COM(84) 405 final

The participation of the Community in the international institutional machinery established by the UNCTAD Restrictive Business Practices Code

I. Background

The "Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (the "Code") adopted by the General Assembly of the United Nations on 5 December 1980 provides:

1. in section B (ii) "Scope of application" that

"8. Any reference to 'States' or 'Governements' shall be construed as including any regional groupings of States, to the extent that they have competence in the area of restrictive business practices;"

2. in section G "International institutional machinery," sub-section (i), that

"1. An Intergovernmental Group of Experts on Restrictive Business Practices operating within the framework of a Committee of UNCTAD will provide the institutional machinery."

Thus, although the Community is recognized as equivalent to a State or Government as far as the scope of application of the RBP Code is concerned, it is denied this status in the institutional machinery, the Intergovernmental Group of Experts ("IGE"), by the reference to the IGE's operating "within the framework of a Committee of UNCTAD".

This paper suggests how this anomaly can be rectified.

II. Representation of the Community at the 1st and 2nd sessions of the IGE

1. Before the IGE's 1st session in November 1981 the matter was discussed in the RELEX Group (Council Doc. 8243/81 and Cor. 1 and 2) and at an UNCTAD coordination meeting in Geneva. At the beginning of the 1st session the representative of the country then holding the presidency of the Council (United Kingdom), speaking on behalf of the

Community and its Member States, made a statement saying that the Community could not accept rules of procedure for the IGE that were incompatible with its legal competence and its obligations in the field of competition policy. The statement was confirmed by letter dated 2 November 1981 and signed by the Presidency of the Council and the Commission (TD/B/RBP/L1).

Supporting the Community's position, the spokesman for Group B (Canada) reiterated the Group's understanding that the Community, as a regional grouping of States having competence in the area of restrictive business practices, should be entitled to participate fully in the work of the IGE, since section B(ii)(8) of the Code recognized it as equivalent to a Member State.

Following coordination meetings between the Chairman and other officers of the Group, the Chairman (Argentina) announced at the plenary meeting that the basis on which the Group would operate at its 1st session would be the rules of procedure of the main committees of the Trade and Development Board.

2. At the beginning of the 2nd session of the IGE in Geneva in November 1983, following a further UNCTAD coordination meeting, the representative of the country then holding the Council presidency (Greece) confirmed the statement made by the Community spokesman on behalf of the Community and its Member States at the 1st session. The Group B spokesman (Canada) also reiterated its support for the Community's position.
3. At the 1st session the spokesman for the Group of 77 (Sudan) hoped that the problem referred to by Group B and the Community "would not impede their full and substantive participation in the work of the Group." At the 2nd session the Group of 77 spokesman (Egypt) advocated using the rules applied at the 1st session.

The spokesman for Group D (GDR) said at the 1st session that the participation of regional groupings of States should be strictly subject to the rules of procedure of the main committees of UNCTAD. At the 2nd session the Group B spokesman (Hungary) reiterated this position, saying that since the IGE was to be regarded as a sub-committee of a main committee of the Trade and Development Board the participation of the Community as an intergovernmental body should be subject to the procedures laid down in Article 74 of the Rules of Procedure of the Main Committees.

III. The Community's role in the Code and in the work of the IGE

1. The Code provides that "regional groupings of States, to the extent that they have competence in the area of restrictive business practices" are to be treated as equivalent to "States" or "Governments".

The Community's competence in this area is uncontested.

If the Community is therefore to be treated as equivalent to an individual State or Government, it is on the same footing as individual Member States when it comes to observing the provisions of the Code relating to the principles to be followed in the adoption, amendment and enforcement of national or regional legislation (sections C and E) or to international cooperation (section F). However, the Community's position in this regard is purely academic as long as it is denied the same status in the insitutional machinery for implementing the Code.

2. The functions assigned to the IGE under the Code can be divided broadly into the following:
 - (a) mainly technical functions in the realm of studies, etc., and
 - (b) functions relating to the implementation and development of the Code.

(a) Studies

The IGE is required to undertake studies and research and to work for wider exchanges of experience on restrictive business practices in order to give greater effect to the Rules and Principles (section G(iii)(b), (c), (d) and (e)). It reports on its work once a year.

The Community's legislation and experience play a major role in the research work and studies undertaken by the IGE.

- The papers produced by the Secretary-General draw heavily on them. The Community influence is seen, for example, in the model laws drafted by the Secretariat which use wordings and

- procedures very similar to those found in Community competition law and refer to Community experience in their arguments in support of such wordings or procedures.
- The Secretariat regularly asks the Commission for contributions to ongoing work.
- For the 2nd session, for example, the Commission presented, on behalf of the European Community, a report on exclusive dealing arrangements which concluded that there was a broadly favourable economic case for exclusive distribution arrangements in international trade.
- This interest in the Community's experience is hardly surprising since both the Code and Community law, unlike national law, are mainly concerned with restrictive business practices that have damaging effects on trade, whether at international level or between the Member States of the Community.

The Community should therefore be able to intervene or respond in the discussion of substantive issues concerning Community law in the IGE, without having any conditions placed on its rights in this regard.

(b) Implementation and development of the Code

The IGE's role in ensuring the effective implementation of the Code involves providing facilities for consultations between States, making appropriate recommendations to States and preparing proposals on ways of improving and developing the Code for the review conference scheduled for 1985 (section G(ii)(a) and (f) and (iii)(6)).

The Community is as directly concerned by the activities of the IGE as are the individual Member States of UNCTAD. For example, it may be the subject of recommendations and it is also directly concerned by the proposals for amending the provisions of the Code. It must therefore be able to take a full part in the IGE's work.

IV. How to secure the Community's right to play a full part in the work of the IGE

The ultimate solution is to amend the section of the Code dealing with the institutional machinery (section G(i)(1)) to make provision for regional groupings of States to be treated as equivalent to States or Governments in the same way as the section on the scope of application. This could be done during the revision of the Code which is scheduled for 1985.

Irrespective of this ultimate solution, it would be appropriate to submit to the Trade and Development Board for the 3rd session of the IGE (scheduled for 7 - 16 November 1984) a proposal designed to secure the Community's right to full participation in the shorter term.

The proposal would read as follows:

"Notwithstanding Article 78 of the Rules of Procedure of the Trade and Development Board, regional groupings of States, to the extent that they have competence in the area of restrictive business practices, shall participate in the work of the Intergovernmental Group of Experts on the same footing as Member States of UNCTAD."

The Community should make it clear to the Trade and Development Board that if regional groupings of States which have competence in the area of restrictive business practices are not given the same rights as individual Member States of UNCTAD on the Intergovernmental Group of Experts, the Community's status under the Code can only be that accorded to it within the institutions of UNCTAD. This status does not allow the Community to be treated as equivalent to an individual Government or State in the institutional machinery and renders the equivalence clause in section B(ii)(8) of the Code inoperative. In these circumstances the Community should not consider assuming its responsibilities under the Code as long as it was not accorded equivalent status in the IGE.