

No. 21/1978

October 20, 1978

EUROPEAN COMMUNITY OFFERS PROPOSALS ON TRANSFER OF TECHNOLOGY CODE

European Community negotiators at the UNCTAD conference that opens this month in Geneva, Switzerland, are expected to seek a code of conduct on the transfer of technology that will be non-mandatory, but regularly monitored, and suited to the needs of both industrialized and developing countries.

In past conferences, disagreement between industrialized and developing countries over the binding nature of a code of conduct has blocked its passage. From the Community's standpoint, the political, economic and especially the legal nature of the code-making process restricts scope for compromise. A paper outlining the Commission's proposals on a code was presented last month to the Council of Ministers of the nine-nation Community.

To assure compliance with EC law, the Community is expected to seek a code that does not require treaty ratification or other forms of a binding nature. Most industrialized nations envision a similar code. The Community believes a non-binding code will prevent unnecessary international commitments while still establishing key principles of such obvious political importance that it would be difficult for adopting countries to avoid compliance.

An agreement in the form of non-binding lines of conduct, which could be accomplished by a resolution of the U.N. General Assembly, would avoid the legal and political difficulties inherent in a binding code that would relate to transfer of technology transactions by independent firms. Tight restrictions and rules placed by some developing countries on small and medium-sized firms have actually tended to impede technology transfer, with the result that rigid rules have worked to the detriment of the nation's best interests. It is, in fact, often the smaller firms that can best benefit developing countries through the transfer of technology.

In past sessions, a proposal has already been put forward by different sides that could make a non-binding code more appealing to developing countries. This proposal calls for the regular monitoring of the code and possibly its review and alteration should the code fail to do its job adequately.

A non-binding code would not modify or replace the provisions of national, Community or international law. It would be easier for the Community to apply because Community members would be able to participate without violating fundamental Community safeguards governing abusive or restrictive business practices.

The issues surrounding the code of conduct for the transfer of technology go beyond the province of UNCTAD's work to affect other areas of international negotiations. For example, the U.N. Commission on Transnational Corporations has postponed its drafting of a code of conduct until the UNCTAD conference completes its code. In addition, the provisions of the Paris Convention protecting patents and other industrial property rights are in the process of being amended by the World Intellectual Property Organization, which is expected to be guided by the principles adopted by the UNCTAD code.

Because the Community is involved in these other negotiations, the Commission is reluctant, according to its proposal, to allow the final outcome of the UNCTAD negotiations to restrict room for maneuver elsewhere. The Commission believes a "mixed code" of mandatory and non-mandatory parts would therefore be a poor solution to the dilemma.

At the Geneva conference, the negotiators will also seek solutions to disagreement over guarantees and responsibilities of the parties to the transfer of technology. Agreement must be reached as well on the definition of technology.

There is, however, universal accord on one point: the conference members all believe that the transfer of technology code of conduct should apply to all countries and not just to transfers between industrialized and developing countries.

The Community's interest in the code is obligatory since the code deals with subjects that fall undeniably within the competence of the Community. According to Community law, the member states cannot enter into commitments with non-member countries if the commitments are incompatible with the Community rules spelled out in the Treaty of Rome.

A non-binding code of conduct that is still compatible with Community law could be negotiated if a European Community clause is included to assure that the code will not infringe upon any existing or future application of the EC treaties. At the same time, the Community should be included in the areas of its competency as a party to the code negotiations in the same manner as its nine member states.