

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(86) 544 final

Brussels, 8 October 1986

Commission Communication to the Council

Community participation in the institutional machinery established by the
Code on Restrictive Business Practices (IGE)

—

COM(86) 544 final

Com 5441

Commission Communication to the Council

Re.: Community participation in the institutional machinery established by the Code on Restrictive Business Practices (IGE)

The question of the Community's status as regards its participation in the work of the Intergovernmental Group of Experts on Restrictive Business Practices was raised by the Community at each of the Group's four annual meetings to date. On 21 September 1984 the Community sent a Note on the subject (see Annex 1) to the Trade and Development Board.

At the time of the Code review conference, which was held in November 1985, and in connection with the conference's draft rules of procedure, the question of Community participation, this time in the review conference, was also considered by the Council (cf. Commission Communication to the Council of 18 October 1985 - doc. 9922/85 Relex 33). At the negotiating conference, the Community stated that it reserved the right to examine the possible implications of the fact that the conference's rules of procedure conferred on the Community non-voting-participant status. The question was treated as an "A" item within the Working Party on External Relations (ref. 10028/85 Relex 37 of 31 October 1985).

The next meeting of the Intergovernmental Group of Experts is to be held in Geneva from 14 to 24 October 1986. It is proposed that the Community make a declaration confirming the reservations previously entered by it with the support, moreover, of Group B and giving notice of its intention to seek the inclusion of this matter on the agenda of a forthcoming meeting of the Trade and Development Board (in either the spring or autumn of 1987); the draft declaration is set out at Annex 2.

Meanwhile, the Commission proposes to transmit to the Council a communication on the procedure for making a reference in due course to the Trade and Development Board with a view to inducing it to derogate - on the basis of Article 64(3) of its rules of procedure - from the main committees' rules of procedure so as to take account of the equating of states and regional groupings of states provided for in the Code itself / Section B (ii) (8) / and of the specific powers of the Community in the restrictive business practices field.

EUROPEAN COMMUNITIES

Geneva, 20 September, 1984

Mr President,

The question of full European Community participation in the institutional machinery established by the UNCTAD Principles and Rules on Restrictive Business Practices was raised at the 22nd session of the Trade and Development Board, which set up the Intergovernmental Group of Experts on Restrictive Business Practices ('the IGE'). (1)

Two meetings of the IGE have now been held, and in the Community's view the question has not yet been satisfactorily resolved ; the Community would therefore like to bring the matter to the Board's attention once again.

Section B (ii) (8) of the Principles and Rules on restrictive business practices, which notes that any reference to "States" or "Governments" shall be construed as including regional groupings of States, implies that to the extent of its competence the Community is to assume full responsibility under the Principles and Rules and to participate in its implementation.

./.

(1) Cf. the proposal by the Chairman of the sessional committee (TD/B/(XXII)-SC/L/7) and resolution 228-XXII of the TDB (TD/B/877).

Since the IGE was to operate "within the framework of a Committee of UNCTAD", certain delegations took the view that the IGE's work should be strictly governed by the rules of procedure of the main committees of the Board. Accordingly it was decided that for the first session, the rules of procedure to be observed would be those of the main committees (TD/B/834 and TD/B/RBP8-n° 115). The same procedure applied to the second session.

As Article 74 of the rules of procedure of the main committees prevents the Community from putting forward its views except by prior invitation, and from submitting proposals, the Community is therefore unable to participate fully in the fundamental work provided for by the Set of Principles and Rules such as the adoption of the reports and recommendations referred to in Section G(ii)3(f). Strict application of the rules of procedure of the main committees to the institutional machinery set up by the Principles and Rules does not ensure that the Community is treated as Member States and thus puts at risk full implementation of a substantive provision of the Principles and Rules.

At both meetings of the IGE, spokesmen for the Community and for Group B underlined that the Community had to participate fully in the work of the IGE. The Community representatives also stated that the Community could not accept rules of procedure which did not confer on it a status corresponding to the commitments which it was in fact prepared to assume, so its participation in the work of the first two meetings was therefore without prejudice to its legal position.

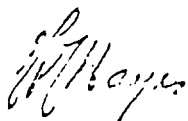
In these circumstances, unless in another way a solution to this problem can be found, which is in accordance with the provisions of the Principles and Rules, it would seem essential that appropriate rules be established which permit full Community participation in the work of the IGE. As stated in the letter dated 2 November 1981 to the Secretary General of UNCTAD, full Community participation will be realized once the Community is able to participate as a member of the IGE. In this context, the Community would like to draw attention to section 64(3) of the rules of procedure of the Board.

In addressing this question to the Board the Community and its Member States are convinced that an effective solution will be found, and for their part they are ready to help in whatever way may be useful.

A copy of this letter is being sent to the Secretary General of UNCTAD and we request that it be circulated for information to members of the Board.

Please accept, Mr. President, the assurance of our highest consideration.

For the Presidency of the
Council of the European Communities



Francis Mahon HAYES
Ambassador

For the Commission
of the European Communities



TRAN Van-Thinh
Head of the Permanent Delegation
of the Commission

The President of the Trade
and Development Board

Palais des Nations
1211 GENEVE 10

Annex 2

Declaration by the Community at the fifth meeting
of the Intergovernmental Group of Experts on
Restrictive Business Practices

Sir,

On 20 September 1984 the Community submitted to the Trade and Development Board a note drawing the Board's attention to the fact that the application of the rules of procedure of the main committees to the proceedings of the intergovernmental group of experts provided for in the Code on Restrictive Business Practices has the effect of preventing the Community from participating fully, like the Member States, in the proceedings of the intergovernmental group of experts, which is not in keeping with the equating of the Community with Member States stemming from Section B (ii) (8) of the Code.

At previous meetings, the intergovernmental group of experts has continued to apply the main committees' rules of procedure.

The Community intends, in accordance with the position it took on 29 September 1984, to seek the formal inclusion of this matter on the agenda of a forthcoming meeting of the Board and accordingly reaffirms the position it took in its Letter of 20 September 1984. It insists on being accorded a status corresponding to the commitments it assumes under the Treaty of Rome and the experience it has acquired in this field.