

EUROPEAN COMMUNITY NEWS

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COMMISSION OF THE EUROPEAN COMMUNITIES

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AMERICAN CORPORATION WINS APPEAL AGAINST EC COMMISSION

While upholding the EC Commission's broad interpretation of Article 86 of the Common Market Treaty, forbidding abuse of a dominant position, the European Court of Justice overturned, on technical grounds, the Commission's antitrust case against Continental Can.

"The Commission has won on basic philosophy but lost the specific case," one EC official was quoted as saying after the February 21 landmark decision. The Communities' "Supreme Court" confirmed that the Common Market treaty permits the Commission to control transnational mergers.

The case against Continental Can had arisen in 1970, when the American firm, through its European subsidiary Europemballage, acquired the largest Benelux metal packaging company, Thomassen et Drijver-Verblifa NV. Europemballage had already taken over the largest German metal packaging company, Schmalback-Lubeca-Werke A.G.

In December 1971, the EC Commission ruled that the acquisition of the Dutch firm had practically eliminated competition in the metal packaging sector and thus constituted "abuse of a dominant position" within the meaning of Article 86. Continental Can then appealed the Commission ruling to the Communities' Court of Justice in Luxembourg.

In its precedent-setting ruling, the Court said:

- An abuse of a dominant position could occur if the company in the dominant position strengthened its position to the point where it substantially handicapped competing companies, leaving only companies dependent on the dominant enterprise itself.
- The market in question must be clearly defined. The Court held that the Commission's decision on Continental Can did not define the market in which the company was alleged to have held a dominant position. It did not specify whether the market in which competition had allegedly been restricted was the market for metal containers for meat and fish products, the entire metal packaging market, or the entire packaging market including glass and plastic containers. Because of these uncertainties and contradictions, the Commission's decision was overturned.

Meanwhile, the Commission announced that it would propose this year to the Council of Ministers a regulation for "more systematic control" of mergers. Such a regulation would supplement the already extensive Community legislation to ensure fair competition. During the past year, the Commission successfully concluded several antitrust cases on the Community level. The Commission's Director-General for Competition is Willy Schlieder.

SOAMES REPORTS TO EUROPE

After a two-day visit to Washington, EC Commission Vice President Christopher Soames now begins a tour of European capitals to put together a common trading position. His trip to the United States, Soames emphasized during a Washington news conference on February 16, was a first step toward the necessary liberalization of global trade.

In his first visit to the United States as EC Commission member responsible for external trade, Soames met with President Richard M. Nixon, who, Soames said, "very kindly took me into a Cabinet meeting, and I was able to say a few more things there." The EC Commission Vice President also held individual meetings with Peter M. Flanigan, Special Assistant to President Nixon; Walter J. Stoessel, Assistant Secretary of State for European Affairs; William J. Casey, Under Secretary of State for Economic Affairs; Willis C. Armstrong, Assistant Secretary of State for Economic Affairs; Kenneth Rush, Deputy Secretary of State; William P. Rogers, Secretary of State; George P. Schultz, Secretary of Treasury; Arthur F. Burns, Chairman of the Board of Governors of the Federal Reserve System; William D. Eberle, Special Representative for Trade Negotiations; Frederick B. Dent, Secretary of Commerce, and Herbert Stein, Chairman of the Council of Economic Advisors. Soames also met informally with Congressmen and EC member states' ambassadors.

At the press conference attended by approximately 90 journalists, Soames laid principal stress on the need for the United States to pass a liberal trade bill before the scheduled multilateral talks in the General Agreement on Tariffs and Trade (GATT) open in the autumn. Asked if this meant that there could be no negotiations without a prior liberal US negotiating mandate, Soames replied: "There would be considerable reluctance in Europe to starting negotiations unless there was a reasonable chance of their succeeding." The US trade bill, Soames hoped, should clearly be a trade liberalization bill and not just a trade bill with some liberal elements. It should, he added, deal explicitly with tariffs, nontariff barriers, safeguards, and agriculture.

Soames said that the single most important factor facing the enlarged Community was relations with the United States. At present, he said EC-US relations "leave a great deal to be desired." He added, however, that too much was being made of the differences and not enough of the "very real common interest which should hold us together." He said he looked forward to the time when US-EC relations would be "normal."

His Washington visit, Soames said, had been given increased timeliness by "coinciding with a solution to what might have been a very serious monetary crisis -- which with considerable statesmanship had been resolved." Soames said that no one knew how long the solution would stand up but that he hoped it would last longer than the Smithsonian Agreement of 1971. America shared Europe's awareness of the urgent need to reform the international monetary system, and the events of recent weeks should be a "spur" to achieving this reform, Soames said.

Asked whether there would be institutional machinery for US-EC relations, Soames referred to the need for prior political growth in the Community and said of the EC: "This economic colossus cannot continue to be a political pygmy." Asked if Europe and the United States might adopt a common approach on trading vis-à-vis Japan, the EC Commission Vice President said that there would be "no ganging up" but that Europe and America have common problems with Japan which would loom large in multilateral negotiations.

Soames was accompanied on his Washington visit by Edmund Wellenstein, EC Director General for external relations, Pierre Malvé, a member of the Commission President's cabinet, and Adrian Fortescue, a member of Soames' cabinet.

EC RENEWS MONETARY UNION PLEDGE

In spite of the recent international monetary crisis, the EC's goal of economic and monetary union by 1980 is still very much alive and well. At least that's the view of the nine member countries' Finance Ministers, who met in Brussels on February 14. The following text was released at the conclusion of their meeting:

"The Council analyzed various aspects of the last few days' monetary events.

"It believes that the US decision to devalue the dollar...and Japan's decision to float its currency help improve international payments equilibrium. It notes with satisfaction the prompt reopening of the exchange markets.

"The Council reaffirms its determination to continue without delay the achievement of the economic and monetary union which implies the participation of every member state in the Community monetary system.

"The Council believes that the decisions for putting the economic and monetary union into effect, as stated in the October 21, 1972, communiqué by the conference of heads of state or government, should be accelerated.

"The Council believes, in the light of recent events, that the Community must complete without delay a common position for the reform of the international monetary system in order to give additional impetus to the work being done within the International Monetary Fund's 'Committee of Twenty.'"

GREENWALD STRESSES COMMON INTERESTS

Different circumstances but enduring common interests -- that was the theme struck by the Head of the US Mission to the European Communities, Ambassador Joseph A. Greenwald, in a February 20 speech in Brussels. In pointing to the specific common problems of security, monetary and trade affairs, the energy crisis, and relations with developing countries, Japan, and state-trading countries, Greenwald told the American and Common Market Club: "If we both keep in mind the larger common interests, goals, and objectives, the solutions to specific problems and the conclusion of successful negotiations may come more easily." Other remarks from the text of Greenwald's speech included:

"The economic crises and headlines of the past 18 months should have brought us to the point where the major industrialized powers are ready to reconstruct their trade and monetary system in the light of changed circumstances but continuing common interests.

"In the immediate postwar period, common objectives were clearly articulated and embodied in agreements and institutions. But they inevitably reflected the economic situation and relationships of the period. Everyone now accepts, at least intellectually, that things have changed, particularly with respect to the US and the dollar. The events since August 1971 have brought the point home most vividly.

"On the other hand, our common goals have not changed -- only perhaps lost sight of in the day-to-day conflict, crises, and carping."

EUROPEAN-SOUTH AMERICAN COOPERATION

An informational exchange for metalworking and engineering industries is the latest example of cooperation between the European Community and the Andean Group. A delegation from the regional grouping of Bolivia, Chile, Columbia, Ecuador, and Peru met in Brussels February 21-23 with European industrialists, engineers, and Commission officials.

The delegation, led by Salvador Lluch, discussed the Andean Group's industrial development program in the metalworking and engineering sector, the first such development program to be adopted by the Group. Close cooperation with industrialized countries would facilitate such programs, a necessary step in the economic integration of the Group.

The delegation met with Altiero Spinelli, the Commission member responsible for the EC's industrial and technological affairs, who stressed the importance of cooperation and industrial interpenetration between the two zones of regional integration. Commission Vice President Christopher Soames, who is responsible for the Community's external trade relations, also joined the discussions.

DISPUTES ATTEST TO VITALITY OF US-EC RELATIONS

"The fundamental and essential joint interests which are the basis of EC-US relations eclipse the inevitable points of dispute in any healthy relationship," according to the President of the Commission of the European Communities. President Francois-Xavier Ortoli's remark came in his February 13 presentation of the Commission's annual report to the European Parliament. The annual report, as provided for by Article 143 of the Common Market Treaty, describes the Community's activities during the past year and outlines the Commission's program of action for the coming year. The following text is a summary of the portions of the annual report dealing with US-EC relations:

"The outstanding event of the year in EC-US trade and monetary relations was the conclusion, on February 11, 1972, of the commercial counterpart of the monetary agreement of December 18, 1971 [the "Smithsonian Agreement"]. It consisted of a joint declaration by which both parties agreed to extensive multilateral negotiations in 1973 within the context of the General Agreement on Tariffs and Trade (GATT) and of an exchange of letters on reciprocal commercial commitments.

"The joint declaration (with which Japan associated itself in a similar declaration signed with the United States) specified that the multilateral negotiations would be directed toward the expansion and liberalization of world trade and toward the improvement of living conditions of the peoples involved in them. The negotiating commitment was conditional upon obtaining necessary domestic negotiating authorizations. This condition recognized the US Congress' limitations on the Administration's current negotiating powers. The declaration specified that the negotiations would be based on mutual benefits entailing global reciprocity and would include trade in both farm and industrial products. Both parties also agreed that special attention should be given to the developing countries during the negotiations.

"The exchange of letters covered both parties' commitments to stock grains and the Community's agreement to temporary reductions in customs duties on some citrus fruits. This exchange of concessions settled some limited but annoying problems which, because of their political repercussions, had caused months of friction, despite the Community's conciliatory moves early in 1971.

"The February 1972 agreement relieved strains which had begun in 1971 in EC-US relations, although it did not settle every problem. The wide divergence of EC-US objectives still demands comprehension and compromise on both sides, which will involve difficult negotiations. Nevertheless, the agreement has loosened the dogmatic rigidity in which the EC-US dialogue had become frozen.

"The will to achieve a détente in trade relations, which the agreement embodies, was confirmed by the spirit in which the debates on monetary problems were held at the September 1972 meeting of the "Group of Twenty" within the International Monetary Fund (IMF).

"At the October 1972 'Summit' meeting of the political leaders of the 'Nine,' the enlarged Community stressed the importance of maintaining a constructive dialogue with the United States. At the same time, it expressed its readiness to open extensive multilateral negotiations on a tight schedule. Replying to the Paris declaration, President Richard M. Nixon welcomed the EC 'commitment to progressive liberalization of tariff and nontariff barriers to trade' and renewed the US Government's support for European unity as a cornerstone of US foreign policy.

"The major general policy options must be kept in sight when reviewing day-to-day disputes between the Community and the United States. Here, the points of friction and strain, already numerous, are increasing with the Community's growth. This trend has been accentuated by the US announced intention of dissociating its political support for European unity from the defense of its economic interests. Never before has the US Administration scrutinized and evaluated so systematically every detail of European policies, their scope, and their possible effects.

"During 1972, US reproaches, interventions, and protests about certain Community policies have multiplied and have been formulated with growing insistence and vigor. The major issues are the common agricultural policy and the Community's association and trade agreements establishing free trade areas and customs unions. In the latter field, the Community's policy toward Mediterranean countries has become the main bone of contention.

"The Community also has grounds for complaint. Protectionist pressures in the United States still exert a powerful political and electoral impact, reflected in 1972 by a series of measures of varying importance tending to curtail imports. Here, mention should be made of the US 'voluntary restraints' on EC steel exports, the strengthening of arrangements giving American goods a privileged position in government procurements, and the increased recourse to antidumping duties. Perhaps partially because of the deterioration of the US external financial position, the US Administration has also encouraged exports artificially by exempting some export income from direct taxation (through the Domestic International Sales Corporation statute) which the Community considers in conflict with the GATT rules.

"The Commission of the European Communities still believes that the reality and importance of the problems underlying this climate of strain and misunderstanding between the Community and the United States do not deserve the political, tactical, or psychological emphasis sometimes put on them. The Commission would like to stress that the fundamental and essential joint interests which are the basis of EC-US relations eclipse the inevitable points of dispute in any healthy relationship, whether between individuals or states."

EUROPEAN COMMUNITY CALENDAR -- MARCH 1973

(All meetings are in Brussels unless otherwise noted.)

March 5-6	Council of Foreign Ministers meets.
March 12-13 or 19-20	Council of Agricultural Ministers meets.
March 12-17	European Parliament meets in Strasbourg.
March 22	Council of Finance Ministers meets.
March 26-28	International European Movement holds conference in Amsterdam on Europe and the United States, entitled "New Roles and Relations in the Next Decade." Several US speakers are included on the agenda.
date unscheduled	Semiannual meeting between US and EC officials.

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