

COMMISSION OF THE EUROPEAN COMMUNITIES

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PREPARATION FOR THE U.N. CONFERENCE ON TRADE AND DEVELOPMENT

(Meeting of the UNCTAD Trade and Development Board
8th - 19th March, 1976)

(Communication from the Commission to the Council)

I. NATURE OF TRADE AND DEVELOPMENT BOARD MEETING

1. The Trade and Development Board meets annually to consider reports from the UNCTAD subsidiary committees, e.g. on Commodities, Manufactures, Invisibles and so on: but a somewhat different perspective has been proposed for the forthcoming meeting, given its preparatory role for the Nairobi Conference. The UNCTAD Secretariat wishes it to have a "pre-negotiating" role, i.e. to define those areas where major difficulties remain and to indicate those where progress appears more possible; indeed the Secretary of the Nairobi Conference has described it "as a dress rehearsal for the Conference".

2. Insofar as documentation is concerned, the UNCTAD Secretariat have promised a series of new sectoral papers on International Financial Co-operation, Manufactures and Semi-Manufactures, Transfer of Technology, the Least Developed, Economic Co-operation between Developing Countries, but it is most unlikely that any of them will be circulated before the beginning of February. However, it is unlikely that they will add much to the documentation already put forward in UNCTAD's various subsidiary groups (and notably on commodities).

3. The TDB will therefore consider the items on the Draft Conference Agenda (TD/B/L429, Rev. 1) on the basis of:

- (a) the ideas already circulated by the Secretariat (see Annex), which are to be brought together in the sectoral papers;
- (b) certain draft resolutions already agreed in or submitted to various Committees;
- (c) any further papers or draft resolutions that flow from the Manila Conference; and
- (d) any further Group B or D draft resolutions that may be put forward.

4. The work of the TDB will be organised on the basis of three main Working Groups: i.e. of a Contact Group of the President to look at Commodities and Financial issues; of a Sub-Group to deal with Manufactures and Semi-Manufactures and with the Transfer of Technology; and of a second Sub-Group to deal with other issues, including the problems of the least developed and of trade between developing countries. These three Working Groups may well establish procedures which will carry over into the Nairobi Conference itself (which is to work under the control of a Bureau of 35, including 10 members from Group B, on the basis of one Committee of the Whole and of a so far unspecified, but limited, number of Working Groups).

II. THE PREPARATION OF COMMUNITY POSITIONS

5. It is even more important at the TDB at this stage, than in the general run of UNCTAD Committees that the Community should speak with one voice; the links between UNCTAD IV and the Dialogue (i.e. CIEC) are and will be close. Against this background the Commission takes the view that the Community should make a short, formal opening statement on the major issues; and a draft will be circulated in the light of Member States views, in discussion of this paper. At the same time the Community must continue to work at UNCTAD with and through the Group B system and it will have an important part to play in determining Group B views on several issues, notably on commodities. Steps are therefore in hand to recall and/or to define Community views on each major issue on the UNCTAD draft Agenda: most will have been prepared explicitly for use in UNCTAD and in the Dialogue and all will have been prepared in close liaison with the complementary requirements of the Dialogue.

6. The major lines of existing Community positions are summarised in the Annex, with an indication of Commission proposals in certain cases, and the following list does no more than indicate, on the basis of the draft TDB and Conference Agenda, where the major issues lie. -

Agenda Items 1 - 7: Procedural.

Agenda Item 8: Commodities

Ever since the Trade and Development Board began work on the preparation of the Integrated Programme, in August 1974, in the light of the call made to it by the U.N. 6th Special Session, the question of commodity trade has been in the forefront of evolving developing country demands (e.g. in the events leading up to and ideas contained in the proposed New International Economic Order). The UNCTAD Secretary-General regards progress here as one of the, if not the, major objective of the Conference. At the Trade and Development Board the Community should be in a position to participate in the discussion of the four points in the Resolution adopted at the December meeting of the Commodities Committee on the objectives of commodity arrangements, the measures to be applied, the products to be covered, and the procedures and timetable to be adopted. A document was sent to the Council on 28th January, 1976 by the Services of the Commission (see SEC(76)281) which sets out certain lines of thought [orientations]. In the context of an alternative, overall approach, the Commission now proposes that the Community should be informed by certain elements in these lines of thought, when at the TDB it addresses itself to these four points in the Resolution and in particular to the list of commodities. The broad lines proposed are set out in the Annex.

Agenda Item 9: Manufactures and Semi-Manufactures

The Community's position on generalised preferences is clear, and the Community Mandate on the Multilateral Trade Negotiations (MTN) has established its position on both tariff and non-tariff barriers. Additional work is now being undertaken on the broader aspects of industrial policy, including adjustment assistance on investment guarantees, and inter alia on restrictive business practices, marketing and shipping. The present position is set out in the Annex.

Agenda Items 10, 11 and 13: Major International Developments; Transfer of Resources; and Least Developed

The Community succeeded in sustaining common positions at the recent meeting of the Committee on Invisibles, and Financing, and Trade, in Geneva, notably on the problem of debt. Community positions now need to be developed on a range of issues, including help for the poorest and least developed, triangular co-operation, and the international monetary situation (see Annex).

Agenda Item 12: Transfer of Technology

On this issue the Community's position is particularly well integrated into Group B's: it remains to be seen whether or not UNCTAD IV can help to bring about a rapprochement between the draft Codes of Conduct of Group B on the one side and of the Group of 77 on the other. The major issues are whether or not the Code should be (i) universal and (ii) mandatory. The Community view is set out in the Annex.

Agenda Items 14 - 16

These relate to economic co-operation between developing countries, and between countries of different social systems, and to institutional questions. There may be some useful if limited steps to take on developing country co-operation: and there may be some scope for trying to insist on a more effective contribution from socialist countries. Insofar as institutions are concerned, the Commission believe that the Community should take its stand at the TDB on the position adopted at the Commodities meeting in December (see Annex).

Agenda Items 17 - 19: Procedural items.]

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In addition to four main papers on Commodities, Manufactures, Financial issues, and the Transfer of Technology, the Commission will be circulating a paper containing relevant trade and aid statistics.

III. COMMUNITY OBJECTIVES AND TACTICS AT THE TRADE AND DEVELOPMENT BOARD

7. Given the evolution of the international debate and given the relatively narrow options open to the Community, the Community's overall objectives at the TDB should be:

- (a) to maintain Community unity on major international development issues within the framework so far as possible of Group B positions;
- (b) to achieve conceptual progress in the direction of an alternative, overall approach to commodity arrangements (possibly leading to a General Declaration at Nairobi) which can point the way for practical steps forward;
- (c) to ensure that the discussion of the other major issues is not only realistic but helpful to work in other fora (e.g. the CIEC, GATT and IMF).

8. In the view of the Commission, Community tactics at the TDB should reflect the fact that whilst the meeting will have a useful role in clarifying issues, it neither will nor should negotiate fixed or final positions. The Community should therefore try to avoid steps which might limit the scope for final bargaining at the Nairobi Conference itself, and should aim rather for the limited and useful results:

- (a) of clarification of the demands of the Group of 77 in the light of Manila;
- (b) of the tabling or where necessary re-tabling of draft resolutions which set out Community/Group B positions in a clear and realistic way; and
- (c) of giving some indication of the Community's conceptual approach to commodity arrangements and of its preparedness [disponibilit e] to analyse the UNCTAD list of 17 commodities according to this approach, as a matter of priority, during the coming year. Whilst beginning with this list the Community would be willing to proceed to an examination of other products of interest for the developing or for the industrialised countries.

9. This means that the Community will not be in a position in Geneva in March to undertake major new initiatives. But in the view of the Commission it is essential for the Community to be able to help every way possible (in Paris and in Geneva) in the definition of a positive Group B position on Commodities, in a manner consistent with the proposals which it has now brought forward. The Commission has set out the line which it believes should be followed, in the Annex: without unveiling the whole of the Community's position prior to Nairobi this should enable the Community, and Group B, to work with the TDB Secretariat and the Group of 77 in preparing the Commodities question for decision at Nairobi. As an absolute minimum the Community must make it clear that it is continuing to give serious thought to an alternative overall approach on which it will be prepared to enter into negotiations at Nairobi.

9bis. In the light of the outcome of the meeting of the Trade and Development Board, for which the present communication has been prepared, the Commission will present a further communication to the Council on the Nairobi Conference itself. This will take account of the results of the Manila meeting of the Group of 77, of the first meetings of the Commissions established within the CIEC, and of the further evolution of Community and Group B positions.

ANNEX

SUMMARY OF COMMUNITY POSITIONS ON MAJOR SECTORS

I. COMMODITIES

Main reference documents:

- UN 3362 (S-VII) - Resolution on Development and International Co-operation (esp.: Part 1).
- TD/B/C1(VIII)CG/CRP3 - Resolution adopted by the Committee on Commodities at its eighth session.
- TD/B/C.1/193 - An integrated programme for commodities (specific proposals for decision and action by governments).
- TD/B/C.1/166 - An integrated programme for commodities (with five supplements on stocks, the Common Fund, multilateral commitments, compensatory finance and trade measures).
- TD/B/C.1/194 - Measures for individual commodities.
- TD/B/C.1/195 - Compensatory financing.
- TD/B/C.1/196 - The Common Fund.
- TD/B/C.1/197 - Measures to expand processing of primary commodities in developing countries.
- S/1320/75 RELEX 40 - UNGA 7th Special Session: the text of the Community's Position Paper.
- I/201/75 (DIAL 6) - Council decision on positions to be adopted in the CIEC.
- S/4/76 (COMER 2) - Outcome of the third part of the eighth session of UNCTAD's Commodities Committee, including Group 77 and Group B papers and Community statements.
- S/1847/75 (COMER 510) - Covering the Interim Report of the OECD's High Level Group on Commodities.
- SEC(76)... - Commodities: the Community's overall alternative approach.

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1. The Community has indicated in UNCTAD that it favours the adoption of an overall, integrated approach, covering (a) measures for the stabilisation of export earnings, and (b) measures were appropriate to improve individual commodity market structures, including consideration of their financial implications, in the context of negotiations between the exporters and importers. The Community indicated at the Commodities Committee in December that it was still studying a number of aspects of its approach; at the TDB in March it will be expected to take up a position on the four elements of this Resolution then adopted, i.e. on the objectives of commodity agreements, on measures, on the list of commodities, and on procedures, including a timetable.

2. The UNCTAD Secretariat has, quite sensibly, said that "unless a substantial measure of prior agreement [can] be reached among the importing and exporting countries concerned, on the fundamental policy issues likely to be useful ..." (TD/B/C.1/193, paragraph 47) no general commitments could be meaningful. The role of the Community must accordingly be to define and, after consultation in OECD and in Group B, to win acceptance in UNCTAD, for its own proposed overall alternative approach on Commodities (SEC(76)... refers) as the basis for this prior agreement; and to begin to do so at the TDB by building on elements of the Group B position on the one hand and of the UNCTAD Secretariat position on the other (since in some respects this is more acceptable than that of the Group of 77).

Objectives: There are two main areas of difficulty.

- (i) The UNCTAD list (in para. 7 of TD/B/C.1/193) which is largely acceptable, nevertheless contains unhelpful references to synthetics, and unacceptable references to the issue of sustaining commodity prices in "real terms", etc. The alternative, overall approach by the Commission could be helpful in as much as it takes note of the long term evolution of the terms of trade, without in any way implying that this should be interfered with by the pricing mechanism; and as already indicated (see SEC(76)2, para. 2) the Services of the Commission will be bringing forward further thoughts in this area.
- (ii) Group B has yet to find a formula on access and supply, which all of its members could accept. The Working Group of the OECD's Trade Committee will be trying to resolve this in

early February. The UNCTAD Secretariat's inclusion of "assurance of access to supplies of primary commodities for importing countries" is preferable to the Group of 77's demand for "... assurances of supplies at stable, preferential prices ... for developing, importing countries" (TD/B/C.1(VIII)/CG/CRP1 - Annex 1, paragraph 6(iii)). The Community should continue to try to build on it.

Measures and Techniques: The list in Group B's initial working paper is reasonably comprehensive but it lacks a convincing framework. The Commission proposes that it should be completed in accordance with the broad lines of the Community's overall approach and that it should be placed more specifically in the context of the kind of examination of individual market structures which is an important part of this approach.

Commodities to be Covered: The Commission have proposed that the Community's overall approach on Commodities should be applied as a matter of priority to the UNCTAD list of 17 during the 12 months after the Nairobi Conference. This should be made clear together with the Community's openness to suggest, or accept the suggestion of, the addition of further commodities of interest to the developing and developed countries which might also be examined, in due course.

Follow-up Procedures and Timetable: The UNCTAD Secretariat has proposed that "some central co-ordinating machinery should be set up" to give impetus to [commodity] negotiations, to assess their progress, and to deal with major policy problems ..." (TD/B/C1/193, paragraph 48). In their Manila paper the Group of 77 pick up the same type of idea and propose that there should either be a special negotiating committee or that the directives of the Commodities Commission should be revised in order to turn it into a body capable of monitoring progress. In its second statement at the December meeting the Community explicitly accepted that "procedures including a timetable should be determined at the 4th UNCTAD", but expressed the view that these should include provision for reviewing progress by means of "one of the Conference's existing bodies.

3. Insofar as finance is concerned the Community should adhere to its position of willingness to consider joint consumer/producer financing, product by product, and to leave as an open question whether or not such financial arrangements as are finally made can/should be the subject of co-ordinated international action. At the Trade and Development Board the Community representatives should therefore seek agreement (a) that the 17 commodities on the UNCTAD list should be examined over the coming year on the basis of the Community's approach to market structures and of the Group B list of objectives and measures, (b) that the Commodities Commission should be nominated as the body to monitor progress and provide technical advice, and (c) that the other questions including finance should be considered at the Nairobi Conference itself.

II. MANUFACTURES AND SEMI-MANUFACTURES

Main reference documents:

- UN 3362 (S-VIII) - Resolution on Development and International Co-operation (esp.: Part 1).
- TD/B/C.5/L.25, Rev. 1 - Draft Group of 77 Resolution submitted to the 7th session of the Special Committee on Preferences.
- TD/B/C.5/34 - Functioning and effects of the Community's GPS.
- TD/B/C.5/36 - The GSP and the Lomé Convention.
- TD/B/C.5/37 - Effects of the MTN on systems of generalised preferences.
- TD/B/C.5/38 - Review of the schemes of generalised preferences of the developed market-economy countries.
- TD/B/C.5/41 - Third general report on the implementation of GPS.
- TD/B/C.2/153 - Overall policy on strengthening and diversifying l.d.c. exports of manufactures and semi-manufactures.
- TD/B/C.2/154 - Recent trends in l.d.c. trade in manufactures and semi-manufactures.

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(i) Tariff and non-tariff obstacles: GPS and MTN

4. At first glance, trade in manufactures appears unlikely to be the subject of major decisions at UNCTAD IV. But there are two elements which nevertheless show that it will figure among the key issues of debate and decision.

- (i) The system of generalised preferences is one of UNCTAD's major achievements, and cannot be ignored: the various schemes introduced by donor countries are marked by differences of design and of impact which would be the subject of comparative study, and on which some reflection on future developments would be useful.
- (ii) The MTN have reached a strategic moment concerning the treatment which the developing countries might expect. The Tokyo Declaration contained certain commitments and excited a number of hopes which the developing countries do believe have yet to be realised, especially insofar as tropical products are concerned.

It seems probable moreover that the discussion of manufactured products will take place in the light of the principles which Mr. Corea recently expressed, following adoption of the Lima Declaration and Plan of Action, and notably the target of increasing l.d.c. industrial capacity to 25% of the world total by 1985.

5. It will be important for the Community to have a clear and constructive position on each of these points in order to contribute effectively and hopefully to influence the debate. And the Community should try to lead other Group B countries to take positive initiatives.

6. Starting with the GPS, the Community should propose the elaboration, within Group B, of a resolution addressed, in particular to the following points:

- extension of preferences beyond 1980;
- better qualitative and quantitative utilisation of the available possibilities;

- improvement and adaptation of the GPS to meet the real needs of the l.d.c.s, taking account both of the least favoured and of those drawing special benefit;
- harmonisation of national schemes;
- participation in complementary measures, notably technical assistance designed to support the GPS.

Most of these have already been discussed with the OECD and agreement should not be difficult to achieve.

7. In the second place, the Community should recall that it intends to go on improving its own scheme and, keeping to 1974 as its reference year for tariff quotas and import ceilings, to bring about a substantial advance in respect of manufactured and semi-finished goods. This choice of the year 1974 will lead to considerably increased import opportunities. At the same time the Community should announce that in order to reinforce the technical assistance measures already taken to secure the better use of its scheme it has decided to intensify its efforts to provide documentation, information and advice on its GPS, which would provide evidence of its determination to go further in recognising its responsibilities towards the l.d.c.s.

8. Insofar as the MTN are concerned, l.d.c. demands in the negotiations have the two major objectives of:

- preserving, consolidating, and improving the GPS; and
- securing special and favourable treatment for their exports.

Whilst underlining the specific character of the MTN, the Community should confirm the intentions expressed in the Tokyo Declaration and give some indication of the way in which they can be implemented in the interests of the l.d.c.s.

- (a) Whilst, in the area of tariffs the GPS should remain strictly an autonomous measure, it would be reasonable to respond in some degree to the l.d.c. wish for greater security of benefit. This could be provided by means of prior consultations, in a form to be determined, in the event of a withdrawal or diminution of preferences.

- (b) Certain steps could also be considered to take account of the effect on the GSP of MFN tariff reductions agreed within the MFN. The size or staggered introduction of such reductions could be considered, in order to maintain the l.d.c.s preferential advantages for an additional period of time.
- (c) On non-tariff obstacles the Community should indicate the readiness to take account of l.d.c. interests by examining the effect of general solutions, which can be adapted to their specific needs.

(ii) Restrictive business practices

9. It can hardly be denied that companies and undertakings can have a prejudicial effect on international trade when they lend themselves to restrictive business practices or abuse their dominant market position. A system of international control should therefore be set up, especially between developed and developing countries.

10. In the light of UNCTAD's work to date, the following measures should in particular be considered:

- (a) The Community could accept the listing of restrictive or improper practices which, in given cases, prejudice developing country trade, provided that the developing countries are required to demonstrate that their trade has been prejudiced if they want to pursue the matter.
- (b) The Community could agree to steps to make available and to distribute published information on Community legislation.

- (e) It is desirable that developing countries which have not yet done so should adopt legislation on the suppression of restrictive business practices which ensures that companies and enterprises made subject to it enjoy a full right of defence.
- (d) The elaboration of guidelines to be followed by companies and enterprises on at least a voluntary basis, should be encouraged. But it has to be recalled that there are fundamental differences of view both on the means by which restrictive business practices should be countered and on the proper role of competition within economic policy as a whole. With this in mind it would probably be better to put the emphasis on procedures for voluntary consultation, on a reciprocal basis, between the competent national and international bodies.

(iii) Industrial Co-operation

11. The Community can justly draw attention to its record not only of trade liberalisation but also to its promotion of industrial co-operation by means of:

- its financial assistance, provided in the Yaounde and Lomé Conventions;
- the role of the European Investment Bank;
- its Trade and Co-operation Agreements (e.g. with India, Sri Lanka, Mexico, ASEAN, Andean Group, etc.);
- its trade promotion activities;
- its continued efforts to develop its social and regional policies;
- its promotion of high technology Community industries that do not compete with the l.d.c.s.

The consideration of further steps, including those discussed in UNIDO, will be undertaken within the CIEC; but the various points at issue will also arise in UNCTAD where the Community will need to be in a

position to reply, if only defensively. The Community could therefore associate itself with the suggestion in the 77's Manila document that increased co-operation between UNCTAD and UNIDO could lead to a more rational institutional structure. If effected this could facilitate discussion of proposals for a global, regional, and sectoral system of international industrial co-ordination.

III. RECENT INTERNATIONAL TRENDS IN THE SPHERES OF TRADE, MONETARY
CO-OPERATION AND DEVELOPMENT

12. There could be attempts at UNCTAD to launch a full-scale discussion of the New International Economic Order under this item. At a later stage, the Commission will therefore try to summarise the stages that have actually been reached in the IMN, in international monetary reform, and in the development field.

IV. FINANCIAL ASPECTS

13. The points which will be raised in UNCTAD in connection with the transfer of resources are much the same as those which will be discussed at the Conference on International Economic Cooperation (CIEC). Consequently, the current discussions to work out a Community position for the CIEC can at the same time serve to clarify the line which the Community is to take at the next meeting of the Trade and Development Board as well as at the 4th Conference.

14. What the Community should try to do at both these Conferences is to see that more resources are transferred and that the terms of aid and the geographical allocation of this aid are improved. The question of the developing countries' foreign indebtedness also deserves special attention.

(i) As regards increasing resources, the most important thing to do is to reassert the Community's determination to achieve a substantial increase in real terms of official development aid (ODA), and the position it adopted at the United Nations 7th Special Session on the target of 0.7%. In practical terms this means pressing not only for greater bilateral efforts but also for political incentives to direct the various multilateral and regional initiatives in the field of aid (IDA, IBRD, Trust Fund, etc.). In addition, and especially in view of the present and foreseeable limitations of budgetary resources, the capital markets should be encouraged to play a more active part in development financing. This could involve in particular promoting direct investment, access to the capital markets, and setting up an Investment Trust Fund.

(ii) It is becoming more and more apparent that the scarce resources of ODA should be concentrated on the poorest of the developing countries, and the aim should therefore be to see that the allocation of aid corresponds more closely to the distribution of population in the countries of the third world than in the past. This aim could be

clearly stated either by adopting a target figure or by proclaiming a common principle.

(iii) As regards improving the terms of aid, the Community could aim to see that the 1972 Recommendation of the OECD's Development Aid Committee (DAC) is redefined and, more specifically, that the meeting arrives at a more rigorous definition of ODA, that the grant element of aid is increased, and that the specific targets which are set at present for the grant element for the least advanced are applied in future to all of the poorest developing countries without exception.

(iv) As regards the question of the developing countries' foreign indebtedness, the Member States of the Community should agree, at UNCTAD IV, that a general conference on the debt question should be convened. A number of general guidelines for international cooperation over indebtedness could be worked out in the restricted framework of the "Dialogue". These guidelines should stress the importance of a preventive policy on the terms of aid to solvency and in particular of increasing ODA, and plans could be laid for an early warning system so that action could be taken before the extent of a country's indebtedness became critical. These guidelines should also include rules on what should be done in the event of difficulties of payment. These rules should stress the need to treat each case on its own merits and to take a greater account than in the past of considerations of development policy when debts have to be rescheduled.

15. Generally speaking, the Community should endeavour to speed up the OPEC countries' integration into the international system of cooperation by considering more than the mere recycling of petrodollars or three-cornered cooperation.

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15(a) to be inserted at the end of subsection IV (Financial Aspects)

15(a). As regards monetary questions, the Community should, irrespective of the survey of the future development of the international monetary system which will be undertaken later (see 12.), persuade the developing countries, and especially those which are not oil-producers, to scrutinize their present and future balance of payments situation. This can only be done on the basis of an assessment of the worldwide economic situation and outlook on the one hand, and of the decisions recently taken in favour of the developing countries by the IMF and IBRD on the other.

In any event, it should be made quite clear that any monetary approach to the developing countries' problems must be discussed in the appropriate international organizations.

V. TRANSFER OF TECHNOLOGY

Main reference documents:

UNCTAD Resolution 39 (III)

UN Resolution 3362 (S-VIII), Part III

UNCTAD Committee on the Transfer of Technology Resolution 2 (I)
(covering submission to the TDB of the 3 drafts of the Code).

TD/B/C... - 1975 UNCTAD Secretariat Report

TD/B/C.6/1 - Report of the Intergovernmental Group (May 1975):
plus supporting papers TD/B/C.6/2-8.

TD/B/C.6/AC.1/L.5 - Revised Group B draft outline Code of Conduct.

TD/B/C.6/14 - Structure of outline Code, prepared by the Group of Experts

A/Conf./62/WP8 - Law of the Sea Conference; proposed draft
Convention.

Commission document de travail, 1st July, 1975 for the UNCTAD
Trade Committee.

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16. UNCTAD Resolution 39 (III), dated July 1974, invited UNCTAD to consider the question of an international Code of Conduct on the transfer of technology. First the Group of 77 and subsequently Group B prepared draft outlines to such a Code and these were considered at the meeting of the "Group of Experts" which met in Geneva in May 1975 (TD/B/C.6/1 refers) and again last November/December when UNCTAD's Committee on the Transfer of Technology also met. In April/May 1975 the third session of the Third Law of the Sea Conference considered the marine aspects of the transfer of technology; and in December last the World Intellectual Property Organisation held its second meeting on the revision of the Paris Convention. UN Resolution 3362 stated that "all States should co-operate in evolving an international Code of Conduct for the transfer of technology corresponding in particular to the special needs of the developing countries" and asked for work to be continued within UNCTAD "in time for decisions to be reached at the 4th session of the Conference, including a decision on the legal character of such a Code ...". The Chief of UNCTAD's

Transfer of Technology Division appeared before WIPO's December Conference to underline his view that UNCTAD IV should be able to play a major part in securing agreement on the draft Code and of the revision of the Paris Convention (which deals with patent law, trademarks, business names, geographical descriptions). And the same hope is expressed in the document prepared for Manila on behalf of the Group of 77 (77/MM(III)1/Rev. 1, Annex III, pp. 2 and 3).

17. During the preparations for UNCTAD IV it will be necessary to keep carefully in mind the interrelationships between the several international organisations involved. It is possible that WIPO will be having a further meeting in March, no doubt with the intention of keeping discussion of the Paris Convention within its more expert context rather than letting it be discussed in the more political arena of UNCTAD). The 4th session of the Third Law of the Sea Conference will also take place in New York from 15th March to 7th May, on the basis of the Joint Informal Single Negotiating Text, which deals inter alia with the transfer of technology. Against this background our objective in UNCTAD IV will be to concentrate on the question of the draft Code of Conduct, on the basis of the Group B draft and within the spirit of U.N. Resolution 3362, and keeping the other international discussions very much in mind.

18. The present situation on the Code of Conduct is that both the Group of 77 and Group B have put forward drafts:

- the draft of the Group of 77 envisages a Code that would be binding under international law, would be of universal application and would contain extremely detailed and limitative rules, particularly on restrictive business practices;
- the Group B draft on the other hand takes the form of a non-binding Code which would be universally applied both to originating and recipient governments and undertakings and which would contain a set of general and flexible rules. Group B believe that given the legal and economic context of its members and the variety and complexity of the transactions that are undertaken, only a code of this type could be acceptable and applicable in practice.

Although they have not put forward a draft of their own, Group D have indicated a preference for the Group B text. Independently of both drafts, experts of the three groups have agreed on a common outline of the future Code whilst recognising that their somewhat neutral chapter headings in no way indicate decisions on its legal basis and on its content.

19. At the present time the Community's position is identical with that of Group B and the objective at UNCTAD IV must be to secure the decision required under U.N. Resolution 3362 on the legal character of the Code, on the basis of the Group B draft. In their Manila document the Group of 77 have taken note of U.N. Resolution 3362 and of the report of the Expert Group but add little (save e.g. on their "brain drain") to the demands which they already put forward in their draft. The negotiations at UNCTAD IV will therefore take place on the basis of conflicting proposals which will make agreement difficult.

20. In the view of the Commission the following are the main points to be discussed at UNCTAD IV beginning at the TDB in March.

(i) Tactics

In view of the positions adopted by the Community at Lima and at New York, the Community should do its best to reach a compromise which nevertheless reflects its major concerns (as summarised above). It might indicate that the procedures so far adopted, (i.e. of working through one Expert Group) seem somewhat inadequate and that a larger number of Groups to deal with specialised aspects may be required. The Group of 77 have put forward certain proposals as to how they believe the Code should be implemented, but have not so far shown clearly enough how its concept of a binding Code could be put into practice. Moreover there are a number of elements in the 77's draft which would appear to be not susceptible to regulation by international convention.

(ii) Possible lines of compromise

It would be apt to invite a group of legal experts to examine the various possible formulae which might satisfy

Resolution 3362 without having to arrive at a single, definitive point of view at this stage, the following two formulae might possibly be examined:

- (a) that UNCTAD IV should leave it open to the 77 to adopt the Code under their national law, and to Group B countries (? and Group D) to adopt it as guidelines;
- (b) that UNCTAD IV should decide to make the Code the subject of a U.N. General Assembly Resolution.

(iii) Content and limitation on possible concessions

If Group B is able to negotiate on some other basis than the 77's draft it will probably be necessary to make certain concessions: these might be found in Chapter VI on International Co-operation and Special Measures for the Developing Countries. The Community should certainly determine the limits within which concessions might be made with other Group B countries, in advance of Nairobi

(iv) Consequences for the Community if decisions were to be taken on a binding Code

It would be necessary to refer any such unilateral decision by the 77 to the legal experts of the Community's Member States. Strictly speaking only a properly signed and ratified treaty would be binding under international law, and the Community could find itself forced either to accept unsatisfactory decisions or to take responsibility for a failure of the negotiations if it allowed itself to be drawn into discussion of the draft text of such a treaty. If on the other hand the Code were to be adopted by means, for example of a General Assembly Resolution involving neither signature nor ratification, the extent to which the 77 could maintain that it is binding would depend on the degree of support which Group B countries felt able to give to it (i.e. whether they voted for or against it, or abstained). A treaty which the Community felt able to

accept would no doubt win certain political advantages; but in the view of the Commission the alternative of a General Assembly Resolution appears preferable, in the light of the complexities of the subject being discussed, the improbability of there being a compromise reflecting most of the Group B points, and the greater flexibility it will give.

VI. INSTITUTIONS

21. Proposals for the creation of substantial new machinery should be resisted. It would not be appropriate to consider far reaching institutional changes whilst the MTN are in progress in the GATT and whilst the work and role of the CIEC have yet to be defined. In their Manila documentation the Group of 77 gave general support to the definition of a larger role for UNCTAD in evolving the proposed New International Order, but came to no specific conclusions.

22. The Community might accept, at this stage, the redefinition of the role of the Committee on Commodities as set out under I above.
