

## NATIONAL TREATMENT

### ISSUE

If Canadian subsidiaries are to remain competitive within the EC market, they must have status equal to that of EC-based firms and not face discriminatory regulations because of their non-EC origin. National treatment is the term used to denote a situation where a foreign subsidiary is given the same privileges as a domestic firm in the home market.

### BACKGROUND

The basis of the EC's policy on national treatment is found in the 1957 Treaty of Rome (Articles 52-58), stating that EC firms will have the same rights, throughout the Community, as national firms have in their home market. These articles ensure the application of this principle to the right of establishment and the ability of EC firms to set up operations in other EC countries. Whether or not these articles extend the principle of national treatment to subsidiaries owned by nationals of third countries remains unclear. This ambiguity has led to some concern, arising from initially discriminatory draft directives, that 1992 would compromise the principle of national treatment for subsidiaries from outside the EC.

International observance of the principle of national treatment by the industrialized countries stems from their commitment to follow the codes of the Organization of Economic Cooperation and Development, OECD. While OECD codes are binding on member states, there is no formal dispute resolution mechanism or disciplinary authority. However, the OECD, as an organization, has still been fairly effective in both monitoring and limiting the adoption of regulations which discriminate against OECD members; an unfavourable report by the OECD prefaced a redrafting of the EC's Second Banking Directive.

### EC POSITION

While the EC accepts the principle of national treatment, Member States' regulations have at times undermined the intentions of the Commission. The gradual development of Community regulations as a result of 1992 should ensure the adherence by all EC Member States to this principle.

### CANADIAN POSITION

Canada encourages the development of EC-wide regulations that apply the principle of national treatment and thus ensure that no Member State would discriminate against Canadian subsidiaries on the basis of their place of origin. Non-discriminatory treatment would help to ensure access for Canadian business.