

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES

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RESTRICTIVE BUSINESS PRACTICES

Statement made by Mr. W. Thagaard of the Norwegian Delegation on 8 December 1954

In document L/283 the Danish, Norwegian and Swedish delegations have stated as their opinion that the CONTRACTING PARTIES should consider the inclusion in the revised Agreement of provisions with regard to restrictive business practices. As a basis for the discussions on this question the delegations have in the same document submitted the provisions proposed by an ad hoc committee to the Economic and Social Council.

I would like to take this opportunity to explain more closely the view of the Norwegian delegation on this matter.

I

As stated in the document submitted by the Scandinavian delegations it is generally recognized that the activities of international trusts and cartels may hamper the expansion of international trade and in other ways interfere with the objectives of the GATT. Powerful trusts and cartels may break down or prevent competition from domestic producers in importing countries or cut off competition from other exporting countries by the use of dumping, exclusive-agreements or other unfair trade practices. On the other hand, when a trust or a cartel has a dominating influence on a market, it may charge inequitably high prices or excessive profits. Further, trusts and cartels may discriminate with regard to prices or terms of sales between different countries or different groups of enterprises. They may divide markets, limit production and delay technological development by preventing application of inventions. In these and in various other ways international trusts and cartels may seriously hamper both economic development in the different countries and the expansion of world trade.

I stress the word may. I will not maintain that international trusts and cartels always are to blame. I am only stating that such organizations may cause great injuries to individual countries and to international trade, and I add that it is a fact that they have in many cases done much harm. That is the reason why it is highly important to establish control of trusts and cartels, operating in foreign trade.

II

In the Preparatory Committee which was appointed by the Economic and Social Council in February 1946 to prepare the establishment of an international trade organization it was generally agreed that the Charter of the organization should include provisions with regard to restrictive business practices. The basic question was whether such practices should be generally prohibited as originally proposed by the United States of America, or if the Organization should counteract only such restrictive business practices which had harmful effects in respect to the objectives of the organization. Recommendations were made in accordance with the latter view. With some minor alterations the provisions proposed by the Preparatory Committee were accepted by the Havana Conference. The provisions concerning restrictive business practices are contained in Chapter V of the Havana Charter.

Pending the establishment of the proposed international trade organization the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade have provisionally carried out several of its functions. However, the CONTRACTING PARTIES have not generally dealt with questions concerning trusts and cartels. There have been good reasons for this.

The functions of the CONTRACTING PARTIES have been based on a temporary agreement without an adequate organization to deal with such matters as control of restrictive business practices. However, we are now going to establish an organization and therefore it is now time for inclusion in the General Agreement of provisions with regard to control of restrictive business practices. This control is closely connected with the present functions of the GATT. I shall illustrate this by an example:

In Article VI, paragraph 1, it is stated that dumping is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retard the establishment of a domestic industry. However, the only means which may be applied in order to offset or prevent dumping is the imposition of anti-dumping duties. Such measures are not sufficient. It is very difficult to impose anti-dumping duties. It is necessary to collect a lot of information, the decisions are often complicated and questionable and may provoke protests from the exporting country. Therefore most of the contracting parties have refrained from imposing anti-dumping duties, or have done it only in exceptional cases.

Dumping which is not fostered by governmental export subsidies are mainly practised by trusts and cartels. If we want to fight dumping successfully we should in the first place strike at these dumping practices. That can be done by an effective control of international trusts and cartels. In this way we may have joint reactions from the CONTRACTING PARTIES instead of or as a supplement to anti-dumping duties which may be imposed by some countries.

This is only one example. I shall not go further into details but would like to add some general remarks.

The aim which we particularly have in mind by the revision of the General Agreement is to remove as far as possible the barriers to trade between the different countries. We are discussing the limitation of quantitative restrictions, the lowering of tariffs and the doing away with other obstacles to trade. I hope that we may make some progress in our work with these problems. However, we should be aware of the fact that the removal of restrictions imposed by governments may be frustrated by actions taken by international trusts and cartels. I refer to what I have already said with regard to trust - and cartel - practices which limit access to markets or in other ways hamper the expansion of international trade. To counteract this we should establish control of international trusts and cartels at the same time as we take steps to limit governmental restrictions on foreign trade.

III

In the Working Plenaries the representatives of the United Kingdom and of the United States stated that the question of international control of restrictive business practices presently would be brought before the United Nations. Therefore it was premature now to bring this matter within the scope of the Agreement. I find it necessary to comment on that point of view.

As mentioned in document L/283, the Economic and Social Council in a resolution adopted on 13 September 1951, stressed the importance of international control of restrictive business practices. At the same time the Council adopted an ad hoc committee to prepare a new proposal with regard to this matter. The committee submitted its report in February 1953. With a few slight alterations the proposed provisions with regard to the control are the same as those in Chapter V of the Havana Charter. Owing to its restricted mandate the committee did not make recommendations with respect to the organization which should be charged with the control. In its resolution the Economic and Social Council had instructed the Secretary-General of the United Nations to seek from any appropriate intergovernmental body or agency their views as to the organization which could most appropriately be charged with this task and in the light of these views make a report and recommendation at a later session of the Council.

It is to be appreciated that the Economic and Social Council in its resolution stressed the importance of an international control of restrictive business practices. On the other hand, it may be questioned whether it was a suitable line of action to appoint an ad hoc committee to prepare a new proposal on this matter. In my opinion it would have been better if the Council had put the case before the GATT or at any rate had referred the report from the ad hoc committee to GATT without delay. GATT is the only international body which may suitably be charged with control of restrictive business practices. As I have mentioned before, this function is closely connected with the present functions of GATT.

Up till now, more than three years after the Economic and Social Council adopted its resolution concerning restrictive business practices and almost two years after the ad hoc committee submitted its report, the Council has not referred the matter to GATT, nor asked the opinion of the CONTRACTING PARTIES with respect to the establishment of the control. As far as I can see it might take considerable time before the Economic and Social Council and the General Assembly of the United Nations would be able to deal with this matter, if they will have to wait for the report from the Secretary-General and this report should be made after the Secretary-General has consulted with different intergovernmental bodies.

Under the present circumstances the Norwegian delegation is of the opinion that the CONTRACTING PARTIES should not postpone the decision with respect to the control of restrictive business practices until the Economic and Social Council and the General Assembly of the United Nations have dealt with the question. The General Agreement is a separate Agreement. It is not for the Economic and Social Council or the General Assembly of the United Nations to instruct the CONTRACTING PARTIES with respect to the scope or the provisions of the Agreement. It is up to the CONTRACTING PARTIES themselves to decide on these questions.

In this connexion I would like to point to the discussions in this Working Party concerning the commodity trade. In this field the Economic and Social Council has established a special advisory commission to assist the interested countries. Nevertheless several delegations have proposed that the CONTRACTING PARTIES in one way or another should take care of this matter. Under these circumstances I may be allowed to ask, Mr. Chairman: If in this case the existence of a United Nations agency does not prevent the CONTRACTING PARTIES from dealing with the same matter, why should the CONTRACTING PARTIES be prevented from charging themselves with the control of international trusts and cartels? A task which no other international body has undertaken and which is closely connected with the present functions of the GATT.

IV

The Norwegian delegation would not be opposed to a postponement of the decision with regard to control of restrictive business practices, if it would only be a postponement for a short time. However, I am afraid that that would not be the case.

It is now that we are dealing with the revision of the General Agreement. At the end of this Session the CONTRACTING PARTIES are to agree on the establishment of an Organization and a new General Agreement. If the decision with respect to control of international trusts and cartels should be postponed it may be for many years. Everybody knows that it takes a long time to agree on substantial revisions of such agreements, and to have the new agreements ratified by the national assemblies in the respective countries.

I am aware of the possibility of agreeing now on a clause enabling the new Organization to undertake the administration of new functions. I do not know whether such a clause will be adopted, nor how it will be drafted. At any rate the clause would not involve any extension of the scope of the General Agreement. An extension would require either a new revision of the General Agreement or a special additional agreement. The enabling clause would only have reference to the administration of new functions, agreed upon in such manner.

In this connexion I would like to point out that an agreement with respect to control of international trusts and cartels necessarily must be general in character. If some of the contracting parties, especially some of the greater countries, should stay outside, it is not likely that the other contracting parties would wish to put the trusts and cartels operating from their territories under international supervision, while trusts and cartels in other countries should not be kept under control. A partial supervision would also be difficult to carry out, as many of the international trusts and cartels are based on agreements between enterprises in different countries.

V

I come now to the conclusion of this lengthy statement, Mr. Chairman.

On behalf of the Norwegian delegation I propose that necessary provisions with regard to control of restrictive business practices should be included in the revised General Agreement. Further I propose that a special sub-group should be appointed to make recommendations with regard to such provisions.