

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## RESTRICTIVE BUSINESS PRACTICES

Statement made by the German Delegation  
on 8 December 1954.

The German delegation would like to refer to the statement made by the Federal Minister for Economic Affairs, Prof. Erhard, at the Plenary Meeting on 9 November 1954, in which the Minister declared that it would be desirable to agree that all international cartel agreements should be notified to the GATT and that this Organization should eliminate the possible harmful effects of restrictive business practices.

In view of this objective, the German delegation submitted proposals in Document L/261/Add. 1, of 12 November 1954, designed to provide, within the framework of the GATT, an approach towards solving the problem of eliminating such effects on international trade as result from restrictive business practices. The main features of those proposals are based on Chapter V of the Havana Charter and on the proposals made by the Ad Hoc Committee on Restrictive Business Practices to the Economic and Social Council of the United Nations.

The German delegation believes that the treatment of this problem is inseparably connected with the obligation assumed by the contracting parties to promote their relations in the field of trade and economic endeavour, for instance, by eliminating quantitative restrictions and discriminatory treatment, since the contracting parties' efforts to reduce customs tariffs and other barriers to trade and, by eliminating discriminatory treatment in the field of international trade, to achieve the objectives of GATT, might be frustrated or circumvented by restrictive business practices of interested economic circles.

The provisions of the Havana Charter aiming at the elimination of restrictive business practices have not been put into effect, and the proposals which the Ad Hoc Committee to the Economic and Social Council submitted to the General Assembly of the United Nations in April 1953, have hitherto not been

adopted by the United Nations. Whilst provision has been made for a discussion of the Ad Hoc Committee's proposals in the General Assembly of the United Nations in Spring 1955, it is, however, understood that only very few of the United Nations' members have so far transmitted their comments on the proposals; whether the discussions in Spring 1955 will result in the adoption of the proposals by the United Nations must, therefore, be considered questionable.

Even in the more limited frame of the Council of Europe it has so far not been possible to find a solution to this problem. Although the Council of Europe, in January 1951, actually prepared a draft European Convention for the Control of International Cartels, after consulting with the Secretariat of ICITO, that draft was not adopted, in view of the establishment of the Ad Hoc Committee to the United Nations' Economic and Social Council.

The development of the various above mentioned proposals shows, on the one hand, that those members of the United Nations which are contracting parties to the GATT and, in some cases, also members of the Council of Europe, agree that the effect on international trade which is caused by restrictive business practices should be eliminated by appropriate measures. On the other hand, the development reflects the fact that the envisaged measures could not be implemented owing to the complexity of the problem and to the difficulties evidently involved, due to the differences in the provisions of national legislation, in the establishment of an institution charged with eliminating harmful business practices.

With the strengthening of GATT, the German delegation thinks that the time has come to create a basis within the framework of the General Agreement for the realization of the objectives embodied in the above mentioned proposals. That conviction has been strengthened by a resolution adopted by the Consultative Assembly of the Council of Europe (Document No. 309; 27th Meeting of the Consultative Assembly of the Council of Europe) in which a large majority of the member countries of the Council of Europe expressed the view that the proposals made by the Ad Hoc Committee to the United Nations' Economic and Social Council should be implemented within the framework of the GATT.

In view of the difficulties involved in the establishment, at an international level, of an institution to be charged with eliminating restrictive business practices, the German delegation felt that it would, for the beginning, be advisable to avoid the creation of a special institution or charging the CONTRACTING PARTIES with the elimination of harmful business practices. Therefore, the German proposal leaves it, in principle, to the contracting parties to decide by means of consultations whether existing restrictive business practices have harmful effects and whether ways and means can be found, in the scope of national legislation, to eliminate such harmful effects by mutual agreement. There is no doubt that such a procedure has the disadvantage of being but an imperfect method of modifying or eliminating restrictive business practices. The German

delegation, however, feels that it does constitute a possibility of gaining experience and thus of taking a step forward towards an ultimate and more effective solution of the problem.

The German delegation would like to suggest that the detailed discussion of these proposals be left to a special working party which might examine them as to their advisability and practicability and submit to the CONTRACTING PARTIES definite proposals, if possible during the current session.