

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/303

5 January 1955

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DISCRIMINATION IN TRANSPORT INSURANCE

Note by the Executive Secretary

1. At the Eighth Session, on the basis of a resolution by the Economic and Social Council of the United Nations (L/94), the CONTRACTING PARTIES gave preliminary consideration to the question of discrimination in transport insurance, and decided to instruct the Executive Secretary to prepare a report on the issues involved for presentation to the Ninth Session. In preparing this report the Executive Secretary made an enquiry, both among the contracting parties and, through the courtesy of the Secretary-General of the United Nations, among those members of the United Nations which are not parties to the General Agreement. Thirty-six governments in all responded to the enquiry, most of them replying to a questionnaire containing specific questions (L/204). In addition, the secretariat was able to obtain information from other sources, which covers ten other countries. The present paper reflects the data gathered from all sources.

2. In its resolution of April 1953, the Economic and Social Council also instructed the Secretary-General to bring the relevant material to the notice of the International Monetary Fund "with a view to examination by the Fund of the possibility of achieving relaxation of exchange controls as applied to transport insurance" (see L/94). Accordingly, the Fund has made a study of the question mainly on the basis of the data gathered and forwarded to it by this secretariat. A letter dated 17 December 1954 from the Fund to the United Nations on this subject is annexed.

Analysis of the problem

3. Some of the difficulty in obtaining the information required has probably arisen from differences in interpretation of the term "discrimination". There is little evidence of discrimination in the sense in which the term is used in the General Agreement - that is, discrimination as among foreign countries. On the other hand, governments quite commonly distinguish between domestic insurance companies and the insurance companies of foreign countries. It should be kept in mind in reading the following analysis that the term "discrimination" is used in the sense of not according national treatment to foreign companies, and not in the sense of failure to grant most-favoured-nation treatment.

4. Another source of confusion has been the failure of many governments supplying information to distinguish between the effects on foreign trade and the effects on the insurance business. While many practices have been revealed that place foreign insurance companies at a disadvantage as compared with local companies in underwriting foreign shipments, comparatively few of the replies received have attempted to appraise the adverse effect, if any, of these practices on export or import trade. There is a considerable body of evidence to lead to the conclusion that practices which restrict foreign traders in their choice of insurance companies tend to increase the cost of insurance and to interfere with normal methods of conducting foreign trade, but specific information on the order of magnitude of these increased costs or the effect of this kind of interference is generally lacking.

5. The enquiry into the effects of discrimination has also been made more difficult by the lack of any objective criterion for distinguishing between those regulations which are designed to protect domestic insurance companies against competition and those which are necessary for the protection of the purchaser of insurance. Most countries establish financial and other standards with which an insurance company, whether domestic or foreign, must comply before it is permitted to do business within the jurisdiction of the country concerned. In some countries, stricter regulations are applied to foreign companies than to domestic companies. It would appear that some of these distinctions are justified by the fact that the assets of the domestic companies are more readily accessible in the event of default or litigation, though it would appear that the regulations applying to foreign companies in some cases are unnecessarily severe and designed to have a protective effect.

Nature and extent of discrimination

6. In order to establish the basic facts, governments were requested by the questionnaire to supply information on:

- (a) whether residents in their countries are restricted in their choice of insurance companies when insuring the international transportation of goods, and
- (b) under what conditions foreign insurance companies are permitted to conduct transport insurance business in their territory.

The available information shows that a number of governments on which information was obtained through the questionnaire or otherwise (five contracting parties and four non-contracting parties out of forty-six countries) require that the risks in international transport insurance for the account of residents may only be covered by policies issued by national insurance companies or foreign insurance companies authorized to do business

in the national territory. In some of these cases, these requirements are reinforced through exchange controls. In certain cases, exchange restrictions include a requirement that imports be contracted on either an f.o.b. or a c. and f. basis. This, of course, means that the insurance must be purchased by the importer. Finally, five countries which do not otherwise discriminate (four of them contracting parties) subject insurance policies contracted with foreign companies to more severe taxation than those contracted with domestic companies.

7. Most countries which replied answered the second question by acknowledging that foreign insurance companies must register in order to do business in their territories. But the treatment accorded to foreign companies or the requirements imposed on them were said in most cases to be the same as those for domestic concerns. A number of countries, however, apply special regulations to foreign companies for the protection of the insurance buyer. These include the requirement of specified deposits with designated banks and institutions and more detailed financial information than is required of domestic companies. In at least two countries, permission for foreign insurance companies to do business is granted only to companies of countries which accord the same privilege to the nationals of the country concerned. In only one country replying to the questionnaire were these provisions such as clearly to show an intention to protect domestic insurance companies against competition. In this case, the government expressly retains discretion to refuse authorization, even when the requirements are complied with by a foreign company, and no foreign company has been authorized to operate in that country in recent years.

8. To sum up the above, it would appear, based primarily on information submitted by governments concerning their own regulations, that fourteen out of forty-six governments practise discrimination either by limiting the ability of their nationals to purchase insurance from companies of their own choosing or by discriminatory taxation. Furthermore, of the remaining thirty-two countries, one apparently discriminates against foreign insurance companies by preventing them from doing business in the national territory. It is impossible, however, to be certain concerning the rest that there is not disguised discrimination through administrative action. Of those countries which did not discriminate, however, two had, at the time the information was obtained, pending legislation which would introduce discrimination, and one had pending legislation which might result in discrimination.

Effects of discrimination

9. Governments were also asked whether their trade had been adversely affected by discrimination in the legislation or regulations of other countries. In replying to this question, few governments made any clear distinction between the effects on their merchandise trade and the effects on the business of their insurance companies. A number of governments replied that discriminatory legislation or regulations in other countries were adversely affecting their

business interests, but only a small number related the results to their export trade. It was pointed out by some, however, that discriminatory practices interfere with the established customs of trade, such as the type of contract customarily used. It was also pointed out that some countries which do not discriminate against the placement of marine insurance with foreign companies do require local insurance of the goods after they have entered the national jurisdiction, and thus interfere with the practice of insuring goods from warehouse to warehouse. Others pointed out that the shipper who is required to place insurance with a company not of his own choosing is sometimes forced to increase his insurance costs by duplicating the insurance with a company in his own country, or by purchasing contingency insurance in order to obtain adequate protection. The few replies which claimed an adverse effect on their trade emphasized either that the cost of imported goods has been increased by discrimination or that trade is made more difficult because traders are forced to abandon their usual methods of doing business and have lost the right to choose the type of contract best suited to the circumstances. On the other hand, a large majority of the countries replying to the questionnaire were evidently not aware of any adverse effects on their trade.

Proposals for international action

10. In the questionnaire governments were asked if they had proposals to make regarding international action. In reply certain governments thought that no action should be taken, one of them pointing out that any action to remove direct discrimination in transport insurance might conceivably lead to an increase in other forms of protectionist measures, such as discriminatory taxes and restrictions on profit remittances. Among the other countries replying to the enquiry, several indicated that they would welcome or support international action. It was proposed by some of them that the CONTRACTING PARTIES should adopt a resolution or declaration condemning such measures and urging governments not to apply them, or that they should sponsor an international convention open for signature by all governments. One government proposed that the CONTRACTING PARTIES should consider during the Review ways in which this objective might be achieved. The majority of the countries replying, however, made no proposals for international action.

11. The International Chamber of Commerce, chiefly upon whose instigation the various resolutions of the United Nations on this subject were adopted, continues to pay attention to this problem. In October 1954, its General Transport Commission discussed further the question of promoting international action for the elimination of discrimination in marine insurance, but reached no conclusion. The International Union of Marine Insurance, through its Freedom of Insurance Committee, supplied the secretariat with certain factual information which was taken into account in the preparation of the present paper. The Committee also transmitted the text of a clause which it formulated and proposed for international adoption, as follows:

"The High Contracting Parties undertake not to hinder or prevent persons or corporations within their countries and territories from effecting, either directly or through intermediaries, contracts for the transport insurance of goods with any insurers of any other High Contracting Party; the transfers necessary for payments under such contracts, and the exercise of all rights arising therefrom, shall be free from any restrictions whatsoever."

Conclusions

12. From the above it appears (a) that the discriminatory practices engaged in by certain countries clearly affect the interests of the insurance business in other countries, and (b) that there is some prima facie evidence of harmful effects of these practices on international trade. The evidence would seem to be sufficient to justify the CONTRACTING PARTIES pursuing the matter, which is not within the competence of any other international organization. It is, however, not yet sufficiently conclusive to warrant action at this stage such as the drafting of an international convention or any amendment of the Agreement. It is therefore suggested that this problem be retained on the agenda and should be dealt with by the CONTRACTING PARTIES at their Tenth Session.

13. If this proposal is accepted governments should in the meantime give consideration to the question of the real effects of such discrimination on their trade so as to form an opinion as to the kind of international measure required. The information available at present does not indicate clearly the extent in quantitative terms to which the trade of the countries of the world has suffered from these discriminatory practices. Governments might therefore wish to consult the insurance and commercial interests in their countries so as to prepare for a fruitful discussion when the matter is taken up again at the next Session.

ANNEX

Letter, dated 17 December 1954, from the
International Monetary Fund to the United Nations

Dear Mr. Georges-Picot,

I write with further reference to your letter of 27 April 1953, and subsequent correspondence (Ref. ECA 121/010) on the subject of discrimination in transport insurance.

The Fund has given careful consideration to the report by the Secretary-General (E/CN.2/139, 12/23/52) and to ECOSOC Resolution 468 (XV) H (E/2419, 5/12/53) and, in accordance with paragraph 2(b) of this Resolution, has considered in particular "the possibility of achieving relaxation of exchange controls as applied to transport insurance."

The Fund has carefully reviewed all available information, covering some forty countries, including that submitted to the CONTRACTING PARTIES to the GATT. On the basis of this information, the Fund concludes that only very few countries use their exchange control machinery so as to restrict specifically the making of payments to foreign insurers in respect of transport insurance for the purpose of conserving their foreign exchange resources. About one-fourth of the countries reviewed, however, have legislation which protects their domestic insurance industry, and which precludes their residents from entering into transport insurance contracts with foreign insurers or with companies not authorized to operate in the national territory. Accordingly, these countries refuse to make exchange available for payments in respect of unauthorized insurance contracts.

It will be appreciated that the Fund, in discussing with a member country the application of its exchange system, considers with the member how restriction and discrimination are applied in its territory to the various categories of transactions involving commodities and services. Moreover, the Fund, in accordance with its purposes, is concerned to promote and encourage the lessening of restrictions on all current international payments and, whenever it deems the situation appropriate, urges individual member countries to relax exchange restrictions, including those placed on making payments abroad in respect of transport insurance.

I would like to add that, should any further information on this subject be received to affect significantly the remarks made above, the Fund will be pleased to transmit such information to you.

Sincerely yours,

H. Merle Cochran
Acting Managing Director