

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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RESTRICTIVE BUSINESS PRACTICES

Proposal by the Delegation of the Federal Republic of Germany

1. During their Ninth Session the CONTRACTING PARTIES dealt with the question whether it would be advisable to complement the General Agreement by adding provisions relating to restrictive business practices and to charge the CONTRACTING PARTIES (or the proposed Organization) with the implementation of an international agreement. At that time, an inquiry of the Economic and Social Council of the United Nations of July 1953 (E 2508 Resolution of Supp. No. 1 - 487 - XVI) had been submitted to the CONTRACTING PARTIES, in which the Executive Secretary was asked to make recommendations on the application of a draft Agreement prepared by the Special Committee of the Economic and Social Council.
2. Encouraged by the inquiry of the Economic and Social Council, the delegation of the Federal Republic of Germany - in document L/261/Add.1(p.41) - and the delegations of Denmark, Norway and Sweden - in document L/283 - set forth their view that the CONTRACTING PARTIES should include in the General Agreement provisions relating to restrictive business practices and submitted proposals to that effect. The delegations of Norway, Sweden and Denmark proposed to include in the General Agreement the substance of the draft Agreement prepared by the Special Committee of the Economic and Social Council and to adapt it to the organizational framework of the General Agreement only with respect to its implementation. The provisions proposed by the German delegation, however, merely required that the contracting parties should undertake to cooperate and, within the limits of their national legislations, to take appropriate measures to prevent business practices which, by impeding competition, limiting access to markets and requiring monopolistic control, have a prejudicial effect on the trade between the contracting parties. For the implementation of such an undertaking, mutual consultations were provided for, and only in the case of differences of opinion which could not be settled, the CONTRACTING PARTIES (or the Organization) would decide on the prejudicial character of the practices and address corresponding recommendations to the contracting parties.
3. Since, during the Ninth Session, the draft agreement elaborated by the Special Committee of the Economic and Social Council had not yet been dealt with conclusively within the Council, several delegations considered a discussion of this matter by the CONTRACTING PARTIES to be premature. It was decided that the result of the discussions in the Council should be awaited and the Executive

Secretary was directed to report on these discussions at the next session of the CONTRACTING PARTIES. (BISD, Third Supplement, p.239.)

4. At their Tenth Session, the CONTRACTING PARTIES were informed, by the report of the Executive Secretary (L/384 dated 5th August 1954), that in a resolution of 26 May 1956, the Economic and Social Council, while expressing its apprehension at the existence of restrictive practices in international trade having a prejudicial effect on the efforts towards promoting higher standards of living and full employment as well as economic and social progress, did not, as yet, see any possibility of reaching an international agreement on an efficient control of such practices. Nevertheless, considering the importance of the matter, the CONTRACTING PARTIES decided to take up the matter again at the Eleventh Session. This would enable the contracting parties to examine, in the meantime, whether they could, on their part, find a solution to the problem (S.R. 10/3, dated 3 November 1955, p.29/30).

5. The renewed examination of the problem has confirmed the Federal Government in its apprehension, expressed also by the Economic and Social Council in its resolution of 26 May 1956, as to the existence of restrictive business practices in international trade. It has noted with interest that, during the former negotiations held by the CONTRACTING PARTIES on this problem, the existence of such prejudicial practices has not been questioned, at least by the majority of the contracting parties. The Federal Government is, therefore, of the opinion that the CONTRACTING PARTIES, considering the far-reaching agreement which appears to exist among them, according to the meaning and purpose of the engagements assumed by them under the General Agreement with a view to furthering their relations in the field of trade and economy, inter alia by the elimination of discrimination and quantitative restrictions, are also obliged to ensure that the governmental measures taken by the CONTRACTING PARTIES are not rendered ineffective or evaded by analogous restrictive measures on the part of the interested economic circles. The Federal Government furthermore believes that the CONTRACTING PARTIES (or the Organization) would be best suited to carry through such a control of restrictive business practices within the scope of their activities.

6. The Federal Government is, however, aware of the great difficulties - largely of a psychological nature - which stand in the way of the preparation and inclusion in the General Agreement of provisions for the implementation of an efficient international control of restrictive business practices, especially since the Economic and Social Council has postponed the decision on the report of its Special Committee for an indefinite period. These difficulties do certainly exist, though, considering the declared mutual economic objectives of the contracting parties, as laid down in the preamble to the General Agreement, an arrangement in this field should be more easily attainable by the CONTRACTING PARTIES than by the members of the United Nations whose economic structures and economic interests are, in part, diametrically opposed. The Federal Government is, however, of the view that the CONTRACTING PARTIES, owing to their wide experience in jointly eliminating governmental trade barriers, are particularly qualified at least to collect information also in the field of private trade barriers. At a later date, such information might certainly serve to elaborate

the provisions on the control of private business restrictions. The provisions hereafter proposed by the Federal Government for inclusion in the General Agreement should enable the contracting parties to gather such information in the field of private restrictive practices.

7. By the inclusion of the proposed provisions in the General Agreement, the contracting parties would merely acquire the possibility of mutual consultations in the field of restrictive business practices. It would be left to their own discretion to decide whether, on the basis of such consultations, they take measures under their national legislations to eliminate prejudicial practices, and which measures they consider to be appropriate. The proposed provisions would not impose on the contracting parties obligations exceeding those already assumed by some of them in bilateral treaties of trade and friendship. It should, however, be noted that the proposed possibility of consultation could be made more use of if the contracting parties can be better informed of the existence of such restrictive business practices. Therefore, it would certainly serve the purpose if the contracting parties could likewise agree upon a mutual obligation for registration, at least in respect of certain types of restrictive arrangements, such as price conventions, limitation of spheres of influence and restrictions of the use of technical innovations. The Federal Government wants, however, to leave a clarification of this question to the further discussions.

The Federal Government believes that, in making this proposal, it has taken a first step towards solving the problem of the control of restrictive business practices, on the basis of which further steps might be taken after experience has been gathered in this field.

A. Draft Proposal

"The CONTRACTING PARTIES recognize that business practices which restrict competition, limit access to markets or encourage a monopolistic control and which are applied or put into practice by one or more private or public business enterprises or by merger, agreement or other arrangements among such enterprises, may have prejudicial effects on the trade between the territories of the contracting parties. Accordingly, each government will enter into consultations on such practices at the request of the government of a contracting party and will, in accordance with its legal prescriptions, take such measures as it deems advisable to eliminate such prejudicial effects."