

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/872

13 October 1958

Limited Distribution

CONTRACTING PARTIES
Thirteenth Session

RESTRICTIVE BUSINESS PRACTICES

Note by the Executive Secretary

I have been instructed by the Intersessional Committee at its meeting on 24-26 September to draw the attention of contracting parties to the following documentation in connexion with the discussion of the above item at the Thirteenth Session:

- SR.12/14 - Plenary discussion at the Twelfth Session
- MGT/75/58 - Memorandum requested by the CONTRACTING PARTIES at the Thirteenth Session
- L/653 - Norwegian Explanatory Memorandum and Draft Agreement on the Control of Restrictive Business Practices.

In addition I have been instructed to distribute the text of Articles 85-90 inclusive of the Treaty Establishing the European Economic Community which read as follows:

ARTICLE 85

1. The following shall be deemed to be incompatible with the Common Market and shall hereby be prohibited: any agreements between enterprises, any decisions by associations of enterprises and any concerted practices which are likely to affect trade between the Member States and which have as their object or result the prevention, restriction or distortion of competition within the Common Market, in particular those consisting in:

- (a) the direct or indirect fixing of purchase or selling prices or of any other trading conditions;
- (b) the limitation or control of production, markets, technical development or investment;
- (c) market-sharing or the sharing of sources of supply;
- (d) the application to parties to transactions of unequal terms in respect of equivalent supplies, thereby placing them at a competitive disadvantage; or

(e) the subjecting of the conclusion of a contract to the acceptance by a party of additional supplies which, either by their nature or according to commercial usage, have no connection with the subject of such contract.

2. Any agreements or decisions prohibited pursuant to this Article shall be null and void.

3. Nevertheless, the provisions of paragraph 1 may be declared inapplicable in the case of:

- any agreements or classes of agreements between enterprises,

- any decisions or classes of decisions by associations of enterprises, and

- any concerted practices or classes of concerted practices which contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress while reserving to users an equitable share in the profit resulting therefrom, and which:

(a) neither impose on the enterprises concerned any restrictions not indispensable to the attainment of the above objectives;

(b) nor enable such enterprises to eliminate competition in respect of a substantial proportion of the goods concerned.

ARTICLE 86

To the extent to which trade between any Member States may be affected thereby, action by one or more enterprises to take improper advantage of a dominant position within the Common Market or within a substantial part of it shall be deemed to be incompatible with the Common Market and shall hereby be prohibited.

Such improper practices may, in particular, consist in:

(a) the direct or indirect imposition of any inequitable purchase or selling prices or of any other inequitable trading conditions;

(b) the limitation of production, markets or technical development to the prejudice of consumers;

(c) the application to parties to transactions of unequal terms in respect of equivalent supplies, thereby placing them at a competitive disadvantage; or

(d) the subjecting of the conclusion of a contract to the acceptance, by a party, of additional supplies which, either by their nature or according to commercial usage, have no connection with the subject of such contract.

ARTICLE 87

1. Within a period of three years after the date of the entry into force of this Treaty, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Assembly has been consulted, shall lay down any appropriate regulations or directives with a view to the application of the principles set out in Articles 85 and 86.

If such provisions have not been adopted within the above-mentioned time-limit, they shall be laid down by the Council acting by means of a qualified majority vote on a proposal of the Commission and after the Assembly has been consulted.

2. The provisions referred to in paragraph 1 shall be designed, in particular:

- (a) to ensure observance, by the institution of fines or penalties, of the prohibitions referred to in Article 85, paragraph 1, and in Article 86;
- (b) to determine the particulars of the application of Article 85, paragraph 3, taking due account of the need, on the one hand, of ensuring effective supervision and, on the other hand, of simplifying administrative control to the greatest possible extent;
- (c) to specify, where necessary, the scope of application in the various economic sectors of the provisions contained in Articles 85 and 86;
- (d) to define the respective responsibilities of the Commission and of the Court of Justice in the application of the provisions referred to in this paragraph; and
- (e) to define the relations between, on the one hand, municipal law and, on the other hand, the provisions contained in this Section or adopted in application of this Article.

ARTICLE 88

Until the date of the entry into force of the provisions adopted in application of Article 87, the authorities of Member States shall, in accordance with their respective municipal law and with the provisions of Article 85, particularly paragraph 3, and of Article 86, rule upon the admissibility of any understanding and upon any improper advantage taken of a dominant position in the Common Market.

ARTICLE 89

1. Without prejudice to the provisions of Article 88, the Commission shall, upon taking up its duties, ensure the application of the principles laid down in Articles 85 and 86. It shall, at the request of a Member State or ex officio, investigate, in conjunction with the competent authorities of the Member States which shall lend it their assistance, any alleged infringement of the above-mentioned principles. If it finds that such infringement has taken place, it shall propose appropriate means for bringing it to an end.
2. If such infringement continues, the Commission shall, by means of a reasoned decision, confirm the existence of such infringement of the principles. The Commission may publish its decision and may authorise Member States to take the necessary measures, of which it shall determine the conditions and particulars, to remedy the situation.

ARTICLE 90

1. Member States shall, in respect of public enterprises and enterprises to which they grant special or exclusive rights, neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular, to those rules provided for in Article 7 and in Articles 85 to 94 inclusive.
2. Any enterprise charged with the management of services of general economic interest or having the character of a fiscal monopoly shall be subject to the rules contained in this Treaty, in particular to those governing competition, to the extent that the application of such rules does not obstruct the de jure or de facto fulfilment of the specific tasks entrusted to such enterprise. The development of trade may not be affected to such a degree as would be contrary to the interests of the Community.
3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, issue appropriate directives or decisions to Member States.