

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
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RESTRICTIVE BUSINESS PRACTICES

Memorandum by the Government of Norway

Amendments

To meet some objections raised against the Norwegian draft proposal (L/1287), the Norwegian delegation submits the following amendments in paragraph 3(b) and in paragraph 7.

The present text of paragraph 3(b) reads as follows:

"In the CONTRACTING PARTIES decide to comply with the request, the Committee on Restrictive Business Practices shall carry out consultations with the parties concerned in accordance with such instructions as are laid down by the CONTRACTING PARTIES. The Committee shall inform the CONTRACTING PARTIES of the outcome of the consultations. If the Committee does not succeed in reaching a satisfactory solution, the CONTRACTING PARTIES may, if they find it appropriate, make specific recommendations to the contracting parties concerned with a view to reaching a settlement of the case. The parties concerned should within a time limit fixed by the CONTRACTING PARTIES inform the secretariat if and how the case is settled and if not, why this has not been possible. The secretariat shall convey the information to the Committee, which shall report to the CONTRACTING PARTIES."

By such "specific recommendations" in the third sentence which is underlined, it is not meant to put any responsibility on the respective contracting party to bring about a solution of the case. It is obvious that countries having no legislation on restrictive business practices would not be able to take any legal action against the cartel or trust in question. The situation might in fact be similar also for most of the countries which have adopted legislation on restrictive business practices. Such national legislation has ordinarily for its purpose only to protect the country itself against harmful restrictive business practices. The legislation does not empower the authorities to take action against restrictive associations or enterprises with a view to protecting other countries. Each country might, however, be able to take the question up with the respective association or enterprises and recommend them to comply with the view expressed by the CONTRACTING PARTIES.

The Norwegian delegation agrees that the text of paragraph 3(b) of the draft proposal should be amended to correspond to such procedures.

Another objection against the Norwegian draft proposal is that it might lead to the CONTRACTING PARTIES being burdened with cases which really have no importance. The Norwegian delegation agrees that some preventive measures may be required. As an example, the delegation will mention that a price agreement between a few small enterprises which operate in the foreign trade theoretically may be construed as a restrictive business practice falling under the scope of paragraph 7 of the present Norwegian draft proposal. However, if the agreement does not affect the buying countries in a significant way it should not be necessary to deal with the case by the CONTRACTING PARTIES.

For the reasons mentioned, the Norwegian delegation proposes the following amendments:

Paragraph 3(b)

The new text shall read:

"3. (b) If the CONTRACTING PARTIES decide to comply with the request, the Committee on restrictive Business Practices shall carry out consultations with the parties concerned in accordance with such instructions as are laid down by the CONTRACTING PARTIES. The Committee shall inform the CONTRACTING PARTIES of the outcome of the consultations. In case the Committee has not succeeded in reaching a satisfactory solution, the CONTRACTING PARTIES may discuss the matter. If the CONTRACTING PARTIES consider the restrictive practices complained of being of such a character and having such effects as described in the paragraphs 6 and 7 below, the CONTRACTING PARTIES may inform the respective contracting party or parties of the outcome of the discussions and ask them to make recommendations to the association or enterprises concerned to amend or abolish the practices with a view to reaching a satisfactory settlement with the complaining party or parties. The parties concerned should within a time limit fixed by the CONTRACTING PARTIES inform the secretariat if and how the case is settled and if not, why this has not been possible. The secretariat shall convey the information to the Committee, which shall report to the CONTRACTING PARTIES."

Paragraph 7

In the second line of the present text the word "substantially" is to be inserted before the word "affect". The first sentence would therefore read as follows:

"7. Restrictive business practices as defined under 6 fall under the scope of this resolution only if they substantially affect other contracting parties than the contracting party or parties within whose territories the associations or enterprises have their seat."