

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/84

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CONTRACTING PARTIES
Ninth Session

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Review Working Party IV on Organizational and Functional Questions

RESTRICTIVE BUSINESS PRACTICES

Proposal by the delegations of Denmark, Norway and Sweden

A. GENERAL NOTES

1. In document L/273 the delegations of Denmark, Norway and Sweden have stated as their opinion that the CONTRACTING PARTIES should consider the inclusion in the revised Agreement of provisions with regard to restrictive business practices.
2. In the meeting on 8 December 1954 of the Review Working Party IV the Norwegian representative made a statement explaining more closely the view of the Norwegian delegation on this matter. He proposed that necessary provisions with regard to control of restrictive business practices should be included in the revised General Agreement at this Session and that a special sub-group should be appointed to make recommendations with regard to such provisions. His statement is circulated as document W.9/83.
3. The Norwegian proposal was supported by the representatives of Denmark, Sweden and Germany. However, objections were set forth by representatives for other delegations. It was especially maintained that it was premature to decide on this complicated matter at this Session.
4. In the light of the said discussions the delegations of Denmark, Norway and Sweden recognize that it will not be possible to have adopted at this Session the inclusion in the General Agreement of provisions concerning control of restrictive business practices. However, in the opinion of these delegations the need of such control is urgent. Therefore the question of charging the GATT with such functions should be dealt with by the CONTRACTING PARTIES as soon as possible. With a view to this the delegations propose that the CONTRACTING PARTIES at this Session should adopt a resolution as set forth below.
5. By adopting a resolution as proposed, the CONTRACTING PARTIES would stress in a formal manner the need of establishing control of restrictive business practices. At the same time the individual countries would be given sufficient time to study the problem. If the CONTRACTING PARTIES so consider the resolution might be notified to the Economic and Social Council so as to give the Council opportunity to make recommendations if it so wishes.

6. In connection with this question the delegations wish to draw attention to the remarks in the report of the ad hoc committee on restrictive business practices to the Economic and Social Council with regard to the inter-relation between restrictive business practices and other barriers to trade. An extract of these remarks is attached to this document.

B. DRAFT RESOLUTION:

The CONTRACTING PARTIES

RECOGNIZING that the activities of international trusts and cartels may hamper the expansion of international trade and in other ways interfere with the objectives of the General Agreement on Tariffs and Trade and that international control of such restrictive business practices therefore may be considered necessary,

CONSIDERING that the question of including in the General Agreement or in a supplementary agreement provisions with regard to such control should be dealt with as soon as possible,

DECIDE

- (i) to deal with the matter on the ordinary session of the CONTRACTING PARTIES in autumn 1955,
- (ii) to appoint an intersessional working party to make recommendations to the CONTRACTING PARTIES with regard to provisions to be included in the General Agreement or in a supplementary agreement concerning control of restrictive business practices.

EXTRACT OF REPORT OF THE AD HOC COMMITTEE
ON RESTRICTIVE BUSINESS PRACTICES
TO THE ECONOMIC AND SOCIAL COUNCIL

The inter-relation between restrictive business practices and other barriers to trade

71. While the Committee has not attempted to cover the ground which the Secretary-General will be covering in making his recommendation to the Economic and Social Council on the jurisdictional issue, in the course of its discussions the Committee has touched on this problem which has a direct bearing on the Committee's work. Some observations arising from the Committee's discussions may usefully throw light on the nature of the problem involved.

72. The expansion of international trade may, in some circumstances be hindered by restrictive business practices, but it may also be hindered by governmental measures. At times governmental measures and restrictive business practices operate independently and at other times they interact in various ways. For example, restrictive agreements may arise as a direct reaction to governmental measures, and sometimes the objective sought through restrictive arrangements could be achieved by analogous governmental measures.

73. The frequency with which these interactions occur may be great or small - this is a matter of conjecture - but where they do occur an agency dealing solely with restrictive business practices on the lines of Chapter V of the Havana Charter may encounter difficulties. A sound conclusion as to the harmfulness of a restrictive business practice should take account of all the surrounding circumstances, including any governmental action which might have caused the practice. It is possible that, if these interactions were ignored, the agency could not find acceptable and effective solutions. For example there might be no remedy appropriate to a practice unless action were taken at the same time about a related governmental measure. Yet a thorough exploration of such interactions would take the agency outside the scope of Chapter V and into the field of general commercial policy.

74. Some members of the Committee draw the conclusion that the proposed agency would obtain the necessary degree of support only if - as was intended in the original proposal for an International Trade Organization in the Havana Charter - it formed part of a wider body with comprehensive responsibilities in the field of international trade as a whole. In their view, this would allow restrictive business practices to be properly considered side by side with any governmental measures with which they interacted.

75. Some members of the Committee make the further point that only in this way could a reasonable equivalence of obligations be assured as between different governments. Their argument runs on the following lines. Unduly restrictive policies of governments often do serious damage to the industries of other countries. The governments of those countries might well be unwilling to expose their industries to international investigation of allegedly harmful restrictive business practices - especially if the complaint arose at the instance of a government whose policy was causing hardship to their industries - unless the governmental restrictions which were causing hardship could be investigated under the auspices of a comprehensive international agency. In the absence of some reasonable equivalence of obligations, it would scarcely be possible for the procedures suggested in the draft agreement to command public acceptance in the countries whose industries might be investigated, and this difficulty could not be resolved by loose consultative arrangements between a body dealing with restrictive business practices and other bodies, differently constituted, dealing with governmental restrictions.

76. Other members of the Committee were of the view that the agency would serve a useful purpose whether or not it was directly associated with an organization dealing with commercial policy. They think that governmental barriers can provide as formidable an obstacle to world trade as restrictive business practices, and they believe that there may be situations in which a close interaction

exists between the two types of barriers. They believe that the importance of this relationship depends largely on its frequency and they see no basis in past experience for assuming that the problem of interaction would arise more than infrequently. On the contrary, they feel that the body of cases of restrictive business practices, uncomplicated by issues of governmental action, is sufficiently large and sufficiently important that it readily merits apparatus devoted exclusively to the problem.

77. In any case, these other members point out that governments have long since come realistically to accept the concept that different types of trade barriers must be dealt with at a different pace and through different organizational arrangements. For example, the International Monetary Fund, which is charged with the problem of dealing with exchange restrictions, was established several years before any organization had been set up to deal with the problem of import restrictions, the close companion of exchange restrictions; and the General Agreement on Tariffs and Trade was established without any parallel organization with respect to restrictive business practices. Both the International Monetary Fund and the General Agreement, in turn, were created at a time when no formal arrangements had been developed for continuous consideration of commodity agreements and commodity allocations, problems which are intimately related to trade barrier problems. In each of these fields, notwithstanding their interrelationships, machinery for international action was developed at its own pace and in its own form. The problems of liaison and consistency of pace have proved far less difficult in actuality than in the abstract. A common core of membership in these groups, supplemented by the enterprise of the secretariats, by arrangements similar to those provided in Article 9 of the draft agreement, and by a few formal ties, have created a reasonably workable system.

78. No full reconciliation of the views expressed in paragraphs 74 to 77 has emerged from the Committee. In general, however, the Committee is convinced that the arrangements to be adopted, in order to be workable and effective, should take account of the need to secure the willing co-operation of all the countries concerned.