GENERAL AGREEMENT ON TARIFFS AND TRADE

REVIEW OF THE GENERAL AGREEMENT

Proposals by the delegations of Denmark, Norway and Sweden

RESTRICTIVE BUSINESS PRACTICES

A. General Notes

1. It is generally recognized that the activities of international trusts and cartels may hamper the expansion of the international trade and in other ways interfere with the objectives set forth in the Preamble of the GATT. The countering of such harmful business practices therefore is closely connected with the functions of GATT.

2. In the Preparatory Committee which was appointed by the Economic and Social Council in February, 1946, to prepare the establishment of an international trade organization, it was generally agreed that the Charter of the organization should include provisions with regard to restrictive business practices. The basic question was whether such practices should be generally prohibited as originally proposed by the government of the United States, or if the organization only should counteract such restrictive business practices which had harmful effects in respect to the objectives of the organization. Recommendations were made in accordance with the last view.

3. With some minor alterations the provisions of the Preparatory Committee were accepted by the Havana conference. The provisions concerning restrictive business practices are contained in Chapter V of the Havana Charter.

4. Pending the establishment of the proposed international trade organization the Contracting Parties to the General Agreement on Tariffs and Trade have provisionally carried out several of its functions. However, the CONTRACTING PARTIES have not generally dealt with questions concerning trusts and cartels.

5. The need of international control of harmful restrictive business practices have called forth increased attention. In a resolution, adopted on 13 September 1951, the ECOSOC stressed the importance of the matter and appointed an ad hoc committee to prepare a new proposal on international control of restrictive business practices. This committee submitted its report in February, 1953. The proposed provisions are mainly based on Chapter V in the Havana Charter. In accordance with its restricted mandate the Committee have not made recommendations with regard to the organization which should be charged with the control.
6. The Danish, Norwegian and Swedish delegations are of the opinion that the CONTRACTING PARTIES should consider the inclusion in a revised Agreement of provisions with regard to restrictive business practices. As a basis for the discussion of these questions the said delegations submit the provisions of the ad hoc committee to the ECOSOC. The Preamble and the organizational part of the provisions (Articles 10-19 inclusive) have been omitted as these provisions fall under the scope of the organizational provisions to be included in the revised Agreement. For the same reasons paragraph 8 of Article 5 and paragraph 2 of Article 9 have been put in brackets.

The delegations would like to stress that the proposal of the ad hoc committee is submitted only as a starting point for the discussions on the matter. They reserve their positions with regard to any alterations which they during the course of the deliberations may deem appropriate.

B. Provisions regarding restrictive business practices
(proposed by the Ad Hoc Committee to the ECOSOC)

ARTICLE 1
GENERAL POLICY TOWARDS RESTRICTIVE BUSINESS PRACTICES

1. Each Member shall take appropriate measures and shall co-operate with other Members and the Organization to prevent, on the part of private or public commercial enterprises, business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control whenever such practices have harmful effects on the expansion of production or trade, in the light of the objectives set forth in the Preamble to this Agreement.

2. In order that the Organization may decide in a particular instance whether a practice has or is about to have the effect indicated in paragraph 1, the Members agree, without limiting paragraph 1, that complaints regarding any of the practices listed in paragraph 3 shall be subject to investigation in accordance with the procedure regarding complaints provided for in Articles 3 and 5, whenever

(a) such a complaint is presented to the Organization, and
(b) the practice is engaged in, or made effective, by one or more private or public commercial enterprises or by any combination, agreement or other arrangement between any such enterprises, and
(c) such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products,
3. The practices referred to in paragraph 2 are the following:
   (a) fixing prices, terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;
   (b) excluding enterprises from or allocating or dividing, any territorial market or field of business activity, or allocating customers, or fixing sales quotas or purchase quotas;
   (c) discriminating against particular enterprises;
   (d) limiting production or fixing production quotas;
   (e) preventing by agreement or coercion the development or application of technology or invention whether patented or unpatented, or withholding the application of such technology with the result of monopolizing an industrial or commercial field;
   (f) extending the use of rights under patents, trade marks or copyrights granted by any Member to matters which, according to its laws and regulations, are not within the scope of such grants, or to products or conditions of production, use or sale which are likewise not the subjects of such grants;
   (g) any similar practices which the Organization may declare, by a majority of two-thirds of the Members present and voting, to be restrictive business practices.

ARTICLE 2
CONSULTATION PROCEDURE

Any affected Member which considers that in any particular instance a practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect indicated in paragraph 1 of Article 1 may consult other Members directly or request the Organization to arrange for consultation with particular Members with a view to reaching mutually satisfactory conclusions. If requested by the Member and if it considers such action to be justified, the Organization shall arrange for and assist in such consultation. Action under this Article shall be without prejudice to the procedure provided for in Article 3.

ARTICLE 3
INVESTIGATION PROCEDURE

1. In accordance with paragraphs 2 and 3 of Article 1, any affected Member on its own behalf or any Member on behalf of any affected person, enterprise or organization within that Member's jurisdiction, may present a written complaint to the Organization that in any particular instance a practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect indicated in paragraph 1 of Article 1; provided that in the case of complaints against a public commercial enterprise
acting independently of any other enterprise, such complaints may be presented only by a Member on its own behalf and only after the Member has resorted to the procedure of Article 2.

2. The Organization shall prescribe the minimum information to be included in complaints under this Article. This information shall give substantial indication of the nature of the practices and the reasons for alleging the effects indicated in paragraph 1 of Article 1.

3. The Organization shall consider each complaint presented in accordance with paragraph 1. If the Organization deems it appropriate, it shall request Members concerned to furnish supplementary information, for example, information from commercial enterprises within their jurisdiction. After reviewing the relevant information, the Organization shall decide whether an investigation is justified.

4. If the Organization is satisfied that the practice in question has been specifically required by governmental measures existing prior to the complaint, no further investigation under the provisions of this Article shall be undertaken; provided, however, that any practice found to exist in more than one country may be further investigated in the discretion of the Organization if such practice is not so specifically required in all countries in which it is found to exist. The Organization may, however, bring to the attention of Members or of any appropriate inter-governmental body or agency, with such observations as it may desire to make, aspects of governmental measures that specifically require restrictive business practices, or aspects of practices thus required, which may have the effect indicated in paragraph 1 of Article 1.

5. If the Organization decides that an investigation is justified, it shall inform all Members of the complaint, request any Member to furnish such additional information relevant to the complaint as the Organization may deem necessary, and shall subsequently afford any Member, and any person, enterprise or organization on whose behalf the complaint has been made, as well as the commercial enterprises alleged to have engaged in the practice complained of, reasonable opportunity to be heard.

6. The Organization shall review all information available and decide whether the conditions specified in paragraphs 2 and 3 of Article 1 are present and, if so, whether the practice in question has had, has or is about to have the effect indicated in paragraph 1 of that article.

7. The Organization shall inform all Members of its decision and the reasons therefor.

8. If the Organization decided that in any particular case the conditions specified in paragraphs 2 and 3 of Article 1 are present and that the practice in question has had, has or is about to have the effect indicated in paragraph 1 of that article, it shall request each Member concerned to take every possible remedial action, and may also recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures.
9. The Organization may request any Member concerned to report fully on the remedial action it has taken in any particular case.

10. As soon as possible after its proceedings in respect of any complaint under this article have been provisionally or finally closed, the Organization shall prepare and publish a report showing fully the decisions reached, the reasons therefor and any measures recommended to the Members concerned. The Organization shall not, if a Member so requests, disclose confidential information furnished by that Member, which if disclosed would substantially damage the legitimate business interests of a commercial enterprise.

11. The Organization shall report to all Members and make public the remedial action which has been taken by the Members concerned in any particular case.

ARTICLE 4
STUDIES RELATING TO RESTRICTIVE BUSINESS PRACTICES

1. The Organization is authorized:
   (a) to conduct and publish the results of studies, either on its own initiative or at the request of any Member or of any organ of the United Nations or of any other inter-governmental body or agency, relating to
      (i) general aspects of restrictive business practices affecting international trade;
      (ii) conventions, laws and procedures concerning, for example, incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade marks, copyrights, patents and the exchange and development of technology in so far as they are relevant to restrictive business practices affecting international trade; and
      (iii) the registration of restrictive business agreements and other arrangements affecting international trade; and
   (b) to request information from Members in connection with such studies.

2. The Organization is authorized:
   (a) to make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Agreement; and
   (b) to arrange for conferences of Members to discuss any matters relating to restrictive business practices affecting international trade.
ARTICLE 5
OBLIGATIONS OF MEMBERS

1. Each Member shall take all possible measure by legislation or otherwise, in accordance with its constitution or system of law and economic organization, to ensure, within its jurisdiction, that private and public commercial enterprises do not engage in practices which are as specified in paragraphs 2 and 3 of Article 1 and have the effect indicated in paragraph 1 of that article, and it shall assist the Organization in preventing these practices.

2. Each Member shall make adequate arrangements for presenting complaints, conducting investigations and preparing information and reports requested by the Organization.

3. Each Member shall furnish to the Organization, as promptly and as fully as possible, such information as is requested by the Organization for its consideration and investigation of complaints and for its conduct of studies under this Agreement; provided that any Member, on notification to the Organization, may withhold information which the Member considers is not essential to the Organization in conducting an adequate investigation and which, if disclosed, would substantially damage the legitimate business interests of a commercial enterprise. In notifying the Organization that it is withholding information pursuant to this clause, the Member shall indicate the general character of the information withheld and the reason why it considers it not essential.

4. Each Member shall take full account of each request, decision and recommendation of the Organization under Article 3 and, in accordance with its constitution or system of law and economic organization, take in the particular case the action it considers appropriate having regard to its obligations under this Agreement.

5. Each Member shall report fully any action taken, independently or in concert with other Members, to comply with the requests and carry out the recommendations of the Organization and, when no action has been taken, inform the Organization of the reasons therefor and discuss the matter further with the Organization if so requests.

6. Each Member shall, at the request of the Organization, take part in consultations and conferences provided for in this Agreement with a view to reaching mutually satisfactory conclusions.

7. Each Member shall inform the Organization of the results of consultations and conferences provided for in this Agreement in which such Member has participated.
8. Nothing in this Agreement shall be construed to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests.

ARTICLE 6

CO-OPERATIVE REMEDIAL ARRANGEMENTS

1. Members may co-operate with each other for the purpose of making more effective within their respective jurisdictions any remedial measures taken in furtherance of the objectives of this Agreement and consistent with their obligations under other provisions of this Agreement.

2. Members shall keep the Organization informed of any decision to participate in any such co-operative action and of any measures taken.

ARTICLE 7

DOMESTIC MEASURES AGAINST RESTRICTIVE BUSINESS PRACTICES

No act or omission to act on the part of the Organization shall preclude any Member from enforcing any national statute or decree directed towards preventing monopoly or restraint of trade.

ARTICLE 8

SPECIAL PROCEDURES IN RESPECT OF SERVICES

1. The Members recognize that certain services, such as transportation, telecommunications, insurance and the commercial services of banks, are substantial elements of international trade and that any restrictive business practices by enterprises engaged in these activities in international trade may have harmful effects similar to those indicated in paragraph 1 of Article 1. Such practices, when (a) they are engaged in or made effective by one or more private or public commercial enterprises or by any combination, agreement or other arrangement between any such enterprises and (b) such commercial enterprises individually or collectively possess effective control or trade in one or more services among a number of countries, shall be dealt with in accordance with the following paragraphs of this Article.

2. If any Member considers that there exist restrictive business practices in relation to a service referred to in paragraph 1 which have or are about to have harmful effects similar to those indicated in paragraph 1, and that its interests are thereby adversely affected, the Member may submit a written
statement explaining the situation to the Member or Members whose private or public enterprises are engaged in the services in question. The Member or Members concerned shall give sympathetic consideration to the statement and to such proposals as may be made and shall afford adequate opportunities for consultation, with a view to affecting a satisfactory adjustment.

3. If no adjustment can be effected in accordance with the provisions of paragraph 2, and if the matter is referred to the Organization, it shall be transferred to the intergovernmental body or agency, if one exists, empowered to deal with that type of problem with such observations as the Organization may wish to make. If no such intergovernmental body or agency exists, and if Members so request, the Organization may make recommendations for, and promote international agreement on, measures designed to remedy the particular situation so far as it comes within the scope of this Agreement. For the purpose of framing such recommendations, the Organization may make such arrangements as it deems appropriate to obtain information from Members and, subject to the proviso of paragraph 3 of Article 5 and to paragraph 8 of Article 5, Members shall co-operate with the Organization accordingly, provided that due regard is had to their legal and constitutional systems.

ARTICLE 9

OTHER PROCEDURES

1. Where measures taken by a Member or an intergovernmental body or agency, or business practices required or approved by any such measure, relate to the work of the Organization, the Organization may bring the effect of these measures or practices on its work to the attention of the Member or intergovernmental body or agency, respectively, with such observations as it may desire to make.

2. The Organization shall make arrangements with other intergovernmental bodies or agencies to provide for effective co-operation with respect to restrictive business practices and the avoidance of unnecessary duplication of activities in connection therewith. The Organization may for this purpose consult with such bodies or agencies, arrange for joint committees and reciprocal representation at meetings and establish such other working relationship as may be appropriate.

3. For the purposes of this Article, the words "intergovernmental bodies or agencies" shall be deemed to include entities which have responsibility in the field of restrictive business practices and which possess sovereign powers through a delegation of sovereignty by two or more states.

4. The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of this Agreement.
ARTICLE 20

INTERPRETATION AND DEFINITION

For the purpose of this Agreement -

(a) the term "business practice" shall not be so construed as to include an individual contract between two parties as seller and buyer, lessor and lessee, or principal and agent, provided that such contract is not used to restrain competition, limit access to markets or foster monopolistic control;

(b) the term "public commercial enterprises" means

(i) agencies of governments in so far as they are engaged in trade and

(ii) trading enterprises mainly or wholly owned by public authority, - provided the Member concerned declares that for the purposes of this Agreement it has effective control over or assumes responsibility for the enterprises;

(c) the term "private commercial enterprises" means all commercial enterprises other than public commercial enterprises;

(d) the term "decide" and "decision" as used in Articles 1, 3 (except in paragraphs 3 and 5) and 5 do not determine the obligations of Members, but mean only that the Organization reaches a conclusion.

INTERPRETATIVE NOTE TO ARTICLE 8

The provisions of this Article shall not apply to matters relating to shipping services which are subject to the Convention of the Intergovernmental Maritime Consultative Organization.