GENERAL AGREEMENT ON TARIFFS AND TRADE

Preliminary draft
19th June, 1959.

ANNEX

DRAFT RULES OF PROCEDURE WITH REGARD TO RESTRICTIVE BUSINESS PRACTICES

REFERING to the resolution adopted by the CONTRACTING PARTIES on 5 November, 1958 in which it was stated that the activities of international cartels and trusts may hamper the expansion of world trade and the economic development in individual countries and thereby frustrate the benefits of tariff reductions and of removal of quantitative restrictions or otherwise interfere with the objectives of the General Agreement on Tariffs and Trade,

RECOGNIZING that the activities of international trusts and cartels may be of such nature as to call for consultations and actions by the CONTRACTING PARTIES under Article XXIII of the General Agreement,

HAVING CONSIDERED the report prepared by the
Group of Experts, appointed under the said resolution,

The CONTRACTING PARTIES

DECIDE to adopt the following procedure with regard to restrictive business practices, referred to the CONTRACTING PARTIES under paragraph 2 of Article XXIII of the General Agreement:

CHAPTER I.

Definitions.

1. The term "restrictive business arrangements" shall refer to decisions of associations between enterprises, agreements, concerted practices and other arrangements between enterprises having as their object or result the prevention, restriction or distortion of competition, as for instance:

(a) direct or indirect fixing of prices, rates of profit or terms of business;

(b) limitation or control of production or of technical development or investment;

(c) limitation or control of import or export or allocation of markets, customers or sources of supply;

(d) discrimination, specifically as concerns prices or terms of business.

2. The term "dominant enterprise" shall mean an enterprise or a combination of enterprises which have dominant influence on trade in one or more commodities or
services between two or more contracting parties. The term "combination of enterprises" shall mean enterprises which are under joint control of the same group of interests regardless of whether the control is carried out in the form of a trust, a holding company, or otherwise.

CHAPTER II.

The Preparatory Committee.

1. A special committee is hereby established to prepare a basis for the consideration by the CONTRACTING PARTIES of matters relating to particular restrictive business arrangements or particular practices applied by dominant enterprises, referred to the CONTRACTING PARTIES under paragraph 2 of Article XXIII of the General Agreement.

2. The committee shall consist of a chairman and four other members elected by the CONTRACTING PARTIES. The members shall be elected for a term of four years provided that at the first election two of the members shall be elected for two years only. The CONTRACTING PARTIES shall elect ten alternates to take seat in the committee when a member is prevented from attending. The alternates shall act as members according to the order in which they are elected. If a member or an alternate retires before his term is expired, the CONTRACTING PARTIES shall elect another member or another alternate for the rest of the term.
3. The committee decides whether a member or an alternate should be considered as disqualified. A member or an alternate shall at any rate not act in the committee in cases where his country is involved.

4. The members of the committee shall perform their duties in the general interest of all contracting parties and shall neither solicit nor accept instructions from any government.

The paramount consideration in the selection of candidates shall be their competence, integrity and impartiality as individuals. Due regard shall also be had for the desirability of including in the committee members from countries in different geographical areas and with different types of economies.

5. The committee shall perform its duties with the assistance of the Secretariat.

CHAPTER III.

Reports.

1. If a matter, described in paragraph 1 of Chapter II is referred to the CONTRACTING PARTIES, the committee shall promptly collect and analyse necessary information. The committee shall for this purpose ask the contracting party or contracting parties having jurisdiction over the associations or enterprises concerned to furnish information, and may also seek information from other sources.

2. Having examined the case, the committee shall
state its opinion as to whether the arrangement or practice has harmful effects on trade between contracting parties or otherwise interferes with the objectives of the General Agreement.

3. The committee shall submit a report to the CONTRACTING PARTIES and shall at the same time send copies of the report to the contracting parties concerned. The CONTRACTING PARTIES shall decide whether the report shall be made public.