ACTION BY THE CONTRACTING PARTIES IN DEALING WITH
RESTRICTIVE BUSINESS PRACTICES IN INTERNATIONAL TRADE

Draft Report

(Proposed by seven members of the Group)

1. The Group of experts, appointed by the Executive Secretary, met in Geneva from 15 to 24 June 1959. The Group was composed of experts from the twelve countries which responded to the enquiry which the Executive Secretary addressed to X countries inviting them to make experts available. The names of the experts are listed in Annex I and also the names of those who attended the meetings as observers.

2. The terms of reference of the Group were contained in the Resolution of the CONTRACTING PARTIES of 5 November 1958 which reads as follows:

Recognizing 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;

Recognizing further that international co-operation is needed to deal effectively with harmful restrictive business practices in international trade; and

Referring to the discussions on this matter at the twelfth and thirteenth sessions and to the documentation submitted,

THE CONTRACTING PARTIES

Decide:

1. to appoint a group of experts to study and make recommendations with regard to whether, to what extent if at all, and how the CONTRACTING PARTIES should undertake to deal with restrictive business practices in international trade;

2. to request the expert group to submit a report by the end of 1959; and

3. to consider the report at a session of the CONTRACTING PARTIES in 1960.

Spec(59)118

E. only
3. The members of the Group were well familiar with the documentation submitted to them and with the lengthy discussions on this subject that have taken place through the past fifteen years: the work of the Preparatory Committee of the United Nations Conference on Trade and Employment, the Havana Charter, the discussions in the Economic and Social Council of the United Nations and the reports of its Ad Hoc Committee, the proposals put forward to the CONTRACTING PARTIES including those examined at their Review Session, the discussions of these matters at sessions of the CONTRACTING PARTIES, and the analysis of these various endeavours published by the CONTRACTING PARTIES in May 1959. All these were taken into account in their deliberations, and also the provisions of the Treaty establishing the European Coal and Steel Community and of the Rome Treaty relating to rules governing competition and the work done in this field by the Organization for European Economic Cooperation and by the Council of Europe.
4. The Group noted the views of the CONTRACTING PARTIES, as set out in the preamble to their Resolution of 5 November 1958, that the activities of international cartels and trusts may hamper the expansion of world trade and interfere with the objectives of the GATT. With these postulates the members of the Group were in full accord although they felt that sufficient evidence was not yet available to judge the extent of the actual damage to world trade which results from these practices. Something more than has been attempted in the past should now be undertaken and, therefore, the Group give an affirmative answer to the first question in their terms of reference i.e. whether the CONTRACTING PARTIES should undertake to deal with these matters. Members agreed that the CONTRACTING PARTIES should now be regarded as an appropriate and competent body to initiate action in this field.

5. The Group unanimously considered that it would be unrealistic to recommend at present a multilateral agreement for the control of international restrictive business practices. The necessary consensus of opinion among countries upon which such an agreement could be based did not yet exist, and countries did not yet have sufficient experience of action in this field to devise an effective control procedure. Such agreement must be based upon sufficient harmonization of national legislation or must incorporate a supranational body invested with broad powers of investigation and control. The complexities of the subject and the impossibility of obtaining accurate and complete information on commercial activities in international trade and of enforcing decisions without adequate powers of investigation and control precludes the possibility of an effective control agreement which is not based upon one of these two alternatives. The majority, therefore, considered that it was at this stage impracticable to set up any procedure for investigating or passing judgement on individual cases within the framework of the GATT. In fact, a premature attempt to do so could well prejudice future progress in this field.
6. The Group felt it was not competent to judge whether restrictive business practices were a matter that would be deemed to fall under any specific provisions of the GATT - for example, whether the provisions of Article XXIII would be applicable. The Group felt that, regardless of the question whether Article XXIII could legally be applied, it should recommend to the CONTRACTING PARTIES that they take no action under this Article as it might stimulate undesirable retaliatory action under paragraph 2 of that Article.

7. In these circumstances, the majority considered that the course of action holding out the best hope of progress at this stage was the encouragement of direct consultations between contracting parties with a view to the elimination of the harmful effects of particular restrictive practices. Such consultations might be bilateral, or they might be joint consultations in the sense that representations might be made by one contracting party to more than one government or that two or more contracting parties might submit joint representations to another. The majority also considered that the CONTRACTING PARTIES should appoint a group of experts to study the experience gained from these consultations and to report to them on the nature and extent of the effects of international restrictive practices so far as these are revealed/ The majority believed that this procedure would not only facilitate the settlement of differences by direct consultation but, by providing the CONTRACTING PARTIES with fuller information about the problem, would provide the basis on which they might decide what further steps may be needed or desirable.

8. A draft decision to give effect to these proposals, prepared by the majority, appears in Annex ___.

9. __Minority proposal__
10. With this view, the majority disagreed for the following reasons. The experts would be bound to make judgments upon specific issues involved in particular cases, which were the subject of consultations, without the means of obtaining sufficient information upon which to base such judgments. Further, there were no agreed standards or guidelines upon which such judgments could be based. In making these judgments experts would therefore be obliged to rely upon their personal views which may not be consistent with each other and which may therefore tend to hinder rather than help the development of a common international approach. The majority did not consider that any useful purpose would be served by the intervention of experts in the consultations and, moreover, could not agree that in present circumstances governments should be obliged to accept such intervention.