CHAPTER VI. RESTRICTIVE BUSINESS PRACTICES

Article 59

Policy towards restrictive business practices

1. Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade (whether engaged in by private or public commercial enterprises) which restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other purposes of the Organization as set forth in Article 1.

2. Without limiting the generality of paragraph 1 of this Article, and in order that the Organization may decide in a particular instance whether certain practices have or are about to have any of the effects referred to in paragraph 1, complaints regarding any of the practices listed in paragraph 3 shall be subject to investigation in accordance with the procedure regarding complaints provided in Articles 40 and 42, whenever

(a) such complaint is presented to the Organization; and

(b) the practices are engaged in or are made effective by one or more public or private commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises, or between private and public commercial enterprises; and

(c) such commercial enterprises, individually or collectively, possess effective control of trade among two or more countries in one or more products.

3. The practices referred to in paragraph 2 above are the following:

(a) fixing prices or terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;
(b) excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business activity, allocating customers, or fixing sales or purchase quotas;

(o) discriminating against particular enterprises;

(d) limiting production or fixing production quotas;

(e) preventing by agreement the application or development of technology or invention whether patented or unpatented;

(f) extending the use of rights under patents, trade marks or copyrights, granted by any Member, to matters which are determined by its system of law not to be within the scope of such grants, or to products or conditions of production, use or sale which are similarly determined not to be the subjects of such grants;

(g) any similar practices which the Organization may from time to time decide to be restrictive business practices.

4. In this Article "public commercial enterprises" means
   (a) trading agencies of governments, and
   (b) enterprises wholly or mainly owned by public authority over which there is effective control by public authority, including control of engagement in the practices listed in paragraph 3.

"Private commercial enterprises" means all other commercial enterprises.

Article 40

Procedure with respect to Investigations and consultations

1. The Organization shall arrange, if it considers such action to be justified on the basis of information submitted by the Members concerned, for particular Members to take part in a consultation requested by any affected Member which considers that in any particular instance practices exist (whether engaged in by private or public commercial enterprises) which have or are about to have the effect described in paragraph 1 of Article 39.
2. A complaint may be presented to the Organization by any affected Member on its own behalf, or by any Member on behalf of any affected person, organization or business entity within that Member's jurisdiction, provided that, in the case of a complaint against a single public commercial enterprise (as defined in Article 39) acting independently, such complaint may be presented only by a Member on its own behalf and only after the Member has resorted to the procedure under paragraph 1 of this Article.

3. The Organization shall prescribe minimum information to be included in complaints claiming that particular practices exist and have or are about to have the effect described in paragraph 1 of Article 39. The information shall give substantial indication of the nature and harmful effects of the practices.

4. In order to decide whether an investigation of a complaint is justified, the Organization shall consider each written complaint submitted in accordance with paragraph 2 of this Article, review all relevant information, and decide whether an investigation is justified. If the Organization deems that further information is necessary before such decision can be reached, it shall request each Member concerned to furnish supplementary information, including for example information from commercial enterprises within the jurisdiction of the Members concerned.

5. If the Organization decides that an investigation is justified, it shall notify all Members of the complaint, request any Member to provide such additional information relevant to the complaint as the Organization may deem necessary, and shall conduct or arrange for hearings on the complaint. Any Member, and any affected person, organization or business entity on whose behalf a complaint is made, as well as the parties alleged to have engaged in the practice complained of, shall be afforded reasonable opportunity to be heard at such hearings.

6. The Organization shall review all information available and decide whether the practices in question have had or are about to have the effect described in paragraph 1 of Article 39.

7. The Organization shall report fully to all Members its decision and the reasons therefor.

8. If the Organization decides that in any particular case the practices complained of have had or are about to have the effect described in paragraph 1 of Article 39, it shall request each Member concerned to take every possible remedial action, and may 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 Members concerned to report fully on the remedial action it has taken in any particular case.
10. As soon as possible after its enquiries concerning any complaint dealt with under paragraphs 3 to 7 of 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 action recommended to the Members concerned. However, the Organization shall not, if a Member so requests, disclose confidential information furnished by that Member which would materially damage the legitimate business interests of a commercial enterprise.

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

Article 41

Studies relating to restrictive business practices

1. The Organization is authorized

(a) to conduct 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 organization, relating to

(i) general aspects of restrictive business practices affecting international trade; and

(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, insofar as they are relevant to restrictive business practices affecting international trade; and

(iii) 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 Chapter; and

(b) to arrange for conferences of Members to discuss any matters relating to restrictive business practices affecting international trade.
Article 42

Obligations of Members

1. Each Member shall take all possible measures by legislation or otherwise to ensure, within its jurisdiction, that private and public commercial enterprises do not engage in practices which have the effect described in paragraph 1 of Article 39, and in addition shall assist the Organization in preventing these practices, such measures to be taken in accordance with the Member's system of law and economic organization.

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 its investigation of complaints and for its conduct of studies under this Chapter, provided that any Member

   (a) may withhold confidential information relating to its national security; and

   (b) on proper 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 materially 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 reasons why it considers it not essential.

4. Each Member shall take full account of each decision, request and recommendation of the Organization under paragraphs 6 and 8 of Article 40 and, in accordance with its system of law and economic organization, take in the particular case the action it considers appropriate in the light of its obligations under this Chapter.

5. Each Member shall report any action taken, independently or in concert with other Members, to implement decisions made by 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 requested to do so.
6. Each Member shall, at the request of the Organization, take part in consultations and conferences provided for in this Chapter with a view to reaching mutually satisfactory conclusions.

Article 43
Supplementary enforcement arrangements

1. Members may co-operate with each other in prohibitive, preventive or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any Member in furtherance of the objectives of this Chapter.

2. Members participating in or intending to participate in such co-operative action shall notify the Organization.

Article 44
Continued effectiveness of 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 44 - A
Procedure with respect to services

1. Members recognize that certain services, such as transportation, telecommunications, insurance and banking, are substantial elements of international trade, and that any restrictive business practices in relation to them may have harmful consequences similar to those described in Article 39. Such practices shall be dealt with in accordance with the following paragraphs of this Article.

2. If any Member should consider that there exist restrictive business practices in relation to an international service in the meaning of Paragraph 1 which have or are about to have such harmful effects, and that its interests are seriously prejudiced by this situation, the Member may submit a written statement explaining the situation to the Member or Members the public or private enterprises of which 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 with a view to affording adequate opportunities of consultation and effecting a satisfactory adjustment of the matter.
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 appropriate inter-governmental organization if one exists, with such observations as the Organization in its discretion may wish to make. If no such inter-governmental organization exists, Members may, under Article 61(c), ask the Organization to make recommendations for, and promote international agreement on, measures designed to remedy the particular situation so far as it relates to the purposes of the Organization.

4. The Organization shall, subject to Article 61(e), co-operate with inter-governmental organizations in connection with restrictive business practices affecting the general field covered by the Charter and those inter-governmental organizations shall be entitled to consult the Organization, to seek advice, and to ask that a study of a particular problem be made.