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1. **Disciplines and Arrangements of the International Civil Aviation Organization (ICAO)**

The basic legal instrument for the provision of services in international civil aviation is the Convention on International Civil Aviation, also known as the Chicago Convention. The Convention, which came into force on 4 April 1947, establishes the International Civil Aviation Organization. The Convention is adhered to by 157 Member States.

**Objectives**

In the Preamble, governments express their general aim of developing international civil aviation in a safe and orderly manner and establishing international air transport services i.e. any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo, on the basis of equality of opportunity and sound and economical operations.

The specific aims of the ICAO are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to (a) insure the safe and orderly growth of international civil aviation throughout the world; (b) encourage the arts of aircraft design and operation for peaceful purposes; (c) encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) prevent economic waste caused by unreasonable competition; (f) insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; (g) avoid discrimination between contracting States; (h) promote safety of flight in international air navigation; (i) promote generally the development of all aspects of international civil aeronautics.

**Features and Coverage**

The ICAO is made up of (a) an Assembly which examines and takes appropriate action on the reports of the Council and decide on any matter referred to it by the Council; (b) a Council which carries out the directives of the Assembly and which requests, collects, examines and publishes information relating to the advancement of air navigation and the operation of international air services, including information about the cost of operations and particulars of subsidies paid to airlines from public funds, and (c) such other bodies as may be necessary.

The contracting parties to the Convention recognize that every State has complete and exclusive sovereignty over the airspace above its territory. The Convention addresses fundamental issues concerning the exchange of rights between States, measures to facilitate air navigation and international standards and recommended practices. With regard to non-scheduled flights, all aircrafts of other contracting parties have the
right to make flights into the territory of a signatory contracting party and to make stops for non-traffic purposes without obtaining prior permission. Regarding scheduled air services, air services may be operated into the territory of a contracting State only with the authorization of that State. Regarding airport and similar charges, the Convention provides that any charges for the use of airports and air navigation facilities by the aircraft of other contracting States shall not be higher than those that would be paid by its national aircraft engaged in similar operations.

The Convention deals with dispute settlement. If any disagreement between contracting States relating to the interpretation or application of the Convention and its Annexes cannot be settled by negotiation, it shall be decided by the Council. Any contracting State may appeal from the decision of the Council to an ad-hoc arbitral tribunal or to the Permanent Court of International Justice. Decisions are by majority vote. Decisions of the Permanent Court or an arbitral tribunal are final and binding. Penalties are provided for non-conformity of airlines and States, e.g. suspension of voting rights in the Assembly or the Council or of the rights of operating in the airspace of an airline of another contracting party.

Eighteen annexes to the Convention provide for detailed regulation of a variety of matters involving air navigation as well as environmental protection, security, the safe transport of dangerous goods, and the facilitation of air traffic through customs, immigration and similar entry processes. By conforming their national regulations to the multilaterally agreed standards found in these Annexes, thus accepting uniform practices, States in effect yield some of their sovereign right to create regulatory requirements.

In addition to the Convention, the International Air Services Transit Agreement deals with non-traffic rights for scheduled services which are exchanged multilaterally. Each of the 100 States having signed and ratified this Agreement grants all other signatory States in respect of scheduled international air services (1) the privilege to fly across its territory without landing and (2) the privilege to land for non-traffic purposes. In the latter case, a contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made. Such requirements shall not involve any discrimination between airlines operating on the same route, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned.

The Convention does not contain any provisions concerning the establishment or regulation of international fares and rates. This is a matter for agreement between States along with the exchange of routes and rights and the regulation of capacity. In practice the vast majority of bilateral agreements leave the initial responsibility for the development of tariffs to the airlines.

When the Chicago Convention was drawn up in 1944, there were unsuccessful attempts to exchange multilaterally the rights to transport passengers, cargo and mail internationally. As a consequence of the
failure to establish a multilateral régime, the vast majority of regulatory matters affecting the economics of international air transport are covered today by over 2,000 bilateral air services agreements between States. Bilateral air services agreements typically define permissible routes, regulate the number of seats and cargo space and the frequency of flights offered, and set forth how prices are to be governed. They encompass a spectrum of policy approaches and a multitude of compromises between such approaches, including, in recent years, a number designed to minimize governmental involvement in air transport. They also usually deal with designation or naming of airlines to operate the routes, their permission to operate, fair charges for the use of airports and route air navigation facilities, certain exemptions from customs duties and taxes, consultation and settlement of disputes, etc. Increasingly, bilateral arrangements are being used to approach new issues arising from the rapid growth and ever increasing complexity of the air transport system.

Bilateral regulation through negotiated intergovernmental agreements stems from the sovereignty principle, which necessitates that authorization be sought to operate over or into the territory of another State. Each State ensures that its bilateral commitments are consistent with its national laws. Similarly, States ensure that national regulations conform to their international agreements. The bilateral approach by and large has worked because States typically have a very strong interest in the development of their airlines and air services, this interest in many cases extending to government ownership of airlines.
2. Disciplines and Arrangements of the International Air Transport Association (IATA)

In negotiating the ICAO, governments were not able to reach agreement on a multilateral framework for the commercialization and trade in international air services (see above). A network of bilateral intergovernmental agreements thus evolved. Today more than 2000 bilateral air service agreements regulate basic aspects of the air transport market such as entry, supply and how prices shall be determined.

With the geographic limitations inherent in this bilateral structure, a mechanism was required to provide the public with a worldwide network of inter-connected air carrier services. Moreover, the first bilateral air service agreements provided for the carriers to jointly develop fares and rates which would then be subject to government approval. A forum was thus required through which the carriers could develop these fare proposals, particularly to ensure a relativity between adjacent markets and to coordinate multi-carrier tariffs.

Thus following the conclusion of the Chicago Convention, a group of airlines established the International Air Transport Association in April 1945. Using the extensive pre-war foundation of the earlier International Air Traffic Association (from 1919 until the outbreak of the second world war IATA existed as the International Air Traffic Association), IATA set about re-establishing and expanding the international air transport network with emphasis on standardisation and cooperation in the traffic, technical, legal and financial areas. A new feature of the post-war IATA was its role, delegated by governments, to coordinate and if possible agree on fares, rates and related conditions of carriage for submission to governments.

The international air transport system is thus based structurally on a multilateral intergovernmental convention covering technical and legal matters, a network of bilateral government agreements in the economic field and an association of air carriers for the cooperation in the handling of air transport. Institutionally, ICAO and IATA play important roles with governments and airlines respectively in developing and maintaining the trading environment for international civil aviation.

2.1 IATA Objectives and Structure

The Rules and Regulations Handbook, which includes the "Act of Incorporation", the "Articles of Association", and the "Provisions for the Conduct of Traffic Conferences" describe the aims and structure of IATA. IATA is an association of airlines, incorporated as a non-profit body by a Special Act of the Canadian Parliament in 1945. The aims of IATA as contained in the Act of Incorporation are to:

"Promote safe, regular and economical air transport for the benefit of the peoples of the world, to foster air commerce and to study the problems connected therewith;"
Provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport service;

Cooperation with the International Civil Aviation Organization and other international organizations."

The above aims are pursued through a wide range of programmes, services and facilities, a number of which are highlighted hereunder. Many of the IATA programmes are undertaken on an industry-wide basis and are made available to both Members and non-Member airlines. The work of IATA is carried out through a structure of Committees and Traffic Conferences comprised of airline representatives assisted by the Secretariat.

The structure and procedures of the various IATA activities have been revised on a number of occasions to reflect changing market, regulatory and regional requirements. The most significant adaptations have involved the Traffic Conference procedures for the coordination of fares and rates. Here the objective has been to provide participating carriers with greater flexibility to introduce innovative tariffs and to respond quickly to changing market conditions. Moreover, greater emphasis has been given to supplying information to governments and facilitating participation by representatives of government bodies at Traffic Conference meetings.

Membership in IATA is open to any airline registered in a state eligible for membership in ICAO and operating scheduled services. At 1 June 1987, IATA had 160 member airlines, of which 130 operate international scheduled services.

2.2 IATA Features and Coverage

2.2.1 Activities which Facilitate the Marketing and Sale of International Air Transport Services

A basic objective of IATA is the creation and maintenance of a global air transportation network where all airlines are able to participate to the fullest extent. Given the underlying framework of bilateral air service agreements where governments control market access and capacity, this objective is pursued by IATA through a series of multilateral airline arrangements and mechanisms designed to facilitate and encourage the inter-connection of airline services.

Among these arrangements are Multilateral Interline Traffic Agreements. These passenger and cargo agreements form the framework for the exchange of traffic among the 250 participating airlines. Membership in these agreements eliminates the need to negotiate bilateral inter-carrier arrangements by providing standard documents such as passenger tickets and cargo waybills and procedures for interline sales, reservations, transfers and billings. These agreements ensure that carriers can accept each others' documentation and that passengers or shippers can adapt or change their routing or schedules with the minimum of difficulty.
The Passenger and Cargo Agency Programme is the industry's shared distribution system. It offers airlines a sales network of qualified passenger and cargo agents in 165 countries. The Programme facilitates airline access to foreign markets and ensures that agency outlets used by IATA Members are competent business organizations able to provide accurate and reliable service to the public. Recently this Programme has undergone considerable evolution, enabling it to adapt to changing regulatory and market conditions at the national and regional levels.

As regards tariff coordination as provided for in Section F of the Rules and Regulations, it is noted that most bilateral air service agreements call for the development of tariffs by the carriers prior to submission to governments for approval. Many agreements further specify the IATA mechanism as the means for this tariff negotiation. IATA thus provides a forum where carriers can multilaterally coordinate a coherent tariff structure between adjacent and competitively-related points and countries, not only on the routes directly operated by carriers, but also between any two pairs of points in the world which might be served by air and which are not covered by bilateral agreements. An important product of this coordination is a centralized source of tariff information for use by airlines, agents, passengers/shippers. The tariff structures resulting from this coordination process are today not subject to enforcement. The negotiating procedures also allow for carriers independently to adjust their tariffs to market requirements.

A worldwide clearing mechanism enables a carrier to settle its interline accounts (including leases or service contracts) with 350 airlines in a single monthly settlement and in one currency. It reduces accounting costs and exposure to bad debts, increases cash flow and minimises interline foreign exchange transaction costs and the impact of restrictions on currently transfer.

Furthermore, 25 Agency Settlement Plans operating in 36 countries function as a clearing mechanism for the reporting and remitting of passenger and cargo sales by agents to airlines. In the process, these plans improve cash flow, simplify accounting and reduce administrative costs.

Lastly, given the complexity and volume of interline transactions, revenue accounting standards have been established by IATA to process the large number of passenger and cargo traffic documents exchanged between carriers. A separate industry programme establishes procedures for the equitable division of revenue between carriers.

2.2.2 Activities which Encourage Fair and Equitable Trading Conditions

IATA undertakes a variety of missions on behalf of its Members which are aimed at reducing or eliminating the effects of government restrictions on the trade in international air services.
The activity concerning airport and navigation charges is designed to ensure that airport and en-route charges are moderate, cost-justified and equitably applied in accordance with policies developed by governments in ICAO. A key objective is to consult with airport and other authorities, particularly on construction or expansion projects to ensure that international airline users only pay for services which they actually require.

As regards aviation fuel, the prime objectives are to identify problem areas and institute action to reduce or contain the costs of aviation fuel. Of particular concern is the effect on fuel prices of government fuel supply monopolies and the need to counter the imposition of taxation on aviation fuel and "no-value" fuel throughput charges.

Concerning currency remittances, it has been found, in recent years that delays or stoppages in currency remittances - both foreign earnings and interline billings - have become an increasingly serious problem for many airlines. Through IATA, airlines are working to contain the problem through negotiations with government authorities to establish priority remittance schedules.

Furthermore, international air transport entails special problems in the field of taxation, as operations involve various tax jurisdictions. Moreover a considerable percentage of airline operations is conducted outside of any tax jurisdiction, i.e. over the high seas. Through the IATA taxation sub-committee, airlines work to limit the incidence of multiple taxation of international air transport through representations to local authorities.

Finally, as differences between individual governments' regulatory policies have widened, the effects of national laws have increasingly intruded into the regulation of international air transport. IATA has sought to minimise the disruptive effects of these often conflicting national laws which can involve such issues as competition policy or aircraft noise limitations.

2.2.3 Activities to Improve the Efficiency of International Air Transport Operations

An extensive IATA programme is directed towards improving the safety of airline flight operations, increasing the efficiency of engineering and other technical procedures as well as coordinating the facilities provided by governments with airline requirements. In addition, a series of IATA activities is devoted to improving the cost-effectiveness of airport facilities, developing ground handling standards for procedures and equipment, improving customs and immigration procedures and advising on airport security measures. Lastly, with the extensive operational and commercial inter-relationships within the industry, a major IATA priority is to ensure that the benefits of automation are maximised through a coordinated approach to automation projects. A wide range of automated systems are operational or under development.
3. Convention of the International Maritime Organization (IMO) on Facilitation of International Maritime Traffic

The 1965 Convention on Facilitation of International Maritime Traffic, as amended, is the basic legal instrument for co-operation among governments in the field of governmental regulations and practices relating to technical matters of all kinds affecting shipping engaged in international trade. It establishes the International Maritime Organization (IMO), the specialized agency of the United Nations concerned solely with maritime affairs. IMO is the depository of various maritime conventions and instruments.

Objectives

The purpose of the Convention is to facilitate maritime transport by simplifying and minimizing the formalities, documentary requirements and procedures associated with the arrival, stay and departure of ships engaged on international voyages. This includes all documents required by customs, immigration, health and other public authorities pertaining to the ship, its crew and passengers, baggage, cargo and mail.

Features and Coverage

The Convention is a "co-operative" treaty among 54 Contracting Parties to bring about uniformity and simplicity and thereby facilitate international maritime traffic. The Convention which applies to all ships, except ships of war and pleasure yachts, encourages the adoption of the standardized documentation system developed by IMO and recommended by its Assembly for world-wide use. Governments are invited to adjust their national legislation when practicable, and to this effect, to draft international standards to facilitate their incorporation into national legislation.

Contracting governments to the Convention have agreed to adopt appropriate measures to facilitate international maritime traffic, to prevent unnecessary delays to ships, their crews, passengers and cargoes, to secure the highest practicable degree of uniformity in formalities, documentary requirements and procedures, and to keep to a minimum any alterations needed to meet special national requirements. Such measures should be practical and no less favourable than those applied to other means of international transport.

IMO has been assigned the tasks of simplifying (elimination of superfluous data and unnecessary documents), unifying (the combining of several similar documents wherever possible), and standardizing throughout the industry the relevant documentation.

In its Annex the Convention contains standards and recommended practices on formalities, documentary requirements and procedures which should be applied on arrival, stay and departure to the ship itself, and to its crew, passengers, baggage and cargo. The Convention defines standards
as internationally agreed measures which are necessary and practicable in order to facilitate international maritime traffic and recommended practices as measures, the application of which is "desirable".

The Convention provides that any contracting government which finds it impracticable to comply with an international standard or deems it necessary to adopt differing regulations must inform the Secretary-General of IMO of the differences between its own practices and the standards in question. The same procedure applies to new or amended standards. In the case of recommended practices, contracting governments are urged to adjust their laws accordingly but are only required to notify the Secretary-General when they have brought their own formalities, documentary requirements and procedures into full accord with the recommended practices. The Convention does not provide for any other enforcement provisions.

Pursuant to a resolution adopted by the 1965 Conference, IMO has developed Model Forms for six documents. The model general declaration, cargo declaration, crew list and passenger list incorporate the information detailed in recommended practices as constituting the maximum information necessary. The model ship's stores declaration and crew's effects declaration incorporate the agreed essential minimum information requirements. Twenty-two Governments have informed IMO of their national use of the six Model Forms.
4. Disciplines and Arrangements on Shipping Matters Negotiated in UNCTAD and Adopted by the United Nations

4.1 United Nations Code of Conduct for Liner Conferences

The first formal proposal for a Code of Conduct on Liner Conferences was elaborated at UNCTAD III in Santiago in Chile in 1972. Later that year, the General Assembly of the United Nations requested the Secretary General of the United Nations to convene, under the auspices of UNCTAD, a conference of plenipotentiaries to consider and adopt a convention or any legally binding instrument on a code of conduct for Liner Conferences. The Code (Annex 1) was adopted in 1974 by vote and opened for signature.

The Convention was to enter into force six months after the date on which not less than 24 states with a combined tonnage of at least 25 per cent of the world general cargo fleet had become contracting parties. These criteria were met in April 1983 after 58 countries had become contracting parties to the convention. As of June 1987, 68 countries owning nearly 50 per cent of the relevant tonnage had become contracting parties to the Convention by definitive signature, approval, acceptance, ratification or accession.

Objectives

The underlying purpose of the Code is to improve the Liner Conference system taking into account the special needs and problems of developing countries. The following specific objectives are sought to be realized: (a) to facilitate the orderly expansion of world sea-borne trade; (b) to stimulate the development of regular and efficient liner services adequate to the requirement of the trade concerned; (c) to ensure a balance of interests between suppliers and users of liner services.

Features and Coverage

The Code establishes rules for the participation by member lines in the trade carried by the conference. Unless otherwise agreed, when determining a share of trade within a pool operated under a conference, the group of national shipping lines of each of two countries shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference. Third-country shipping lines, or cross-traders, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade and carried by the conference. The same principles would guide other types of trade-sharing arrangements in the absence of a pool.

The Code also sets forth rules for other internal conference activities such as self-policing. The Code regulates the relationship between shippers and liner conferences by establishing principles for the use of loyalty arrangements, as well as through the provision that conferences are required to hold consultations with shippers or representative organizations of shippers on matters of concern to shippers, such as
changes in freight rates, loyalty arrangements, imposition of surcharges, etc. It also sets forth rules regulating freight rate increases, promotional freight rates, surcharges and currency adjustment factors.

A further operational consideration is that the Code establishes the machinery for a system of mandatory dispute settlement based on conciliation. To this end, it contains detailed rules governing its functioning, including in an annex to the Convention a set of model rules of procedure for international mandatory conciliation.

There exist considerable differences of opinion among countries, be they Contracting Parties or not, on what may be considered as the scope of application of the Convention with regard to the carriage of cargo. The Convention itself does not contain any provisions which would clearly determine its scope and, with regard to its application, general consensus appears to exist that it would be applicable only in trades between Contracting Parties.

A number of ad hoc agreements exclude some of the provisions of the Code from application. The Brussels' Package, for example, excludes from application the Code's provisions mandating cargo sharing, limiting freight rate increases and governing conference decision-making procedures in the trade between EC Member States and, on a reciprocal basis, between EC Member States and other OECD Member States which have accepted the Code.

4.2 United Nations Convention on International Multimodal Transport of Goods

The Convention on International Multimodal Transport of Goods was adopted in 1980 by the United Nations Conference on a Convention on International Multimodal Transport convened under the auspices of UNCTAD. The convention requires 30 countries to sign for its entry to come into force. Until now four countries have become contracting parties.

The stated objective of the Convention is to stimulate the development of smooth, economic and efficient multimodal transport services. International multimodal transport is described in the Convention as the carriage of goods by at least two different modes of transport on the basis of a contract to transport goods from one country to another country by a multimodal transport operation. The Convention establishes rules relating to the carriage of goods by international multimodal transport contracts, including provisions concerning the liability of multimodal transport operators, which is based on the principle of presumed fault or neglect which is the same as the one in the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). The Convention establishes conditions on the nature of multimodal transport documentation and contains procedures and conditions relating to claims and actions (e.g. notice of loss, damage and delay, arbitration proceedings).

There is a specific recognition that the Convention should not affect the application of any international convention or national law relating to the regulation and control of transport operations, and that each state retains the right to regulate and control at the national level multimodal transport operators and operations.
5. Disciplines and Arrangements of the International Telecommunication Union (ITU)

5.1 International Telecommunication Convention

The ITU, the origins of which date back to 1865 is the oldest specialized agency of the UN. It is composed of 162 Member States and governed by the 1982 International Telecommunication Convention, which is divided into "Basic Provisions" (Preamble and Articles 1 to 52) and "General Regulations" (Articles 53 to 83) and constitutes the basic instrument of the Union, the provisions of which are supplemented by the Administrative Regulations which regulate the use of Telecommunications and are binding on all Members.

Objectives

The Preamble states the objectives of the Union as facilitating peaceful relations, international cooperation and economic and social development among peoples by means of efficient telecommunication services, while fully recognizing the sovereign right of each country to regulate its telecommunications.

Article 4 of the Convention sets out the "purposes" of the Union which are: "(a) to maintain and extend international cooperation between all Members of the Union for the improvement and rational use of telecommunications of all kinds, as well as to promote and to offer technical assistance to developing countries in the field of telecommunications; (b) to promote the development of technical facilities and their most efficient operation with a view to improving the efficiency of telecommunication services, increasing their usefulness and making them, so far as possible, generally available to the public and (c) to harmonize the actions of nations in the attainment of those ends".

To this end, the Union is required in particular to: "(i) effect allocation of the radio frequency spectrum and registration of radio frequency assignments in order to avoid harmful interference between radio stations of different countries; (ii) coordinate efforts to eliminate harmful interference between radio stations of different countries and to improve the use made of the radio frequency spectrum; (iii) foster international cooperation in the delivery of technical assistance to the developing countries and the creation, development and improvement of telecommunication equipment and networks in developing countries by every means at its disposal, including through its participation in the relevant programmes of the United Nations and the use of its own resources, as appropriate; (iv) coordinate efforts with a view to harmonizing the development of telecommunication facilities, notably those using space techniques, with a view to full advantage being taken of their possibilities; (v) foster collaboration among its Members with a view to the establishment of rates at levels as low as possible consistent with an efficient service and taking into account the necessity for maintaining independent financial administration of telecommunication on a sound basis; (vi) promote the adoption of measures for ensuring the safety of life
through the cooperation of telecommunication services and (vii) undertake studies, make regulations, adopt resolutions, formulate recommendations and opinions, and collect and publish information concerning telecommunication matters".

Features and Coverage

The Convention, in its "Basic Provisions", provides for the Union's structure comprising the Plenipotentiary Conference (as the supreme organ of the Union normally convened every five to six years), Administrative Conferences for consideration of specific telecommunication matters (of which world conferences also periodically update and revise the Administrative Regulation, while regional conferences deal only with specific telecommunication questions of a regional nature), the Administrative Council (meeting annually and acting on behalf of the Plenipotentiary Conference) and the four permanent organs, i.e. the General Secretariat; the International Frequency Registration Board (IFRB); the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT).

As far as telecommunications in general are concerned, Articles 18 to 32 of the Convention place emphasis on the establishment, operation and maintenance of an efficient worldwide telecommunication network. Members agree to ensure the establishment, under the best technical conditions, of the channels and installations necessary to carry on the rapid and uninterrupted exchange of international telecommunications, to maintain these channels and installations in proper operating conditions and to keep them abreast of scientific and technical progress. In addition, Members agree to take all possible measures, compatible with the system of telecommunication used, with a view to ensuring the secrecy of international correspondence subject to the conditions stipulated in Article 22. Article 28 stipulates that the provisions regarding charges and the various cases in which free services are accorded are set forth in the Administrative Regulations annexed to the Convention. Article 29 deals with "Rendering and Settlement of Accounts". Article 30 deals with the monetary unit to be used in the composition of accounting rates and the establishment of international accounts.

While Members recognize the right of the public to correspond by means of the international service of public correspondence, they also reserve their right to stop the transmission of any private telegramme and to cut off any other private telecommunications which may appear dangerous to the security of the State or contrary to their laws, to public order or to decency. The Convention permits Members to suspend the international telecommunication service for an indefinite time, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit, provided that they immediately notify such action to each of the other Members through the Secretary-General. Finally, Members accept no responsibility towards users of the international telecommunication services, particularly as regards claims for damages.
According to the special provisions for radio and concerning the rational use of the radio frequency spectrum and of the geostationing satellite orbit, Members shall endeavour to limit the number of frequencies and the spectrum space used to the minimum essential, to provide in a satisfactory manner the necessary services and to apply the latest technical advances as soon as possible. In using frequency bands for space radio services, there is recognition that radio frequencies and the geostationary satellite orbit are limited natural resources and that they must be used efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to both, taking into account the special needs of the developing countries and the geographical situation of particular countries. The Members agree that all stations must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Members operating in accordance with the provisions of the Radio Regulations. Members retain generally their entire freedom with regard to military radio installations of their army, naval and air forces under the conditions specified in Article 38 of the Convention.

The Convention also contains provisions for dispute settlement. Disputes can be settled through diplomatic channels, or according to procedures established by bilateral or multilateral treaties or by any other method mutually agreed upon. If none of these methods of settlement is adopted, any Member party to a dispute may submit the dispute to arbitration in accordance with a defined procedure.

The General Regulations forming the second part of the Convention contain detailed provisions on the structure and functioning of the various organs of the ITU and also the rules of procedure of conferences and other meetings of the Union. As regards reservations, if any decision appears to a delegation to be of such a nature as to prevent its government from ratifying the Convention or from approving the revision of the Regulations, the delegation may make final or provisional reservations regarding this decision.

The Convention contains also three Annexes: Annex 1 (a list of the Members of the Union at the time of signature of the Convention), Annex 2 (a list of definitions of certain terms used in the Convention and in the Administrative Regulations) and Annex 3 (the agreement between the United Nations and the ITU according to Article I of which the UN recognizes the Union as the specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein).

5.2 The Telegraph and Telephone Regulations

The Telegraph Regulations and the Telephone Regulations (contained in the Final Acts of the 1973 Administrative Telegraph and Telephone Conference) are a model of simplicity and brevity, mainly because of a decision adopted in 1973 to turn most of the detailed technical, operating and tariff questions over to the International Telegraph and Telephone
Consultative Committee (CCITT). This allows for easier updating and makes the treatment of these questions more responsive to the rapidly evolving technology. The great mass of the earlier Telegraph and Telephone Regulations was therefore eliminated and replaced by two sets of very similar provisions which relate the Regulations with the Recommendations of the CCITT. Article 1 of both the Telegraph and Telephone Regulations stipulates that in implementing the principles of the Regulations, administrations or recognized private operating agencies should comply with the CCITT Recommendations, including any instructions forming part of those Recommendations, on any matters not covered by the Regulations. It has, therefore, been concluded that these Recommendations can also be considered as forming part of the ITU legal instruments, though on a level below the provisions of the Regulations themselves.

The stated purpose of the Telegraph Regulations is to lay down the general principles to be observed in the international telegraphic service. The provisions require inter-alia that (1) the circuits and installations provided for in the international telegraph service shall be sufficient to meet all requirements of the service and (2) administrations or recognized private operating agencies shall cooperate in the establishment, operation and maintenance of the circuits and installations used for the international telegraph service to ensure the best possible quality of service.

The Telephone Regulations are somewhat similar in format and content. The provisions require inter-alia that (1) all administrations or recognized private operating agencies shall promote the provision of telephone service on a world-wide scale and shall endeavour to extend the international service to their national network, (2) they shall designate the exchanges in the territory they serve which are to be regarded as international exchanges, (3) the circuits and installations provided for the international telephone service shall be sufficient to meet all requirements of the service, (4) administrations or recognized private operating agencies shall cooperate in the establishment, operation and maintenance of the circuits and installations used for the international telephone service to ensure the best possible quality of service, (5) they shall determine by mutual agreement which routes are to be used.

Both Regulations contain a general description of the services offered to users, a section concerning operations and a set of definitions. A major portion of these two instruments is made up of rules concerning tariffs and how to apply them.

It should be noted that both Regulations stipulate that they shall apply regardless of the means of transmission used, so far as the Radio Regulations do not provide otherwise.

Furthermore, both Regulations are to be replaced by a new set of international Regulations to be adopted by a forthcoming World Administrative Telegraph and Telephone Conference to be held in Melbourne in November/December 1988. The agenda for this Conference, as drawn up by the Administrative Council of the Union, with the concurrence of a majority
of the Members, provides for the adoption, as necessary, of new Regulations which will establish a new regulatory framework for all existing and foreseen new international telecommunication services. In effect the rôle of the Conference would be the regulation of the telecommunication infrastructure which permits the transport of information or communication of any kind through electronic means.

5.3 The Radio Regulations

The Regulations, Geneva, 1979, resulting from a general revision of the preceding Regulations have been further partially revised in 1983 and in 1985, and divided in two parts.

The General Provisions in Part A deal with terminology, technical characteristics of stations, frequencies, coordination, notification and registration of frequencies, measures against interference, administrative provisions for stations and service documents, e.g. the international frequency list and the list of ship stations.

Part B of the Radio Regulations deals with provisions relating to groups of services and to specific services and stations, distress and safety communications, aeronautical mobile service and aeronautical mobile-satellite service, maritime mobile service and maritime mobile-satellite service and land-mobile service.

It should be noted that it is stated in the Final Acts of the 1979 World Administrative Conference that "should an administration make reservations concerning the application of one or more of the provisions of the Radio Regulations, no other administration shall be obliged to observe that provision, or those provisions, in its relations with that particular administration".

5.4 Recommendations of the International Telegraph and Telephone Consultative Committee (CCITT)

The Recommendations as revised and adopted at Malaga-Torremolinos in 1984 and at present applicable are reproduced in the CCITT Red Book which contains some 11,000 pages. The entire set of texts contains all recommendations in force on a wide variety of subjects.

Recommendations published in ten volumes deal, among others, with tariff principles, telephone, telegraph and telematic services, analogue systems, digital networks, integrated services digital network (ISDN), data communication networks and open system interconnections (OSI).

It should be noted that Series D. Recommendations deal with general tariff principles - charging and accounting in international telecommunication services. These recommendations cover a wide range of subjects which include general principles for the lease of international private telecommunication services, special conditions for such lease, costs and value of services rendered as factors in the fixing of rates for private leased facilities, tariff principles applicable to data communication services, charging and accounting in various international
services such as the public télégramme, teletext, telex, facsimile, phototelegraph, maritime mobile, telephone and transferred account services, sound-and television-programme transmissions and the settlement of international telecommunication balances of accounts.

It should also be noted that Recommendation I.120 deals with Integrated Service Digital Network (ISDN). The main feature of the ISDN concept is the support of a wide range of voice and non-voice applications in the same network. A key element of service integration for an ISDN is the provision of a range of services using a limited set of connection types and multipurpose user-network interface arrangements. It is recognized that ISDNs may be implemented in a variety of configurations according to specific national situations. Services supported by an ISDN are the communication capabilities made available to customers by telecommunication service providers. An ISDN provides a set of network capabilities which are defined by standardized protocols and functions and enable telecommunication services to be offered to customers.

Telecommunication services are described by attributes that define service characteristics as they apply at a given reference point where the customer accesses the service. A telecommunication service is composed of technical attributes as seen by the customer, and other attributes associated with the service provision, e.g. operational and commercial attributes. Realization of the technical attributes of a telecommunication service requires a combination of network and terminal capabilities and other service providing systems. Telecommunication services are divided into two broad categories, i.e. bearer services, and teleservices.

Finally, it should be mentioned that CCITT Recommendations are periodically reviewed to ensure that technological developments and operational changes are duly taken into account. Accordingly, they are updated as necessary, every four years, at Plenary Assemblies of the CCITT of which the next one is scheduled to be held at Melbourne in November 1988.

5.5 Technical Cooperation

The Technical Cooperation activities of the Union support, in specific and need-oriented ways, the actions of nations in the development of their national and international networks. This cooperation (mainly through the provision of advisory services) is aimed at improving telecommunication infrastructures in developing countries and involves such activities as the planning, establishment and maintenance of networks, the development of human resources, the establishment of institutions and the strengthening of self-reliance.

Much of the work consists in executing telecommunication projects within the framework of the United Nations Development Programme (UNDP). However, to an increasing extent, recipient countries and third-party donors are calling upon the services of the Union to execute technical cooperation projects. Lately a new dimension has been added to these activities by the establishment of a Centre for Telecommunication
Development which is intended to reinforce the assistance to the multilateral process. The Centre is an experiment in international cooperation with the entry of recognized public telecommunication service providers, the industry and interested governments participating in an advisory board, having responsibility for the programming and managing of the Center's separate and identifiable budget, financed on a voluntary programme basis.

The Centre was established in July 1985 as a result of one of the recommendations of the report "The Missing Link" published in that year by the Independent Commission for World-Wide Telecommunications Development, established by the ITU Plenipotentiary Conference of 1982 (Reference is made in MDF/34 paragraphs 2-12).

The Report of the Commission includes several other recommendations which also take into account the need to explore new, innovative and pragmatic ways to increase cooperative efforts for development, including through the multilateral process of the ITU.
6. Disciplines and Arrangements of the International Telecommunications Satellite Organization (INTELSAT)

INTELSAT is the not-for-profit international cooperative organization which owns and operates the global satellite system. Although INTELSAT was created in 1964, the Agreement Relating to the International Telecommunications Satellite Organization entered into force on 12 February 1973. INTELSAT, whose membership totals 113 countries, has a global network of 15 satellites which link nearly 170 countries via more than 1700 pathways for full time communication. Two-thirds of the world's international telephone services and virtually all international television transmissions are carried over INTELSAT satellites.

Objectives

In the Preamble to the Agreement, the States Parties to the Agreement express their aim of achieving a single global commercial telecommunications satellite system as part of an improved global telecommunications network which will provide expanded telecommunications services to all areas of the world. They are determined to provide, through the most advanced technology available, the most efficient and economic facilities possible consistent with the best and most equitable use of the radio frequency spectrum and of orbital space.

Features and Coverage

The main purpose of INTELSAT is to continue and carry forward on a definitive basis the design, development, construction, establishment, operation and maintenance of the space segment of the global commercial telecommunications satellite system. INTELSAT provides, on a commercial basis, the space segment required for international public telecommunications services of quality and reliability to be available on a non-discriminatory basis to all areas of the world. The Agreement provides that all legal disputes arising in connection with the rights and obligations are submitted to arbitration. The decision of the arbitral tribunal (of three members) is binding on all the disputants and is carried out by them "in good faith".

INTELSAT has a four-tier organizational structure:

1. The Assembly of Parties, composed of representatives of governments, considers resolutions and recommendations on long-term objectives;

2. The Meeting of Signatories, composed of representatives of the investors in INTELSAT, who are either the member governments themselves or their designated telecommunications entities, considers issues related to the financial, technical and operational aspects of the system. It establishes general rules concerning the approval of earth stations for access to INTELSAT satellites, the allotment of INTELSAT satellite capacity and the establishment and adjustment of the charges for using INTELSAT satellites on a non-discriminatory basis;
3. The Board of Governors, composed of representatives of those INTELSAT Signatories that individually, or in groups, are the major users of the system, has 28 members representing 100 of the 113 Signatories of INTELSAT. The Board is responsible for all decisions concerning the design, development, construction, establishment, operation and maintenance of the INTELSAT satellites. It is assisted by Advisory Committees on Technical Matters and on Planning;

4. The Executive Organ. Headquartered in Washington D.C., with support offices in California and the United Kingdom, INTELSAT is headed by a Director General who reports directly to the Board of Governors.

INTELSAT satellites and control facilities are owned by its member countries. As a general rule, those owner countries also use its services. Each member country of INTELSAT holds an investment share based upon that country's current use of the system (with a minimum share of 0.05 percent). Each country is responsible for providing the capital funds necessary for satellite construction and operation in proportion to its investment share. The revenues of the system come from utilization charges for individual channels (i.e., voice, data, television), from leases (domestic and international television), and from transponder sales. After deduction of operating costs, the revenues are redistributed to members in proportion to their investment share as amortization of their investment and as compensation for use of capital.

International and domestic services are provided on a global basis through a combination of INTELSAT satellites over the Atlantic, Indian and Pacific Ocean Regions, as well as individual satellites located over South America and West Africa. International earth station facilities are owned and operated by the member countries.

More than three-quarters of these countries and one-third of the investment share is represented by developing countries. The annexes illustrate the magnitude of participation in the global network by developing countries. The INTELSAT system may be used by non-member countries, and some 35 countries participate as non-members. Approximately 500 of INTELSAT's 800 antennas are located in developing countries.

INTELSAT services have expanded dramatically since its creation. In 1986, business services, broadcast services, domestic leases and services other than full time international public telephone message service showed exceptional growth and accounted for approximately 26.9 percent of INTELSAT revenues. Growth also continued in the basic services of international public telephone messages, but at a slower rate than some of the newer services. These basic services represented 73.1 percent overall revenues in 1986, compared to the 95 percent it represented a decade earlier.
INTELSAT currently provides the following services:

6.1 International Telephone Services

Capacity on individual INTELSAT satellites has expanded from Early Bird's original capacity of 240 simultaneous telephone calls to 120,000 telephone calls on the INTELSAT VI satellite, scheduled for launch in 1989. Today, as indicated, more than two-thirds of all international calls go through INTELSAT system.

6.2 International Television Services

The space segment of the INTELSAT network currently consists of 15 satellites in geosynchronous orbit over the Atlantic, Indian and Pacific Ocean regions at an altitude of approximately 36,000 km. It offers the unique ability to serve most directions around the world. A regional transborder video distribution service was approved in 1986 to accommodate the inevitable spillover and desired international reception of domestic TV broadcast transmissions. A pilot project for direct signatory access to the Television Service Centre data base was also initiated in 1986 to determine space segment availability.

6.3 Planned Domestic Services

Under this new programme approved in 1985, INTELSAT member and user countries may purchase or lease INTELSAT transponders on a long-term basis for non-preemptible domestic communications. This programme provides the assurance and guarantee of service availability that countries require when planning domestic communications networks. As of March 1987, 32 transponders had been sold to 12 different signatories for a total of US$ 79.3 million.

6.4 Preemptible Domestic Services

These service provide satellite capacity for domestic telecommunications services on a preemptible basis.

6.5 INTELSAT Business Service (IBS)

IBS is a digital service tailored to meet the specific needs of the business community and designed to carry all types of telecommunication services, including voice telephony, high and low-speed data, packet switching, video conferencing, electronic mail, and telex. IBS was introduced in 1983. The service has grown to the point where more than 35 companies in the United States have applied for or received authorization to offer IBS from the United States to Europe.

6.6 CARIBNET Service

CARIBNET service was introduced in 1986 to satisfy emerging regional needs and strengthen INTELSAT's competitive position in the Caribbean area. This is a combination of IBS and INTELNET service.
6.7 INTELNET Service

INTELNET is a digital service designed for data collection and distribution, using small, inexpensive microterminals and a large central hub earth station. Applications for this service range from networks for sending out financial news and other data, to networks for collecting information on oil and gas exploration, gathering environmental data, and controlling and analyzing inventory data.

6.8 VISTA Service

Introduced in 1983, VISTA is a service providing basic satellite communications for rural and remote communities presently having inadequate communications facilities. The service can be used either for voice communications or low speed data applications. Super VISTA service is now available to VISTA networks under the control of a Demand Assigned Multiple Access (DAMA) system. Super VISTA, introduced in 1986 at approximately one-third the cost of regular VISTA, permits more efficient utilization of INTELSAT space segment capacity with the DAMA equipment and cost savings for customers. An additional development in 1986 was the selection of Scientific Atlanta as the earth station manufacturer for the VISTA Earth Station Volume Discount Agreement. Through this program, INTELSAT has negotiated an arrangement on behalf of its Signatories and non-member users to allow purchases of VISTA earth stations at discounted prices, thereby reducing the earth station cost.

6.9 Cable Restoration Services

The cable restoration service is designed for the restoration of submarine analog and wideband fiber optic cable systems.

6.10 INTELSAT Assistance and Development Program (IADP)

Since 1978, INTELSAT has provided technical and operational assistance to signatories and other users in all areas relating to access to the INTELSAT system. The types of assistance requested thus far fall generally within three broad categories:

1. Planning and development of international satellite services, including: feasibility studies, preparation of performance specifications, evaluation of proposals, monitoring and implementation, verification acceptance testing and upgrading.

2. Initial planning and expansion planning for domestic lease services including, feasibility studies, transmission and network planning, earth station design and proposal evaluation.

3. Training assistance, including seminars related to the planning, procurement, implementation, operation and maintenance of earth segment facilities intended to work with the INTELSAT space segment.
In all IADP activities, special emphasis is placed on assisting recipients in carrying out the work themselves. In this way, the program aims toward long-term assistance. Requests for assistance are becoming increasingly more concerned with planning and development activities rather than "rescue and maintenance" activities.

6.11 Project SHARE

Project SHARE (Satellites for Health and Rural Education) was announced in August 1984 by INTELSAT in conjunction with the International Institute of Communications (IIC) and provides free use of spare INTELSAT space segment capacity for educational and health programming in developing countries. Forty different countries on five continents have been involved in Project SHARE activities. One such project is already operating on a fully commercial basis, and others have similar plans.

6.12 Engineering and Planning Services

The continuing demand for new analog and digital services, together with steadily increasing growth in INTELSAT Business Service (IBS) has required extensive transmission engineering efforts to accommodate the variety of services offered. These efforts have included more analytical studies and increased hardware measurement activity. Transponder optimization software programs were expanded to facilitate the following transmission techniques. In this context, the Time Division Multiple Access (TDMA) is a high speed digital system which allocates space segment capacity on the basis of sequential time shared use of the entire transponder bandwidth. Three TDMA networks are presently in operation, two in the Atlantic Ocean region and one in the Indian Ocean region. Intermediate Date Rate (IDR) transmission mode may be used by a variety of service applications, including digital telephony and digital television, since the IDR system transmits digital carriers in multicarrier transponders.

6.13 Research and Development Services

INTELSAT research and development services completed numerous projects, continued implementations of sophisticated laboratory facilities for test and evaluation, and increased technical support to both planning and program activities.

6.14 Integrated Services Digital Networks (ISDN)

Since satellites will be an integral part of the ISDN concept and architecture, INTELSAT has an active and important role to play in the evolution of ISDN from concept to reality. The three new digital services currently being offered (Time Division Multiple Access TDMA, Intermediate Data Rate IDR and INTELSAT Business Services IBS) meet a number of ISDN specifications. It is considered that the fundamental requirements of a telecommunications infrastructure to serve the global information society
are (1) a global network for voice, data, and image, (2) global interconnectivity, (3) access from anywhere, and (4) uniform cost with appropriate technology. In addition, the growth of ISDN in developing countries will be aided by INTELSAT satellites through the use of smaller, less costly earth stations and more powerful satellites.

The Third UNCTAD Conference in Santiago 1972 decided to establish an Ad hoc Group of Experts to examine the possibility of drawing up guidelines regarding restrictive business practices. The Fourth UNCTAD Conference in Nairobi in 1976 decided that there should be international negotiations to formulate a set of principles and rules for the control of restrictive business practices. In April 1980 the United Nations Conference on Restrictive Business Practices, convened by the General Assembly, approved the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (hereafter referred to as the Set) and transmitted it to the General Assembly of the United Nations for adoption (General Assembly Resolution 35/63 is annexed to this document).

Objectives

The Set aims to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers, particularly those affecting the trade and development of developing countries. It also aims at attaining greater efficiency in trade and development through, for example, the creation of competition, the control of economic power and the encouragement of innovation. The Set aims to promote and protect social welfare in general and, in particular, the interests of consumers in both developed and developing countries. It seeks to eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations and other enterprises. It also aims at facilitating the adoption and strengthening of restrictive business practices laws and policies at the national and regional levels.

Features and Coverage

There are a number of key definitions that serve to determine the coverage of the Set. Restrictive business practices refer to the behaviour of enterprises which through an abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition. Dominant position of market power refers to a situation where an enterprise is in a position to control the market for a particular good or service. The term enterprise is used to describe all firms, partnerships, corporations and other associations, irrespective of the mode of creation or control or ownership, private or State, which are engaged in commercial activities. It includes their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them. Therefore, the Set applies to all transactions in goods and services and to all enterprises, including transnational corporations, be they private or State owned. The Set does not apply, however, to intergovernmental agreements, nor to restrictive business practices directly caused by such agreements.
The Set describes the activities from which enterprises should refrain when engaging in commercial activities. These include, for example, price fixing arrangements, collusive tendering and quota allocation of sales and production. It also indicates the acts associated with an abuse of market power which should be avoided. These include predatory behaviour towards competitors, discriminatory pricing in the supply of goods and fixing the price at which goods exported can be resold in importing countries.

According to the Set, the objectives are to be implemented by States taking action at the national level to adopt or improve legislation to control restrictive business practices. The characteristics of the legislation are described in the Set. For example, States should base their legislation primarily on the principle of eliminating acts of behaviour of enterprises which through an abuse of a dominant position of market power limit access to markets or otherwise unduly restrain competition and thereby create adverse effects for their trade or economic development.

At the international level the Set calls for collaboration between governments with a view to adopting national policies which are compatible with the Set. It provides for the communication annually to the Secretary-General of UNCTAD of steps taken by States to meet their commitment to the Set along with the publication by UNCTAD of an annual report on developments in restrictive business practice legislation and on practices adversely affecting international trade, and the implementation of technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries. The Set contains consultation procedures for the resolution of any problems that may arise in respect of the control of restrictive business practices.

The Set establishes the desired norms for the control of restrictive business practices at national, regional and international levels, and constitutes an understanding that the States will introduce and strengthen legislation in this area and ensure that their enterprises abide by the Set. The Set of Principles and Rules is not legally binding, but its adoption by the General Assembly involves a moral undertaking by all States to recognize and apply the principles and rules contained in the document, and to collaborate to this end.

An Intergovernmental Group of Experts on Restrictive Business Practices operating within the framework of a Committee of UNCTAD, provides the institutional machinery. The Set also provides for a review procedures. Five years after its adoption, a United Nations Conference to review all aspects of the Set was held in Geneva in 1985, and a further Review Conference is scheduled to take place in 1990.
8. Disciplines and Arrangements of the Organisation for Economic Cooperation and Development (OECD)

8.1 The Code of Liberalisation of Capital Movements (CLCM)

Objectives

The main objective of the Code of Liberalisation of Capital Movements (CLCM) is the progressive abolition of restrictions on capital movements between Member countries. Liberalization measures (as well as any restrictions) shall be applied to all Member countries on a non-discriminatory basis. While the CLCM focuses on OECD Member countries, it recommends that those countries should endeavour to extend their liberalization measures to all members of the International Monetary Fund. The CLCM has the legal status of an OECD Decision which is binding on all the Members. Accordingly, the Members are expected to take whatever steps are necessary to ensure that the obligations accepted are honoured.

Features

The CLCM has four parts (I-IV) and four Annexes (A-D). Part I defines the undertakings of the Member countries with regard to international capital operations, including transactions and transfers, between residents and non-residents of the Member countries. Operations between residents are not covered. Part II deals primarily with procedures concerning the notification by Member countries of any measures of liberalization or restriction that may affect their obligations under the CLCM, and the procedures for review and examination of measures requiring a dispensation from those obligations (i.e. a reservation or derogation). Part III lists the terms of reference of the Committee on Capital Movements and Invisible Transactions which is responsible for the surveillance of the application of the Code. Part IV provides the definition of certain terms such as "collective investment securities" and "recognised security market". Annex A lists the capital operations that are to be liberalised under the CLCM (see Annex 5 to this document). Annex B lists the capital operations that have not yet been liberalised by each Member, and for which the Member concerned has been granted a dispensation from the obligations of the CLCM. Annex C refers to a decision under which the provisions of the CLCM do not apply to actions taken by states of the United States, but which also provides that if a Member country considers that its interests under the CLCM are being prejudiced by such actions, the United States Government will bring the provisions of the Code to the attention of the competent authorities of any state concerned and will inform the Organisation of the results of its efforts. Annex D contains a General List which is an attempt to establish a transfer of capital from one country to another, as well as items concerning non-resident-owned blocked funds under which no such transfers take place. This list is more wide-ranging than the liberalization obligations set out in Annex A. Both Annex A and the General List in Annex D are currently being re-examined with a view to bringing the General List up to date and strengthening the obligations of liberalization in Annex A.
Coverage

One of the most important capital movements covered by the CLCM is direct investment, which is defined as "investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof". Moreover, the liberalization obligations apply to "the creation, extension, acquisition of, or participation in, an enterprise, or a long-term loan (5 years or longer)". The authorities concerned must authorize automatically transactions and transfers involving international direct investment operations falling within this definition, whether to or from other OECD countries, and must allow the proceeds of investment liquidation to be re-transferred. Subject to certain limited provisions in the CLCM, this obligation is reduced only to the extent that some Member countries have a reservation or derogation with respect to the relevant items of the Code (see below).

In 1984, as part of a general effort to strengthen its obligations regarding inward direct investment, the CLCM was amended to extend its coverage and explicitly to include measures or practices, including licensing or concession laws, that restrict what is generally known as the right of establishment for foreign investors. With this amendment, it has clearly been established that transactions for the purpose of inward direct investment are considered to be liberalized in a given country only if that country allows non-residents effective access to operate a corporation in any sector within the general framework for doing business in the country concerned. While not conferring on non-residents a claim to preferential treatment, the CLCM does require that Member countries avoid policies or practices that raise special barriers to non-residents as compared to resident investors.

The obligations of the Code do not extend to the activities of subsidiaries after establishment: these matters are covered by another OECD instrument known as the National Treatment Instrument (see below). However, the CLCM does contain obligations on host countries to allow a non-resident parent enterprise to expand its affiliates, and to have its securities admitted to the capital markets of the country where its affiliates are located. Moreover, both the parent and its affiliates benefit from the liberalization of other operations, such as trade credits (including those related to international service transactions), credits and loans by financial institutions, sureties and guarantees, and the physical movement of assets.

The obligation to liberalize direct investment, whether inward or outward, is subject to certain specific qualifications. First, Members are not required to permit investments of a purely financial character designed only to give access to the money or financial market of another country. Second, Members are not required to allow a specific transaction if, in view of the amount involved or of other factors, it would have an exceptionally detrimental effect on the interests of the Members concerned.
In the second case, however, the OECD must be notified if any transaction or transfer is restricted, and reasons for the restriction must be given; the OECD can then determine whether the Member concerned is complying with its obligations.

The liberalization obligations concerning direct investment are also qualified by other provisions that apply to all the capital transactions covered by the Code. For example, the Code does not prevent Members from taking restrictive measures that are necessary for the maintenance of public order, or for the protection of essential security interests and the fulfilment of international obligations. The Code is not regarded as altering the obligations undertaken by a Member as a signatory to the Articles of Agreement of the International Monetary Fund or other multilateral international agreements existing at the time of the Code's adoption. Nor does the Code limit the powers of Members to verify the authenticity of transactions or transfers, or to prevent the evasion of their laws and regulations in other spheres (e.g. taxation).

Many Member countries have not yet fully liberalized all of the operations covered by the Code. These countries have thus lodged reservations or invoked derogations in accordance with the procedures provided in the Code. The possibility of reservations or derogations provides a way of dealing with the situation of countries that, for various reasons, consider themselves unable to apply the liberalization obligations in full or at all times. It should be noted in this regard that each Member remains obliged to extend its liberalization measures to all other Members - including those maintaining reservations or derogations - on a non-discriminatory basis.

A Member is permitted to lodge a reservation to items of the Code only under specified conditions. This may be done on a unilateral basis at the time the Member adheres to the Code, or when a new item is added, or when the scope of an existing item is broadened. It therefore does not require the agreement of other Member States. Reservations on some items cannot be otherwise extended or added to; they can only be withdrawn or their scope narrowed. This is true of the items dealing with inward and outward direct investment, including the liquidation of such investments. For some other items, for instance, real estate operations other than those associated with productive investment, a reservation can be entered at any time. All reservations are subject to periodic examination. The Member being examined is expected to give reasons for the reservations it wishes to maintain, and the examination is directed to making proposals designed to assist the Member to withdraw its reservations.

The derogation clauses may be invoked in well defined circumstances. First, a Member need not take the liberalization measures called for under the Code if its economic and financial situation justifies such a course. At present, only two Members invoke this general derogation clause. Second, liberalization measures may be withdrawn if they result in serious economic and financial disturbance in the Member concerned. Third, if the overall balance-of-payments and reserve position of a Member develops adversely in a way that the Member considers serious, that Member may temporarily suspend its liberalization measures. In any of these
circumstances, the Member invoking a derogation clause must notify the Organisation and give reasons for its action. If the Organisation considers that the invocation is justified, it re-examines the measure at intervals until the Member terminates its derogation. If the invocation is not considered to be justified, the procedure laid down is for the Organisation to seek the Member's compliance with the Code through a process of consultation with the Member concerned. For a Member that invokes a derogation clause and that is considered to be in the process of economic development, the Organisation may grant a special dispensation from the liberalization obligations of the Code.

The Committee on Capital Movements and Invisible Transactions, composed of independent experts designated by Member countries, is responsible for the surveillance of the application of the Code. This task includes, in particular, undertaking reviews of the reservations or derogations that Member countries maintain, examining in the light of changing economic and financial circumstances the justification for the maintenance of restrictive measures and, where appropriate, recommending that certain measures be relaxed or withdrawn. The Committee is responsible for the interpretation of the provisions of the Code, although final decisions on the Committee's recommendations are taken by the Council. In recent years, the Committee has also carried out several studies on the effectiveness of controls on capital movements. (See for example "Experience with Controls on International Portfolio Operations in Shares and Bonds", OECD, 1980; and "Experience with Controls on International Financial Credits, Loans and Deposits", OECD, 1982).

The Code has facilitated a high degree of liberalisation of inward direct investment in the OECD area, and is regarded as an instrument which can be adapted to cover new issues in the area of capital movements as they emerge in relation to changing economic circumstances. Restrictions remain in several countries that represent obstacles and impediments to the ability of foreign investors to carry out business activities in certain areas. But, in accordance with the progressive liberalization process that the Code promotes, these have been considerably reduced over the years. Furthermore, the Code and the liberalization process associated with it are such that results in this direction, once achieved, tend to take root and become very difficult to dislodge.

8.2 The Code of Liberalisation of Current Invisible Operations (CLIO)

Objectives

The Code of Liberalisation of Current Invisible Operations (CLIO) calls on Members to eliminate restrictions on a wide range of current invisible transactions and transfers. In parallel with the CLCM, the CLIO requires that all measures of liberalization (or restriction) be applied to all Member countries on a non-discriminatory basis and, while the obligations apply strictly only between OECD Member countries, it recommends that those Members should endeavour to extend their liberalization measures to all members of the International Monetary Fund.
Similarly, the liberalisation obligations of the CLIO relate to international invisible transactions between residents and non-residents; transactions between residents (even if one of the residents is an affiliate of a foreign company) are not covered. The CLIO also has the legal status of an OECD Decision which is binding on all the Members.

Features and Coverage

The CLIO contains detailed provisions similar to those of the CLCM with respect to non-discrimination, public order and security, obligations in existing multilateral international agreements. Like the CLCM, the CLIO is set out in four parts and four Annexes. The four parts of the CLIO - which contain Members' obligations (Part I), procedures for notification, review and examination of measures of liberalisation, reservations and derogations (Part II), the terms of reference of the Committee on Capital Movements and Invisible Transactions (Part III) and definitions (Part IV) - are similar, though not identical, to the provisions of Parts I-IV of the CLCM. Annex A of the CLIO (see Annex 6 to the present document) sets out the list of current invisible operations that are to be liberalised under the following ten headings: business and industry, foreign trade, transport, insurance, films, income from capital, travel and tourism, personal income and expenditure, public income and expenditure, and general, i.e. advertising, professional services, registration of patents and trademarks, etc. The liberalization obligations for some of these items are complemented by more detailed provisions set out in sub-annexes to Annex A. These additional provisions concern invisible operations in insurance, air transport, the international movement of bank-notes and traveller's cheques, exchange of means of payment by travellers, the use of cash cards and credit cards abroad, and films. Annex B lists the reservations to the CLIO. Annexes C and D refer to two decisions regarding the application of the provisions of the CLIO to actions taken respectively by states of the United States and provinces of Canada. Concerning the United States, the decision provides that, if a Member country considers that its interests under the CLIO are being prejudiced, the United States Government undertakes to bring the provisions of the Code to the attention of the competent authorities concerned. In the case of Canada, the decision takes note of the undertaking of the Canadian Government to carry out the provisions of the Code to the fullest extent compatible with the constitutional system of Canada.

The Committee on Capital Movements and Invisible Transactions (the CMIT Committee) periodically reviews the position of Member countries under the CLIO in general examinations of the remaining reservations and in examinations of any derogations invoked by Member countries. Moreover, in recent years, the Committee has undertaken an extensive review of the CLIO with a view to updating and strengthening its liberalization obligations. In co-operation with other OECD Committees with expertise in the sectors concerned, the CMIT Committee has made considerable progress in the areas of insurance, tourism and travel, audiovisual works (formerly "films") and banking and related financial services, and preparatory work has been done on maritime transport. In regard to tourism and travel, for example, the decision was taken in 1985 to extend the CLIO provisions, in particular, to increase substantially the amounts of domestic and foreign bank-notes that travellers can carry abroad without need for justification, and to provide
for the unlimited use of credit cards for tourism purposes. New provisions have been adopted also for insurance. In both of these sectors, the next step will be to examine Members' positions vis-à-vis the new obligations under the CLIO with a view to extending liberalisation measures by Member countries in the sectors concerned.

8.3 The OECD National Treatment Instrument

The OECD national treatment instrument consists of a section of the 1976 Declaration on International Investment and Multinational Enterprises. The relevant text is reproduced below:

"Member countries should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfill commitments relating to peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another Member country (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

Member countries will consider applying "National Treatment" in respect of countries other than Member countries;

Member countries will endeavour to ensure that their territorial subdivisions apply "National Treatment";

This Declaration does not deal with the right of Member countries to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises."

The OECD Committee on International Investment and Multilateral Enterprises reviewed a number of concepts embodied in its definition of national treatment. Concerning the concepts of "public order" and "essential security interests", it was noted that no standard definition of these terms was given in national legal systems. The Committee agreed, however, that the provisions relating to these terms should be applied with caution, bearing in mind the objectives of the national treatment instrument. These terms should not be used as a general escape clause from the commitments under these instruments.

Concerning the terms "operating in their territory", it is considered that, in addition to sales offices and representative offices, the main forms of doing business in a host country for foreign-controlled enterprises are through locally-incorporated subsidiaries of foreign companies and through branches of foreign companies.

With regard to the terms "owned or controlled", it was noted that the criteria for determining control could include equity ownership, voting rights, power to appoint directors or otherwise influence the affairs of an enterprise.
With regard to the terms "treatment no less favourable than that accorded to domestic enterprises", it was agreed that possible discriminatory measures deriving from the existence of a public monopoly were not deemed to be exceptions to national treatment. The Committee considered the situations in which all domestic enterprises in a country were subject to the same treatment. It agreed that if a foreign-controlled enterprise already established in that country received less favourable treatment than that extended on a uniform basis to domestic enterprises, this could constitute less than national treatment.

The Committee considered the three different situations in which domestic enterprises in a country did not all receive the same treatment:

1. If a foreign-controlled enterprise already established in that country received less favourable treatment than the least well treated domestic enterprise, this would constitute an exception to national treatment and would do so if the other conditions determining these exceptions were fulfilled.

2. If the enterprise under foreign control received treatment at least as favourable as the best treated domestic enterprise, there could be no case of an exception to national treatment.

3. In cases where the enterprise under foreign control received treatment at least as favourable as the least well treated domestic enterprise but less favourable than the best treated domestic enterprise, it was neither possible nor desirable to provide an answer of principle to the question of whether this could constitute an exception to national treatment, even if the other conditions serving to determine such exceptions were fulfilled. The measures concerned in this latter case should be examined pragmatically, taking into account individual national characteristics in this regard and the degree to which the foreign-controlled enterprise and the domestic enterprise concerned were placed in the same circumstances.

As regards the terms "in like situations", it was agreed that comparison between treatment of foreign-controlled enterprises already established in a country and domestic enterprises in that country, in order to determine whether a measure taken by that country is discriminatory and could therefore constitute an exception to national treatment, is valid only if the comparison is made between firms operating within the same sector. It was also agreed that more general considerations, such as the policy objectives of countries in various fields, could be taken into account in order to define the circumstances in which comparison between foreign-controlled and domestic enterprises is permissible inasmuch as those objectives are not contrary to the agreed principles of national treatment. In any case, the real key to determining whether a discriminatory measure applied to foreign-controlled enterprises constitutes an exception to national treatment was to ascertain whether the discrimination implied by that measure was actually motivated, at least in part, by the fact that the enterprises concerned are under foreign control.
In 1984, the role of the national treatment instrument was strengthened when the Member countries agreed to carry out periodic examinations of Member country exceptions and of other measures related to National Treatment that must be notified to the OECD.

8.4 The OECD Recommendation on Restrictive Business Practices

In a step forward in antitrust procedures, OECD's Council adopted on 21 May 1986 a revised Recommendation on "co-operation between Member countries on restrictive business practices affecting international trade", i.e. agreements between enterprises for production and market-sharing or the fixing of pricing. This Recommendation repeats the main points of three earlier Recommendations adopted in 1979, 1967 and in 1973 and adds new guiding principles (see Annex 7 to this document).

Although the various procedures advocated by the Recommendations are voluntary, they can help the authorities responsible for dealing with competition matters in Member countries apply the provisions of national legislation to those restrictive business practices which affect international trade. One of the main objectives of the Recommendation is to facilitate the application of national legislation to restrictive business practices originating abroad or practised by enterprises established abroad.

In deciding to strengthen their co-operation in this field, Member countries recognize that investigations of restrictive business practices and legal proceedings undertaken by one Member country are more and more likely to affect the interests of other Member countries. In addition, since the unilateral application of national legislations to acts by firms situated in other countries may raise questions about the respective spheres of sovereignty of the countries concerned, the Recommendation also aims at smoothing out these difficulties.

The 1979 Recommendation takes its three main instruments from the 1967 Recommendations which laid the foundations for co-operation between Member countries in this field. These mechanisms are (1) notifications (a Member country undertaking an investigation of restrictive business practices or legal proceedings will notify any country whose substantial interests are involved), (2) co-ordination of Member countries' action to remedy the harmful effects of restrictive business practices which affect international trade and (3) exchange of information. The 1979 Recommendation makes a number of improvements to these already existing procedures. One important addition is that all Member countries receiving a notification of an investigation or proceedings involving its interests have the opportunity to present their observations to or enter into consultations with the notifying Member country. Another significant addition relates to exchanges of information between Member countries. It is recommended, subject to appropriate safeguards, for example to protect confidentiality, that the competent authorities and firms of one Member country be allowed to disclose information to the competent authorities of other Member countries, unless such disclosure would be contrary to significant national interests.
The provisions concerning consultation and conciliation included in the 1979 Recommendation are based on clauses of the 1973 Recommendation. If a Member country finds that its interests are seriously affected by a restrictive business practice of a firm located in another Member country, it may enter into consultation with the other country so as to get the latter to adopt appropriate remedial action.

In addition, in cases where a country considers that an investigation or proceedings being conducted by another Member country substantially affects its interests, a new kind of consultation procedure is specifically provided for. The concerned parties will examine the various possibilities for meeting the objectives of the investigation or the requirements of legal proceedings.

Under the terms of the Recommendation, Member countries will endeavour during the consultations to try to find a mutually acceptable solution and, in the event that none can be found, the Member countries concerned may, if they agree to do so, submit the case to the OECD Committee of Experts on Restrictive Business Practices with a view to conciliation.

The basic provisions of notification, exchange of information, consultation and conciliation are virtually unchanged in the 1986 Revised Recommendation. However, it was agreed that the Recommendation could be strengthened by ensuring a common interpretation of the procedures and an interpretative Appendix to the Recommendation has been elaborated containing guiding principles in this regard. These principles set out the circumstances in which a notification of an investigation or proceeding should be made. They confirm the principle of advance notification to enable the views of other countries to be taken into account. They clarify the channels by which notifications should be made as well as their content. They include guidelines for the obtaining of information from persons or enterprises located abroad. They also lay down principles which should govern bilateral consultations between Member countries and clarify the principle of confidentiality of information disclosed.

8.5 The OECD Declaration on Transborder Data Flows

The OECD Declaration on Transborder Data Flows was adopted by Ministers of the OECD Member countries on 11 April 1985 (See Annex 8 to this document).

This Declaration represents the first international effort to address economic issues raised by the developments in telematics, i.e. the combined use of telecommunications and informatics. It addresses the policy issues arising from transborder data flows such as flows of data and information related to trading activities, intra-corporate flows, computerized information services and scientific and technological exchanges.

In adopting this Declaration, the governments of OECD Member countries expressed their intention (1) to promote access to data, information and related services, by avoiding the creation of unjustified barriers to their
international exchange, (2) to seek transparency in regulations and policies relating to information, computer and communications services affecting transborder data flows, (3) to develop common approaches for dealing with issues related to transborder data flows and, when appropriate, develop harmonized solutions, and (4) consider possible implications for other countries when dealing with issues related to transborder data flows.

The governments of OECD Member countries agreed to undertake further work on issues emerging from flows of data accompanying international trade, marketed computer services, computerized information services and intra-corporate data flows.
9. General comments

A number of general comments of a preliminary nature can be made on the basis of this factual note on the existing disciplines and arrangements relevant to trade in services.

The features, coverage and objectives of the disciplines and arrangements discussed above cover a variety of services activities (civil aviation, maritime transport and telecommunications). They also relate to groups of activities (invisibles), economic variables (capital flows) and restrictions on trade (restrictive business practices). The disciplines and arrangements differ in structure and cover technical, economic, administrative and legal matters. They are based on multilateral intergovernmental agreements, bilateral/plurilateral governmental agreements and non-governmental agreements.

The sectoral disciplines and arrangements play an important rôle in assisting governments and private firms to maintain and develop the technical, legal and economic environment for international civil aviation, maritime transport and telecommunications. The disciplines and arrangements establish a set of agreements or understandings aimed at ensuring that service activities in these particular areas are developed on a co-operative basis, can better meet the requirements of the national and international markets and standards of comfort and convenience, and provide for an appropriate sharing of benefits among the participating countries. The primary objective of these sectoral arrangements and disciplines is, it should be noted, not trade liberalization but for example the elaboration of technical standards, the pooling of resources and the allocation of markets. Partly for these reasons, these arrangements also tend to be highly technical in character.

The UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the OECD Recommendation on Restrictive Business Practices are aimed at eliminating certain types of practices that might restrain or distort international competition. They are not, however, aimed at providing a comprehensive set of rules governing the expansion of trade in goods or services. The purposes of the OECD Codes on Capital Movements and on Current Invisible Operations are to liberalize the various types of international transactions covering capital movements and investment flows, but also more directly services transactions among countries involving other factor and non-factor payments. The scope of these arrangements is, however, by definition limited to Member countries of the OECD.

A number of the sectoral disciplines or arrangements contain as an essential element the principle of reciprocity and mutual advantage and are concerned with the practical application of this principle in allocating rights and benefits among participants. However, they do not deal with such concepts as transparency or non-discrimination as principles for general application.
The extent to which the disciplines and arrangements are legally binding in the sense that lack of compliance may be a matter for arbitration or judicial finding, varies greatly. The OECD Codes on capital flows and invisibles have the legal status of an OECD Decision which is binding on all the OECD Members, to the extent that reservations with respect to special provisions have not been made at the time of acceptance. Accordingly, the Members are expected to take whatever steps necessary to ensure that the obligations accepted are honoured. The procedure for review applies to reservations made at the time of acceptance. The United Nations text on Restrictive Business Practices constitutes a moral obligation for governments to bring their own national laws into line with the objectives of a set of rules and principles. The system of discussions within the framework of the UNCTAD Committee does not give these obligations a binding or mandatory character. The International Maritime Organization has a co-operative treaty that encourages governments to adapt their national practices to standard procedures to facilitate international maritime traffic.

There are provisions for disputes settlement for example in the Convention on International Civil Aviation, the International Telecommunication Convention, the Convention on a Code of Conduct for Liner Conferences and the Agreement relating to the INTELSAT Organization. The manner in which disputes are settled varies greatly. In the case of the Convention on International Civil Aviation, disputes are settled by reference to the Council, while for the International Telecommunication Convention, disputes are settled through normal diplomatic channels or any other mutually agreed procedure.
CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES

OBJECTIVES AND PRINCIPLES

The Contracting Parties to the present Convention,

Desiring to improve the liner conference system,

Recognizing the need for a universally acceptable code of conduct for liner conferences,

Taking into account the special needs and problems of the developing countries with respect to the activities of liner conferences serving their foreign trade,

Agreeing to reflect in the Code the following fundamental objectives and basic principles:

(a) The objective to facilitate the orderly expansion of world sea-borne trade;

(b) The objective to stimulate the development of regular and efficient liner services adequate to the requirements of the trade concerned;

(c) The objective to ensure a balance of interests between suppliers and users of liner shipping services;

(d) The principle that conference practices should not involve any discrimination against the shipowners, shippers or the foreign trade of any country;

(e) The principle that conferences hold meaningful consultations with shippers' organizations, shippers' representatives and shippers on matters of common interest, with, upon request, the participation of appropriate authorities;

(f) The principle that conferences should make available to interested parties pertinent information about their activities which are relevant to those parties and should publish meaningful information on their activities.

Have agreed as follows:

Part one

Chapter I

DEFINITIONS

Liner conference or conference

A group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services.

National shipping line

A national shipping line of any given country is a vessel-operating carrier which has its head office of management and its effective control in that country and is recognized as such by an appropriate authority of that country or under the law of that country.

Lines belonging to and operated by a joint venture involving two or more countries and in whose equity the national interests, public and/or private, of those countries have a substantial share and whose head office of management and whose effective control is in one of those countries can be recognized as a national line by the appropriate authorities of those countries.

Third-country shipping line

A vessel-operating carrier in its operations between two countries of which it is not a national shipping line.

Shipper

A person or entity who has entered into, or who demonstrates an intention to enter into, a contractual or other arrangement with a conference or shipping line for the shipment of goods in which he has a beneficial interest.

Shippers' organization

An association or equivalent body which promotes, represents and protects the interests of shippers and, if those authorities so desire, is recognized in that capacity by the appropriate authority or authorities of the country whose shippers it represents.

Goods carried by the conference

Cargo transported by shipping lines members of a conference in accordance with the conference agreement.

Appropriate authority

Either a government or a body designated by a government or by national legislation to perform any of the functions ascribed to such authority by the provisions of this Code.

Promotional freight rate

A rate instituted for promoting the carriage of non-traditional exports of the country concerned.

Special freight rate

A preferential freight rate, other than a promotional freight rate, which may be negotiated between the parties concerned.
RELATIONS AMONG MEMBER LINES

MEMBERSHIP

1. Any national shipping line shall have the right to be a full member of a conference which serves the foreign trade of its country, subject to the criteria set out in article 1, paragraph 2. Shipping lines which are not national lines in any trade of a conference shall have the right to become full members of that conference, subject to the criteria set out in article 1, paragraphs 2 and 3, and to the provisions regarding the share of trade as set out in article 2 as regards third-country shipping lines.

2. A shipping line applying for membership of a conference shall furnish evidence of its ability and intention, which may include the use of chartered tonnage, provided the criteria of this paragraph are met, to operate a regular, adequate and efficient service on a long-term basis as defined in the conference agreement within the framework of the conference, shall undertake to abide by all the terms and conditions of the conference agreement, and shall deposit a financial guarantee to cover any outstanding financial obligation in the event of subsequent withdrawal, suspension or expulsion from membership, if so required under the conference agreement.

3. In considering an application for membership by a shipping line which is not a national line in any trade of the conference concerned, in addition to the provisions of article 1, paragraph 2, the following criteria, inter alia, should be taken into account:

(a) The existing volume of the trade on the route or routes served by the conference and prospects for its growth;

(b) The adequacy of shipping space for the existing and prospective volume of trade on the route or routes served by the conference;

(c) The probable effect of admission of the shipping line to the conference on the efficiency and quality of the service;

(d) The current participation of the shipping line in trade on the same route or routes outside the framework of a conference; and

(e) The current participation of the shipping line on the same route or routes within the framework of another conference.

The above criteria shall not be applied so as to subvert the implementation of the provisions relating to participation in trade set out in article 2.

4. An application for admission or readmission to membership shall be promptly decided upon and the decision communicated by a conference to an applicant promptly, and in no case later than six months from the date of application. When a shipping line is refused admission or readmission the conference shall, at the same time, give in writing the grounds for such refusal.

5. When considering applications for admission, a conference shall take into account the views put forward by shippers and shippers' organizations of the countries whose trade is carried by the conference, as well as the views of appropriate authorities if they so request.

6. In addition to the criteria for admission set out in article 1, paragraph 2, a shipping line applying for re-admission shall also give evidence of having fulfilled its obligations in accordance with article 4, paragraphs 1 and 4. The conference may give special scrutiny to the circumstances under which the line left the conference.

PARTICIPATION IN TRADE

1. Any shipping line admitted to membership of a conference shall have sailing and loading rights in the trades covered by that conference.

2. When a conference operates a pool, all shipping lines members of the conference serving the trade covered by the pool shall have the right to participate in the pool for that trade.

3. For the purpose of determining the share of trade which member lines shall have the right to acquire, the national shipping lines of each country, irrespective of the number of lines, shall be regarded as a single group of shipping lines for that country.

4. When determining a share of trade within a pool of individual member lines and/or groups of national shipping lines in accordance with article 2, paragraph 2, the following principles regarding their right to participation in the trade carried by the conference shall be observed, unless otherwise mutually agreed:

(a) The group of national shipping lines of each of two countries the foreign trade between which is carried by the conference shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference;

(b) Third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade.

5. If, for any one of the countries whose trade is carried by a conference, there are no national shipping lines participating in the carriage of that trade, the share of the trade to which national shipping lines of that country would be entitled under article 2, paragraph 4 shall be distributed among the individual member lines participating in the trade in proportion to their respective share.

6. If the national shipping lines of one country decide not to carry their full share of the trade, that portion of
their share of the trade which they do not carry shall be
distributed among the individual member lines participating
in the trade in proportion to their respective shares.

7. If the national shipping lines of the countries con-
cerned do not participate in the trade between those
countries covered by a conference, the shares of trade
carried by the conference between those countries shall be
allocated between the participating member lines of third
countries by commercial negotiations between those lines.

8. The national shipping lines of a region, members of a
conference, at one end of the trade covered by the
conference, may redistribute among themselves by mutual
agreement the shares in trades allocated to them, in
accordance with article 2, paragraphs 4 to 7 inclusive.

9. Subject to the provisions of article 2, paragraphs 4 to
8 inclusive regarding shares of trade among individual
shipping lines or groups of shipping lines, pooling or
trade-sharing agreements shall be reviewed by the confer-
ence periodically, at intervals to be stipulated in those
agreements and in accordance with criteria to be specified
in the conference agreement.

10. The application of the present article shall com-
mence as soon as possible after entry into force of the
present Convention and shall be completed within a
transition period which in no case shall be longer than two
years, taking into account the specific situation in each of
the trades concerned.

11. Shipping lines members of a conference shall be
entitled to operate chartered ships to fulfil their conference
obligations.

12. The criteria for sharing and the revision of shares as
set out in article 2, paragraphs 1 to 11 inclusive shall apply
when, in the absence of a pool, there exists berthing, sailing
and/or any other form of cargo allocation agreement.

13. Where no pooling, berthing, sailing or other trade
participation agreements exist in a conference, either group
of national shipping lines, members of the conference, may
require that pooling arrangements be introduced, in respect
of the trade between their countries carried by the
conference, in conformity with the provisions of article 2,
paragraph 4; or alternatively they may require that the
sailings be so adjusted as to provide an opportunity to these
lines to enjoy substantially the same rights to participate in
the trade between those two countries carried by the
conference as they would have enjoyed under the provi-
sions of article 2, paragraph 4. Any such request shall be
considered and decided by the conference. If there is no
agreement to institute such a pool or adjustment of sailings
among the members of the conference, the groups of
national shipping lines of the countries at both ends of the
trade shall have a majority vote in deciding to establish such
a pool or adjustment of sailings. The matter shall be
decided upon within a period not exceeding six months
from the receipt of the request.

14. In the event of a disagreement between the national
shipping lines of the countries at either end whose trade is
served by the conference with regard to whether or not
pooling shall be introduced, they may require that within
the conference sailings be so adjusted as to provide an
opportunity to these lines to enjoy substantially the same
rights to participate in the trade between those two
countries carried by the conference as they would have
enjoyed under the provisions of article 2, paragraph 4. In
the event that there are no national shipping lines in one of
the countries whose trade is served by the conference, the
national shipping line or lines of the other country may
make the same request. The conference shall use its best
efforts to meet this request. If, however, this request is
not met, the appropriate authorities of the countries at
both ends of the trade may take up the matter if they so
wish and make their views known to the parties concerned
for their consideration. If no agreement is reached, the
dispute shall be dealt with in accordance with the pro-
cedures established in this Code.

15. Other shipping lines, members of a conference, may
also request that pooling or sailing agreements be intro-
duced, and the request shall be considered by the confer-
ce in accordance with the relevant provisions of this
Code.

16. A conference shall provide for appropriate measures
in any conference pooling agreement to cover cases where
the cargo has been shut out by a member line for any
reason excepting late presentation by the shipper. Such
agreement shall provide that a vessel with unbooked space,
capable of being used, be allowed to lift the cargo, even in
excess of the pool share of the line in the trade, if otherwise
the cargo would be shut out and delayed beyond a period
set by the conference.

17. The provisions of article 2, paragraphs 1 to 16
inclusive concern all goods regardless of their origin, their
destination or the use for which they are intended, with the
exception of military equipment for national defence
purposes.

Article 3
DECISION-MAKING PROCEDURES

The decision-making procedures embodied in a confer-
ence agreement shall be based on the equality of all the full
member lines; these procedures shall ensure that the voting
rules do not hinder the proper work of the conference and
the service of the trade and shall define the matters on
which decisions will be made by unanimity. However, a
decision cannot be taken in respect of matters defined in a
conference agreement relating to the trade between two
countries without the consent of the national shipping lines
of those two countries.
Article 4
SANCTIONS

1. A shipping line member of a conference shall be entitled, subject to the provisions regarding withdrawal which are embodied in pool schemes and/or cargo-sharing arrangements, to secure its release, without penalty, from the terms of the conference agreement after giving three months' notice, unless the conference agreement provides for a different time period, although it shall be required to fulfil its obligations as a member of the conference up to the date of its release.

2. A conference may, upon notice to be specified in the conference agreement, suspend or expel a member for significant failure to abide by the terms and conditions of the conference agreement.

3. No expulsion or suspension shall become effective until a statement in writing of the reasons therefor has been given and until any dispute has been settled as provided in chapter VI.

4. Upon withdrawal or expulsion, the line concerned shall be required to pay its share of the outstanding financial obligations of the conference, up to the date of its withdrawal or expulsion. In cases of withdrawal, suspension or expulsion, the line shall not be relieved of its own financial obligations under the conference agreement or of any of its obligations towards shippers.

Article 5
SELF-POLICING

1. A conference shall adopt and keep up to date an illustrative list, which shall be as comprehensive as possible, of practices which are regarded as malpractices and/or breaches of the conference agreement and shall provide effective self-policing machinery to deal with them, with specific provisions requiring:

(a) The fixing of penalties or a range of penalties for malpractices or breaches, to be commensurate with their seriousness;

(b) The examination and impartial review of an adjudication of complaints, and/or decisions taken on complaints, against malpractices or breaches, by a person or body unconnected with any of the shipping lines members of the conference or their affiliates, on request by the conference or any other party concerned;

(c) The reporting, on request, on the action taken in connexion with complaints against malpractices and/or breaches, and on a basis of anonymity for the parties concerned, to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

2. Shipping lines and conferences are entitled to the full co-operation of shippers and shippers' organizations in the endeavour to combat malpractices and breaches.

Article 6
CONFERENCE AGREEMENTS

All conference agreements, pooling, berthing and sailing rights agreements and amendments or other documents directly related to, and which affect, such agreements shall be made available on request to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

Chapter III
RELATIONS WITH SHIPPERS

Article 7
LOYALTY ARRANGEMENTS

1. The shipping lines members of a conference are entitled to institute and maintain loyalty arrangements with shippers, the form and terms of which are matters for consultation between the conference and shippers' organizations or representatives of shippers. These loyalty arrangements shall provide safeguards making explicit the rights of shippers and conference members. These arrangements shall be based on the contract system or any other system which is also lawful.

2. Whatever loyalty arrangements are made, the freight rate applicable to loyal shippers shall be determined within a fixed range of percentages of the freight rate applicable to other shippers. Where a change in the differential causes an increase in the rates charged to shippers, the change can be implemented only after 150 days' notice to those shippers or according to regional practice and/or agreement. Disputes in connexion with a change of the differential shall be settled as provided in the loyalty agreement.

3. The terms of loyalty arrangements shall provide safeguards making explicit the rights and obligations of shippers and of shipping lines members of the conference in accordance with the following provisions, inter alia:

(a) The shipper shall be bound in respect of cargo whose shipment is controlled by him or his affiliated or subsidiary company or his forwarding agent in accordance with the contract of sale of the goods concerned, provided that the shipper shall not, by evasion, subterfuge, or intermediary, attempt to divert cargo in violation of his loyalty commitment;

(b) Where there is a loyalty contract, the extent of actual or liquidated damages and/or penalty shall be specified in the contract. The member lines of the conference may, however, decide to assess lower liquidated damages or to waive the claim to liquidated damages. In
any event, the liquidated damages under the contract to be paid by the shipper shall not exceed the freight charges on the particular shipment, computed at the rate provided under the contract;

(c) The shipper shall be entitled to resume full loyalty status, subject to the fulfilment of conditions established by the conference which shall be specified in the loyalty arrangement;

(d) The loyalty arrangement shall set out:
   (i) A list of cargo, which may include bulk cargo shipped without mark or count, which is specifically excluded from the scope of the loyalty arrangement;
   (ii) A definition of the circumstances in which cargo other than cargo covered by (i) above is considered to be excluded from the scope of the loyalty arrangement;
   (iii) The method of settlement of disputes arising under the loyalty arrangement;
   (iv) Provision for termination of the loyalty arrangement on request by either a shipper or a conference without penalty, after expiry of a stipulated period of notice, such notice to be given in writing; and
   (v) The terms for granting dispensation.

4. If there is a dispute between a conference and a shippers' organization, representatives of shippers and/or shippers about the form or terms of a proposed loyalty arrangement, either party may refer the matter for resolution under appropriate procedures as set out in this Code.

Article 8

DISPENSATION

1. Conferences shall provide, within the terms of the loyalty arrangements, that requests by shippers for dispensation shall be examined and a decision given quickly and, if requested, the reasons given in writing where dispensation is withheld. Should a conference fail to confirm, within a period specified in the loyalty arrangement, sufficient space to accommodate a shipper's cargo within a period also specified in the loyalty arrangement, the shipper shall have the right, without being penalized, to utilize any vessel for the cargo in question.

2. In ports where conference services are arranged subject to the availability of a specified minimum of cargo (i.e. on inducement), but either the shipping line does not call, despite due notice by shippers, or the shipping line does not reply within an agreed time to the notice given by shippers, shippers shall automatically have the right, without prejudicing their loyalty status, to use any available vessel for the carriage of their cargo.

Article 9

AVAILABILITY OF TARIFFS AND RELATED CONDITIONS AND/OR REGULATIONS

Tariffs, related conditions, regulations, and any amendments thereto shall be made available on request to shippers, shippers' organizations and other parties concerned at reasonable cost, and they shall be available for examination at offices of shipping lines and their agents. They shall spell out all conditions concerning the application of freight rates and the carriage of any cargo covered by them.

Article 10

ANNUAL REPORTS

Conferences shall provide annually to shipper organizations, or to representatives of shippers, reports on their activities designed to provide general information of interest to them, including relevant information about consultations held with shippers and shippers' organizations, action taken regarding complaints, changes in membership, and significant changes in service, tariffs and conditions of carriage. Such annual reports shall be submitted, on request, to the appropriate authorities of the countries whose trade is served by the conference concerned.

Article 11

CONSULTATION MACHINERY

1. There shall be consultations on matters of common interest between a conference, shippers' organizations, representatives of shippers and, where practicable, shippers, which may be designated for that purpose by the appropriate authority if it so desires. These consultations shall take place whenever requested by any of the above-mentioned parties. Appropriate authorities shall have the right, upon request, to participate fully in the consultations, but this does not mean that they play a decision-making role.

2. The following matters, inter alia, may be the subject of consultation:
   (a) Changes in general tariff conditions and related regulations;
   (b) Changes in the general level of tariff rates and rates for major commodities;
   (c) Promotional and/or special freight rates;
   (d) Imposition of, and related changes in, surcharges;
   (e) Loyalty arrangements, their establishment or changes in their form and general conditions;
   (f) Changes in the tariff classification of ports;
   (g) Procedure for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes; and
   (h) Presentation of cargo for shipment and the requirements regarding notice of cargo availability.

3. To the extent that they fall within the scope of activity of a conference, the following matters may also be the subject of consultation:

   (a) Changes in general tariff conditions and related regulations;
   (b) Changes in the general level of tariff rates and rates for major commodities;
   (c) Promotional and/or special freight rates;
   (d) Imposition of, and related changes in, surcharges;
   (e) Loyalty arrangements, their establishment or changes in their form and general conditions;
   (f) Changes in the tariff classification of ports;
   (g) Procedure for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes; and
   (h) Presentation of cargo for shipment and the requirements regarding notice of cargo availability.
which shipping services are provided; changes in the areas served and in the regularity of calls by conference vessels.

The availability of shipping services and freight rates at reduction of conventional service or loss of direct services;

Where applicable, the outward and inward voyage should be evaluated for the round voyage of ships, with the feasible from the commercial point of view and shall permit a reasonable profit for shipowners;

CRITERIA FOR FREIGHT-RATE DETERMINATION

In arriving at a decision on questions of tariff policy in all cases mentioned in this Code, the following points shall, unless otherwise provided, be taken into account:

(a) Freight rates shall be fixed at as low a level as is feasible from the commercial point of view and shall permit a reasonable profit for shipowners;

(b) The cost of operations of conferences shall, as a rule, be evaluated for the round voyage of ships, with the outward and inward directions considered as a single whole. Where applicable, the outward and inward voyage should be considered separately. The freight rates should take into account, among other factors, the nature of cargoes, the interrelation between weight and cargo measurement, as well as the value of cargoes;

(c) In fixing promotional freight rates and/or special freight rates for specific goods, the conditions of trade for these goods of the countries served by the conference, particularly of developing and land-locked countries, shall be taken into account.

CONFERENCE TARIFFS AND CLASSIFICATION OF TARIFF RATES

1. Conference tariffs shall not unfairly differentiate between shippers similarly situated. Shipping lines members of a conference shall adhere strictly to the rates, rules and terms shown in the tariffs and other currently valid published documents of the conference and to any special arrangements permitted under this Code.

2. Conference tariffs should be drawn up simply and clearly, containing as few classes/categories as possible, depending on the commodity and, where appropriate, for each class/category; they should also indicate, wherever practicable, in order to facilitate statistical compilation and analysis, the corresponding appropriate code number of the item in accordance with the Standard International Trade Classification, the Brussels Tariff Nomenclature or any other nomenclature that may be internationally adopted; the classification of commodities in the tariffs should, as far as practicable, be prepared in co-operation with shippers' organizations and other national and international organizations concerned.

GENERAL FREIGHT-RATE INCREASES

1. A conference shall give notice of not less than 150 days, or according to regional practice and/or agreement, to shippers' organizations or representatives of shippers and/or shippers and, where so required, to appropriate authorities of the countries whose trade is served by the conference, of its intention to effect a general increase in freight rates, an indication of its extent, the date of effect and the reasons supporting the proposed increase.

2. At the request of any of the parties prescribed for this purpose in this Code, to be made within an agreed period of time after the receipt of the notice, consultations shall commence, in accordance with the relevant provisions of this Code, within a stipulated period not exceeding 30 days or as previously agreed between the parties concerned; the consultations shall be held in respect of the bases and amounts of the proposed increase and the date from which it is to be given effect.

3. A conference, in an effort to expedite consultations, may or upon the request of any of the parties prescribed in this Code as entitled to participate in consultations on general freight-rate increases shall, where practicable, reasonably before the consultations, submit to the participating parties a report from independent accountants of repute, including, where the requesting parties accept it as one of the bases of consultations, an aggregated analysis of
data regarding relevant costs and revenues which in the opinion of the conference necessitate an increase in freight rates.

4. If agreement is reached as a result of the consultations, the freight-rate increase shall take effect from the date indicated in the notice served in accordance with article 14, paragraph 1, unless a later date is agreed upon between the parties concerned.

5. If no agreement is reached within 30 days of the giving of notice in accordance with article 14, paragraph 1, and subject to procedures prescribed in this Code, the matter shall be submitted immediately to international mandatory conciliation, in accordance with chapter VI. The recommendation of the conciliators, if accepted by the parties concerned, shall be binding upon them and shall be implemented, subject to the provisions of article 14, paragraph 9, with effect from the date mentioned in the conciliators’ recommendation.

6. Subject to the provisions of article 14, paragraph 9, a general freight-rate increase may be implemented by a conference pending the conciliators’ recommendation. When making their recommendation, the conciliators should take into account the extent of the above-mentioned increase made by the conference and the period for which it has been in force. In the event that the conference rejects the recommendation of the conciliators, shippers and/or shippers’ organizations shall have the right to consider themselves not bound, after appropriate notice, by any arrangement or other contract with that conference which may prevent them from using non-conference shipping lines. Where a loyalty arrangement exists, shippers and/or shippers’ organizations shall give notice within a period of 30 days to the effect that they no longer consider themselves bound by that arrangement, which notice shall apply from the date mentioned therein, and a period of not less than 30 days and not more than 90 days shall be provided in the loyalty arrangement for this purpose.

7. A deferred rebate which is due to the shipper and which has already been accumulated by the conference shall not be withheld by, or forfeited to, the conference as a result of action by the shipper under article 14, paragraph 6.

8. If the trade of a country carried by shipping lines members of a conference on a particular route consists largely of one or few basic commodities, any increase in the freight rate on one or more of those commodities shall be treated as a general freight-rate increase, and the appropriate provisions of this Code shall apply.

9. Conferences should institute any general freight-rate increase effective in accordance with this Code for a period of a stated minimum duration, subject always to the rules regarding surcharges and regarding adjustment in freight rates consequent upon fluctuations in foreign exchange rates. The period over which a general freight-rate increase is to apply is an appropriate matter to be considered during consultations conducted in accordance with article 14, paragraph 2, but unless otherwise agreed between the parties concerned during the consultations, the minimum period of time between the date when one general freight-rate increase becomes effective and the date of notice for the next general freight-rate increase given in accordance with article 14, paragraph 1 shall not be less than 10 months.

Article 15
PROMOTIONAL FREIGHT RATES

1. Promotional freight rates for non-traditional exports should be instituted by conferences.

2. All necessary and reasonable information justifying the need for a promotional freight rate shall be submitted to a conference by the shippers, shippers’ organizations or representatives of shippers concerned.

3. Special procedures shall be instituted providing for a decision within 30 days from the date of receipt of that information, unless mutually agreed otherwise, on applications for promotional freight rates. A clear distinction shall be made between these and general procedures for considering the possibility of reducing freight rates for other commodities or of exempting them from increases.

4. Information regarding the procedures for considering applications for promotional freight rates shall be made available by the conference to shippers and/or shippers’ organizations and, on request, to the Governments and/or other appropriate authorities of the countries whose trade is served by the conference.

5. A promotional freight rate shall be established normally for a period of 12 months, unless otherwise mutually agreed between the parties concerned. Prior to the expiry of the period, the promotional freight rate shall be reviewed, on request by the shipper and/or shippers’ organization concerned, when it shall be a matter for the shipper and/or shippers’ organization, at the request of the conference, to show that the continuation of the rate is justified beyond the initial period.

6. When examining a request for a promotional freight rate, the conference may take into account that, while the rate should promote the export of the non-traditional product for which it is sought, it is not likely to create substantial competitive distortions in the export of a similar product from another country served by the conference.

7. Promotional freight rates are not excluded from the imposition of a surcharge or a currency adjustment factor in accordance with articles 16 and 17.

8. Each shipping line member of a conference serving the relevant ports of a conference trade shall accept, and not unreasonably refuse, a fair share of cargo for which a promotional freight rate has been established by the conference.
**Surcharges**

1. Surcharges imposed by a conference to cover sudden or extraordinary increases in costs or losses of revenue shall be regarded as temporary. They shall be reduced in accordance with improvements in the situation or circumstances which they were imposed to meet and shall be cancelled, subject to article 16, paragraph 6, as soon as the situation or circumstances which prompted their imposition cease to prevail. This shall be indicated at the moment of their imposition, together, as far as possible, with a description of the change in the situation or circumstances which will bring about their increase, reduction or cancellation.

2. Surcharges imposed on cargo moving to or from a particular port shall likewise be regarded as temporary and likewise shall be increased, reduced or cancelled, subject to article 16, paragraph 6, when the situation in that port changes.

3. Before any surcharge is imposed, whether general or covering only a specific port, notice should be given and there shall be consultation, upon request, in accordance with the procedures of this Code, between the conference concerned and other parties directly affected by the surcharge and prescribed in this Code as entitled to participate in such consultations, save in those exceptional circumstances which warrant immediate imposition of the surcharge. In cases where a surcharge has been imposed without prior consultation, consultations, upon request, shall be held as soon as possible thereafter. Prior to such consultations, conferences shall furnish data which in their opinion justify the imposition of the surcharge.

4. Unless the parties agree otherwise, within a period of 15 days after the receipt of a notice given in accordance with article 16, paragraph 3, if there is no agreement on the question of the surcharge between the parties concerned referred to in that article, the relevant provisions for settlement of disputes provided in this Code shall prevail. Unless the parties concerned agree otherwise, the surcharge may, however, be imposed pending resolution of the dispute, if the dispute still remains unresolved at the end of a period of 30 days after the receipt of the above-mentioned notice.

5. In the event of a surcharge being imposed, in exceptional circumstances, without prior consultation as provided in article 16, paragraph 3, if no agreement is reached through subsequent consultations, the relevant provisions for settlement of disputes provided in this Code shall prevail.

6. Financial loss incurred by the shipping lines members of a conference as a result of any delay on account of consultations and/or other proceedings for resolving disputes regarding imposition of surcharges in accordance with the provisions of this Code, as compared to the date from which the surcharge was to be imposed in terms of the notice given in accordance with article 16, paragraph 3, may be compensated by an equivalent prolongation of the surcharge before its removal. Conversely, for any surcharge imposed by the conference and subsequently determined and agreed to be unjustified or excessive as a result of consultations or other procedures prescribed in this Code, the amounts so collected or the excess thereof as determined hereinabove, unless otherwise agreed, shall be refunded to the parties concerned, if claimed by them, within a period of 30 days of such claim.

**Currency Changes**

1. Exchange rate changes, including formal devaluation or revaluation, which lead to changes in the aggregate operational costs and/or revenues of the shipping lines members of a conference relating to their operations within the conference provide a valid reason for the introduction of a currency adjustment factor or for a change in the freight rates. The adjustment or change shall be such that in the aggregate the member lines concerned neither gain nor lose, as far as possible, as a result of the adjustment or change. The adjustment or change may take the form of currency surcharges or discounts or of increases or decreases in the freight rates.

2. Such adjustments or changes shall be subject to notice, which should be arranged in accordance with regional practice, where such practice exists, and there shall be consultations in accordance with the provisions of this Code between the conference concerned and the other parties directly affected and prescribed in this Code as entitled to participate in consultations, save in those exceptional circumstances which warrant immediate imposition of the currency adjustment factor or freight-rate change. In the event that this has been done without prior consultations, consultations shall be held as soon as possible thereafter. The consultations should be on the application, size and date of implementation of the currency adjustment factor or freight-rate change, and the same procedures shall be followed for this purpose as are prescribed in article 16, paragraphs 4 and 5, in respect of surcharges. Such consultations should take place and be completed within a period not exceeding 15 days from the date when the intention to apply a currency surcharge or to effect a freight-rate change is announced.

3. If no agreement is reached within 15 days through consultations, the relevant provisions for settlement of disputes provided in this Code shall prevail.

4. The provisions of article 16, paragraph 6 shall apply, adapted as necessary to currency adjustment factors and freight-rate changes dealt with in the present article.
Chapter V
OTHER MATTERS

Article 18
FIGHTING SHIPS

Members of a conference shall not use fighting ships in the conference trade for the purpose of excluding, preventing or reducing competition by driving a shipping line not a member of the conference out of the said trade.

Article 19
ADEQUACY OF SERVICE

1. Conferences should take necessary and appropriate measures to ensure that their member lines provide regular, adequate and efficient service of the required frequency on the routes they serve and shall arrange such services so as to avoid as far as possible bunching and gapping of sailings. Conferences should also take into consideration any special measures necessary in arranging services to handle seasonal variations in cargo volumes.

2. Conferences and other parties prescribed in this Code as entitled to participate in consultations, including appropriate authorities if they so desire, should keep under review, and should maintain close co-operation regarding the demand for shipping space, the adequacy and suitability of service, and in particular the possibilities for rationalization and for increasing the efficiency of services. Benefits identified as accruing from rationalization of services shall be fairly reflected in the level of freight rates.

3. In respect of any port for which conference services are supplied only subject to the availability of a specified minimum of cargo, that minimum shall be specified in the tariff. Shippers should give adequate notice of the availability of such cargo.

Article 20
HEAD OFFICE OF A CONFERENCE

A conference shall as a rule establish its head office in a country whose trade is served by that conference, unless agreed otherwise by the shipping lines members of that conference.

Article 21
REPRESENTATION

Conferences shall establish local representation in all countries served, except that where there are practical reasons to the contrary the representation may be on a regional basis. The names and addresses of representatives shall be readily available, and these representatives shall ensure that the views of shippers and conferences are made rapidly known to each other with a view to expediting prompt decisions. When a conference considers it suitable, it shall provide for adequate delegation of powers of decision to its representatives.

Article 22
CONTENTS OF CONFERENCE AGREEMENTS, TRADE PARTICIPATION AGREEMENTS AND LOYALTY ARRANGEMENTS

Conference agreements, trade participation agreements and loyalty arrangements shall conform to the applicable requirements of this Code and may include such other provisions as may be agreed which are not inconsistent with this Code.

Part two
Chapter VI
PROVISIONS AND MACHINERY FOR SETTLEMENT OF DISPUTES

A. GENERAL PROVISIONS

Article 23

1. The provisions of this chapter shall apply whenever there is a dispute relating to the application or operation of the provisions of this Code between the following parties:
   (a) A conference and a shipping line;
   (b) The shipping lines members of a conference;
   (c) A conference or a shipping line member thereof and a shippers’ organization or representatives of shippers or shippers; and
   (d) Two or more conferences.

For the purposes of this chapter the term “party” means the original parties to the dispute as well as third parties which have joined the proceedings in accordance with (a) of article 34.

2. Disputes between shipping lines of the same flag, as well as those between organizations belonging to the same country, shall be settled within the framework of the national jurisdiction of that country, unless this creates serious difficulties in the fulfilment of the provisions of this Code.

3. The parties to a dispute shall first attempt to settle it by an exchange of views or direct negotiations with the intention of finding a mutually satisfactory solution.

4. Disputes between the parties referred to in article 23, paragraph 1 relating to:
   (a) Refusal of admission of a national shipping line to a conference serving the foreign trade of that country that shipping line;
Refusal of admission of a third-country shipping line to a conference;

Expulsion from a conference;

Inconsistency of a conference agreement with this Code;

A general freight-rate increase;

Surcharges;

Changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes;

Participation in trade; and

The form and terms of proposed loyalty arrangements which have not been resolved through an exchange of views or direct negotiations shall, at the request of any of the parties to the dispute, be referred to international mandatory conciliation in accordance with the provisions of this chapter.

Article 24

1. The conciliation procedure is initiated at the request of one of the parties to the dispute.

2. The request shall be made:

(a) In disputes relating to membership of conferences: not later than 60 days from the date of receipt by the applicant of the conference decision, including the reasons therefor, in accordance with article 1, paragraph 4 and article 4, paragraph 3;

(b) In disputes relating to general freight-rate increases: not later than the date of expiry of the period of notice specified in article 14, paragraph 1;

(c) In disputes relating to surcharges: not later than the date of expiry of the 30-day period specified in article 16, paragraph 4 or, where no notice has been given, not later than 15 days from the date when the surcharge was put into effect; and

(d) In disputes relating to changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes: not later than five days after the date of expiry of the period specified in article 17, paragraph 3.

3. The provisions of article 24, paragraph 2 shall not apply to a dispute which is referred to international mandatory conciliation in accordance with article 25, paragraph 3.

4. Requests for conciliation in disputes other than those referred to in article 24, paragraph 2, may be made at any time.

5. The time-limits specified in article 24, paragraph 2 may be extended by agreement between the parties.

6. A request for conciliation shall be considered to have been duly made if it is proved that the request has been sent to the other party by registered letter, telegram or teleprinter or has been served on it within the time-limits specified in article 24, paragraphs 2 or 5.

7. Where no request has been made within the time-limits specified in article 24, paragraphs 2 or 5, the decision of the conference shall be final and no proceedings under this chapter may be brought by any party to the dispute to challenge that decision.

Article 25

1. Where the parties have agreed that disputes referred to in article 23, paragraph 4 (a), (b), (c), (d), (h) and (i) shall be resolved through procedures other than those established in that article, or agree on procedures to resolve a particular dispute that has arisen between them, such disputes shall, at the request of any of the parties to the dispute, be resolved as provided for in their agreement.

2. The provisions of article 25, paragraph 1 apply also to the disputes referred to in article 23, paragraph 4 (e), (f) and (g), unless national legislation, rules or regulations prevent shippers from having this freedom of choice.

3. Where conciliation proceedings have been initiated, such proceedings shall have precedence over remedies available under national law. If a party seeks remedies under national law in respect of a dispute to which this chapter applies without invoking the procedures provided for in this chapter, then, upon the request of a respondent to those proceedings, they shall be stayed and the dispute shall be referred to the procedures defined in this chapter by the court or other authority where the national remedies are sought.

Article 26

1. The Contracting Parties shall confer upon conferences and shippers' organizations such capacity as is necessary for the application of the provisions of this chapter. In particular:

(a) A conference or a shippers' organization may institute proceedings as a party or be named as a party to proceedings in its collective capacity;

(b) Any notification to a conference or shippers' organization in its collective capacity shall also constitute a notification to each member of such conference or shippers' organization;

(c) A notification to a conference or shippers' organization shall be transmitted to the address of the head office of the conference or shippers' organization. Each conference or shippers' organization shall register the address of its head office with the Registrar appointed in accordance with article 46, paragraph 1. In the event that a conference or a shippers' organization fails to register or has no head office, a notification to any member in the name of the conference or shippers' organization shall be
deemed to be a notification to such conference or organization.

2. Acceptance or rejection by a conference or shippers' organization of a recommendation by conciliators shall be deemed to be acceptance or rejection of such a recommendation by each member thereof.

Article 27

Unless the parties agree otherwise, the conciliators may decide to make a recommendation on the basis of written submissions without oral proceedings.

B. INTERNATIONAL MANDATORY CONCILIATION

Article 28

In international mandatory conciliation the appropriate authorities of a Contracting Party shall, if they so request, participate in the conciliation proceedings in support of a party being a national of that Contracting Party, or in support of a party having a dispute arising in the context of the foreign trade of that Contracting Party. The appropriate authority may alternatively act as an observer in such conciliation proceedings.

Article 29

1. In international mandatory conciliation the proceedings shall be held in the place unanimously agreed to by the parties or, failing such agreement, in the place decided upon by the conciliators.

2. In determining the place of conciliation proceedings the parties and the conciliators shall take into account, inter alia, countries which are closely connected with the dispute, bearing in mind the country of the shipping line concerned and, especially when the dispute is related to cargo, the country where the cargo originates.

Article 30

1. For the purposes of this chapter an international panel of conciliators shall be established, consisting of experts of high repute or experience in the fields of law, economics of sea transport, or foreign trade and finance, as determined by the Contracting Parties selecting them, who shall serve in an independent capacity.

2. Each Contracting Party may at any time nominate members of the panel up to a total of 12, and shall communicate their names to the Registrar. The nominations shall be for periods of six years each and may be renewed. In the event of the death, incapacity or resignation of a member of the panel, the Contracting Party which nominated such person shall nominate a replacement for the remainder of his term of office. A nomination takes effect from the date on which the communication of the nomination is received by the Registrar.

3. The Registrar shall maintain the panel list and shall regularly inform the Contracting Parties of the composition of the panel.

Article 31

1. The purpose of conciliation is to reach an amicable settlement of the dispute through recommendations formulated by independent conciliators.

2. The conciliators shall identify and clarify the issues in dispute, seek for this purpose any information from the parties, and on the basis thereof, submit to the parties a recommendation for the settlement of the dispute.

3. The parties shall co-operate in good faith with the conciliators in order to enable them to carry out their functions.

4. Subject to the provisions of article 25, paragraph 2, the parties to the dispute may at any time during the conciliation proceedings decide in agreement to have recourse to a different procedure for the settlement of their dispute. The parties to a dispute which has been made subject to proceedings other than those provided for in this chapter may decide by mutual agreement to have recourse to international mandatory conciliation.

Article 32

1. The conciliation proceedings shall be conducted either by one conciliator or by an uneven number of conciliators agreed upon or designated by the parties.

2. Where the parties cannot agree on the number or the appointment of the conciliators as provided in article 32, paragraph 1, the conciliation proceedings shall be conducted by three conciliators, one appointed by each party in the statement(s) of claim and reply respectively, and the third by the two conciliators thus appointed, who shall act as chairman.

3. If the reply does not name a conciliator to be appointed in cases where article 32, paragraph 2 would apply, the second conciliator shall, within 30 days following the receipt of the statement of claim, be chosen by lot by the conciliator appointed in the statement of claim from among the members of the panel nominated by the Contracting Party or Parties of which the respondent(s) is(are) a national(s).

4. Where the conciliators appointed in accordance with article 32, paragraphs 2 or 3 cannot agree on the appointment of the third conciliator within 15 days following the date of the appointment of the second
conciliator, he shall, within the following 5 days, be chosen by lot by the appointed conciliators. Prior to the drawing by lot:

(a) No member of the panel of conciliators having the same nationality as either of the two appointed conciliators shall be eligible for selection by lot;

(b) Each of the two appointed conciliators may exclude from the list of the panel of conciliators an equal number of them subject to the requirement that at least 30 members of the panel shall remain eligible for selection by lot.

Article 33

1. Where several parties request conciliation with the same respondent in respect of the same issue, or of issues which are closely connected, that respondent may request the consolidation of those cases.

2. The request for consolidation shall be considered and decided upon by majority vote by the chairmen of the conciliators so far chosen. If such request is allowed, the chairmen will designate the conciliators to consider the consolidated cases from among the conciliators so far appointed or chosen, provided that an uneven number of conciliators is chosen and that the conciliator first appointed by each party shall be one of the conciliators considering the consolidated case.

Article 34

Any party, other than an appropriate authority referred to in article 28, if conciliation has been initiated, may join in the proceedings:

either

(a) As a party, in case of a direct economic interest; or

(b) As a supporting party to one of the original parties, in case of an indirect economic interest,

unless either of the original parties objects to such joinder.

Article 35

1. The recommendations of the conciliators shall be made in accordance with the provisions of this Code.

2. When the Code is silent upon any point, the conciliators shall apply the law which the parties agree at the time the conciliation proceedings commence or thereafter, but not later than the time of submission of evidence to the conciliators. Failing such agreement, the law which in the opinion of the conciliators is most closely connected with the dispute shall be applicable.

3. The conciliators shall not decide *ex aequo et bono* upon the dispute unless the parties so agree after the dispute has arisen.

4. The conciliators shall not bring a finding of *non liquet* on the ground of obscurity of the law.

5. The conciliators may recommend those remedies and reliefs which are provided in the law applicable to the dispute.

Article 36

The recommendations of the conciliators shall include reasons.

Article 37

1. Unless the parties have agreed before, during or after the conciliation procedure that the recommendation of the conciliators shall be binding, the recommendation shall become binding by acceptance by the parties. A recommendation which has been accepted by some parties to a dispute shall be binding as between those parties only.

2. Acceptance of the recommendation must be communicated by the parties to the conciliators, at an address specified by them, not later than 30 days after receipt of the notification of the recommendation; otherwise, it shall be considered that the recommendation has not been accepted.

3. Any party which does not accept the recommendation shall notify the conciliators and the other parties, within 30 days following the period specified in article 37, paragraph 2 of its grounds for rejection of the recommendation, comprehensively and in writing.

4. When the recommendation has been accepted by the parties, the conciliators shall immediately draw up and sign a record of settlement, at which time the recommendation shall become binding upon those parties. If the recommendation has not been accepted by all parties, the conciliators shall draw up a report with respect to those parties rejecting the recommendation, noting the dispute and the failure of those parties to settle the dispute.

5. A recommendation which has become binding upon the parties shall be implemented by them immediately or at such later time as is specified in the recommendation.

6. Any party may make its acceptance conditional upon acceptance by all or any of the other parties to the dispute.

Article 38

1. A recommendation shall constitute a final determination of a dispute as between the parties which accept it, except to the extent that the recommendation is not recognized and enforced in accordance with the provisions of article 39.
2. "Recommendation" includes an interpretation, clarification or revision of the recommendation made by the conciliators before the recommendation has been accepted.

Article 39

1. Each Contracting Party shall recognize a recommendation as binding between the parties which have accepted it and shall, subject to the provisions of article 39, paragraphs 2 and 3, enforce, at the request of any such party, all obligations imposed by the recommendation as if it were a final judgement of a court of that Contracting Party.

2. A recommendation shall not be recognized and enforced at the request of a party referred to in article 39, paragraph 1 only if the court or other competent authority of the country where recognition and enforcement is sought is satisfied that:

(a) Any party which accepted the recommendation was, under the law applicable to it, under some legal incapacity at the time of acceptance;

(b) Fraud or coercion has been used in the making of the recommendations;

(c) The recommendation is contrary to public policy (ordre public) in the country of enforcement; or

(d) The composition of the conciliators, or the conciliation procedure, was not in accordance with the provisions of this Code.

3. Any part of the recommendation shall not be enforced and recognized if the court or other competent authority is satisfied that such part comes within any of the subparagraphs of article 39, paragraph 2 and can be separated from other parts of the recommendation. If such part cannot be separated, the entire recommendation shall not be enforced and recognized.

Article 40

1. Where the recommendation has been accepted by all the parties, the recommendation and the reasons therefor may be published with the consent of all the parties.

2. Where the recommendation has been rejected by one or more of the parties but has been accepted by one or more of the parties:

(a) The party or parties rejecting the recommendation shall publish its or their grounds for rejection, given pursuant to article 37, paragraph 3, and may at the same time publish the recommendation and the reasons therefor;

(b) A party which has accepted the recommendation may publish the recommendation and the reasons therefor; it may also publish the grounds for rejection given by any other party unless such other party has already published its rejection and the grounds therefor in accordance with article 40, paragraph 2 (a).

3. Where the recommendation has not been accepted by any of the parties, each party may publish the recommendation and the reasons therefor and also its own rejection and the grounds therefor.

Article 41

1. Documents and statements containing factual information supplied by any party to the conciliators shall be made public unless that party or a majority of the conciliators agrees otherwise.

2. Such documents and statements supplied by a party may be tendered by that party in support of its case in subsequent proceedings arising from the same dispute and between the same parties.

Article 42

Where the recommendation has not become binding upon the parties, no views expressed or reasons given by the conciliators, or concessions or offers made by the parties for the purpose of the conciliation procedure, shall affect the legal rights and obligations of any of the parties.

Article 43

1. (a) The costs of the conciliators and all costs of the administration of the conciliation proceedings shall be borne equally by the parties to the proceedings, unless they agree otherwise.

(b) When the conciliation proceedings have been initiated, the conciliators shall be entitled to require an advance or security for the costs referred to in article 43, paragraph 1 (a).

2. Each party shall bear all expenses it incurs in connexion with the proceedings, unless the parties agree otherwise.

3. Notwithstanding the provisions of article 43, paragraphs 1 and 2, the conciliators may, having decided unanimously that a party has brought a claim vexatiously or frivolously, assess against that party any or all of the costs of other parties to the proceedings. Such decision shall be final and binding on all the parties.

Article 44

1. Failure of a party to appear or to present its case at any stage of the proceedings shall not be deemed an admission of the other party's assertions. In that event, the other party may, at its choice, request the conciliators to close the proceedings or to deal with the questions presented to them and submit a recommendation in accordance with the provisions for making recommendations set out in this Code.
2. Before closing the proceedings, the conciliators shall grant the party failing to appear or to present its case a period of grace, not exceeding 10 days, unless they are satisfied that the party does not intend to appear or to present its case.

3. Failure to observe procedural time-limits laid down in this Code or determined by the conciliators, in particular time-limits relating to the submission of statements or information, shall be considered a failure to appear in the proceedings.

4. Where the proceedings have been closed owing to one party's failure to appear or to present its case, the conciliators shall draw up a report noting that party's failure.

**Article 45**

1. The conciliators shall follow the procedures stipulated in this Code.

2. The rules of procedure annexed to the present Convention shall be considered as model rules for the guidance of conciliators. The conciliators may, by mutual consent, use, supplement or amend the rules contained in the annex or formulate their own rules of procedure to the extent that such supplementary, amended or other rules are not inconsistent with the provisions of this Code.

3. If the parties agree that it may be in the interest of achieving an expeditious and inexpensive solution of the conciliation proceedings, they may mutually agree to rules of procedure which are not inconsistent with the provisions of this Code.

4. The conciliators shall formulate their recommendation by consensus or failing that shall decide by majority vote.

5. The conciliation proceedings shall finish and the recommendation of the conciliators shall be delivered not later than six months from the date on which the conciliators are appointed, except in the cases referred to in article 23, paragraph 4 (e), (f), and (g), for which the time limits in article 14, paragraph 1 and article 16, paragraph 4 shall be valid. The period of six months may be extended by agreement of the parties.

**C. INSTITUTIONAL MACHINERY**

**Article 46**

1. Six months before the entry into force of the present Convention, the Secretary-General of the United Nations shall, subject to the approval of the General Assembly of the United Nations, and taking into account the views expressed by the Contracting Parties, appoint a Registrar, who may be assisted by such additional staff as may be necessary for the performance of the functions listed in article 46, paragraph 2. Administrative services for the Registrar and his assistants shall be provided by the United Nations Office at Geneva.

2. The Registrar shall perform the following functions in consultation with the Contracting Parties as appropriate:
   (a) Maintain the list of conciliators of the international panel of conciliators and regularly inform the Contracting Parties of the composition of the panel;
   (b) Provide the names and addresses of the conciliators to the parties concerned on request;
   (c) Receive and maintain copies of requests for conciliation, replies, recommendation, acceptances, or rejections, including reasons therefor;
   (d) Furnish on request, and at their cost, copies of recommendations and reasons for rejection to the shippers' organizations, conferences and Governments, subject to the provisions of article 40;
   (e) Make available information of a non-confidential nature on completed conciliation cases, and without attribution to the parties concerned, for the purposes of preparation of material for the Review Conference referred to in article 52; and
   (f) The other functions prescribed for the Registrar in article 26, paragraph 1 (e) and article 30, paragraphs 2 and 3.

**Chapter VII**

**FINAL CLAUSES**

**Article 47**

**IMPLEMENTATION**

1. Each Contracting Party shall take such legislative or other measures as may be necessary to implement the present Convention.

2. Each Contracting Party shall communicate to the Secretary-General of the United Nations, who shall be the depositary, the text of the legislative or other measures which it has taken in order to implement the present Convention.

**Article 48**

**SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION**

1. The present Convention shall remain open for signature as from 1 July 1974 until and including 30 June 1975 at United Nations Headquarters and shall thereafter remain open for accession.
2. All States are entitled to become Contracting Parties to the present Convention by:

(a) Signature subject to and followed by ratification, acceptance or approval; or
(b) Signature without reservation as to ratification, acceptance or approval; or
(c) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to this effect with the depositary.

Article 49
ENTRY INTO FORCE

1. The present Convention shall enter into force six months after the date on which not less than 24 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage, have become Contracting Parties to it in accordance with article 48. For the purpose of the present article the tonnage shall be deemed to be that contained in Lloyd’s Register of Shipping – Statistical Tables 1973, table 2 “World Fleets – Analysis by Principal Types”, in respect to general cargo (including passenger/cargo) ships and container (fully cellular) ships, exclusive of the United States reserve fleet and the American and Canadian Great Lakes fleets.

2. For each State which thereafter ratifies, accepts, approves or accedes to it, the present Convention shall come into force six months after deposit by such State of the appropriate instrument.

3. Any State which becomes a Contracting Party to the present Convention after the entry into force of an amendment shall, failing an expression of a different intention by that State:

(a) Be considered as a Party to the present Convention as amended; and
(b) Be considered as a Party to the unamended Convention in relation to any Party to the present Convention not bound by the amendment.

Article 50
DENUNCIATION

1. The present Convention may be denounced by any Contracting Party at any time after the expiration of a period of two years from the date on which the Convention has entered into force.

2. Denunciation shall be notified to the depositary in writing, and shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the date of receipt by the depositary.

Article 51
AMENDMENTS

1. Any Contracting Party may propose one or more amendments to the present Convention by communicating the amendments to the depositary. The depositary shall circulate such amendments among the Contracting Parties, for their acceptance, and among States entitled to become Contracting Parties to the present Convention which are not Contracting Parties, for their information.

2. Each proposed amendment circulated in accordance with article 51, paragraph 1 shall be deemed to have been accepted if no Contracting Party communicates an objection thereto to the depositary within 12 months following the date of its circulation by the depositary. If a Contracting Party communicates an objection to the proposed amendment, such amendment shall not be considered as accepted and shall not be put into effect.

3. If no objection has been communicated, the amendment shall enter into force for all Contracting Parties six months after the expiry date of the period of 12 months referred to in article 51, paragraph 2.

Article 52
REVIEW CONFERENCES

1. A Review Conference shall be convened by the depositary five years from the date on which the present Convention comes into force to review the working of the Convention, with particular reference to its implementation, and to consider and adopt appropriate amendments.

2. The depositary shall, four years from the date on which the present Convention comes into force, seek the views of all States entitled to attend the Review Conference and shall, on the basis of the views received, prepare and circulate a draft agenda as well as amendments proposed for consideration by the Conference.

3. Further review conferences shall be similarly convened every five years, or at any time after the first Review Conference, at the request of one-third of the
Contracting Parties to the present Convention, unless the first Review Conference decides otherwise.

4. Notwithstanding the provisions of article 52, paragraph 1, if the present Convention has not entered into force five years from the date of the adoption of the Final Act of the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, a Review Conference shall, at the request of one-third of the States entitled to become Contracting Parties to the present Convention, be convened by the Secretary-General of the United Nations, subject to the approval of the General Assembly, in order to review the provisions of the Convention and its annex and to consider and adopt appropriate amendments.

Article 53
FUNCTIONS OF THE DEPOSITARY

1. The depositary shall notify the signatory and acceding States of:
   (a) Signatures, ratifications, acceptances, approvals and accessions in accordance with article 48;
   (b) The date on which the present Convention enters into force in accordance with article 49;
   (c) Denunciations of the present Convention in accordance with article 50;
   (d) Reservations to the present Convention and the withdrawal of reservations;
   (e) The text of the legislative or other measures which each Contracting Party has taken in order to implement the present Convention in accordance with article 47;
   (f) Proposed amendments and objections to proposed amendments in accordance with article 51; and
   (g) Entry into force of amendments in accordance with article 51, paragraph 3.

2. The depositary shall also undertake such actions as are necessary under article 52.

Article 54
AUTHENTIC TEXTS — DEPOSIT

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, will be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, having been duly authorized to this effect by their respective Governments, have signed the present Convention, on the dates appearing opposite their signatures.

ANNEX TO THE CONVENTION

Model rules of procedure for international mandatory conciliation

Rule 1
1. Any party wishing to institute conciliation proceedings under the Code shall address a request to that effect in writing, accompanied by a statement of claim to the other party, and copied to the Registrar.

2. The statement of claim shall:
   (a) Designate precisely each party to the dispute and state the address of each;
   (b) Contain a summary statement of pertinent facts, the issues in dispute and the claimant's proposal for the settlement of the dispute;
   (c) State whether an oral hearing is desired and, if so, and to the extent then known, the names and addresses of persons to give evidence, including experts' evidence, for the claimant;
   (d) Be accompanied by such supporting documentation and relevant agreements and arrangements entered into by the parties as the claimant may consider necessary at the time of making the claim;
   (e) Indicate the number of conciliators required, any proposal concerning the appointment of conciliators, or the name of the conciliator appointed by the claimant in accordance with article 32, paragraph 2; and
   (f) Contain proposals, if any, regarding rules of procedure.

3. The statement of claim shall be dated and shall be signed by the party.

Rule 2
1. If the respondent decides to reply to the claim, he shall, within 30 days following the date of his receipt of the statement of claim, transmit a reply to the other party and copied to the Registrar.

2. The reply shall:
   (a) Contain a summary statement of pertinent facts opposed to the contentions in the statement of claim, the respondent's proposal, if any, for the settlement of the dispute and any remedy claimed by him with a view to the settlement of the dispute;
   (b) State whether an oral hearing is desired and, if so, and to the extent then known, the names and addresses of persons to give evidence, including experts' evidence, for the respondent;
   (c) Be accompanied by such supporting documentation and relevant agreements and arrangements entered into by the parties as the respondent may consider necessary at the time of making the reply;
   (d) Indicate the number of conciliators required, any proposal concerning the appointment of conciliators, or the name of the conciliator appointed by the respondent in accordance with article 32, paragraph 2; and
   (e) Contain proposals, if any, regarding rules of procedure.

3. The reply shall be dated and shall be signed by the party.

Rule 3
1. Any person or other interest desiring to participate in conciliation proceedings under article 34 shall transmit a written request to the parties to the dispute, with a copy to the Registrar.

2. If participation in accordance with (a) of article 34 is desired, the request shall set forth the grounds therefor, including the information required under rule 1, paragraph 2 (a), (b) and (d).
3. If participation in accordance with (b) of article 34 is desired, the request shall state the grounds therefor and which of the original parties would be supported.

4. Any objection to a request for joinder by such a party shall be sent by the objecting party, with a copy to the other party, within seven days of receipt of the request.

5. In the event that two or more proceedings are consolidated, subsequent requests for third-party participation shall be transmitted to all parties concerned, each of which may object in accordance with the present rule.

Rule 4

By agreement between the parties to a dispute, on motion by either party, and after affording the parties an opportunity of being heard, the conciliators may order the consolidation or separation of all or any claims then pending between the same parties.

Rule 5

1. Any party may challenge a conciliator where circumstances exist that cause justifiable doubts as to his independence.

2. Notice of challenge, stating reasons therefor, should be made prior to the date of the closing of the proceedings, before the conciliators have rendered their recommendation. Any such challenge shall be heard promptly and shall be determined by majority vote of the conciliators in the first instance, as a preliminary point, in cases where more than one conciliator has been appointed. The decision in such cases shall be final.

3. A conciliator who has died, resigned, become incapacitated or disqualified shall be replaced promptly.

4. Proceedings interrupted in this way shall continue from the point where they were interrupted, unless it is agreed by the parties or ordered by the conciliators that a review or rehearing of any oral testimony take place.

Rule 6

The conciliators shall be judges of their own jurisdiction and/or competence within the provisions of the Code.

Rule 7

1. The conciliators shall receive and consider all written statements, documents, affidavits, publications or any other evidence, including oral evidence, which may be submitted to them by or on behalf of any of the parties, and shall give such weight thereto as in their judgement such evidence merits.

2. (a) Each party may submit to the conciliators any material it considers relevant, and at the time of such submission shall deliver certified copies to any other party to the proceedings, which party shall be given a reasonable opportunity to reply thereto;

(b) The conciliators shall be the sole judges of the relevance and materiality of the evidence submitted to them by the parties;

(c) The conciliators may ask the parties to produce such additional evidence as they may deem necessary to an understanding and determination of the dispute, provided that, if such additional evidence is produced, the other parties to the proceedings shall have a reasonable opportunity to comment thereon.

Rule 8

1. Whenever a period of days for the doing of any act is provided for in the Code or in these rules, the day from which the period begins to run shall not be counted, and the last day of the period shall be counted, except where that last day is a Saturday, Sunday or a public holiday at the place of conciliation, in which case the last day shall be the next business day.

2. When the time provided for is less than seven days, intermediate Saturdays, Sundays and public holidays shall be excluded from the computation.

Rule 9

Subject to the provisions relating to procedural time-limits in the Code, the conciliators may, on a motion by one of the parties or pursuant to agreement between them, extend any such time-limit which has been fixed by the conciliators.

Rule 10

1. The conciliators shall fix the order of business and, unless otherwise agreed, the date and hour of each session.

2. Unless the parties otherwise agree, the proceedings shall take place in private.

3. The conciliators shall specifically inquire of all the parties whether they have any further evidence to submit before declaring the proceedings closed, and a noting thereof shall be recorded.

Rule 11

Conciliators' recommendations shall be in writing and shall include:

(a) The precise designation and address of each party;

(b) A description of the method of appointing conciliators, including their names;

(c) The dates and place of the conciliation proceedings;

(d) A summary of the conciliation proceedings, as the conciliators deem appropriate;

(e) A summary statement of the facts found by the conciliators;

(f) A summary of the submissions of the parties;

(g) Pronouncements on the issues in dispute, together with the reasons therefor;

(h) The signatures of the conciliators and the date of each signature; and

(i) An address for the communication of the acceptance or rejection of the recommendation.

Rule 12

The recommendation shall, so far as possible, contain a pronouncement on costs in accordance with the provisions of the Code. If the recommendation does not contain a full pronouncement on costs, the conciliators shall, as soon as possible after the recommendation, and in any event not later than 60 days thereafter, make a pronouncement in writing regarding costs as provided in the Code.

Rule 13

Conciliators' recommendations shall also take into account previous and similar cases whenever this would facilitate a more uniform implementation of the Code and observance of conciliators' recommendations.
### OECD Countries' Investment Share

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*Note: The table represents the use of Inmarsat by developing countries, with columns indicating the number of antennas (STD. A, STD. B) and the status of domestic lease. The 'STD. Z' column indicates the year of planned or actual use.*
Cont.

**USE OF INTELSAT BY DEVELOPING COUNTRIES**

*(Members)*

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USE OF INTELSAT BY DEVELOPING COUNTRIES
(Non-Members)

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**STANDARD A**
Currently the most widely used in the system for international communications, this standard originally employed a 30-meter antenna earth station, designed to operate with 6/4 GHz bands of frequencies. Availability of increased power from satellites has allowed this standard to be downsized to less than 18 meters in diameter while still making most efficient use of satellite capacity. New antennas of this size are now under construction.

**STANDARD B**
This standard offers a lower-cost alternative to Standard A antennas. It has an 11-meter antenna designed to operate with 6/4 GHz bands of frequencies and is particularly suitable for areas with lower or medium sized traffic demands.

**STANDARD Z**
This standard is authorized for use with domestic services. Specific guidelines for technical performance are provided and the earth station owner may choose performance within these set parameters.
THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

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The United Nations Conference on Restrictive Business Practices,

Recognizing that restrictive business practices can adversely affect international trade, particularly that of developing countries, and the economic development of these countries,

Affirming that a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices can contribute to attaining the objective in the establishment of a new international economic order to eliminate restrictive business practices adversely affecting international trade and thereby contribute to development and improvement of international economic relations on a just and equitable basis,

Recognizing also the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting international trade, particularly those affecting the trade and development of developing countries,

Considering the possible adverse impact of restrictive business practices, including among others those resulting from the increased activities of

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1 The Set of Principles and Rules was adopted by the United Nations Conference on Restrictive Business Practices as an annex to its resolution of 22 April 1980 (see section II above).
transnational corporations, on the trade and development of developing countries,

*Convinced* of the need for action to be taken by countries in a mutually reinforcing manner at the national, regional and international levels to eliminate or effectively deal with restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries, and the economic development of these countries,

*Convinced also* of the benefits to be derived from a universally applicable set of multilaterally agreed equitable principles and rules for the control of restrictive business practices and that all countries should encourage their enterprises to follow in all respects the provisions of such a set of multilaterally agreed equitable principles and rules,

*Convinced further* that the adoption of such a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices will thereby facilitate the adoption and strengthening of laws and policies in the area of restrictive business practices at the national and regional levels and thus lead to improved conditions and attain greater efficiency and participation in international trade and development, particularly that of developing countries, and to protect and promote social welfare in general, and in particular the interests of consumers in both developed and developing countries,

*Affirming also* the need to eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries,

*Affirming further* the need that measures adopted by States for the control of restrictive business practices should be applied fairly, equitably, on the same basis to all enterprises and in accordance with established procedures of law; and for States to take into account the principles and objectives of the Set of Multilaterally Agreed Equitable Principles and Rules,

*Hereby agrees on* the following Set of Principles and Rules for the control of restrictive business practices, which take the form of recommendations:

### A. Objectives

Taking into account the interests of all countries, particularly those of developing countries, the Set of Multilaterally Agreed Equitable Principles and Rules are framed in order to achieve the following objectives:

1. To ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries;
2. To attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through:

(a) The creation, encouragement and protection of competition;

(b) Control of the concentration of capital and/or economic power;

(c) Encouragement of innovation;

3. To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries;

4. To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries;

5. To provide a Set of Multilaterally Agreed Equitable Principles and Rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.

B. – Definitions and scope of application

For the purpose of this Set of Multilaterally Agreed Equitable Principles and Rules:

(i) Definitions

1. "Restrictive business practices" means acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, or which through formal, informal, written or unwritten agreements or arrangements among enterprises, have the same impact.

2. "Dominant position of market power" refers to a situation where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control the relevant market for a particular good or service or group of goods or services.

3. "Enterprises" means firms, partnerships, corporations, companies, other associations, natural or juridical persons, or any combination thereof, irrespective of the mode of creation or control or ownership, private or State, which are engaged in commercial activities, and includes their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them.
(ii) Scope of application

4. The Set of Principles and Rules applies to restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries. It applies irrespective of whether such practices involve enterprises in one or more countries.

5. The "principles and rules for enterprises, including transnational corporations" apply to all transactions in goods and services.

6. The "principles and rules for enterprises, including transnational corporations" are addressed to all enterprises.

7. The provisions of the Set of Principles and Rules shall be universally applicable to all countries and enterprises regardless of the parties involved in the transactions, acts or behaviour.

8. Any reference to "States" or "Governments" shall be construed as including any regional groupings of States, to the extent that they have competence in the area of restrictive business practices.

9. The Set of Principles and Rules shall not apply to intergovernmental agreements, nor to restrictive business practices directly caused by such agreements.

C. — Multilaterally agreed equitable principles for the control of restrictive business practices

In line with the objectives set forth, the following principles are to apply:

(i) General principles

1. Appropriate action should be taken in a mutually reinforcing manner at national, regional and international levels to eliminate, or effectively deal with, restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries.

2. Collaboration between Governments at bilateral and multilateral levels should be established and, where such collaboration has been established, it should be improved to facilitate the control of restrictive business practices.

3. Appropriate mechanisms should be devised at the international level and/or the use of existing international machinery improved to facilitate exchange and dissemination of information among Governments with respect to restrictive business practices.

4. Appropriate means should be devised to facilitate the holding of multilateral consultations with regard to policy issues relating to the control of restrictive business practices.
5. The provisions of the Set of Principles and Rules should not be construed as justifying conduct by enterprises which is unlawful under applicable national or regional legislation.

(ii) Relevant factors in the application of the Set of Principles and Rules

6. In order to ensure the fair and equitable application of the Set of Principles and Rules, States, while bearing in mind the need to ensure the comprehensive application of the Set of Principles and Rules, should take due account of the extent to which the conduct of enterprises, whether or not created or controlled by States, is accepted under applicable legislation or regulations, bearing in mind that such laws and regulations should be clearly defined and publicly and readily available, or is required by States.

(iii) Preferential or differential treatment for developing countries

7. In order to ensure the equitable application of the Set of Principles and Rules, States, particularly developed countries, should take into account in their control of restrictive business practices the development, financial and trade needs of developing countries, in particular of the least developed countries, for the purposes especially of developing countries in:
   
   (a) Promoting the establishment or development of domestic industries and the economic development of other sectors of the economy, and
   
   (b) Encouraging their economic development through regional or global arrangements among developing countries.

D. Principles and rules for enterprises, including transnational corporations

1. Enterprises should conform to the restrictive business practices laws, and the provisions concerning restrictive business practices in other laws, of the countries in which they operate, and, in the event of proceedings under these laws, should be subject to the competence of the courts and relevant administrative bodies therein.

2. Enterprises should consult and co-operate with competent authorities of countries directly affected in controlling restrictive business practices adversely affecting the interests of those countries. In this regard, enterprises should also provide information, in particular details of restrictive arrangements, required for this purpose, including that which may be located in foreign countries, to the extent that in the latter event such production or disclosure is not prevented by applicable law or established public policy. Whenever the provision of information is on a voluntary basis, its provision should be in accordance with safeguards normally applicable in this field.
3. Enterprises, except when dealing with each other in the context of an economic entity wherein they are under common control, including through ownership, or otherwise not able to act independently of each other, engaged on the market in rival or potentially rival activities, should refrain from practices such as the following when, through formal, informal, written or unwritten agreements or arrangements, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

(a) Agreements fixing prices, including as to exports and imports;
(b) Collusive tendering;
(c) Market or customer allocation arrangements;
(d) Allocation by quota as to sales and production;
(e) Collective action to enforce arrangements, e.g. by concerted refusals to deal;
(f) Concerted refusal of supplies to potential importers;
(g) Collective denial of access to an arrangement, or association, which is crucial to competition.

4. Enterprises should refrain from the following acts or behaviour in a relevant market when, through an abuse* or acquisition and abuse of a dominant position of market power, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

(a) Predatory behaviour towards competitors, such as using below-cost pricing to eliminate competitors;
(b) Discriminatory (i.e. unjustifiably differentiated) pricing or terms or conditions in the supply or purchase of goods or services, including by means of

* Whether acts or behaviour are abusive or not should be examined in terms of their purpose and effects in the actual situation, in particular with reference to whether they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, and to whether they are:

(c) Appropriate in the light of the organizational, managerial and legal relationship among the enterprises concerned, such as in the context of relations within an economic entity and not having restrictive effects outside the related enterprises;

(b) Appropriate in light of special conditions or economic circumstances in the relevant market such as exceptional conditions of supply and demand or the size of the market;

(c) Of types which are usually treated as acceptable under pertinent national or regional laws and regulations for the control of restrictive business practices;

(d) Consistent with the purposes and objectives of these principles and rules.
the use of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(c) Mergers, takeovers, joint ventures or other acquisitions of control, whether of a horizontal, vertical or a conglomerate nature;

(d) Fixing the prices at which goods exported can be resold in importing countries;

(e) Restrictions on the importation of goods which have been legitimately marked abroad with a trademark identical with or similar to the trademark protected as to identical or similar goods in the importing country where the trademarks in question are of the same origin, i.e. belong to the same owner or are used by enterprises between which there is economic, organizational, managerial or legal interdependence and where the purpose of such restrictions is to maintain artificially high prices;

(f) When not for ensuring the achievement of legitimate business purposes, such as quality, safety, adequate distribution or service:

(i) Partial or complete refusals to deal on the enterprise's customary commercial terms;

(ii) Making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods;

(iii) Imposing restrictions concerning where, or to whom, or in what form or quantities, goods supplied or other goods may be resold or exported;

(iv) Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his designee.

E. Principles and rules for States at national, regional and subregional levels

1. States should, at the national level or through regional groupings, adopt, improve and effectively enforce appropriate legislation and implementing judicial and administrative procedures for the control of restrictive business practices, including those of transnational corporations.

2. States should base their legislation primarily on the principle of eliminating or effectively dealing with acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on their trade or economic development, or which through formal, informal, written or unwritten agreements or arrangements among enterprises have the same impact.
3. States, in their control of restrictive business practices, should ensure treatment of enterprises which is fair, equitable, on the same basis to all enterprises, and in accordance with established procedures of law. The laws and regulations should be publicly and readily available.

4. States should seek appropriate remedial or preventive measures to prevent and/or control the use of restrictive business practices within their competence when it comes to the attention of States that such practices adversely affect international trade, and particularly the trade and development of the developing countries.

5. Where, for the purposes of the control of restrictive business practices, a State obtains information from enterprises containing legitimate business secrets, it should accord such information reasonable safeguards normally applicable in this field, particularly to protect its confidentiality.

6. States should institute or improve procedures for obtaining information from enterprises, including transnational corporations, necessary for their effective control of restrictive business practices, including in this respect details of restrictive agreements, understandings and other arrangements.

7. States should establish appropriate mechanisms at the regional and subregional levels to promote exchange of information on restrictive business practices and on the application of national laws and policies in this area, and to assist each other to their mutual advantage regarding control of restrictive business practices at the regional and subregional levels.

8. States with greater expertise in the operation of systems for the control of restrictive business practices should, on request, share their experience with, or otherwise provide technical assistance to, other States wishing to develop or improve such systems.

9. States should, on request, or at their own initiative when the need comes to their attention, supply to other States, particularly developing countries, publicly available information, and, to the extent consistent with their laws and established public policy, other information necessary to the receiving interested State for its effective control of restrictive business practices.

F. International measures

Collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices, including those of transnational corporations, through strengthening and improving controls over restrictive business practices adversely affecting international trade, particularly that of developing countries, and the economic development of these countries. In this regard, action should include:

1. Work aimed at achieving common approaches in national policies relating to restrictive business practices compatible with the Set of Principles and Rules.
2. Communication annually to the Secretary-General of UNCTAD of appropriate information on steps taken by States and regional groupings to meet their commitment to the Set of Principles and Rules, and information on the adoption, development and application of legislation, regulations and policies concerning restrictive business practices.

3. Continued publication annually by UNCTAD of a report on developments in restrictive business practices legislation and on restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, based upon publicly available information and as far as possible other information, particularly on the basis of requests addressed to all member States or provided at their own initiative and, where appropriate, to the United Nations Centre on Transnational Corporations and other competent international organizations.

4. Consultations:
   (a) Where a State, particularly of a developing country, believes that a consultation with another State or States is appropriate in regard to an issue concerning control of restrictive business practices, it may request a consultation with those States with a view to finding a mutually acceptable solution. When a consultation is to be held, the States involved may request the Secretary-General of UNCTAD to provide mutually agreed conference facilities for such a consultation;
   (b) States should accord full consideration to requests for consultations and, upon agreement as to the subject of and the procedures for such a consultation, the consultation should take place at an appropriate time;
   (c) If the States involved so agree, a joint report on the consultations and their results should be prepared by the States involved and, if they so wish, with the assistance of the UNCTAD secretariat, and be made available to the Secretary-General of UNCTAD for inclusion in the annual report on restrictive business practices.

5. Continued work within UNCTAD on the elaboration of a model law or laws on restrictive business practices in order to assist developing countries in devising appropriate legislation. States should provide necessary information and experience to UNCTAD in this connexion.

6. Implementation within or facilitation by UNCTAD, and other relevant organizations of the United Nations system in conjunction with UNCTAD, of technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries:
   (a) Experts should be provided to assist developing countries, at their request, in formulating or improving restrictive business practices legislation and procedures;
   (b) Seminars, training programmes or courses should be held, primarily in developing countries, to train officials involved or likely to be involved in
administering restrictive business practices legislation and, in this connexion, advantage should be taken, inter alia, of the experience and knowledge of administrative authorities, especially in developed countries, in detecting the use of restrictive business practices;

(c) A handbook on restrictive business practices legislation should be compiled;

(d) Relevant books, documents, manuals and any other information on matters related to restrictive business practices should be collected and made available, particularly to developing countries;

(e) Exchange of personnel between restrictive business practices authorities should be arranged and facilitated;

(f) International conferences on restrictive business practices legislation and policy should be arranged;

(g) Seminars for an exchange of views on restrictive business practices among persons in the public and private sectors should be arranged.

7. International organizations and financing programmes, in particular the United Nations Development Programme, should be called upon to provide resources through appropriate channels and modalities for the financing of activities set out in paragraph 6 above. Furthermore, all countries are invited, in particular the developed countries, to make voluntary financial and other contributions for the above-mentioned activities.

G. International institutional machinery

(i) Institutional arrangements

1. An Intergovernmental Group of Experts on Restrictive Business Practices operating within the framework of a Committee of UNCTAD will provide the institutional machinery.

2. States which have accepted the Set of Principles and Rules should take appropriate steps at the national or regional levels to meet their commitment to the Set of Principles and Rules.

(ii) Functions of the Intergovernmental Group

3. The Intergovernmental Group shall have the following functions:

(a) To provide a forum and modalities for multilateral consultations, discussion and exchange of views between States on matters related to the Set of Principles and Rules, in particular its operation and the experience arising therefrom;

(b) To undertake and disseminate periodically studies and research on restrictive business practices related to the provisions of the Set of Principles and
Rules, with a view to increasing exchange of experience and giving greater effect to the Set of Principles and Rules;

(c) To invite and consider relevant studies, documentation and reports from relevant organizations of the United Nations system;

(d) To study matters relating to the Set of Principles and Rules and which might be characterized by data covering business transactions and other relevant information obtained upon request addressed to all States;

(e) To collect and disseminate information on matters relating to the Set of Principles and Rules to the over-all attainment of its goals and to the appropriate steps States have taken at the national or regional levels to promote an effective Set of Principles and Rules, including its objectives and principles;

(f) To make appropriate reports and recommendations to States on matters within its competence, including the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules;

(g) To submit reports at least once a year on its work.

4. In the performance of its functions, neither the Intergovernmental Group nor its subsidiary organs shall act like a tribunal or otherwise pass judgment on the activities or conduct of individual Governments or of individual enterprises in connection with a specific business transaction. The Intergovernmental Group or its subsidiary organs should avoid becoming involved when enterprises in a specific business transaction are in dispute.

5. The Intergovernmental Group shall establish such procedures as may be necessary to deal with issues related to confidentiality.

(iii) Review procedure

6. Subject to the approval of the General Assembly, five years after the adoption of the Set of Principles and Rules, a United Nations Conference shall be convened by the Secretary-General of the United Nations under the auspices of UNCTAD for the purpose of reviewing all the aspects of the Set of Principles and Rules. Towards this end, the Intergovernmental Group shall make proposals to the Conference for the improvement and further development of the Set of Principles and Rules.
Annex 5

Annex A

LIBERALISATION LISTS OF CAPITAL MOVEMENTS

LIST A

I. DIRECT INVESTMENT

Investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof:

A. In the country concerned by non-residents by means of:

1. creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;

2. participation in a new or existing enterprise;

3. a long-term loan (five years and longer).

B. Abroad by residents by means of:

1. creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;

2. participation in a new or existing enterprise;

3. a long-term loan (five years and longer).

Remarks: Transactions and transfers under A and B shall be free unless:

i) an investment is of a purely financial character designed only to gain for the investor indirect access to the money or financial market of another country; or

ii) in view of the amount involved or of other factors a specific transaction or transfer would have an exceptionally detrimental effect on the interests of the Member concerned.
The authorities of Members shall not maintain or introduce:

Regulations or practices applying to the granting of licences, concessions, or similar authorisations, including conditions or requirements attaching to such authorisations and affecting the operations of enterprises, that raise special barriers or limitations with respect to non-resident (as compared to resident) investors, and that have the intent or the effect of preventing or significantly impeding inward direct investment by non-residents.

II. LIQUIDATION OF DIRECT INVESTMENT

A. Abroad by residents.

B. In the country concerned by non-residents.

Remark: Transfers under B shall be free subject, in the case of investments by means of blocked funds, to the remark against Section XV/B1 in List A.

III. ADMISSION OF SECURITIES TO CAPITAL MARKETS

A. Admission of domestic securities on a foreign capital market:

1. (See List B).

2. Introduction on a recognised foreign security market of:
   a) shares and other securities of a participating nature;
   b) bonds.

B. Admission of foreign securities on the domestic capital market:

1. (See List B).

2. Introduction on a recognised domestic security market of:
   a) shares and other securities of a participating nature;
   b) bonds.

Remarks: Transactions and transfers under B 2 shall be free provided the securities concerned are introduced in a recognised security market of the country of issue. The liberalisation obligations under B 2 are subject to the regulations of the security markets concerned. The authorities of Members shall not maintain or introduce restrictions which discriminate against foreign securities.

1. Other than operations falling under Section V of the General List.
IV. BUYING AND SELLING OF SECURITIES

A. Operations in the country concerned by non-residents:

1. Purchase of securities quoted on a recognised security market:
   a) shares or other securities of a participating nature;
   b) bonds.

2. Sale of securities quoted on a recognised security market;
   a) shares or other securities of a participating nature;
   b) bonds.

3. (See List B).

4. (See List B).

B. Operations abroad by residents:

1. Purchase of securities quoted on a recognised security market:
   a) shares or other securities of a participating nature;
   b) bonds.

2. Sale of securities quoted on a recognised security market;
   a) shares or other securities of a participating nature;
   b) bonds.

3. (See List B).

4. (See List B).

Remarks: Transfers of sales proceeds under A 2 shall be free subject, in case of investments by means of blocked funds, to the remark against Section XV/B1. Members shall have the power to lay down with regard to transactions and transfers under A and B that:

i) such transactions and transfers must be carried out through authorised resident agents;

ii) in connection with such transactions and transfers residents may hold funds and securities only through the intermediary of such agents; and

iii) purchases and sales may be contracted only on a spot basis.

1. Other than operations falling under Section I, II, III or V of the General list.
V. BUYING AND SELLING OF COLLECTIVE INVESTMENT SECURITIES

A. Operations in the country concerned by non-residents:
   1. Purchase of collective investment securities.
   2. Sale of collective investment securities.

B. Operations abroad by residents:
   1. Purchase of collective investment securities.
   2. Sales of collective investment securities.

Remarks: Transfers of sales proceeds under A2 shall be free subject, in the case of investments by means of blocked funds, to the remark against Section XV/B1.

Members shall have the power:
   a) with regard to transactions and transfers under A and B to lay down that:
      i) such transactions and transfers must be carried out through authorised resident agents;
      ii) in connection with such transactions and transfers residents may hold funds and securities only through the intermediary of such agents; and
      iii) purchases and sales may be contracted only on a spot basis;
   b) with regard to transactions and transfers under A2, to take measures for the protection of investors, including the regulations of promotional activities, provided such measures do not discriminate against institutions for collective investment organised under the laws of any other Member country;
   c) with regard to transactions and transfers under B1, to regulate on their territory any promotional activities of foreign institutions for collective investment.

VI. OPERATIONS IN REAL ESTATE

A. Operations in the country concerned by non-residents:
   1. (See List B).
   2. Sale.

B. Operations abroad by residents:
   1. (See List B).
   2. Sale.

1. Other than operations falling under Section I or II of the General List.
VIII. CREDITS DIRECTLY LINKED WITH INTERNATIONAL COMMERCIAL TRANSACTIONS OR WITH THE RENDERING OF INTERNATIONAL SERVICES

i) In cases where a resident participates in the underlying commercial or service transaction.

A. Credits granted by non-residents to residents on:
   1. Short-term (less than one year);
   2. Medium-term (from one to five years).

B. Credits granted by residents to non-residents on:
   1. Short-term (less than one year);
   2. Medium-term (from one to five years).

*Remark: Transactions and transfers under A and B shall be free provided they are in conformity with normal commercial practice.*

XI. PERSONAL CAPITAL MOVEMENTS

A. Family loans.
B. Gifts and endowments.
C. Dowries.
D. Inheritances and legacies.

*Remark: Transfers under D shall be free provided that the deceased was resident and the beneficiary non-resident at the time of the deceased's death.*

E. Settlement of debts in their country of origin by immigrants.
F. Emigrants' assets.

*Remark: Transfers under F shall be free upon emigration irrespective of the nationality of the emigrant.*

G. (See List B).
H. Savings of non-resident workers.
XII. LIFE ASSURANCE

Capital transfers arising under life assurance contracts:¹

A. Transfers of capital and annuities certain due to resident beneficiaries from non-resident insurers.

B. Transfers of capital and annuities certain due to non-resident beneficiaries from resident insurers.

Remark: Transfers under A and B shall be free also in the case of contracts under which the persons from whom premiums are due or the beneficiaries to whom disbursements are due were residents of the same country as the insurer at the time of the conclusion of the contract but have changed their residence since.

XIII. SURETIES AND GUARANTEES

A. By non-residents in favour of residents.

B. By residents in favour of non-residents.

Remark: Transactions and transfers under A and B shall be free if they are directly related to international trade, international current invisible operations or international capital movement operations in which a resident participates and which do not require authorisation or have been authorised by the Member State concerned.

XIV. PHYSICAL MOVEMENT OF CAPITAL ASSETS

A. Securities and other documents of title to capital assets:

1. Import.

2. Export.

Remark: In the case of residents the obligation to permit an export applies only to the export of foreign securities and then only on a temporary basis for administrative purposes.

¹ Transfers of premiums and pensions and annuities, other than annuities certain, in connection with life assurance contracts are governed by the Code of Liberalisation of Current Invisible Operations (Item D/3). Transfers of whatever kind or size under other than life assurance contracts are always considered to be of a current nature and are consequently governed by the Current Invisibles Code.
XV. DISPOSAL OF NON-RESIDENT-OWNED BLOCKED FUNDS

A. Transfer of blocked funds.

Remarks: Transfers of blocked funds by their owners shall be free in cases of hardship.
Annual transfer of blocked funds by their owners within general limits or percentages of the total holdings to be determined by the Member States concerned shall be free. Such limits or percentages shall be uniform for all cases.

B. Use of blocked funds in the country concerned:

1. For operations of a capital nature.

Remark: The use of blocked funds for capital payments for account of the holder shall be free to the extent that the transaction does not require authorisation or is authorised for transferable funds by the Member States where the blocked funds are held. The general terms and conditions on which blocked funds may be so used shall be the same as those applying to transferable funds except that the Member State concerned shall have the right to re-impose the original status on such funds in case of liquidation within three years of any investment for which they have been used.

2. For current operations.

Remark: The use of blocked funds for current expenses for account of the holder for any non-commercial purpose shall be free.

C. Cession of blocked funds between non-residents.
LIST B

III. ADMISSION OF SECURITIES TO CAPITAL MARKETS

A. Admission of domestic securities on a foreign capital market:
   1. Issue through placing or public sale of:
      a) shares or other securities of a participating nature;
      b) bonds.
   2. (See List A).

B. Admission of foreign securities on the domestic capital market:
   1. Issue through placing or public sale of:
      a) shares or other securities of a participating nature;
      b) bonds.
   2. (See List A).

IV. BUYING AND SELLING OF SECURITIES

A. Operations in the country concerned by non-residents:
   1. (See List A).
   2. (See List A).
   3. Purchase of securities not quoted on a recognised security market:
      a) shares or other securities of a participating nature;
      b) bonds.
   4. Sale of securities not quoted on a recognised security market:
      a) shares or other securities of a participating nature;
      b) bonds.

B. Operations abroad by residents:
   1. (See List A).
   2. (See List A).

1. Other than operations falling under Section V of the General List.
2. Other than operations falling under Section I, II, III or V of the General list.
3. Purchase of securities not quoted on a recognised security market:
   a) shares or other securities of a participating nature;
   b) bonds.

4. Sale of securities not quoted on a recognised security market:
   a) shares or other securities of a participating nature;
   b) bonds.

Remarks: Transfers and sales proceeds under A4 shall be free subject, in case of investments by means of blocked funds, to the remark against Section XV/B1. Members shall have the power to lay down with regard to transactions and transfers under A and B that:
   i) such transactions and transfers must be carried out through authorised resident agents;
   ii) in connection with such transactions and transfers residents may hold funds and securities only through the intermediary of such agents; and
   iii) purchases and sales may be contracted only on a spot basis.

VI. OPERATIONS IN REAL ESTATE

A. Operations in the country concerned by non-residents:
   1. Building or purchase.
   2. (See List A).

B. Operations abroad by residents:
   1. Building or purchase.
   2. (See List A).

1. Other than operations falling under Section I or II of the General List.
VIII. CREDITS DIRECTLY LINKED WITH INTERNATIONAL COMMERCIAL TRANSACTIONS
OR WITH THE RENDERING OF INTERNATIONAL SERVICES

ii) In cases where no resident participates in the underlying commercial or service transaction.

A. —

B. Credits granted by residents to non-residents on:
   1. short-term (less than one year);
   2. medium-term (from one to five years).

Remark: Transactions and transfers shall be free provided:
   i) they are in conformity with normal commercial practice;
   ii) the credits are granted by a financial institution.

IX. FINANCIAL CREDITS AND LOANS

A. Credits and loans granted by non-residents to residents on:
   1. —
   2. Medium-term (from one to five years):
      a) The debtor being a financial institution.
      b) —
   3. Long-term (five years and longer):
      a) The debtor being a financial institution.
      b) —

B. Credits and loans granted by residents to non-residents on:
   1. —
   2. Medium-term (from one to five years):
      a) The creditor being a financial institution.
      b) —

1. Other than credits and loans falling under Sections I, II, VIII and XI in List A, or Section VIII in List B.
3. Long-term (five years and longer):

   a) The creditor being a financial institution.

   b) —

XI. PERSONAL CAPITAL MOVEMENTS

A. to F. (See List A).

G. Gaming.

   Remark: Transfers under G shall be free only in respect of winnings; the provision does not cover the stakes wagered.

H. (See List A).
Annex A

LIST OF CURRENT INVISIBLE OPERATIONS

A. BUSINESS AND INDUSTRY

A/1. Repair and assembly.

A 2. Processing, finishing, processing of work under contract and other services of the same nature.

**Remark:** In cases where goods are involved, liberalisation applies only if the importation of the goods concerned is liberalised by the Member ordering such processing, finishing, etc.

A/3. Technical assistance (assistance relating to the production and distribution of goods and services at all stages, given over a period limited according to the specific purpose of such assistance, and including e.g. advice or visits by experts, preparation of plans and blueprints, supervision of manufacture, market research, training of personnel). See also Note 3, page 34.

A 4. Contracting (construction and maintenance of buildings, roads, bridges, ports, etc., carried out by specialised firms and, generally, at fixed prices after open tender).

A 5. Authors' royalties. Patents, designs, trade marks and inventions (the assignment and licensing of patent rights, designs, trade marks and inventions, whether or not legally protected, and transfers arising out of such assignment or licensing). See also Note 3, page 34.

A 6. Salaries and wages (of frontier or seasonal workers and of other non-residents).

**Remark:** Free transfer to the country of residence of the recipient. The amounts to be transferred shall be the net salaries and wages, i.e. after deduction of living expenses, taxes, social insurance contributions or premiums, if any.

A/7. Participation by subsidiary companies and branches in overhead expenses of parent companies situated abroad and vice-versa (i.e. overhead expenses other than those included under A/3 and A/5). See also Note 3, page 34.
B. FOREIGN TRADE

B/1. Commission and brokerage.

*Remark:* In the case of goods, this item covers commission and brokerage in connection with their sale, purchase or movement.

Profit arising out of transit operations or sales of transhipment.

*Remark:* In cases where these profits are not covered by F/1 below.

Banking commissions and charges.

Representation expenses.

B/2. Differences, margins and deposits due in respect of operations on commodity terminal markets in conformity with normal commercial practice.

B/3. Charges for documentation of all kinds incurred on their own account by authorised dealers in foreign exchange.

B/4. Warehousing and storage, customs clearance.

B/5. Transit charges.

B/6. Customs duties and fees.
C. TRANSPORT

C/1. Maritime freights (including chartering, harbour expenses, disbursements for fishing vessels, etc.).

Remarks: See Note 1, page 33.

C/2. Inland waterway freights, including chartering.

C/3. Road transport: passengers and freights, including chartering.

C/4. Air transport: passengers and freights, including chartering.

Payment by passengers of international air tickets and excess luggage charges; payment of international air freight charges and chartered flights.

Remarks: Without prejudice to the provisions of Annex II.

Receipts from the sale of international air tickets, excess luggage charges, international air freight charges, and chartered flights.

Remarks: The transfer of these receipts to the head office of the air transport company concerned shall be free.

C/5. For all means of maritime transport: harbour services (including bunkering and provisioning, maintenance, repairs, expenses for crews, etc.).

Remarks: In the case of repairs, current maintenance, voyage and emergency repairs (see also C/6). (See Note 1, page 33.)

For all means of inland waterway transport: harbour services (including bunkering and provisioning, maintenance and minor repairs of equipment, expenses for crews, etc.).

Remarks: In the case of repairs, current maintenance repairs only (see also C/6).

1. This item does not cover transport between two ports of the same State. Where such transport is open to foreign flags, transfers shall be free.

2. For definition of terms employed here and in the Remarks against C/6, see Note 2, page 33.
For all means of commercial road transport: road services (including fuel, oil, minor repairs, garaging, expenses for drivers and crews, etc.).

For all means of air transport: operating costs and general overheads, including repairs to aircraft and to air transport equipment.

Remark: Including all charges in connection with the delivery of oil and petrol to air transport companies which are incurred in the currency of the State where the delivery takes place.

C/6. Repair of ships.

Remark: Transactions other than those covered by C/5 (i.e. classification, conversion and other major repairs) to the extent to which they do not constitute visible trade.

Repairs of means of transport other than ships and aircraft.

Remark: Transactions other than those covered by C/5 to the extent to which they do not constitute visible trade.

D. INSURANCE

D/1. Social security and social insurance.

Remarks:
1. Free transfer of:
   a. contributions and premiums in respect of social security or social insurance payable in another Member State;
   b. social security and social insurance benefits payable to an insured person or beneficiary residing in another Member State or, for their account, to a social security or social insurance authority in that other State.
2. If the transfer relates to an insurance considered as social insurance by only one of the Members concerned the provisions according the more liberal treatment shall apply.
3. Social insurance transactions carried out by private insurers shall also be subject to the provisions of Parts III and IV of Annex I.

1. For definition of terms employed here and in the Remarks against C 5, see Note 2, page 33.
Transactions and transfers in connection with direct insurance (other than social security and social insurance).

D/2. Insurance relating to goods in international trade.

D/3. Life assurance.

D/4. All other insurance.

D/5. Transactions and transfers in connection with re-insurance and retrocession.

Remark: The provisions of Part II of Annex I shall also apply.

D/6. Conditions for establishment and operation of branches and agencies of foreign insurers.

Remarks:
1. Authorisation within the limits specified in Part III of Annex I for insurers of other Member States (a) to establish themselves and (b) to transact business.
2. Transfers between branches and agents of such authorised insurers and their head offices: within the limits specified in Part IV of Annex I.

E. Films

E/1. Exportation, importation, distribution and use of printed films and other recordings — whatever the means of reproduction — for private or cinema exhibition, or for television broadcasts.

Remark: The provisions of Annex IV shall also apply. Members shall grant any authorisation required for transactions which they had authorised on 1st January, 1959, in virtue of regulations or international agreements in force on that date.

1. Transaction shall be deemed to mean the conclusion of a direct insurance contract by a person in one Member State with an insurer in another Member State.
2. The provisions of this item do not apply to Canada which accordingly has neither obligations nor rights thereunder (OECD/C(61)189 of 12th December, 1961 and C(63)154 (Final) of 3rd March, 1964).
F. INCOME FROM CAPITAL

F/1. Profits from business activity.

F/2. Dividends and shares in profits.

F/3. Interest (including interest on debentures, mortgages, etc.).

F/4. Rent.

Remark: Does not apply to income deriving from capital acquired otherwise than in conformity with the laws covering the acquisition of capital.

G. TRAVEL AND TOURISM

Remark: This section covers all international travel as well as stays abroad for purposes other than immigration, such as pleasure, recreation, holiday, sport, business, visits to relatives or friends, missions, meetings, conferences or for reasons of health, education or religion.

No restrictions shall be imposed by Member countries on expenditure by residents for purposes of international tourism or other international travel. For the settlement of such expenditure, no restrictions shall be placed on transfers abroad by or on behalf of travellers or on the use abroad of cash cards or credit cards, in accordance with the provisions of Annex III. Travellers shall, moreover, be automatically permitted to acquire, export and import domestic and foreign bank-notes and to use travellers' cheques abroad in accordance with the provisions of Annex III; additional amounts in travellers' cheques and/or foreign bank-notes shall be allowed on presentation of justification. Lastly, travellers shall be permitted to undertake foreign exchange transactions according to the provisions of Annex III.
H. PERSONAL INCOME AND EXPENDITURE

H/1. Pensions and other income of a similar nature.

Remark: In favour of persons who, after having spent their life in a Member State other than their State of origin, establish themselves in any other Member State including their own.

H/2. Maintenance payments resulting from a legal obligation or from a decision of a court and financial assistance in cases of hardship.

H/3. Immigrants' remittances.

Remarks: Free periodic transfer to the Member State of which the person demanding the transfer is a national, of salaries, fees, wages, and other current remuneration, after deduction of living expenses, taxes, and social insurance. No less favourable treatment shall be accorded to demands for the transfer of earnings of self-employed persons or members of the liberal professions.


H/5. Transfer of minor amounts abroad.

H/6. Subscriptions to newspapers, periodicals, books, musical publications.

Remark: To the extent to which these items do not constitute visible trade.

H/7. Sports prizes and racing earnings.

Remark: In accordance with the laws of the Members concerned.

J. PUBLIC INCOME AND EXPENDITURE

J/1. Taxes.

J/2. Government expenditure (transfer of amounts due by governments to non-residents and in connection with official representation abroad and contributions to international organisations).

J/3. Settlements in connection with public transport and postal, telegraphic and telephone services.


1. The items in this section apply to transfers only.
K. GENERAL

K/1. Advertising by all media.

K/2. Court expenses.

K/3. Damages.


K/5. Membership of associations, clubs and other organisations.

K/6. Professional services (including services of accountants, artists, consultants, doctors, engineers, experts, lawyers, etc.).

K/7. Refunds in the case of cancellation of contracts and refunds of uncalled-for payments.

K/8. Registration of patents and trade-marks.
NOTES

Note 1. The provisions of C/1 "Maritime freights, including chartering, harbour expenses, disbursements for fishing vessels, etc.", of C/5, first sub-paragraph "For all means of maritime transport: harbour services (including bunkering and provisioning, maintenance, repairs, expenses for crews, etc.)", and of the other items that have a direct or indirect bearing on international maritime transport, are intended to give residents of one Member State the unrestricted opportunity to avail themselves of, and pay for, all services in connection with international maritime transport which are offered by residents of any other Member State. As the shipping policy of the Governments of the Members is based on the principle of free circulation of shipping in international trade in free and fair competition, it follows that the freedom of transactions and transfers in connection with maritime transport should not be hampered by measures in the field of exchange control, by legislative provisions in favour of the national flag, by arrangements made by governmental or semi-governmental organisations giving preferential treatment to national flag ships, by preferential shipping clauses in trade agreements, by the operation of import and export licensing systems so as to influence the flag of the carrying ship, or by discriminatory port regulations or taxation measures—the aim always being that liberal and competitive commercial and shipping practices and procedures should be followed in international trade and normal commercial considerations should alone determine the method and flag of shipment.

The second sentence of this Note does not apply to the United States.

Note 2. The following are the definitions of the terms employed in the remarks against C/5 (Maritime transport) and C/6 (Repair of ships) which have been adopted by the Council:

Current maintenance: work which may conveniently be undertaken during a vessel's stay in port, which will contribute to her general upkeep and efficiency, without being immediately necessary for her continued operation.

Voyage repairs: work which is required during a voyage, due to the normal risks of the sea (e.g. weather damage) to enable the vessel to complete the voyage.

Emergency repairs: similar to voyage repairs, but due to less normal causes, such as sudden machinery breakdown or collisions.

Classification: the special work required to pass the survey which the Classification Society holds on each ship every four years.
Conversion: the major operation of altering the size of a ship or the type, e.g. from steamer to motorship, from passenger/cargo to cargo ship, or from coal-burner to oil burner.

NOTE 3. According to the type of knowledge and/or the nature of the contract, “know-how” and manufacturing processes fall under any of the three headings of A/3, A/5 and A/7.
ANNEX 7

REVISED RECOMMENDATION OF THE COUNCIL

• concerning co-operation between Member countries on restrictive business practices affecting international trade

(adopted by the Council at its 643rd Meeting on 21st May 1986)

THE COUNCIL,

having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendation of the Council of 25th September 1979, concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade [C(79)154(Final)] which repealed and superseded the recommendations of the Council of 5th October 1967 and of 3rd July 1973 on the same subject;

Having regard to the request made by the Council meeting at Ministerial level in May 1982 to the Committee of Experts on Restrictive Business Practices to undertake a review of the 1979 Council Recommendation [C/M(82)12 Part 1 (Final), items 114 and 115, paragraph 12 a)];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on the operation of the 1979 Council Recommendation during the period 1980 to mid-1985 [RBP(86)2(1st Revision), Part A];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on international co-operation in the collection of information for purposes of competition law enforcement and, in particular, the suggestions for action contained in that report (paragraphs 173 to 179);

Recognising that restrictive business practices may constitute an obstacle to the achievement of economic growth, trade expansion and other economic goals of Member countries such as the control of inflation;

Recognising that the unilateral application of national legislation, in cases where business operations in other countries are involved, raises questions as to the respective spheres of sovereignty of the countries concerned;
Recognising the need for Member countries to give effect to the principles of international law and comity and to use moderation and self-restraint in the interest of co-operation in the field of restrictive business practices;

Recognising that restrictive business practices investigations and proceedings by one Member country may, in certain cases, affect important interests of other Member countries;

Considering therefore that Member countries should co-operate in the implementation of their respective national legislation in order to combat the harmful effects of restrictive business practices;

Considering also that closer co-operation between Member countries is needed to deal effectively with restrictive business practices operated by enterprises situated in Member countries when they affect the interests of one or more other Member countries and have a harmful effect on international trade;

Considering moreover that closer co-operation between Member countries in the form of notification, exchange of information, co-ordination of action, consultation and conciliation, on a fully voluntary basis, should be encouraged, it being understood that such co-operation should not, in any way, be construed to affect the legal positions of Member countries with regard to questions of sovereignty, and in particular, the extra-territorial application of laws concerning restrictive business practices, as may arise.

Recognising the desirability of setting forth procedures by which the Committee can act as a forum for exchanges of views, consultations and conciliation on matters related to restrictive business practices affecting international trade;

Considering that if Member countries find it appropriate to enter into bilateral arrangements for co-operation in the enforcement of national competition laws, they should take into account the present Recommendation and Guiding Principles.

1. RECOMMENDS to the Governments of Member countries that insofar as their laws permit:

A. NOTIFICATION, EXCHANGE OF INFORMATION AND CO-ORDINATION OF ACTION

1.a) When a Member country undertakes under its restrictive business practices laws an investigation or proceeding which may affect important interests of another Member country or countries, it should notify such Member country or countries, if possible in advance, and, in any event, at a time that would facilitate comments or consultations; such advance notification would enable the proceeding Member country while retaining full freedom of ultimate decision to take account of such views as the other Member country may wish to express and of such remedial action as the other Member country may find it feasible to take under its own laws to deal with the restrictive business practices;
b) Where two or more Member countries proceed against a restrictive business practice in international trade, they should endeavour to co-ordinate their action insofar as appropriate and practicable;

2. Through consultations or otherwise, the Member countries should co-operate in developing or applying mutually satisfactory and beneficial measures for dealing with restrictive business practices in international trade. In this connection, they should supply each other with such relevant information on restrictive business practices as their legitimate interests permit them to disclose; and should allow, subject to appropriate safeguards, including those relating to confidentiality, the disclosure of information to the competent authorities of Member countries by the other parties concerned, whether accomplished unilaterally or in the context of bilateral or multilateral understandings, unless such co-operation or disclosure would be contrary to significant national interests.

B. CONSULTATION AND CONCILIATION

3.a) A Member country which considers that a restrictive business practice investigation or proceeding being conducted by another Member country may affect its important interests should transmit its views on the matter to or request consultation with the other Member country;

b) Without prejudice to the continuation of its action under its restrictive business practices law and to its full freedom of ultimate decision the Member country so addressed should give full and sympathetic consideration to the views expressed by the requesting country, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the restrictive business practice investigation or proceeding;

4.a) A Member country which considers that one or more enterprises situated in one or more other Member countries are or have been engaged in restrictive business practices of whatever origin that are substantially and adversely affecting its interests, may request consultation with such other Member country or countries recognising that entering into such consultations is without prejudice to any action under its restrictive business practices law and to the full freedom of ultimate decision of the Member countries concerned;

b) Any Member country so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting country and, in particular, to the nature of the restrictive business practices in question, the enterprises involved and the alleged harmful effects on the interests of the requesting country;

c) The Member country addressed which agrees that enterprises situated in its territory are engaged in restrictive business practices harmful to the interests of the requesting country should attempt to ensure that these enterprises take remedial action, or should itself
take whatever remedial action it considers appropriate, including actions under its legislation on restrictive business practices or administrative measures, on a voluntary basis and considering its legitimate interests;

5. Without prejudice to any of their rights, the Member countries involved in consultations under paragraphs 3 and 4 above should endeavour to find a mutually acceptable solution in the light of the respective interests involved;

6. In the event of a satisfactory conclusion to the consultations under paragraphs 3 and 4 above, the requesting country, in agreement with, and in the form accepted by, the Member country or countries addressed, should inform the Committee of Experts on Restrictive Business Practices of the nature of the restrictive business practices in question and of the settlement reached;

7. In the event that no satisfactory conclusion can be reached, the Member countries concerned, if they so agree, should consider having recourse to the good offices of the Committee of Experts on Restrictive Business Practices with a view to conciliation. If the Member countries concerned agree to the use of another means of settlement, they should, if they consider it appropriate, inform the Committee of such features of the settlement as they feel they can disclose.

II. RECOMMENDS that Member countries take into account the guiding principles set out in the Appendix to this Recommendation.

III. INSTRUCTS the Committee of Experts on Restrictive Business Practices

1. To examine periodically the progress made in the implementation of the present Recommendation and to serve periodically or at the request of a Member country as a forum for exchanges of views on matters related to the Recommendation on the understanding that it will not reach conclusions on the conduct of individual enterprises or governments;

2. To consider the reports submitted by Member countries in accordance with paragraph 6 of Section I above;

3. To consider the requests for conciliation submitted by Member countries in accordance with paragraph 7 of Section I above and to assist, by offering advice or by any other means, in the settlement of the matter between the Member countries concerned;

4. To report to the Council as appropriate on the application of the present Recommendation.

IV. DECIDES that this Recommendation and its Appendix cancel and replace the Recommendation of the Council of 25th September 1979 [C(79)154(Final)].
GUIDING PRINCIPLES FOR NOTIFICATIONS, EXCHANGES OF INFORMATION, CONSULTATIONS AND CONCILIATION ON RESTRICTIVE BUSINESS PRACTICES AFFECTING INTERNATIONAL TRADE

Purpose

1. The purpose of these principles is to clarify the procedures laid down in the Recommendation and thereby to strengthen co-operation and to minimise conflicts in the enforcement of competition laws.

Notification

2. The circumstances in which a notification of an investigation or proceeding should be made include:

a) When it is proposed that, through a written request, information will be sought from the territory of another Member country or countries;

b) When it concerns a practice carried out wholly or in part in the territory of another Member country or countries, whether the practice is purely private or whether it is required, encouraged or approved by the government or governments of another country or countries;

c) When the investigation or proceeding previously notified, may reasonably be expected to lead to a prosecution or other enforcement action which may affect an important interest of another Member country or countries;

d) In any other situation where the investigation or proceeding may involve important interests of another Member country or countries.

Procedure for notifying

3.a) Under the Recommendation notification should be "if possible in advance". However there may be cases, for example relating to certain kinds of mergers, where advance notification could prejudice the investigative action or proceeding. In such a case notification and, when requested, consultation should take place as soon as possible and in sufficient time to enable the views of the other Member country to be taken into account. Before any formal legal or administrative action is taken, the notifying country should ensure, to the fullest extent possible in the circumstances, that it would not prejudice this process.
b) Notification of an investigation or proceeding should be made in writing through the channels requested by each country as indicated in a list to be established and periodically updated by the Committee of Experts on Restrictive Business Practices.

c) The content of the notification should be sufficiently detailed to permit an initial evaluation by the notified country of the likelihood of any effects on its national interests. It should include, if possible, the names of the persons or enterprises concerned, the activities under investigation, the character of the investigation or procedure and the legal provisions concerned.

Collection of information from persons or enterprises located abroad

4.a) Member countries should use moderation and self-restraint and take into account the substantive laws and procedural rules in the foreign forum when exercising their investigatory powers with a view to obtaining information located abroad.

b) Before seeking information located abroad, Member countries should consider whether adequate information is conveniently available from sources within their national territory.

c) Any requests for information located abroad should be framed in terms that are as specific as possible.

Consultations between Member countries

5.a) The country notifying an investigation or proceeding should conduct its investigation or proceeding, to the extent possible under legal and practical time constraints, in a manner that would allow the notified country to request informal consultations or to submit its views on the investigation or proceeding.

b) Requests for consultation under paragraphs 3 and 4 of the Recommendation should be made as soon as possible after notification and explanation of the national interests affected should be provided in sufficient detail to enable full consideration to be given to them.

c) The notified Member country should, where appropriate, consider taking remedial action under its own legislation in response to a notification.

d) All countries involved in consultations should give full consideration to the interests raised and to the views expressed during the consultations so as to avoid or minimise possible conflict.
Conciliation

6.a) If they agree to the use of the Committee's good offices for the purpose of conciliation in accordance with paragraph 7, Member countries should inform the Chairman of the Committee and the Secretariat with a view to invoking conciliation.

b) The Secretariat should continue to compile a list of persons willing to act as conciliators.

c) The procedure for conciliation should be determined by the Chairman of the Committee in agreement with the Member countries concerned.

d) Any conclusions drawn as a result of the conciliation are not binding on the Member countries concerned and the proceedings of the conciliation will be kept confidential unless the Member countries concerned agree otherwise.

Confidentiality

7. When engaging in notification, consultation or any other form of co-operation under this recommendation, the degree to which a Member country discloses information to another Member country may be subject to and dependent upon the assurances of confidentiality given by the other Member country. When supplying information, Member countries should indicate the degree to which and the length of time during which the information should be treated as confidential. At the request of the country providing information, the receiving country should consider the information exchanged to be confidential and that it will not be disclosed unless the country providing the information agrees to its disclosure or disclosure is compelled by law. Member countries receiving such information should take all reasonable steps to ensure observance of the confidentiality requested.
Annex 8

Declaration on Transborder Data Flows

(Adopted by the Governments of OECD Member countries on 11th April 1985)

Rapid technological developments in the field of information, computers and communications are leading to significant structural changes in the economies of Member countries. Flows of computerised data and information are an important consequence of technological advances and are playing an increasing role in national economies. With the growing economic interdependence of Member countries, these flows acquire an international dimension, known as Transborder Data Flows. It is therefore appropriate for the OECD to pay attention to policy issues connected with these transborder data flows.

This declaration is intended to make clear the general spirit in which Member countries will address these issues.

In view of the above, the Governments of OECD Member Countries:

- Acknowledging that computerised data and information now circulate, by and large, freely on an international scale;

- Considering the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and the significant progress that has been achieved in the area of privacy protection at national and international levels;

- Recognising the diversity of participants in transborder data flows, such as commercial and non-commercial organisations, individuals and governments, and recognising the wide variety of computerised data and information, traded or exchanged across national borders, such as data and information related to trading activities, intra-corporate flows, computerised information services and scientific and technological exchanges;

- Recognising the growing importance of transborder data flows and the benefits that can be derived from transborder data flows; and recognising that the ability of Member countries to reap such benefits may vary;

- Recognising that investment and trade in this field cannot but benefit from transparency and stability of policies, regulations and practices;

- Recognising that national policies which affect transborder data flows reflect a range of social and economic goals, and that governments may adopt different means to achieve their policy goals;

- Aware of the social and economic benefits resulting from access to a variety of sources of information and of efficient and effective information services;

- Recognising that Member countries have a common interest in facilitating transborder data flows, and in reconciling different policy objectives in this field;
Having due regard to their national laws, do hereby DECLARE THEIR INTENTION TO:

a) Promote access to data and information and related services, and avoid the creation of unjustified barriers to the international exchange of data and information;

b) Seek transparency in regulations and policies relating to information, computer and communications services affecting transborder data flows;

c) Develop common approaches for dealing with issues related to transborder data flows and, when appropriate, develop harmonized solutions;

d) Consider possible implications for other countries when dealing with issues related to transborder data flows.

Bearing in mind the intention expressed above, and taking into account the work being carried out in other international fora, the GOVERNMENTS OF OECD MEMBER COUNTRIES,

Agree that further work should be undertaken and that such work should concentrate at the outset on issues emerging from the following types of transborder data flows:

i) Flows of data accompanying international trade;

ii) Marketed computer services and computerised information services; and

iii) Intra-corporate data flows.

The GOVERNMENTS OF OECD MEMBER COUNTRIES AGREED to co-operate and consult with each other in carrying out this important work, and in furthering the objectives of this Declaration.