

DRAFT ARTICLES OF AGREEMENT PROPOSED BY THE
AD HOC COMMITTEE ON RESTRICTIVE BUSINESS
PRACTICES, UNITED NATIONS, MARCH 30, 1953

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Draft articles of agreement

PREAMBLE

For the purpose of realizing the aims set forth in the Charter of the United Nations, particularly the attainment of the higher standards of living, full employment and conditions of economic and social progress and development, envisaged in Article 55 of that Charter;

Recognizing the need for co-ordinated national and international action to attain the following objectives:

1. To promote the reduction of barriers to trade, governmental and private, and to promote on equitable terms access to markets, products, and productive facilities;

2. To encourage economic development, industrial and agricultural, particularly in under-developed areas;

3. To contribute to a balanced and expanding world economy through greater and more efficient production, increased income and greater consumption, and the elimination of discriminatory treatment in international trade;

4. To promote mutual understanding and co-operation in the solution of problems arising in the field of international trade in all its aspects;

Recognizing further that national and international action in the field of restrictive business practices can contribute substantially to the attainment of such over-all objectives;

Accordingly the parties to this Agreement agree as follows;

ARTICLE 1

General policy towards restrictive business practices

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

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

(a) Such a complaint is presented to the Organization, and

(b) The practice is engaged in, or made effective, by one or more private or public commercial enterprises or by any combination, agreement or other arrangement between any such enterprises, and

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

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

(a) Fixing prices, terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;

(b) Excluding enterprises from, or allocating or dividing, any territorial market or field of business activity, or allocating customers, or fixing sales quotas or purchase quotas;

(c) Discriminating against particular enterprises;

(d) Limiting production or fixing production quotas;

(e) Preventing by agreement or coercion the development or application of technology or invention whether patented or

unpatented, or withholding the application of such technology with the result of monopolizing an industrial or commercial field;

(f) Extending the use of rights under patents, trade marks or copyrights granted by any Member to matters which, according to its laws and regulations, are not within the scope of such grants, or to products or conditions of production, use, or sale which are likewise not the subjects of such grants;

(g) Any similar practices which the Organization may declare, by a majority of two-thirds of the Members present and voting, to be restrictive business practices.

ARTICLE 2

Consultation procedure

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

ARTICLE 3

Investigation procedure

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

unpatented, or withholding the application of such technology with the result of monopolizing an industrial or commercial field;

(f) Extending the use of rights under patents, trade marks or copyrights granted by any Member to matters which, according to its laws and regulations, are not within the scope of such grants, or to products or conditions of production, use, or sale which are likewise not the subjects of such grants;

(g) Any similar practices which the Organization may declare, by a majority of two-thirds of the Members present and voting, to be restrictive business practices.

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

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

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

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

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

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

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

9. The Organization may request any Member concerned to report fully on the remedial action it has taken in any particular case.

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

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

ARTICLE 4

Studies relating to restrictive business practices

1. The Organization is authorized:

- (a) To conduct and publish the results of studies, either on its own initiative or at the request of any Member or of any organ of the United Nations or of any other intergovernmental body or agency, relating to
 - (i) general aspects of restrictive business practices affecting international trade;
 - (ii) conventions, laws and procedures concerning, for example, incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade marks, copyrights, patents and the exchange and development of technology in so far as they are relevant to restrictive business practices affecting international trade; and

(iii) the registration of restrictive business agreements and other arrangements affecting international trade; and

(b) To request information from Members in connection with such studies.

2. The Organization is authorized:

(a) To make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Agreement; and

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

ARTICLE 5

Obligations of Members

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

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

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

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

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

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

7. Each Member shall inform the Organization of the results of consultations and conferences provided for in this Agreement in which such Member has participated.

8. Nothing in this Agreement shall be construed to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests.

ARTICLE 6

Co-operative remedial arrangements

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

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

ARTICLE 7

Domestic measures against restrictive business practices

No act or omission to act on the part of the Organization shall preclude any Member from enforcing any national statute

or decree directed towards preventing monopoly or restraint of trade.

ARTICLE 8

Special procedures in respect of services

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

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

3. If no adjustment can be effected in accordance with the provisions of paragraph 2, and if the matter is referred to the Organization, it shall be transferred to the intergovernmental body or agency, if one exists, empowered to deal with that type of problem with such observations as the Organization may wish to make. If no such intergovernmental body or agency exists, and if Members so request, the Organization may make recommendations for, and promote international agreement on, measures designed to remedy the particular situation so far as it comes within the scope of this Agreement. For the purpose

of framing such recommendations, the Organization may make such arrangements as it deems appropriate to obtain information from Members and, subject to the proviso of paragraph 3 of article 5 and to paragraph 8 of article 5, Members shall co-operate with the Organization accordingly, provided that due regard is had to their legal and constitutional systems.

ARTICLE 9

Other procedures

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

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

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

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

ARTICLE 10

The Representative Body

1. The Representative Body shall consist of all Members of the agency. Each Member shall have one representative in the Representative Body and may appoint alternates and advisers to its representative.

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ARTICLE 10

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1. The Representative Body shall consist of all Members of the agency. Each Member shall have one representative in the Representative Body and may appoint alternates and advisers to its representative.

2. Each Member shall have one vote in the Representative Body.

3. Except as otherwise provided in this Agreement, decisions of the Representative Body shall be taken by a majority of the Members present and voting.

4. The Representative Body shall meet in regular sessions at intervals determined by it and in such special sessions as shall be convoked by the executive secretary upon request by the Executive Board or by one-third of the Members of the Representative Body.

5. The Representative Body shall establish its rules of procedure, and shall elect its chairman and other officers.

6. The powers and duties attributed to the agency by this Agreement and the final authority to determine the policies of the agency shall be vested in the Representative Body.

ARTICLE 11

Executive Board

1. There shall be an Executive Board.

2. Except in so far as the Representative Body may decide to reserve to itself specific functions or duties and the powers appropriate thereto, the Executive Board shall carry out the functions and duties of the Representative Body and exercise its powers; provided that the Executive Board may refer any question relating to the carrying out of such functions or duties to the Representative Body or may request the Representative Body to assume any such function or duty.

3. The size, composition and voting procedures of the Executive Board shall be determined by the Representative Body.

4. The members of the Executive Board shall be selected by the Representative Body.

5. In selecting the members of the Executive Board, the Representative Body shall have regard to the objectives of including Members from the different types of economies and degrees of economic development to be found among Members of the agency, from the broad geographical areas to which the Members belong, and from countries of chief economic importance, for which last criterion particular regard shall be paid to Members' shares in international trade.

6. In accord with policies and procedures established by the Representative Body, Members of the agency which are not members of the Executive Board may take part in the work of the Board when matters of direct concern to them are under consideration.

ARTICLE 12

Executive secretary

The chief administrative officer of the agency shall be the executive secretary.

ARTICLE 13

Advisory staff

1. The chief advisory officer of the agency shall be the director of the advisory staff. He shall be appointed by the Representative Body and be subject to its general supervision.

2. In accordance with any rules laid down by the Representative Body, the director shall select the advisory staff and any necessary consultants to it.

3. Members of the advisory staff shall be selected in the light of the following considerations:

(a) Knowledge and experience of the working and problems of different types of economy shall be available so as to secure, so far as possible, a proper balance of advice;

(b) Due regard shall be had to the desirability of drawing staff from different geographical areas;

(c) The paramount considerations in the selection of candidates shall be their competence, integrity, open-mindedness and impartiality as individuals.

4. The advisory staff shall exercise its functions in complete independence, in the general interest of all Members, and shall neither solicit nor accept instructions from any government.

ARTICLE 14

Functions of the executive secretary

Pursuant to policies and rules prescribed by the Representative Body, the executive secretary shall perform the following functions:

(a) Arranging for and assisting in consultations pursuant to the provisions of article 2;

(b) Examining complaints, checking that the minimum information prescribed in accordance with paragraph 2 or article 3 has been supplied, and, where appropriate, requesting Members to furnish supplementary information pursuant to the provisions of paragraph 3 of article 3;

(c) Preparing and transmitting to the Representative Body advice in the form of proposals as to (i) whether investigations are justified pursuant to the last sentence of paragraph 3 of article 3, and (ii) whether any designated sequence is appropriate for them in the programme of investigatory work; provided that, if no Member has within . . . days submitted observations on any such proposals to the Representative Body, the proposals shall be regarded as adopted as the decision of the Representative Body;

(d) Informing Members and requesting information pursuant to paragraph 5 of article 3, article 4 and paragraph 3 of article 8. In requesting information pursuant to this subsection the executive secretary shall consult the director of the advisory staff with reference to the types of information required;

(e) Making administrative arrangements for the advisory staff; provided, however, that the selection of members of the advisory staff shall be carried out in accordance with paragraphs 2 and 3 of article 13. It shall at all times be the duty of the executive secretary to facilitate the work of the advisory staff.

ARTICLE 15

Functions of the advisory staff

1. Pursuant to policies and rules prescribed by the Representative Body, the advisory staff shall (a) perform the functions

set out in the following paragraphs of this article and (b) advise the Representative Body, subject to any limitations established by that Body.

2. After the executive secretary has collected information relating to a complaint in pursuance of the relevant provisions of article 3, and has transmitted it to the director of the advisory staff, the director shall arrange for the analysis of the information and for the preparation of a report by the advisory staff.

3. The director of the advisory staff shall arrange for opportunities to be given in accordance with paragraph 5 of article 3, for any Member or any person, enterprise or organization on whose behalf the complaint has been made, or any commercial enterprise alleged to have engaged in the practice complained of, to be heard by the advisory staff; provided, however, that the Representative Body in its discretion may afford opportunities for such persons to be heard by it after it has received the report of the advisory staff.

4. The report of the advisory staff shall set out the facts established by the information aforesaid, together with such analysis of their effects and significance in relation to the objectives of the Agreement as may assist the Representative Body in carrying out the duties laid on it by the Agreement.

5. When, in accordance with paragraph 3 of article 8, the Representative Body shall have arranged for the collection of information from Members, all such information collected by the executive secretary shall be transmitted to the director of the advisory staff who shall arrange for its analysis and for the preparation of a report in accordance with paragraph 4 of this article.

6. Reports by the advisory staff shall be submitted to the Representative Body.

7. In response to any request transmitted by the executive secretary, the director of the advisory staff shall arrange for the conduct by the advisory staff of such studies as the Representative Body may decide upon pursuant to the provisions of article 4 and within terms of reference prescribed by it, and for the preparation of reports of such studies for consideration by the Representative Body.

8. It shall be the duty of the director of the advisory staff to give such advice and assistance as may be requested by the executive secretary in carrying out his functions and duties under article 14.

ARTICLE 16

Action of the Representative Body on complaints

1. The Representative Body, in carrying out the duties laid on it by this Agreement, shall take full account of reports of the advisory staff.

2. At its discretion the Representative Body may refer reports back to the advisory staff with a request for any material in such report to be clarified or amplified or to be re-examined in the light of any observations transmitted by the Representative Body to the advisory staff.

ARTICLE 17

Content of reports

The Representative Body shall include in any report, prepared in accordance with paragraph 10 of article 3, the report of the advisory staff as submitted to it after any reference back in accordance with paragraph 2 of article 16.

ARTICLE 18

Entry into force

1. The government of each State accepting the Agreement shall deposit an instrument of acceptance with . . . , who will inform all governments that have deposited such instruments of the date of deposit of such instrument of acceptance and of the day on which the Agreement enters into force. After the entry into force of the Agreement, each instrument of acceptance so deposited shall take effect on the sixtieth day following the day on which it is deposited.

2. The Agreement shall enter into force on the sixtieth day following the day on which either of the following conditions is fulfilled;

(a) The number of governments which have deposited instruments of acceptance shall reach twenty or more and shall

cover 65 per cent or more of the total value of world imports and exports, as set forth in appendix A;

(b) The number of governments which have deposited instruments of acceptance shall have reached twenty or more and shall cover 65 per cent or more of the total value of world imports and exports as set forth in appendix A, and shall include six countries which individually have 3 per cent or more of such total value.

Governments which wish to deposit instruments of acceptance applicable only to sub-paragraph (b) of this paragraph may so elect.

3. If this Agreement shall not have entered into force by . . . , the . . . shall invite those governments which have deposited instruments of acceptance to enter into consultation to determine whether and on what conditions they desire to bring this Agreement into force.

ARTICLE 19

Amendment, withdrawal and termination

1. Any amendment to this Agreement which does not alter the obligations of Members shall become effective upon approval by the Representative Body by a two-thirds majority of its Members.

2. Any amendment which alters the obligation of Members shall, after receiving the approval of the Representative Body by a two-thirds majority of its Members, become effective for the Members accepting the amendment upon the . . . day after two-thirds of the Members have given notification of their acceptance, and thereafter for each remaining Member upon acceptance by it.

3. In determining whether a proposed amendment shall be considered under paragraph 1 or paragraph 2 above, it shall require a two-thirds majority of the Members present and voting of the Representative Body to establish that a proposed amendment does not alter the obligations of Members and therefore should be considered under paragraph 1. Amendments which are not so established shall be regarded as altering the obligations of Members and shall be dealt with in accordance with paragraph 2.

4. Any Member may withdraw from the agency at any time after . . . from the day of the entry into force of this Agreement. A withdrawal shall become effective upon the expiration of six months from the day on which written notice of such withdrawal is received by the executive secretary.

5. This Agreement may be terminated at any time by agreement of three-fourths of the Members.

ARTICLE 20

Interpretation and definition

For the purpose of this Agreement:

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

(b) The term "public commercial enterprises" means

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

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

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

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

INTERPRETATIVE NOTE TO ARTICLE 8

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