



Recommendation of the Council
concerning a Consultation and
Conciliation Procedure on
Restrictive Business
Practices Affecting
International Trade

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Background Information

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 Resolution of the Council of 5th December 1961 concerning Action in the Field of Restrictive Business Practices and the Establishment of a Committee of Experts [Doc. No. OECD/C(61)47(Final)];

HAVING REGARD to the Recommendation of the Council of 5th October 1967 concerning Co-operation between Member Countries on restrictive Business Practices Affecting International Trade [Doc. No. C(67) 53(Final)];

HAVING REGARD to the Report by the Committee of Experts on Restrictive Business Practices of 4th June 1973 concerning a Consultation and Conciliation Procedure on Restrictive Business Practices Affecting International Trade [Doc. No. C(73)99, Annex I];

RECOGNISING that restrictive business practices may constitute an obstacle to the achievement of the economic growth and trade expansion aims of Member countries and may contribute to the inflationary process;

RECOGNISING 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 when they have a harmful effect on international trade;

CONSIDERING that a consultation and conciliation procedure in this field should be provided on a voluntary basis, it being understood that such co-operation should not in any way be construed to affect the legal positions of Member countries, in particular with regard to such questions of sovereignty and extra-territorial application of laws concerning restrictive business practices, as may arise;

I. RECOMMENDS to the Governments of Member countries:

1. that a Member country which considers that one or more enterprises situated in one or more other Member countries are engaging in restrictive business practices which substantially and adversely affects its interests, should request consultation with such other Member country or countries;
2. that any Member country so addressed should give full consideration to the case submitted by the requesting country and, in particular, to the nature of the restrictive business practices in question, the enterprises engaging in them and the alleged harmful effects on the interests of the requesting country and on international trade;
3. that the Member country addressed which agrees that enterprises situated in its territory engage 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, in particular under its legislation on restrictive business practices, on a voluntary basis and considering its legitimate interests;
4. that, in the event of a satisfactory settlement of the case, 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 remedial measures taken by the Member country or countries addressed;
5. that, in the event that no satisfactory solution can be found, because the country or one of the countries addressed does not agree that enterprises situated in its territory engage in the alleged practices, or that such practices are restrictive or that they have harmful effects, or because it feels unable to take any action under its laws or for whatever other reason, the Member countries concerned, if they so agree, should submit the case to 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, and do not therefore submit the case to the Committee, they should, if they consider it appropriate, inform the Committee of such features of the settlement as they feel they can disclose.

II. INSTRUCTS the Committee of Experts on Restrictive Business Practices:

1. to consider the reports submitted by Member countries in accordance with paragraph 4 of Section I above;
2. to consider the requests for conciliation submitted by Member countries in accordance with paragraph 5 of Section I above and to assist, by offering advice or by any other means, in the settlement of the case between the Member countries concerned;
3. to report to the Council before 31st December 1975 on the application of the present Recommendation and to submit proposals, where appropriate, for improving its implementation.

In adopting this Recommendation, the Council:

1. **NOTED** the Report by the Committee of Experts on Restrictive Business Practices of 4th June 1973, referred to above;
2. **NOTED** the Statement by the Representative of the Commission of the European Communities to the effect that the Communities would participate in the procedure specified in the Recommendation, pursuant to the Treaties of Paris and Rome, as provided in Supplementary Protocol No. 1 to the Convention on the OECD.

* At its meeting on 18th and 19th December 1973, the Council AGREED to the derestriction of this Recommendation (Cf. C/M(73)34(Final), Item 366).

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