

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 5th October 1976 concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade  
[Doc. No. C(67)53(Final)];

Having regard to the Recommendation of the Council of 3rd July 1973 concerning a Consultation and Conciliation Procedure on Restrictive Business Practices Affecting International Trade Doc. No. C(73)99(Final)7;

Having regard to the Note by the Committee of Experts on Restrictive Business Practices on co-operation between Member countries on restrictive business practices affecting international trade Doc. No. C(79)1547;

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 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;

I. 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 involving important

interests of another Member country or countries, it should notify such Member country or countries in a manner and at a time deemed appropriate, 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 that considers a restrictive business practice investigation or proceeding being conducted by another Member country to 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 proceedings;

4. (a) a Member country that 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 the 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. or 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 settlement of the consultations under paragraphs 3. or 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 solution can be found, 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 examine periodically the progress made in the implementation of the provisions set out in paragraphs 1 and 2 of Section I above;

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 case between the Member countries concerned;

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

III. DECIDES that this Recommendation repeals and supersedes the Recommendations of the Council of 5th October 1967 and of 3rd July 1973 referred to above.

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In adopting this Recommendation, the Council AGREED to its derestriction.