

APPENDIX 1

TEXT OF PRINCIPLES AND RULES FOR CONTROL
OF RESTRICTIVE BUSINESS PRACTICES AS
APPROVED BY U.N. CONFERENCE ON
RESTRICTIVE BUSINESS PRACTICES

UNITED NATIONS CONFERENCE ON
RESTRICTIVE BUSINESS PRACTICES,
SECOND SESSION, GENEVA, APRIL 21, 1980.

NEGOTIATION AND DECISIONS NECESSARY FOR THE ADOPTION OF A SET
OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR
THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES HAVING
ADVERSE EFFECTS ON INTERNATIONAL TRADE, PARTICULARLY THAT
OF DEVELOPING COUNTRIES, AND ON THE ECONOMIC
DEVELOPMENT OF THOSE COUNTRIES

The United Nations Conference on Restrictive Business Practices,
Recalling General Assembly resolution 33/153 which required
the Conference to negotiate, on the basis of the work of the
Third Ad hoc Group of Experts, and to take all decisions
necessary for the adoption of, a set of multilaterally agreed
equitable principles and rules for the control of restrictive
business practices having adverse effects on international trade,
particularly that of developing countries, and on the economic
development of those countries, including a decision on the legal
character of the principles and rules,

Having held its first session from 19 November to 8 December
1979 and its second session from 8 - 21 April 1980;

1. Approves the Set of Multilaterally Agreed Equitable
Principles and Rules for the Control of Restrictive Business
Practices, annexed hereto;
2. Transmits to the General Assembly at its thirty-fifth session
this Set of Principles and Rules, having taken all decisions
necessary for its adoption as a resolution;
3. Recommends also that the General Assembly, five years after
the adoption of the Set of Principles and Rules, convene a United
Nations Conference under the auspices of UNCTAD for the purpose
of reviewing all the aspects of the Set of Principles and Rules.

THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND
RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

SECTION 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.

SECTION B - Definitions and scope of application

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

Definitions:

1. "Restrictive business practices" means acts or behaviour of enterprises which, through an abuse of 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 product or service or groups of products 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.

Scope of application:

1. The Set of Principles and Rules apply 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. They apply irrespective of whether such practices involve enterprises in one or more countries.
2. The "principles and rules for enterprises, including transnational corporations" apply to all transactions in goods and services.
3. The "principles and rules for enterprises, including transnational corporations" are addressed to all enterprises.
4. 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.
5. 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.

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

SECTION 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:

(a) 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 multi-lateral 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.

(b) 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.

(c) Preferential or differential treatment for developing countries

7. In order to ensure the equitable application of the Set of Principles and Rules, States, particularly of developed countries, should take into account in their control of restrictive business practices the development, financial and trade needs of developing countries, in particular 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.

SECTION 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:

- (i) predatory behaviour towards competitors, such as using below cost pricing to eliminate competitors;
- (ii) discriminatory (i.e. unjustifiably differentiated) pricing or terms or conditions in the supply or purchase of goods or services, including by means of the use of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplies as compared with prices for similar or comparable transactions outside the affiliated enterprises;

*/ 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:

- (a) 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.

- (iii) mergers, takeovers, joint ventures or other acquisitions of control, whether of a horizontal, vertical or a conglomerate nature;
- (iv) fixing the prices at which goods exported can be resold in importing countries;
- (v) restrictions on the importation of goods which have been legitimately marked abroad with a trademark identical or similar to the trademark protected as to the 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;
- (vi) when not for ensuring the achievement of legitimate business purposes, such as quality, safety, adequate distribution or service:
 - (a) partial or complete refusals to deal on the enterprise's customary commercial terms;
 - (b) making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods;
 - (c) imposing restrictions concerning where, or to whom, or in what form or quantities supplied or other goods may be re-sold or exported;
 - (d) making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his designee.

SECTION E - Principles and rules for States at national, regional, and sub-regional levels

1. States should, at the national level or through regional groupings, adopt, improve and effectively enforce appropriate legislation and implement 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 sub-regional 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 sub-regional levels.

8. States with greater expertise in the operation of systems for the control of restrictive business practices should, on request, share their experiences 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 of 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.

SECTION 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 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 or 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 connection.

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 connection, 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.

SECTION G - International institutional machinery

1. Institutional arrangements

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

(b) 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.

2. Functions of the Intergovernmental Group

(a) The Intergovernmental Group shall have the following functions:

- (i) 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;
- (ii) 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;
- (iii) To invite and consider relevant studies, documentation and reports from relevant organizations of the United Nations system;
- (iv) 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;
- (v) 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;

(vi) 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;

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

(b) In the performance of its functions, neither the Intergovernmental Group nor its subsidiary organs shall act like a tribunal or otherwise pass judgement 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 to a specific business transaction are in dispute.

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

3. Review procedure

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.

