

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

THE UNITED NATIONS SET OF PRINCIPLES AND RULES ON COMPETITION

THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES¹⁵² **UNITED NATIONS GENEVA, 2000**

I. Preface

The United Nations Conference on Restrictive Business Practices was convened by the General Assembly in its resolution 33/153 of 20 December 1978 under the auspices of UNCTAD. Pursuant to resolution 103 (V) of 30 May 1979 of the United Nations Conference on Trade and Development, the Conference on Restrictive Business Practices met at the United Nations Office at Geneva from 19 November to 8 December 1979. At the conclusion of that period, the Conference requested a resumed session in order to complete its work. In accordance with General Assembly decision 34/447 of 19 December 1979, the Conference reconvened from 8 to 22 April 1980. In concluding its work, the United Nations Conference on Restrictive Business Practices adopted a resolution in which it approved the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, and transmitted this Set of Principles and Rules to the General Assembly at its thirty-fifth Session for adoption as a resolution.

Accordingly, the General Assembly, at its thirty-fifth session in its resolution 35/63 of 5 December 1980, adopted the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices approved by the United Nations Conference on Restrictive Business Practices.

Since the adoption of the Set in 1980, four United Nations Conferences to Review All Aspects of the Set have taken place under the auspices of UNCTAD, in 1985, 1990, 1995 and 2000 respectively. The Fourth Review Conference (25-29 September 2000) adopted a resolution (TD/RBP/CONF.5/15 of 4 October 2000) in which it, inter alia:

“Reaffirms the validity of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, recommends to the General Assembly to subtitle the Set for reference as “UN Set of Principles and Rules on Competition”, and calls upon all member States to implement the provisions of the Set”.

II. Resolution adopted by the United Nations Conference on Restrictive Business Practices, on 22 April 1980

The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

The United Nations Conference on Restrictive Business Practices,

Recalling General Assembly resolution 33/153 of 20 December 1978, which required the Conference to negotiate, on the basis of the work of the Third Ad hoc Group of Experts on Restrictive Business Practices, 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 to 22 April 1980,

1. Approves the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices annexed hereto;¹⁵³
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.

7th plenary meeting 22 April 1980

III. Resolution 35/63 adopted by the General Assembly at its thirty-fifth Session, on 5 December 1980

Restrictive business practices

The General Assembly,

Recalling its resolution 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States, and 3362 (S-VII) of 16 September 1975 on development and international economic co-operation,

Recalling that the United Nations Conference on Restrictive Business Practices, convened by the General Assembly in its resolution 33/153 of 20 December 1978, held its first session from 19 November to 8 December 1979 and, in accordance with Assembly decision 34/447 of 19 December 1979, held a second session from 8 to 22 April 1980,

Noting with satisfaction that the Conference approved the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices¹⁵⁴ and transmitted it to the General Assembly at its thirty-fifth session, having taken all the necessary decisions for its adoption as a resolution,

153 See section IV below.

154 See section IV below.

Noting that the United Nations Conference on Trade and Development, by its resolution 103 (V) of 30 May 1979,¹⁵⁵ requested the United Nations Conference on Restrictive Business Practices to make recommendations through the General Assembly to the Trade and Development Board with regard to the institutional aspects of future work on restrictive business practices within the framework of the United Nations Conference on Trade and Development, bearing in mind the work done in this field elsewhere in the United Nations,

1. Adopts the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, approved by the United Nations Conference on Restrictive Business Practices;
2. Decides to convene, in 1985, under the auspices of the United Nations Conference on Trade and Development, a United Nations conference to review all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices;
3. Takes note of the recommendations of the United Nations Conference on Restrictive Business Practices regarding international institutional machinery, contained in section G of the Set of Principles and Rules, and requests the Trade and Development Board, at its twenty-second session, to establish an intergovernmental group of experts on restrictive business practices, operating within the framework of a committee of the United Nations Conference on Trade and Development, to perform the functions designated in that section;
4. Decides also that the necessary resources should be made available to the United Nations Conference on Trade and Development to carry out the tasks embodied in the Set of Principles and Rules.

83rd plenary meeting 5 December 1980

IV. The Set of Multilaterally Agreed Principles and Rules for the Equitable Control of Restrictive Business Practices¹⁵⁶

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 establish-

155 See Proceedings of the United Nations Conference on Trade and Development, Fifth Session, vol. I, Report and Annexes (United Nations publication, Sales No. E. 79.II.D.14), part one, sect. A.

156 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).

ment 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 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 dis-

semination 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 provisions 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 abuse¹⁵⁷ 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 and 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 supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

157 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 organisational, 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 of 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.

- (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 behavior 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 or 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 or 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 infor-

mation, particularly on the basis of requests addressed to all member States or provided at their own initiative and, where appropriate, to the United Nations Center 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 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.

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 overall 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 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.

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.