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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
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International Investment Instruments: A Compendium

Volume I
Multilateral Instruments



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HAVANA CHARTER FOR AN INTERNATIONAL TRADE ORGANIZATION*
[excerpts]

The Havana Charter for an International Trade Organization was drawn up at the International Conference on Trade and Employment, which met at Havana from 21 November 1947 to 24 March 1948, for submission to the governments represented. The Final Act of the International Conference on Trade and Employment was signed by the representatives of Afghanistan, Australia, Austria, Belgium, Bolivia, Brazil, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Greece, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Ireland, Italy, Lebanon, Liberia, Luxembourg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Southern Rhodesia, Sweden, Switzerland, Syria, Transjordan, South Africa, United Kingdom, United States of America, Uruguay, Venezuela, the United Nations and the United Nations Conference on Trade and Employment. The Charter never entered into force.

CHAPTER III

ECONOMIC DEVELOPMENT AND RECONSTRUCTION

Article 11

Means of Promoting Economic Development and Reconstruction

1. Progressive industrial and general economic development, as well as reconstruction, requires among other things adequate supplies of capital funds, materials, modern equipment and technology and technical and managerial skills. Accordingly, in order to stimulate and assist in the provision and exchange of these facilities:

- (a) Members shall co-operate, in accordance with Article 10, in providing or arranging for the provision of such facilities within the limits of their power, and Members shall not impose unreasonable or unjustifiable impediments that would prevent other Members from obtaining on equitable terms any such facilities for their economic development or, in the case of Member countries whose economies have been devastated by war for their reconstruction;
- (b) no Member shall take unreasonable or unjustifiable action within its territory injurious to the rights or interests of nationals of other Members in the enterprise,

* **Source:** United Nations Conference on Trade and Employment, *Final Act and Related Documents* (New York: United Nations), Sales No. 1948.II.D.4.1 [Note added by the editor].

skills, capital, arts or technology which they have supplied.

2. The Organization may, in such collaboration with other inter-governmental organizations as may be appropriate:

- (a) make recommendations for and promote bilateral or multilateral agreements on measures designed:
 - (i) to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another;
 - (ii) to avoid international double taxation in order to stimulate foreign private investment;
 - (iii) to enlarge to the greatest possible extent the benefits to Members from the fulfilment of the obligations under this Article;
- (b) make recommendations and promote agreements designed to facilitate an equitable distribution of skills, arts, technology, materials and equipment, with due regard to the needs of all Members;
- (c) formulate and promote the adoption of a general agreement or statement of principles regarding the conduct, practices and treatment of foreign investment.

Article 12

International Investment for Economic Development and Reconstruction

1. The Members recognize that:

- (a) international investment, both public and private, can be of great value in promoting economic development and reconstruction, and consequent social progress;
- (b) the international flow of capital will be stimulated to the extent that Members afford nationals of other countries opportunities for investment and security for existing and future investments;
- (c) without prejudice to existing international agreements to which Members are parties, a Member has the right:
 - (i) to take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies;
 - (ii) to determine whether and to what extent and upon what terms it will

- allow future foreign investment;
- (iii) to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments;
 - (iv) to prescribe and give effect to other reasonable requirements with respect to existing and future investments;
- (d) the interests of Members whose nationals are in a position to provide capital for international investment and of Members who desire to obtain the use of such capital to promote their economic development or reconstruction may be promoted if such Members enter into bilateral or multilateral agreements relating to the opportunities and security for investment which the Members are prepared to offer and any limitations which they are prepared to accept of the rights referred to in subparagraph (c).
2. Members therefore undertake:
- (a) subject to the provisions of paragraph 1(c) and to any agreements entered into under paragraph 1(d).
 - (i) to provide reasonable opportunities for investment acceptable to them and adequate security for existing and future investments, and
 - (ii) to give due regard to the desirability of avoiding discrimination as between foreign investments;
 - (b) upon the request of any Member and without prejudice to existing international agreements to which Members are parties to enter into consultation or to participate in negotiations directed to the conclusion, if mutually acceptable, of an agreement of the kind referred to in paragraph 1(d).
3. Members shall promote co-operation between national and foreign enterprises or investors for the purpose of fostering economic development or reconstruction in cases where such co-operation appears to the Members concerned to be appropriate.

CHAPTER V RESTRICTIVE BUSINESS PRACTICES

Article 46 General Policy towards Restrictive Business Practices

1. Each Member shall take appropriate measures and shall co-operate with 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, whether such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objective set forth in Article 1.

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 6 shall be subject to investigation in accordance with the procedure regarding complaints provided for in Articles 48 and 50, 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 the development or application of technology or invention whether patented or unpatented;
- (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 47
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 46 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 48.

Article 48
Investigation Procedure

1. In accordance with paragraphs 2 and 3 of Article 46, 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 46; *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 47.
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 and harmful effects of the practices.
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 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 conduct or arrange for hearings on the complaint. 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, shall be afforded reasonable opportunity to be heard.
5. The Organization shall review all information available and decide whether the conditions specified in paragraph 2 and 3 of Article 46 are present and the practice in question has had, has or is about to have the effect indicated in paragraph 1 of that Article.

6. The Organization shall inform all Members of its decision and the reasons therefor.
7. If the Organization decides that in any particular case the conditions specified in paragraph 2 and 3 of Article 46 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 every 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.
8. The Organization may request any Member concerned to report fully on the remedial action it has taken in any particular case.
9. 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.
10. 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 49
Studies relating to Restrictive Business Practices

1. The Organization is authorized:
 - (a) to conduct 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 inter-governmental organization, 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 authorised:
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- (a) to make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter; and
- (b) to arrange for conferences of Members to discuss any matters relating to restrictive business practices affecting international trade.

Article 50 **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 46 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 Chapter; *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 48 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 Chapter.
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.

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