

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.Amendments proposed by the Norwegian Delegation on Article 39.

The following text to replace the text adopted by the Interim Drafting Committee:

1. Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever

(a) such practices are engaged in or made effective by one or more public or private commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises (i.e. trading agencies of governments or enterprises in which there is effective public control), or between private and public commercial enterprises, when such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products, and

(b) the practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set forth in Article 1.

2. Without limiting the generality of paragraph 1 of this Article the practices listed in paragraph 3 below shall be subject to investigation in accordance with the procedure with respects to complaints by the relevant Articles of this Chapter, if the Organization considers them to have or to be about to have any of the harmful effects enumerated in paragraph 1 of this Article.

3. The practices referred to in paragraph 2 of this article are as follows:

(a) Fixing prices or terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product.

(b) Excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business activity, allocating customers, or fixing sale or purchase quotas;

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- (c) Discriminating against particular enterprises whether by boycott or otherwise;
- (d) Limiting production or fixing production quotas;
- (e) Suppressing the application or development of technology or invention, whether patented or unpatented;
- (f) Extending the use of rights under patents, trade marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

Remarks:

The Norwegian Delegation are of the opinion, that Article 39 of the Draft Charter in part goes too far. Paragraphs 2 and 3 refer to the categories of business practices, which shall be subject to the Organization's investigation, and it is made a condition that such practices are engaged in or made effective among a number of countries in one or more products. This latter provision is not, however, included in paragraph 1 of Article 39. Paragraph 1 covers all kinds of business practices which directly or indirectly affect international trade, even if in this respect they are of no importance worth mentioning.

It is considered that the international control of trusts and cartels, which is to be established through the Charter, should be limited to trusts and cartels of real international importance; that is to say to such enterprises and combinations etc. which are described in paragraph 2 of Article 39. It should be up to the member countries to take the steps they deem expedient to control trusts and cartels which are mainly of national importance. Trusts and cartels are subject to a rather differing judgement in the various countries, and it will hardly be possible, at this stage in any case, to come to an agreement between all member countries as to what policy should be pursued in regard to trusts and cartels exclusively or mainly of national importance.

The Charter ought to provide for control of those combinations, cartels etc. which are of real importance to international trade. In practice this would mean that one should aim at controlling the practices of such commercial enterprises as possess effective control of trade among a number of countries in one or more products. This would also have advantages from a mere practical point of view as the Organization would really not be able to cope with investigations concerning all the commercial enterprises which could, theoretically, be said to influence international trade.

The amendments above were written before the amendments proposed by the Canadian delegation appeared.

As stated under discussion in Commission B the Norwegian Delegation are of the opinion that the Canadian amendments give Article 39 a better form. However, in case the Canadian amendments should be altered or not adopted by the Commission the Norwegian Delegation put forth its own amendment for consideration by the subcommittee.