

FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUB-COMMITTEE A

REPORT OF THE AD HOC COMMITTEE

The Ad Hoc Committee of Sub-Committee A submits to the Sub-Committee the following proposals for consideration and further discussion. In submitting these proposals the members of the Ad Hoc Committee do not necessarily commit their delegations to them:

Article 44

2. (c) "Such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products."
4. (b) trading enterprises mainly or wholly owned by public authority and over which there is effective control by public authority, including control of engagements in a practice listed in paragraph 3 of this Article.
5. "Any business practices described in this Article, insofar as they are specifically subjected to control by the provisions of Chapter IV and VI or any other Chapter of this Charter, shall not be subject to the procedures of this Charter".

Article 45 A

1. "Any affected Member acting 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 enterprises) which has or is about to have the effect described in paragraph 1 of Article 44. Provided that in the case of complaints against a single 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 in Article 45."
7. "Provided that if the Organization finds that the practices concerned have the effect and are as described in Article 44 and have been specifically required by law, the provisions in paragraphs 7, 8, 9 and 10 of this Article shall not apply, and the complaining Member shall

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have further recourse only in accordance with the procedures provided in Chapter VIII or other relevant provisions of this Charter".

Article 47

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 have the effect and are as described in Article 44, and in addition it shall assist the Organization in preventing these practices".

Article 50 - Procedure with Respect to Services

1. "The Members recognize that certain services such as transportation, telecommunications, insurance and the commercial services of banks are substantial elements of international trade and that any restrictive business practices by enterprises engaged in these activities in international trade may have harmful effects similar to those described in paragraph 1 of Article 44. Such practices shall be dealt with in accordance with the following paragraphs of this Article".

2. Substitute "and shall afford" for the words "with a view to affording".

Article 51

It is recommended that, in view of the alteration proposed in Article 44 (5), Article 51 should be deleted.

NOTE IN CONNECTION WITH THE INTERPRETATION OF THE WORDS "DECIDE" AND "DECISION"

The Ad Hoc Committee recommends that the following statement be inserted in the report of the Sub-Committee to the Fourth Committee to clarify and define the meaning of the words "decide" and "decision" as they are used throughout Chapter V:

"The words 'decide' and 'decision' as used in Articles 44, 45A (except in paragraphs 3 and 4) and 47 relate to a conclusion whether or not particular practices have had, have or are about to have the harmful effects described in paragraph 1 of Article 44. Such 'decisions' of the Organization shall not be construed as binding the legislative, executive or judicial authorities of a Member State. Members' obligations regarding these 'decisions' are set out in paragraph 4 of Article 47."

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