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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

TO: Members of Committee V
FROM: The Secretary
SUBJECT: Instructions to Drafting Committee

In accordance with the arrangements agreed to at the Committee's final meeting, the Secretariat is circulating herewith for the consideration and approval of members, a set of draft confidential instructions to the Interim Drafting Committee.

The Secretary of Committee V is leaving London on 21 November and for the remainder of the present session of the Preparatory Committee, his duties will be taken over by the Legal Officer, Mr. A. RENOUF (Room 344, Ext. 56). Any changes, or additions which any member of Committee V may wish to have made in the attached document should be handed to Mr. RENOUF as soon as possible.

The instructions to the Interim Drafting Committee when issued in their final form will have annexed to them the following documents:

1. Redraft of Article 65 as approved by Committee III;
2. Statement as approved by Committee IV regarding allocation of functions to be undertaken by the Organization in the field of Commodity Arrangements; and
3. Netherlands - Belgian - French Memorandum on Article 76.

The above documents will be circulated separately as Committee V documents in the course of the next twenty-four hours.

COMMITTEE V

INSTRUCTIONS TO THE DRAFTING COMMITTEE

There is comparatively little of substance by way of drafting instructions which Committee V can usefully bring to the attention of the Drafting Committee other than the agreed text appended to the Report of the Committee and the general comments and observations thereon contained in Part II of that Report. Except in the case of provisions dealing with voting in the Conference and Executive Board and with Membership of the latter body, the Committee was successful in reaching a very substantial identity of views on virtually all matters coming within its terms of reference. Formal reservations (apart from general reservations on the question of voting and related issues) were entered with respect to one provision only (paragraph 4 of Article 78 of the United States Draft Text as amended). In some other instances, a minority point of view was forcefully presented during the initial discussion of particular articles but in most cases Delegates elected not to press their point or agree to accept compromise solutions based on Sub-Committee recommendations. Attention is drawn in the following notes to the comparatively few cases where Delegations though agreeing in principle with certain Charter provisions nevertheless asked that their observations be brought to the notice of the drafting committee. The Committee hopes that on the basis of the agreed text, and in the light of the record of its proceedings and of other relevant documentation, it will be found possible to produce definitive drafts on which final decisions can be more easily taken.

Article 50 - Functions

1. The Canadian Delegate, observing that the exact implications of paragraph 2 of this Article were by no means clear, "entered a caveat" to the effect that at some stage the paragraph should be reworded in order to make perfectly clear its intentions regarding

the responsibility and commitments to be undertaken by ITO. Though the substantive issues raised by the Canadian Delegate have not yet been fully determined, the Drafting Committee should examine paragraph 2 in the light of the recommendations of the Joint Committee of Committee I and II and of any action which the Economic and Social Council or its commissions may in the meantime take with respect thereto.

2. The South African Delegate, in commenting on paragraph 3 of this Article, considered that it was an undesirable practice, in drafting an international instrument, to use the word "including" and suggested that perhaps sub-paragraphs (a), (b), (c) and (d) might be omitted.

The Drafting Committee if it thinks it advisable, might seek some alternative wording which will obviate the use of "including" whilst retaining the substance of the sub-paragraphs which most Delegates seem to feel serve a useful purpose by making it quite clear that the Organization possesses all the powers needed for dealing with anything that might arise in these four major fields of activity.

3. With respect to sub-paragraph (d) particularly, it was generally recognized that some modification may be necessary, as a consequence of the addition to the Charter of a new and separate Chapter on Industrial Development.

The Drafting Committee should examine the provisions of Article 50 generally and of sub-paragraph (c) in particular, with a view to ensuring that they are consistent with other provisions of the Charter, especially with those relating to employment policy and industrial development of which Committee V did not have full or sufficient knowledge when considering this Article.

4. In connection with sub-paragraph (d) also, the Delegate for India expressed the hope that the Drafting Committee would consider its appropriate position within Article 50. His Delegation considered that the promotion of industrial and general economic development was one of the primary functions of the Organization and consequently felt it was of the utmost importance that both the content and arrangement of the Charter should emphasize this fact.

The Drafting Committee should give careful consideration to the order in which the various functions set out in Article 50 should be arranged, having regard to the relevant Charter provisions and to the discussion which has taken place, particularly with reference to the general problem of industrialization.

Article 55 - Powers and Duties of the Conference

The French Delegate, in commenting on paragraph 8 of this Article, pointed to a number of provisions elsewhere in the Charter which involved important decisions by the Conference and with respect to which no precise voting requirement had been laid down. As the Charter now stood, such decisions would be taken by a simple majority vote under Article 53. He thought that consideration should be given as to whether a two-thirds majority should not be required in the case of Conference decisions, for example, under Articles 20 (3), 25 (3b), 29, 30, 35 and 45.

Apart from the question of its competence in the matter, it was not feasible for Committee V to do very much until the Committees substantively concerned had concluded their deliberations and the Drafting Committee might therefore review the position in the light of the French Delegate's comments and such recommendations regarding majority vote requirement as the other Committees may have made.

Article 56 - Interim Tariff Committee

Attention is drawn to the fact that the Canadian, New Zealand and United Kingdom Delegations, which had declared themselves as favouring the principle of weighted voting in the Conference, entered a reservation in regard to paragraph 3.

Article 60 - Executive Board-Powers and Duties

The last sentence of paragraph 1 was not fully considered by Committee V, and may require some consequential re-casting in accordance with the recommendations of the Joint Committee and any subsequent decisions resulting therefrom.

Article 62 - Composition and Procedure of Commissions

With reference to paragraph 2 of this Article, the Chinese Delegate urged that the Charter should include specific provisions under which the Executive Board would be obliged to consult Member Governments before appointing any of their nationals to be Members of Commissions. He also desired that it should be expressly provided that not more than one national from any country should serve on any one Commission. Most Delegates shared the view that it would be unnecessary and undesirable to include such provisions either in the Charter itself or in any formal recommendation. The Chinese Delegate did not press these proposals on the understanding that it would be brought to the attention of the Drafting Committee as the views of the Chinese Delegation.

Articles 64-66 - Functions of Commissions

1. It was decided by Committee V that the functions of the three commissions as set out in Articles 64, 65, and 66 of the United States Draft Charter could not usefully be discussed in any detail until such time as the three committees substantively concerned in these matters had

completed their work. Lack of time therefore prevented the Fifth Committee from attempting to deal in any definitive way with drafts covering Commission functions. It was agreed merely to approve the general scheme and arrangement as set out in the United States Draft Charter and to transmit directly to the Interim Drafting Committee any observations, suggestions or redrafts of these Articles which might be received from Committee II, III, and IV or from individual Delegations.

The Drafting Committee should in the light of the general views of Committee V concerning the Commission structure and on the basis of the conclusions reached by the other working Committees prepare appropriate drafts covering the functions of the Commissions on Commercial Policy, Business Practices and Commodities, respectively. The attention of the Drafting Committee is drawn particularly to the following documents appended to this report:

- (a) Redraft of Article 65 as approved by Committee III in consultation with the Chairman and certain other Members of the Fifth Committee;
- (b) Communication from the Chairman of Committee IV together with a statement setting out the ideas of that Committee as to allocation of the functions, which are to be undertaken by the Organization in the field of commodity arrangements, between the various organs of ITC.

2. Attention is called to the following statement appearing in Part II of the Fifth Committee's Report (Paragraph 7, Section 0 - The Commissions):
"A proposal was submitted calling for the establishment of an additional Commission to deal with the 'Expansion of Production, Industrialization and Employment.' "

In view of the fact that the Joint Committee of Committees I and II were referring the question of machinery to the Economic and Social Council for advice, it was agreed that the matter would have to be left over for the present, to be considered later by the Interim Drafting Committee and the next meeting of the Preparatory Committee.

The Drafting Committee should take such action as it deems appropriate with reference to this matter, in the light of the discussion which took place in Committee V, the recommendations of the Joint Committee of Committees I and II and such action as the Economic and Social Council may in the meantime decide upon.

Article 76 - Interpretation and Settlement of Disputes

1. In connection with paragraph 3 of this article, the Netherlands Delegate strongly urged that all rulings of the Conference whether they concern justifiable issues or other questions be open to appeal to the International Court of Justice or to arbitration. A memorandum setting out the agreed views of the Netherlands, Belgian and French delegations on this subject was later circulated. It was agreed that this Joint Memorandum should be transmitted directly to the Interim Drafting Committee for its consideration in conjunction with the report of the Fifth Committee's discussion. A copy of the memorandum is accordingly appended hereto.

The Drafting Committee should give appropriate consideration to this paper.

2. With reference to paragraph 4 of this article, it was the desire of the majority that the Organization should be granted a general blanket authorization to seek advisory opinion of the International Court. However, in view of the fact that the Assembly has still to decide on this question in connection with the agreements that have been negotiated with other specialized agencies, it was

decided after a full discussion that for the time being at least, the wording of this paragraph should merely refer to paragraph 2 of Article 96 of the Charter of the United Nations. If, in the meantime, the Assembly agrees to grant to other specialized agencies a general authorization in terms of the relevant Article of the Draft Agreements with the ILO, FAO and UNESCO, the Drafting Committee should consider the desirability of redrafting paragraph 4 accordingly.

Article 77 - Payment of Contributions

Doubt was expressed by several Delegates as to whether the provisions of this Article should appear among the miscellaneous provisions of the Charter or be included either in Article 55 on the subject of powers and duties of the Conference or in Article 53 on the subject of voting.

In considering the most appropriate and logical arrangement of the Charter provisions, the Drafting Committee should pay particular attention to this matter.

Article 78 - Entry into Force

1. The United Kingdom Delegate proposed, with reference to paragraph 2 and having regard to the suggestions his Delegation had made on the subject of weighted voting, that an alternative method of bringing the Charter into force would be to provide for its taking effect when a certain proportion of the world's trade was covered by the countries which were prepared to accept its provisions.

The Drafting Committee might bear this suggestion in mind in connection with any alternative provisions which they may decide to prepare.

2. The attention of the Drafting Committee is drawn to the reservations entered by the Delegates of Australia, France and the Netherlands with respect to paragraph 4 of this Article.

Article 79 - Withdrawal

The question was raised as to whether there would be any possible conflict between the provisions of Article 30 and paragraph 1 of Article 79. It was suggested that to make the position quite clear a reference to Article 30 could be inserted in paragraph 1 of Article 79 or alternatively that the words "except as otherwise provided" might be added at the beginning of Article 79. It was agreed, however, that since other points of the same nature would no doubt arise, the observations made on this matter in Committee V should be passed on to the Interim Drafting Committee for its consideration.

The Drafting Committee should therefore carefully review the provisions of the Charter as a whole with this consideration in mind.

General

1. In the case of Articles 53, 57 and 58 on Voting and Executive Board Membership, no very specific conclusions were arrived at. The attention of the Drafting Committee is called to the exchange of views which occurred with reference to these matters at the Fifth, Eighth, Twelfth and Fourteenth Meetings of the Committee and to the written statements submitted to the Committee by the United Kingdom Delegation and by the Belgium-Netherlands Delegations respectively, and the redraft of Article 57 presented by the Brazilian Delegation. Reference should also be made to the review of the deliberations on these questions as set out in its Report to the Preparatory Committee together with the alternative texts of Article 57 contained in the appendix thereto.

The Drafting Committee in so far as it is able to do so within the terms of reference should draft alternative texts that will take account of the suggestions:

- (a) that a weighted system of voting should be adopted;

(b) that there should be equal voting but some kind of provision for permanent seats on the Executive Board.

Any drafts which it might prepare with respect to Articles 53, 57 and 58 should take due account of the various suggestions and observations made in the course of the Fifth Committee's deliberations.

2. In connection with paragraph 1 of Article 57, fixing the Membership of the Executive Board at fifteen, attention was drawn by the Delegates of China and New Zealand to the fact that provision might need to be made for a smaller Executive Board in the event of the Charter being brought into force in accordance with the provisions contained in paragraph 3 of Article 78.

The Drafting Committee should give this point consideration.

3. It will be noted that in Article 55 (2) and (8) and in Article 75, reference is made to a two-thirds majority of the Members of the Organization. This expression gave rise to a certain amount of discussion as a result of which the Committee agreed upon the following formulae:

(a) "by the affirmative votes of two-thirds of the Members"

(b) "by the affirmative votes of two-thirds of the Members present and voting"

It was considered that the first formula should be used in those cases where by virtue of their importance matters should be decided by an affirmative vote of at least two-thirds of the total Membership and that the latter formula should apply in the cases of relatively less important decisions. Some Delegates, however, considered that these formulae were not entirely free of ambiguity.

The Drafting Committee should therefore examine this question with a view to incorporating in the text of the Charter where necessary such wording as clearly conveys what is intended.

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4. The suggestion was made that paragraph 2 of Article 70 together with paragraph 1 of Article 71 since they are of a temporary character might more suitably be placed in a separate chapter in the Charter.

The Drafting Committee should bear this suggestion in mind in connection with such attention which it will give to the general arrangement and form of the Charter provisions.
