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**CONSEIL**  
**ECONOMIQUE**  
**ET SOCIAL**

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E/PC/T/C.6/37  
4 February 1947

ORIGINAL: ENGLISH

**DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT**

**SUMMARY RECORD OF THE TWELFTH MEETING**

Held at Lake Success on 3 February 1947 at 10:30 a.m.

Chairman: H. E. M. Erik COLBAN

**1. Draft Amendments and Observations Submitted**

(a) Modifications proposed by the Delegate for the United States  
(document E/PC/T/C.6/W.28);

(b) Modifications proposed by the Delegate for Canada  
(document E/PC/T/C.6/W.35);

(c) Secretariat remarks on Article 39 (document E/PC/T/C.6/W.38).

**2. Consideration of Article 39**

The Committee debated the Canadian modifications of paragraph 1 as contained in E/PC/T/C.6/W.35 and approved unanimously the following wording for the first three lines of paragraph 1: "Members agree to take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade, which restrain competition, limit ...".

The Delegate of the United Kingdom proposed that paragraph 1 should stress that only goods and not services are falling within the purview of Article 39, by inserting after the words "affecting international trade", the words "in goods", and by inserting in paragraph 2 after the words "Paragraph 1", the words "as regards the type of practices covered".

The Indian Delegate referred to the reservation of the Indian Delegation in London regarding the exclusion of services and sustained this reservation. The Delegates from Brazil, Chile, Cuba and

/South Africa

South Africa supported this reservation. The Cuban Delegate pointed out that the opinion that services were excluded under the terms of reference of the Preparatory Committee was erroneous and that services would fall legitimately within the purview of the work of the Preparatory Committee. He objected to the view that it was necessary to request an opinion of the Economic and Social Council in this respect.

The Delegate of France proposed the retention of the London text, without the addition of the words "in goods", proposed by the United Kingdom Delegate, as the majority formulation of the Drafting Committee, whereas a different text providing for the inclusion of services in Article 39 should be submitted to the Second Session of the Preparatory Committee as an alternative formulation. The Delegate from Canada supported this motion which was approved by the Committee.

The Brazilian Delegate referred to Brazil's suggestion at the First Session of the Preparatory Committee to include a mention of economic development in paragraph 1. He wished to direct attention to the fact that the reference to Article 1 in paragraph 1 of Article 39 refers to Article 1 in its new formulation which includes economic development as one of the purposes of the Organization and not to Article 1 in the formulation of the United States Draft Charter which did not contain economic development. The Chairman took note of this observation.

The Delegate of India objected to the deletion of the words "and the maintenance in all countries of high levels of real income" as suggested in document E/PC/T/C.6/W.35, and after the Canadian Delegate withdrew his respective motion, it was approved to retain these words. The Delegate of the United Kingdom moved to add a new sentence to paragraph 1 as follows: "Such practices are hereafter in this Chapter and in Article 76 described as restrictive business practices", and this motion was carried.

Paragraph 2, sub-paragraph (a)

The Committee debated paragraph 2 on the basis of the United States

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proposal (document E/PC/T/C.6/W.28), after the Canadian Delegate expressed his preference of this formulation over the one suggested in document E/PC/T/C.6/W.35. The Delegates of Brazil and of China referred to their reservations regarding the inclusion of public enterprises in sub-paragraph (a) and sustained these reservations.

The Delegate of the United States upon query of the Delegate from New Zealand explained that the deletion of "international" in the clause "international combination" did not entail a change of meaning but was merely suggested in order to provide for consistency between paragraphs 1 and 2 and in order to eliminate possible ambiguity of the word "international" in this connection. The Committee debated whether the definition of public commercial enterprises in sub-paragraph (a) included enterprises in which there is effective control of subordinate governmental bodies such as municipalities and agreed to change for the purpose of clarification the words "effective government control" to "effective public control."

The French Delegate pointed out that the investigation procedure, provided for in Article 40, should only follow upon a specific complaint in accordance with Article 40 and not as a consequence of studies undertaken by the Organization according to Article 41 and moved to insert after the words "subject to investigation" the clause "in accordance with the procedure with respect to complaints provided by the subsequent Articles of this Chapter."

The United States Delegate moved to change the word "subsequent" in this clause to "relevant". The Delegate of the United Kingdom, the Delegate for Czechoslovakia and the Delegate for Belgium supported the motion of the French Delegate. The Canadian Delegate queried whether this would not unduly limit the power of the Organization to investigate upon its own initiative. The Committee decided to accept the United States formulation of paragraph 2, with the addition of the clause suggested by the French

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Delegate and to refer to the question of limitation of the Organization's investigative authority in the Report of the Drafting Committee.

Paragraph 3

The Delegate of the United States explained that the change suggested in paragraph 3, sub-paragraph (c) of document E/PC/T/C.6/W.28 was due to an observation on the part of Belgium at the First Session of the Preparatory Committee that boycott constituted an especially reprehensible case of discrimination, the Belgian Delegate stated that his change took full account of the respective Belgian observation and supported the United States text, and the Committee approved this new formulation of paragraph 3, sub-paragraph (c).

Sub-paragraphs 3 (e) and (f)

The Cuban Delegate queried the difference between the cases of sub-paragraphs (e) and (f), and the Delegate of the United States explained that the case of sub-paragraph (e) had in mind the suppression of invention or technology by firms in order to protect their capital investment in processes and products rendered obsolete by new technology. The Canadian Delegate suggested the substitution of the word "limiting" for "suppressing" but withdrew this motion when the United States Delegate pointed out that this would make it an offense if firms were not introducing new technology at a time when it was economically unjustified.

The Committee approved the formulation of sub-paragraph (e) as contained in the Secretariat draft document E/PC/T/C.6/W.38 with the addition of the words "or development" after the word "application" and sub-paragraph (f) in the Canadian formulation of document E/PC/T/C.6/W.35.

Sub-paragraph 3 (d)

The Cuban Delegate queried whether this sub-paragraph included also limitation of exports, and the Canadian Delegate pointed out that such limitation of exports would fall under sub-paragraphs (b) or (c).

3. Article 40

The Committee debated Article 40 on the basis of the Canadian draft (document E/PC/T/C.5/W.35). The Australian Delegate suggested a partial redraft of Article 40 and upon the suggestion of the Delegate from the United States, the Chairman requested the Australian Delegate to submit a redraft for the second reading of this Article.

Paragraph (a)

The Canadian substitution of the word "specific" for "particular" was unanimously approved.

Paragraph (b)

The Delegate from France explained that the present formulation of this paragraph contained the danger that private persons or organizations would be allowed the right of direct complaint in matters affecting the jurisdiction and legislation of sovereign states. The word "permission" would only call for a kind of visa without a state accepting responsibility for such complaints. A French redraft, which will be submitted to the Committee, substitutes for this reason the word "assistance" for the word "permission".

The United Kingdom supported this motion and the Delegate of Belgium, seconding the motion, referred to the word "approval" for "permission" in the second part of the London report.

The Chairman observed that no such reservation had been made in London. The Canadian Delegate suggested to substitute the word "approval" for "permission" and the United States Delegate pointed out that governments might not want to identify themselves with certain complaints and yet would want to grant their nationals the right of complaint. He suggested to substitute "authorization" in lieu of "permission" and the Canadian Delegate supported this motion.

The Delegate of the United Kingdom suggested the following formulation:

"Consider each written complaint submitted by a Member on its own behalf or  
/in behalf

in behalf of any affected person, organization or business entity, within that Member's jurisdiction".

The Canadian Delegate expressed the view that the United Kingdom suggestion would involve a change in substance, namely the principle that a country would have to adopt the case of private persons or organizations, a principle which was definitely not envisaged at the First Session of the Preparatory Committee.

The Delegates of Belgium and Chile supported the formulation of the Delegate from the United Kingdom and the United States Delegate, with the support of the Delegate of France moved to retain the Canadian formulation with the substitution of the word "authorization" for "permission", while the United Kingdom formulation should be reported as an alternative to the Second Session of the Preparatory Committee. With the support of the Delegates of Canada and China this motion was carried. The United States Delegate also stressed that the provision for the appearance of private persons or organizations in hearings before the Organization, as provided for in Article 40, sub-paragraph (d), would contain an inconsistency with the United Kingdom formulation and suggested to include a reference to this point in the Committee's report to the Preparatory Committee.

Paragraph (d)

The Delegate of the United Kingdom pointed out that the insert, suggested in the fourth line of the Canadian draft of this paragraph, would involve the possibility of the Organization conducting direct investigations in the territory of Member countries. For this reason, he moved for the deletion of this insert and was supported by the Delegate of Czechoslovakia. The Delegate of Canada tentatively suggested to resolve this difficulty by changing the beginning of paragraph (c) in the following manner: "Consider and request each Member concerned ....". This change was tentatively approved pending a second reading.

The Committee adjourned to 4 February 1947 at 10:30 a.m.

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