

United Nations
ECONOMIC
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Nations Unies
CONSEIL
ECONOMIQUE
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RESTRICTED

E/PC/T/C.6/W.77
14 February 1947

ORIGINAL: ENGLISH

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

ARTICLE 86

Summary of Points Made By Mr. Shackleton Regarding
Interpretation and Settlement of Disputes

The draft suggested by the United Kingdom Delegation (paper E/PC/T/C.6/W.63) covers Article 86 and also paragraph 2 of Article 35. It is felt that there should be only one Article dealing with the procedures related to nullification and impairment contemplated in the latter Article, which applies to questions in any part of the Charter, and the general provisions as to interpretation and settlement of disputes.

The United Kingdom Delegation feels that the guiding principle in this whole question should be that the Organization must be master in its own house and that this could not be so if all its rulings were subject to appeal to an outside body. There are many provisions throughout the Charter under which the Organization makes determinations and findings (e.g. Article 13, Article 25, Article 30, Articles 34 and 35) all of which involve not mere legal considerations but the appraisal of economic facts and the taking of decisions based on such facts. It would be purposeless and meaningless to say that the Organization decides if all its decisions could be called in question.

It seems to the United Kingdom Delegation that in these matters the analogy with ordinary commercial treaties and conventions is misleading, since these are precise, static and self-executing and require no exercise of discretionary power, whereas there are numerous provisions in the Charter which require the exercise of discretion and economic judgment rather than precise interpretation of the terms of the Charter. In contrast

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to the law of commercial treaties, the law of the International Trade Organization should be dynamic, and should be open to amendment and addition in the light of experience in this new field of international activity. The making of rulings under the Charter should therefore, we feel, be the function of the International Trade Organization itself and not of an outside body such as the International Court whose proper function is to determine questions of law and not to appraise economic facts; to ask it to do so would overburden it with a task outside its competence. Very careful thought should be given before such a step is taken.

A further point is the distinction in paragraph 3 of Article 86 between "justiciable" and other issues. This distinction the United Kingdom Delegation feels to be untenable and unworkable. In almost every conceivable case arising under the Charter, the issues will of their nature involve the element of economic appraisal and assessment and will not be purely legal in character, and it will be impossible to say where economic judgment ends and legal judgment begins.

The United Kingdom Delegation feels that it is important to place confidence in the impartiality of the Organization's judgment. At the same time it is recognized that in some cases a substantial minority may feel that their interests are being overridden by a majority. To remove any sense of grievance and provide a remedy in such cases, provision should be made that, if Members of the Conference representing one-third of its total voting power so request, any dispute as to interpretation may be referred to the International Court for an advisory opinion; that on such reference all further proceedings of the Organization should be stayed; and that the opinion of the Court should be binding. This, the United Kingdom Delegation feels, is an adequate safeguard and should not be combined with any procedure for reference to outside arbitration.
