

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENTCOMMISSION BSUMMARY RECORD

Fourth Meeting held on Saturday, 31 May at 10.30 a.m.  
at the Palais des Nations, Geneva.

Chairman: Hon. L. D. WILGESS (Canada)

1. In continuing the debate on Article 40 the CHAIRMAN opened the discussion on the French and British re-formulation of paragraph 1, sub-paragraph (b) (D.C. Report, page 35, note (a) to paragraph 1 (b)).

The Delegate of FRANCE explained that only the general interests and not private interests should be considered in the procedure established by Chapter VI. Only the Governments concerned can accurately judge which practices are harmful from the point of view of the general interest and consequently it should be reserved to Governments and not to private persons to file complaints and appear before the I.T.O. The Delegate of the UNITED KINGDOM and the Delegate of CZECHOSLOVAKIA concurred with the explanations of the Delegate of France.

The Delegate of the UNITED STATES stated that the British and French re-formulation would involve a prior investigation of business practices within the jurisdiction of the Member and consequently each complaint lodged with the

I.T.O. would to some extent involve a charge of breach of faith against another country. Such implications should by all means be avoided, apart from the fact that such a prior investigation on the national level would prove to be slow, cumbersome and ineffectual. The present United States re-draft of Article 40 takes pains to prevent any malicious complaints and thus removes any need for prior national approval of complaints. The Drafting Committee's formulation, which substitutes the word "authorization" for "permission" is sufficient in bringing about a higher degree of Government control over private complaints.

The Commission agreed to refer this issue to Sub-Committee 2.

2. In debating the United States amendment to Article 40, The Delegate of BELGIUM stated that the changes in paragraph 7 involved an extension of scope, and reserved his right to further comments in the Sub-Committee.

The Delegate of CZECHOSLOVAKIA, although considering some parts of the revision useful and acceptable, objected to the changes in paragraph 9 of the United States revision.

The Delegate of CANADA concurred with the Delegate of Czechoslovakia in this respect, and the Delegate of the NETHERLANDS seconded the position taken by the Delegate of Belgium.

The Delegate of the UNITED STATES pointed out that after publication of the New York text the American public had taken strong exception to the clause on suppression of parts of reports and that for this reason, if for none other, the United States revision should be very seriously considered by the Commission.

The Delegate of CZECHOSLOVAKIA suggested a drafting change which would allow for the withholding of parts of the report only in exceptional cases when vital interests of Member States are affected.

The Commission agreed to refer the United States revision of Article 40 to Sub-Committee 2 with the instruction to give due consideration to the points of view advanced in the Commission and especially the suggestion of the Delegate of Czechoslovakia. The Commission also agreed to refer all other amendments to Article 40 to Sub-Committee 2, including the Czechoslovak amendment in document E/PC/T/W/119, which is to be inserted in the Annotated Agenda between points 4 and 5 on page 9 of document E/PC/T/W/132.

The amendments proposed by the Delegate of the NETHERLANDS (documents E/PC/T/W/138 and 139), the revision of the BELGIAN amendment (document E/PC/T/W/130 - correction 1), and the amendment proposed by the Delegation of CHINA (document E/PC/T/W/151) were also referred directly to Sub-Committee 2. The suggestion of the Delegate of SOUTH AFRICA that the procedural details contained in Article 40 should not form a part of the Charter but rather ought to be put into an annexure or protocol to the Charter, was also referred to the consideration of Sub-Committee 2.

3. Article 41: The Delegate of NORWAY proposed an amendment to Article 41 regarding which he would submit a formal working paper, and the Delegate of the UNITED KINGDOM suggested that the sources of information for studies of the I.T.O. should be defined in conformity with such sources as enumerated in Article 48, paragraph 2.

The Delegate of NEW ZEALAND suggested that the Sub-Committee might study the question of an international census and compulsory registration of restrictive agreements, and the Delegate of BRAZIL reserved his right to present to the Sub-Committee amendments to Article 41 regarding studies on effective means for the international registration of restrictive business practices. The Delegate of CHILE queried the substitution of the term "discussion" for "consultation" in paragraph 2(b) of Article 41 and the Commission decided to refer Article 41 to Sub-Committee 2 with the instruction to take the observations of the Delegates of NORWAY, the UNITED KINGDOM, NEW ZEALAND, BRAZIL and CHILE into due consideration.

4. Article 42: The CHAIRMAN proposed, and the Commission agreed, to deal in the Commission only with the United States revision of Article 42, referring all other amendments and observations with regard to this Article to Sub-Committee 2.

The Delegate of the UNITED STATES explained the purpose of his revision and directed the attention of the Commission to the words "forbid and prevent" in paragraph 1, and remarked that the words "and initiate ....." in paragraph 4 did not involve that action must be taken under all circumstances as was duly borne out in paragraph 5 of his re-draft.

The Delegate of the UNITED KINGDOM objected to the substitution of the words "forbid and prevent" in paragraph 1, stressing that the original New York text, by using the word "censure" was stronger in this respect than the revision. He also objected to the insertion of the words "and initiate", suggesting that an acceptable clause would be the following: "decide on and initiate the appropriate action to be taken, if any".

The Commission agreed to refer the United States re-draft of Article 42 to Sub-Committee 2 along with all other

proposed amendments and observations on Article 42, instructing the Sub-Committee to take due account of the debate in the Commission.

5. Article 43 and 44: The Commission approved the New York text of Articles 43 and 44.

6. Article 44-A: The CHAIRMAN proposed to open the debate on the report of Sub-Committee 1 and the Delegate of NORWAY suggested to defer consideration of this report which involved highly important questions of principle calling for further study.

The CHAIRMAN, pointing out that the report of Sub-Committee 1 had been distributed during yesterday's afternoon session suggested, nevertheless, to defer consideration of this report for the time when the Commission would be examining the report of Sub-Committee 2, and the Delegates of CUBA and INDIA pointed out that the new Article 44-A represented an exceedingly fortunate manner for resolving the issue of services in Chapter VI. Both Delegates stressed that restrictive business practices in the field of those services for which specialized agencies are in existence or contemplated would fall under the jurisdiction of these specialized bodies, while restrictive practices in the field of other services would be dealt with under Article 61.

7. Article 45: The Delegate of the UNITED KINGDOM pointed out that in case the Commission had been ready to adopt at present the new Article 44-A, the United Kingdom would have been able to withdraw its amendment to Article 45; failing the adoption of this new Article by the Commission the UNITED KINGDOM had to maintain for the time being and until adoption of Article 44, its amendment proposed for Article 45.

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The Delegate of SOUTH AFRICA requested clarification whether the Canadian re-draft of Article 39 would result in having Chapter VI. apply to the case of South African citrus growers associations inasmuch as these associations controlled the trade in citrus products between South Africa and the United Kingdom.

The Delegate of CANADA suggested that Sub-Committee 2 in its deliberation of Article 39 should take this observation into account and the CHAIRMAN ruled accordingly.

The Delegate of BRAZIL directed attention to the fact that the French text of document E/PC/T/S.R.2 referred on page 5 erroneously to private instead of public enterprises and the Chairman instructed that a correction to this effect should be made in the French text of document E/PC/T/S.R.2.

The Commission referred Article 42, including all the amendments, reservations and observations recorded on pages 13 and 14 of document E/PC/T/W/132 to Sub-Committee 2 and adjourned the meeting until such time as the report of Sub-Committee 2 would be ready for examination by the Commission.

The Meeting rose at 1.15 p.m.