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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

REPORT OF COMMITTEE III

RESTRICTIVE BUSINESS PRACTICES

PART I

The Preparatory Committee of the International Conference on Trade and Employment established in its Third Executive Session, on 16 October 1946, the "Working Committee on Restrictive Business Practices", known as "Committee III". In its first meeting, 18 October 1946, Mr. Pierre DIETERLIN (France) was elected Chairman, and Senor Don Higinio GONZALEZ (Chile) Vice-Chairman. The following Agenda was adopted:

1. Policy towards restrictive business practices -
  - (a) In relation to the objectives of the International Trade Organization;
  - (b) with reference to specific practices.
2. Procedure with respect to complaints.
3. Studies and Conferences relating to restrictive business practices.
4. Obligations of members.
5. Supplementary enforcement measures.
6. Continued effectiveness of domestic measures against restrictive business practices.
7. Exceptions to provisions relating to restrictive business practices.

General problems involved in international treatment of restrictive business practices, and the principles which should be applied by the International Trade Organization in dealing with such practices, were discussed at the second and third meetings.

In its fourth meeting, on 30 October, the Committee appointed a Sub-Committee composed of Messrs. HOLMES (United Kingdom), LEENDERTZ (Netherlands), MCGREGOR (Canada), MULHERKAR (India),

THILGES (Belgium), and WILCOX (United States), under the chairmanship of Mr. DIETERLIN (France). This Sub-Committee was instructed to study Articles 35 through 40 of the United States Draft Charter, taking into account other drafts, observations, amendments, additions and suggestions submitted by Members of the Sub-Committee and of the full Committee.

The Sub-Committee held five sessions, examined with care all submissions received, prepared and discussed numerous tentative drafts. A tentative draft prepared by the Canadian Delegate, which attempted to take into account the several drafts and suggestions, was discussed in detail by the Sub-Committee and was further revised. The Sub-Committee then authorized the Canadian Delegate to submit this tentative draft, as revised, as a basis for discussion by Committee III. It was based on a substantial measure of agreement in the Sub-Committee, though there were divergencies of view on some points. Articles 34 and 35 of this document were discussed by Committee III at its Fifth Session on 5 November. At this meeting, Committee III appointed the Canadian Delegate as its Rapporteur, and instructed him to prepare, with the assistance of Delegates from France, the United States, and the United Kingdom as his consultants, a final draft of provisions for international treatment of restrictive business practices within the framework of the Agenda.

The "Draft of Chapter V Submitted by the Rapporteur of Committee III and the Advisers Appointed by the Committee" was submitted to the Committee in its Seventh Session on 8 November. The "Rapporteur's Draft of the Final Report of Committee III (Restrictive Business Practices) to the Preparatory Committee of the International

"Conference on Trade and Employment" was submitted to the Committee in its Eighth Session on 11 November 1946. In this meeting, the Committee approved the substance of this Report. However, in view of the fact that the form and the arrangement of the Report did not entirely conform to the principles laid down for final Reports by the Heads of Delegations, the Committee instructed the Secretariat to prepare an arrangement of the Report in conformity with these principles, and appointed a Drafting Sub-Committee composed of Messrs. HOLMES (United Kingdom), and LECUYER (France) and WILCOX (United States) to present a final text.

PART II

I. GENERAL PRINCIPLES

A. Policy towards restrictive business practices

1. The Committee has not attempted to define precisely what is meant by restrictive business practices but has taken the phrase to mean broadly those practices in international trade which restrain competition, limit access to markets, or foster monopolistic control and thus substitute the decisions of single enterprises or groups of enterprises acting in concert and exercising monopolistic power for the forces of the market in the determination of price levels, volume of production and distribution of products. It was found convenient to refer to the list of such practices in Article 34 (2) of the United States Draft Charter, which, though not exhaustive, includes the most common types of such practices.

2. In preliminary exchanges of views it was found on the one hand that some delegates regarded these practices as invariable and automatic barriers to a free and expanding system of international trade and in conflict with the obligations which it was proposed members of the Organization would assume under other Chapters of the proposed Charter. On the other hand some delegates perceived considerable advantages in their wise use, particularly in introducing stability in industries requiring large investment and depending mainly on external markets. It was also urged that restrictive agreements were frequently accompanied by exchanges of technical information which facilitated establishment of new industries in the less industrialized countries.

3. It was found, however, that, despite this wide divergence of view on the significance of these practices, there was a unanimous belief that they were capable of having harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income and on the other purposes of the

Organization, whether, as some felt, by their very nature, or as others maintained, only in their wrongful use. Accordingly it was agreed that all members of the Organization should undertake to take all possible steps within their jurisdiction to prevent restrictive practices having harmful effects on the purposes of the Organization.

4. It was clear to all that Governments would be unlikely to agree in their judgment of the effects of particular practices and that an undertaking of the kind just referred to would leave open the possibility of one member allowing or approving a monopolistic arrangement or practice, which would be felt by another member to injure the purposes of the Organization. Accordingly it was agreed that the Organization should be empowered to receive complaints and to investigate them. It was felt that this was the most important function which the Organization could discharge in this field.

5. It was agreed that the procedure of complaint and investigation should apply equally whether the practices were pursued by private or by public (i.e., government-owned or controlled) enterprises or by a mixture of the two, so far as agreements are concerned, but the procedure should apply to the practices of single monopolistic enterprises only when these are privately owned. The problem of the public enterprise acting independently should, it was thought, be dealt with under the provisions governing state trading which Committee II is considering. Care will have to be taken in any event that the final provisions on restrictive business practices and on state trading are in harmony.

B. Procedure with respect to Complaints and Conferences

1. Complaints should be received and examined by the Organization whether they come from members or from affected persons, organizations, or business enterprises, provided in the latter cases that the

responsible Government approves the consideration of the complaint by the Organization. The steps which the Organization should take should be on the following lines:-

- (a) At the request of a member it should, at its discretion, be free to arrange conferences between members to consider a specific practice which the member feels has or is about to have a harmful effect on the purpose of the Organization.
- (b) It should consider written complaints, obtain minimum information both from the complainant and from other members concerned, and then determine whether a further investigation is necessary.
- (c) If it is satisfied that there is a prima facie case for further consideration, then it should obtain information from all members who wish to submit such information, and it should afford opportunity for any member and for the commercial enterprises alleged to have been engaged in the practice to be heard by it if they so wish.
- (d) The Organization should then determine whether the practice complained of has the harmful effect feared, and if so, it should report to all members its findings, requesting them to take action to prevent the continuance or recurrence of the practice and at its discretion recommend specific remedial measures. Each member would, of course, take action in accordance with its own laws and procedures.
- (e) The Organization should then prepare a report on the case.

C. Studies relating to restrictive business practices

1. It was felt that it was necessary that the Organization should give further study to the subject, as it was clear to the Committee that it was one of extreme difficulty on which there was no unanimity of opinion among the various countries. It was agreed therefore

that the Organization should study types of restrictive practices, and conventions, laws and procedures relevant to these practices. It should obtain information from members to assist it in its studies, and it should be at liberty to make recommendations concerning conventions, laws and procedures so far as these are relevant to the obligations which members will undertake.

2. The Organization should also be empowered to arrange conferences at the request of members for general consultation on the problem.

D. Obligations of Members

It was agreed that members should take all possible steps to prevent commercial enterprises within their jurisdiction from engaging in practices having harmful effects on the purposes of the Organization. Members should also conduct investigations in order to be able to furnish information requested by the Organization in connection with complaints, though they should be free to withhold confidential information affecting national security or production techniques. It was felt, however, that there should be some provision in this obligation of members to furnish such information whereby the legitimate business interests of particular enterprises should be safeguarded as far as feasible from possible injury which might arise if detailed information were to fall into the hands of their competitors or other private persons. Members should also take the fullest account of any recommendations made by the Organization, after investigation of a particular complaint, in considering the initiation of action appropriate to their system of law and economic organization. They should report to the Organization what actions have been taken.

E. Supplementary enforcement arrangements

It was recognized that members may co-operate with each other in assisting the enforcement of any provision made by other members in furtherance of the general objectives. There should be no specific

obligation on members to take such action, but it should be made clear that they are free to adopt this course if they wish provided that they notify the Organization.

F. Continued Effectiveness of Domestic Measures  
against Restrictive Business Practices

It was recognized that the responsibilities of the Organization in this field should not affect the national laws under which some countries have made general provision for the prevention of monopoly or restraint of trade.

G. Exceptions to provisions of this Chapter

The procedure described should not apply to inter-governmental commodity agreements made under the arrangements which Committee IV is working out, or international agreements of the kind described in Article 49 of the United States Draft Charter, though the Organization should, at its discretion, be empowered to make recommendations to members and to appropriate international agencies concerning any features of such agreements which may have harmful effects on the purpose of the Organization.

H. General Observations

1. Three delegations suggest that the provisions of the Chapter on Restrictive Business Practices be extended to cover services.

One delegation has stated that the Chapter will have no meaning for it if the question of restrictive business practices relating to services such as shipping, insurance and banking is excluded.

2. Two delegations suggest that consideration should be given to the possibility of establishing some form of procedure for the registration with the International Trade Organization of international combinations, agreements or other arrangements as defined in Article A (b) (i). One delegation feels, moreover, that some degree of publicity should be given to the results of such a procedure.

II. AGREED TEXT

The members of Committee III, without committing their respective Governments, have established general identity of views regarding the following text of Articles A to H inclusive, and recommend that the Drafting Committee be instructed to draft provisions on restrictive business practices on the basis of the following text.

Article A

Policy Toward Restrictive Business Practices

1. Members agree to take appropriate measures, individually and through the Organization, to prevent in international trade, business practices which restrain competition, limit access to markets or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income, or on any of the purposes of the Organization as set forth in Article 1.
2. Without limiting the generality of paragraph (1), members agree that the practices listed in paragraph (c) below, when they are engaged in or are made effective by:
  - (a) an international combination, agreement or other arrangement among commercial enterprises, including such an arrangement among private commercial enterprises, among public commercial enterprises (i.e., trading agencies of government or enterprises in which there is effective government control), or between private and public commercial enterprises;
  - (b) one or more private commercial enterprises;when such commercial enterprises, individually or collectively, possess effective control of international trade, among a number of

countries or generally in one or more products, shall be subject to investigation, in accordance with the procedure provided by the subsequent Articles of this Chapter, if the Organization considers them to have or to be about to have such harmful effects as are described in paragraph (a) of this Article.

3. The practices referred to in paragraph (b) are as follows:

- (a) fixing prices or terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;
- (b) excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial markets or field of business activity, allocating customers, or fixing sales or purchase quotas;
- (c) boycotting or discriminating against particular enterprises;
- (d) limiting production or fixing production quotas;
- (e) suppressing technology or invention, whether patented or unpatented;
- (f) extending the use of rights under patents, trade marks or copyrights to matters not properly within the scope, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

#### Article B

##### Procedure with respect to Complaints and Conferences

Members agree that the Organization shall:

- (a) Arrange, if it considers such action to be justified, for particular members to take part in a conference requested by any member who considers that any specific practices exist which have or are about to have the effect described in paragraph (a) of Article A.

- (b) Consider each written complaint submitted by any member or, with the permission of a member, submitted by any affected person, organization or business entity within that member's jurisdiction, claiming that specific practices exist which have or are about to have the effect described in paragraph (1) of Article A, and prescribe the minimum information to be included in such complaints.
- (c) Request each member concerned to obtain such information as the Organization may deem necessary, including, for example, statements from commercial enterprises within its jurisdiction, and then determine whether further investigation is justified.
- (d) If it is considered that further investigation is justified, notify all members of each such complaint; request the complainant or any member to provide such information relevant to the complaint as it may deem necessary and conduct or arrange for hearings at which any member, and the parties alleged to have engaged in the practice, will have opportunity to be heard.
- (e) Review all information and come to its findings whether the practices in question have the effect described in paragraph (1) of Article A.
- (f) Report to all members the findings reached and the information on which such findings are based; if it finds that the practices have had the effect described in paragraph (1) of article A, request each member concerned to take every possible action to prevent the continuance or recurrence of the practices, and at its discretion recommend to the members concerned remedial measures to be carried out in accordance with their respective laws and procedures.
- (g) Request all members concerned to report fully the action they have taken to achieve these results.

- (h) Prepare and publish, as expeditiously as possible after enquiries have been completed, reports on all complaints dealt with under paragraph (d) of this Article, showing fully the findings reached, the information on which such findings are based, and the action which members concerned have been recommended to take; provided that publication of such reports or of any portion thereof may be withheld if it deems this course justified; provided also that the Organisation shall not, if a member so request, disclose to any person confidential information furnished by that member which would materially damage the legitimate business interests of a commercial enterprise.
- (i) Report to all members, and make public if it is deemed desirable, the action which has been taken by the members concerned to achieve the results described in paragraph (f) of this Article.

#### Article C

##### Studies Relating to Restrictive Business Practices

The Organization shall be authorized to:

- (a) Conduct studies, either on its own initiative or at the request of any member, or the United Nations or any specialized agency brought into relationship with the United Nations, relating to
  - (i) types of restrictive business practices in international trade;
  - (ii) conventions, laws and procedures such as those concerning incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade marks, copyrights, patents and the exchange and development of technology, insofar as they

- are relevant to restrictive business practices, and to request information from members in connection with such studies;
- (b) Make recommendations to members concerning such conventions, laws and procedures as are relevant to their obligations under this Charter.
  - (c) Arrange conferences, when requested by members, for purposes of general consultation on any matters relating to restrictive business practices.

Article D

Obligations of Members

1. In order to implement the preceding Articles in this Chapter, each member undertakes to:

- (a) Take all possible steps by legislation or otherwise to ensure that private and public commercial enterprises within its jurisdiction do not engage in practices which have the effect described in paragraph (a) of Article A; and
- (b) to take the fullest account of the Organization's findings, requests and recommendations made under paragraph (f) of Article B, in the light of its obligations under Article A, in considering the initiation of action in accordance with its system of law and economic organization to prevent within its jurisdiction the continuance or recurrence of any practices which the Organization finds to have had such effect.

2. Establish procedures to deal with complaints, conduct investigations, prepare information and reports requested by the Organization, and generally assist in preventing practices which have the effect described in paragraph (1) of Article A, these measures to be taken in accordance

with the particular system of law and economic organization of the member concerned.

3. Conduct such investigations as may be necessary and practicable to secure information requested by the Organization or to prevent practices which have the effect described in paragraph (1) of Article A.

4. Furnish to the Organization, as promptly as possible and to the fullest extent feasible, such information as is requested by the Organization under paragraphs (c), (d) and (g) of Article B and under paragraph (a) of Article C; provided that confidential information affecting national security or production technique may be withheld.

5. Report, as requested by the Organization under paragraph (g) of Article B, the action taken, independently or in concert with other members, to implement recommendations made by the Organization under paragraph (f) of Article B, and, in cases in which no action is taken, to explain to the Organization the reasons therefor and discuss the matter further with the Organization if requested to do so.

6. Take part in conferences upon the request of the Organization in accordance with paragraph (c) of Article C.

#### Article E

##### Supplementary Enforcement Arrangements

1. Members may, by mutual accord, co-operate with each other in prohibitive, preventive or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any member in furtherance of the objectives of this Chapter.

2. Members participating in such co-operative actions shall notify the Organization.

#### Article F

##### Continued Effectiveness of Domestic Measures against Restrictive Business Practices

Any act or failure to act on the part of the Organization shall not preclude any member from enforcing any national statute or decree

directed toward preventing monopoly or restraint of trade.

Article G

Exceptions to Provisions of this Chapter

1. The undertakings expressed in this Chapter shall not apply to
  - (a) inter-governmental commodity agreements meeting the requirements of the Chapter on inter-governmental commodity agreements;
  - (b) the international agreements excepted in Article 49 of the United States Draft Charter.
2. Notwithstanding the foregoing, the Organization may in its discretion make recommendations to members and to appropriate international agencies concerning any features of the agreements referred to in paragraph (1) (b) which may have the effect described in paragraph (1) of Article A.

Committee III has communicated to Committee V its suggestions for the manner in which the duties to be laid on the Organization in the foregoing Articles should be discharged. These suggestions are set out in the following Article which corresponds in scope to Article 65 of the United States Draft Charter.

Article H

Functions of Commission on Business Practices

The Commission on Business Practices shall have the following functions:

1. In accordance with Article B to:
  - (a) Arrange, at the request of a member, consultative conferences with other members and make appropriate reports for communication at the discretion of the Executive Board to all members;
  - (b) Receive and consider written complaints concerning restrictive business practices in international trade;

- (c) Prescribe minimum information required in such complaints;
  - (d) Notify members of complaints received and request information relative to such complaints;
  - (e) Request further data from members and conduct or arrange for hearings;
  - (f) Report to the Executive Board its findings and its recommendations of remedial measures;
  - (g) Request reports from members on the action taken as a result of recommendations made to them by the Executive Board; and
  - (h) Prepare reports for publication by the Executive Board.
2. In accordance with Article C, and subject to the approval of the Executive Board, to conduct studies relating to business practices which restrain competition, restrict access to markets or foster monopolistic control in international trade, or relating to international conventions or national laws and procedures designed to carry out the objectives of Article B or to those which may effect such objectives, and to make recommendations when appropriate to the Executive Board for action by members.
3. To advise the Executive Board as to information and other materials to be obtained from members or other sources in the discharge of the duties and responsibilities of the Commission.
4. To perform such other functions, pursuant to the objectives of the Chapter on Restrictive Business Practices as may be assigned to it from time to time by the Executive Board.