

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

DRAFT CHARTER

CHAPTER VI

Articles 39, 40, 42 and 45

Amendments proposed by the Canadian Delegation

Article 39

Paragraph 1:

Amend this paragraph by deleting the words in brackets and adding the words underlined:

1. Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade ~~[which restrain competition]~~ whenever such practices<sup>(1)</sup>

(a) limit access to markets, ~~[or]~~ foster monopolistic control or otherwise restrain competition in international trade ~~[whenever such practices]~~; and

(b) have or are about to have<sup>(2)</sup> harmful effects on the expansion of production ~~[and]~~ or<sup>(3)</sup> trade ~~[and the maintenance in all countries of high levels of real income]~~<sup>(4)</sup> or ~~[impair]~~ interfere with the realization of<sup>(5)</sup> any of the purposes of the Organization as set forth in Article 1; and

~~[(a)]~~ (c) ~~[They]~~ are engaged in or are made effective by one or more public or private commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises, (i.e., trading agencies

of governments or enterprises in which there is effective public control), or between private and public commercial enterprises; and if such commercial enterprises, individually or collectively, possess effective control of substantially control or influence trade among a number of two or more countries in one or more products.

Paragraph 2:

Amend this paragraph by deleting the words in brackets and adding the words underlined:

3. 2. The practices referred to in paragraph 2  
1(a) are as follows shall include the following: (6)

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .
- (f) . . .

2. 3. Without limiting the generality of paragraph 1 of this Article, the practices listed in paragraph 3 below Any practices which are alleged, under Article 40, to be as described in paragraphs 1 and 2 of this Article shall be subject to investigation, in accordance with the procedure with respect to regarding complaints provided by the relevant Articles of for in this Chapter, if the Organization considers them to have or to be about to have any of the harmful effects enumerated in order that the Organization may determine, in any particular instance, whether these or related practices are as described (7) in paragraph 1 of this Article , whenever.

Paragraph 2(a) and 2(b):

Delete these subparagraphs, which are incorporated in paragraph 1(c).

Article 39 (contd)

COMMENT:

(1) The following three lettered subparagraphs bring together, and indicate more clearly, the conditions which must exist before any practice is subject to investigation. Under (a) the practice must be of certain types, which include those listed in par. 2(2); under (b) it must have certain effects; and under (c) it must be engaged in by a certain type of commercial enterprise having a certain measure of control or influence in international trade.

(2) This provision for preventive activity on the part of ITO has been agreed upon, and is included in several of the Articles. It was inadvertently omitted from this first paragraph. It is suggested that it would be sufficient to insert the phrase in this paragraph, and amendments proposed hereunder would make it unnecessary to repeat the words "have or are about to have the effect" where they now appear in several Articles.

(3) It is suggested that the word "or" be substituted for "and" because an agreement to engage in restrictive practices may relate only to marketing or trade activities. It should not be necessary to prove that they affect both production and trade.

(4) It is not necessary to single out this particular purpose for reference here because it is included in the last phrase of the paragraph, "any of the purposes of the Organization as set forth in Article 1".

(5) It is suggested that the phrase "interfere with the realization of" would be more accurate than the word "impair", since it is not the purpose which is impaired but the realization of the purpose which is interfered with.

(6) This phrase would make unnecessary the use of the legalistic phrase "Without limiting the generality of the foregoing" in paragraph 2, and make it clear that the practices listed as examples at the end of the paragraph are not to be regarded as necessarily harmful but that they, as well as the practices described in more comprehensive terms in par. 1, are subject to investigation to determine their nature and their actual or probable effects.

(7) The wording underlined has been suggested by the United States. As the Canadian delegation feels that this change is most desirable and relates to the other amendments proposed herein by Canada, the suggestion has been incorporated in this document. The amendment is obviously necessary since under the present wording (between square brackets) the Organization would have to reach a conclusion as to the effects of the practices before it could make an investigation.

Paragraph 1(a):

In lines 5 and 6, substitute the word "as" for the words "which have or are about to have the effect"(1).

In line 6, delete the words "paragraph 1 of"(2).

Paragraph 1(b):

In lines 6 and 7, substitute the word "as" for the words "which have or are about to have the effect".

In line 7, delete the words "paragraph 1 of".

Paragraph 1(c):

In line 3, insert comma after "necessary" and delete comma after "including".

Paragraph 1(e):

In line 3, substitute the words "are as" for the words "have or are about to have the effect".

In line 4, delete the words "paragraph 1 of".

Paragraph 2(a):

In lines 3 and 4, substitute the words "are as" for the words "have had [or are about to have] the effect".

In line 4, delete the words "paragraph 1 of".

COMMENT:

(1) The phrase "which have or are about to have the effect" or "which have the effect" is repeated over and over again throughout the Chapter. The one word "as" is a satisfactory substitute and avoids constant repetition of the long phrase. Moreover it has the advantage of referring to the nature of the practices as well as to their effects.

(2) To get the full description of the practices in question one should read Article 39 as a whole, not merely paragraph 1.

Article 42

Paragraph 1(a):

In lines 4 and 5, delete the words "which have the effect".

In line 5, delete the words "paragraph 1 of".

In line 9, substitute "determine" for "determined".

In lines 13 and 14, substitute the words "finds are as" for the words "find to have had ~~or to be about to have~~ the effect".

In line 15, delete the words "paragraph 1 of".

Paragraph 2(a):

In line 5, substitute the words "are as" for the words "have the effect".

In lines 5 and 6, delete the words "paragraph 1 of".

Paragraph 2(b):

In line 4, substitute the words "are as" for the words "have the effect".

In line 5, delete the words "paragraph 1 of".

Paragraph 2(d):

In line 7, substitute the words "inform the Organization of" for the words "explain to the Organization".

Article 45

Paragraph 2:

In lines 6 and 7, substitute the words "appear to the Organization to be practices as" for the words "may have the effect".

In line 7, delete the words "paragraph 1 of".