

FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUB-COMMITTEE A

AMENDMENT PROPOSED BY NORWAY

For the purpose of clarification of Article 45 A (see document 2/C/4/A/16-30/2) the Norwegian Delegation suggests the following amendments:

Paragraph 1

The following words to be inserted in the third line of the first sentence after the word "may":

"in accordance with Article 44, paragraphs 2 and 3".

The text of the first sentence thus to read as follows:

"Any affected Member acting in its own behalf or any Member on behalf of any affected person, enterprise or organization within that Member's jurisdiction may, in accordance with Article 44, paragraphs 2 and 3, present a written complaint....."

Paragraph 2

The text of the first sentence of paragraph 2 should read as follows:

"The Organization shall prescribe the minimum information to be included in complaints that particular practices exist which are as described in paragraphs 2 and 3 of Article 44 and have, or are about to have the effect described in paragraph 1 of that Article."

Paragraph 5

The text of paragraph 5 should read as follows:

"The Organization shall review all information available and decide whether the practices in question are as described in paragraphs 2 and 3 of Article 44 and have had, have or are about to have the effect described in paragraph 1 of that Article."

Paragraph 7

The first paragraph of the first sentence of paragraph 7 should read as follows:

"If the Organization decides that in any particular case the practices complained of are as described in paragraphs 2 and 3 of Article 44 and have had, have or are about to have the effect described in paragraph 1 of that Article, it shall request....."

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COMMENTS

Regarding paragraph 1

The complaints to be investigated according to Article 45 A are only such complaints as described in Article 44, paragraphs 2 and 3. Consequently, a complaint must refer to such practices as described in paragraph 3 of Article 44 and which are engaged in or made effective by such enterprises as described in paragraph 2, (b) and (c) of that Article. The text of Article 45 A, paragraph 1, as it reads in the proposal suggested by the Ad Hoc Committee, may be read as establishing a basis for a more comprehensive right to make complaints to be considered according to Article 45 A. To avoid such misinterpretation one ought to insert a reference to paragraphs 2 and 3 of Article 44.

Regarding paragraphs 2, 5 and 7

According to paragraph 5 as it now reads the Organization shall decide whether the practices in question have had, have or are about to have the effect described in paragraph 1 of Article 44. However, this is not a sufficient description of what the Organization should do in this case. The Organization should make a conclusion with regard to the following points:

1. whether the practices complained of really exist or have existed,
2. whether the practices are of such nature as described in paragraph 3 of Article 44,
3. whether the practices are engaged in or are made effective by such commercial enterprises as described in paragraph 2 (b) and (c) of Article 44,
4. whether the practices have had, have or are about to have the effect described in paragraph 1 of Article 44.

If the Organization finds that the practices complained of do not exist or that the practices are not of such nature as described in paragraph 3 of Article 44, or that they are not engaged in or made effective by such enterprises as mentioned in paragraph 2 of Article 44, the Organization should not make any decision whether the practices have such effect as described in paragraph 1 of Article 44.

The aim of the proposed amendment to paragraph 5 and the corresponding amendments to paragraphs 2 and 7 is to make these points sufficiently clear.