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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE III

RESTRICTIVE BUSINESS PRACTICES

MEMORANDUM ON CHAPTER V OF THE UNITED STATES
DRAFT CHARTER

Submitted by the Indian Delegation

As explained in the general statement made by the Indian Delegation at the 3rd meeting of Committee III, the Draft Charter is an improvement on the original United States Proposals, as it has widened the scope of the Charter by including "Services" under clause 2 (a) of Article 34. There is also a reference to "Any territorial market or field of business activity" in clause 2(b). This means that Article 34 will not only cover "commodity trade" but also "services ancillary to trade" such as shipping, banking and insurance.

While this is a legitimate interpretation of Article 34, as the Indian Delegation has pointed out, under Article 40(2), which deals with exceptions, cartel agreements or understandings amongst private firms "concerning railway transportation, aviation, shipping and telecommunication services" are to be outside the scope of the understandings contemplated under Chapter V.

This is unsatisfactory on logical and other grounds. In India national enterprise has all along suffered under the operation of these private agreements and understandings, particularly in the realm of shipping, banking and insurance. With the operation of shipping rings, Indian national shipping has been shut out entirely, and it does not carry even one per cent of its overseas trade; insurance of its overseas trade covered by Indian Insurance Companies is not accepted by Shipping Companies, and as such it has to move under the protection of non-Indian Insurance concerns, and so is the case with Banking. These are essential services required in the movement of

international trade - and expansion and development of such trade - which depends upon the scope allowed for the country's national services like shipping banking and insurance.

Since the whole position requires to be fully clarified in an unambiguous manner we suggest the following amendments:-

1. The first 5 lines of sub-paragraph 1 of Article 54 should read as under:

" 1. Members agree to take appropriate individual and collective measures to prevent commercial enterprises from following practices which restrain competition, restrict access to markets or foster monopolistic control in the field of international commodity trade or services ancillary thereto such as shipping, banking and insurances and which thus have the effect of frustrating the purposes of the organization....."

2. Under Article 40 which provides for exceptions to the provisions of Chapter V, sub-clause. (c) of clause 1 should read as under:

" (c) International agreements concerning railway transportation, aviation, shipping and tele-communication services. "

We suggest that the intention of sub-clause (c) of Article 40 should be to exempt from the operation of Chapter V only agreements or understandings which are reached at an international level, on the initiative of United Nations Economic and Social Council "concerning railway transport, aviation, shipping and tele-communication services." Agreements or understandings reached between private commercial enterprises in respect of these services should not be treated as exempted under article 40. The same principle should apply to understandings privately arrived at amongst commercial enterprises with regard to banking and insurance.

3. We suggest that fresh sub-clauses (d) and (e) be inserted under clause 1 of Article 40 as follows:-

" (d) Agreements or understandings amongst commercial enterprises concerning technological assistance, manufacturing processes and/or patent rights; or

" (e) Agreements or understandings entered into by manufacturers either with their own government or with domestic primary producers for the restriction of exports of raw materials in the interest of domestic industries."

4. The object of inserting sub-clause (d) is to exempt certain individual arrangements which commercial enterprises in an industrially under-developed country may have to arrive at with foreign commercial enterprises with a view to securing essential technological assistance, "Know-Hows", certain manufacturing processes and/or use of certain patent rights which may be necessary for the effective utilization of their resources.

5. The exemption sought for these agreements should only be continued till a suitable and effective machinery is devised by the ITO. for securing such assistance to industrially under-developed countries, in a fair and equitable manner.

The exemption suggested under (e) is really meant for ensuring that in certain cases manufacturers in a country should be able to arrive at certain standing arrangements either with their government or with domestic primary producers to restrict the export of the raw materials in the interest of domestic industries. We are anxious that such an understanding should not be treated as a restrictive business practice.