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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE V

INSTRUCTIONS TO THE DRAFTING COMMITTEE

There is comparatively little of substance by way of drafting instructions which Committee V can usefully bring to the attention of the Drafting Committee other than the agreed text appended to the Report of the Committee and the general comments and observations thereon contained in Part II of that Report. Except in the case of provisions dealing with voting in the Conference and Executive Board and with membership of the latter body, the Committee was successful in reaching a very substantial identity of views on virtually all matters coming within its terms of reference. Formal reservations (apart from general reservations on the question of voting and related issues,) were entered with respect to one provision only (paragraph 4 of Article 78 of the United States Draft Text as amended). In some other instances a minority point of view was forcefully presented during the initial discussion of particular articles but in most cases delegates elected not to press their point or to agree to accept compromise solutions based on sub-committee recommendations. Attention is drawn in the following notes to the comparatively few cases where delegations, through agreeing in principle with certain Charter provisions, nevertheless asked that their observations be brought to the notice of the Drafting Committee. The Committee hopes that on the basis of the agreed text, and in the light of the record of its proceedings and of other relevant documentation, it will be found possible to produce definitive drafts on which final decisions can be more easily taken.

Article 50 - Functions

1. The Delegate for Canada observing that the exact implications of paragraph 2 of this Article were by no means clear, "entered a caveat" to the effect that at some stage the paragraph should be reworded in order to make perfectly clear its intentions regarding the responsibilities and commitments to be undertaken by the International Trade Organization. Though the substantive issues raised by the delegate for Canada have not yet been fully determined, the Drafting Committee should examine paragraph 2 in the light of the recommendations of the Joint Committee of Committee I and II and of any action which the Economic and Social Council or its commissions may in the meantime take with respect thereto.
2. With respect to sub-paragraph (d) particularly, it was generally recognized that some modification may be necessary, as a consequence of the addition to the Charter of a new and separate Chapter on Industrial Development.
3. The Drafting Committee should examine the provisions of Article 50 generally and of sub-paragraph (d) in particular, with a view to ensuring that they are consistent with other provisions of the Charter, especially with those relating to employment policy and industrial development of which Committee V did not have full or sufficient knowledge when considering this article.
4. In connection with sub-paragraph (d) also, the delegate for India expressed the hope that the Drafting Committee would consider its appropriate position within Article 50. His delegation considered that the promotion of industrial and general economic development was one of the primary functions of the Organization and consequently felt it was of the utmost importance that both the content and arrangement of the Charter should emphasize this fact.
5. The Drafting Committee should give careful consideration to the order in which the various functions set out in Article 50 should be arranged.

having regard to the relevant Charter provisions and to the discussion which has taken place, particularly with reference to the general problem of industrialization:

Article 55 - Powers and Duties of the Conference

1. The delegate for France, in commenting on paragraph 8 of this Article, pointed to a number of provisions elsewhere in the Charter which involved important decisions by the Conference and with respect to which no precise voting requirement had been laid down. As the Charter now stood, such decisions would be taken by a simple majority vote under Article 53. He thought that consideration should be given as to whether a two-thirds majority should not be required in the case of Conference decisions, for example, under Articles 20 (3), 25 (3b), 29, 30, 35 and 45.

2. Apart from the question of its competence in the matter, it was not feasible for Committee V to do very much until the Committees substantively concerned had concluded their deliberations and the Drafting Committee might, therefore, review the position in the light of the delegate for France's comments and such recommendations regarding majority vote requirement as the other Committees may have made.

Article 56 - Interim Tariff Committee

Attention is drawn to the fact that the delegations of Canada, New Zealand and the United Kingdom, which had declared themselves as favouring the principle of weighted voting in the Conference, entered a reservation in regard to paragraph 3.

Article 60 - Executive Board-Powers and Duties

The last sentence of paragraph 1 was not fully considered by Committee V, and may require some consequential re-casting in accordance with the recommendations of the Joint Committee and any subsequent decisions resulting therefrom.

Article 62 - Composition and Procedure of Commissions

With reference to paragraph 2 of this Article, the delegate for China urged that the Charter should include specific provisions under which the Executive Board would be obliged to consult member Governments before appointing any of their nationals to be members of Commissions. He also desired that it should be expressly provided that not more than one national from any country should serve on any one Commission. Most delegates shared the view that it would be unnecessary and undesirable to include such provisions either in the Charter itself or in any formal recommendation. The delegate for China did not press these proposals on the understanding that it would be brought to the attention of the Drafting Committee as the views of the Delegation of China.

Articles 64-66 - Functions of Commissions

1. It was decided by Committee V that the functions of the three commissions as set out in Articles 64, 65, and 66 of the United States Draft Charter could not usefully be discussed in any detail until such time as the three committees substantively concerned in these matters had completed their work. Lack of time, therefore, prevented the Committee V from attempting to deal in any definitive way with drafts covering functions of Commissions. It was agreed merely to approve the general scheme and arrangement as set out in the United States Draft Charter and to transmit directly to the Drafting Committee any observations, suggestions or redrafts of these Articles which might be received from Committee II, III, and IV or from individual delegations.
2. The Drafting Committee should in the light of the general views of Committee V concerning the structure of Commissions and on the basis of the conclusions reached by the other working Committees prepare appropriate drafts covering the functions of the Commissions on Commercial policy, Business Practices and Commodities. The attention of the Drafting

Committee is drawn particularly to the following documents appended to this report:

(a) Redraft of Article 65 as approved by Committee III in consultation with the Chairman and certain other members of Committee V;

(b) Communication from the Chairman of Committee IV together with a statement setting out the ideas of that Committee as to allocation of the functions, which are to be undertaken by the Organization in the field of commodity arrangements, between the various organs of the International Trade Organization.

3. Attention is called to the following statement appearing in Part II of Committee V's Report (Paragraph 7, Section O - The Commissions), "A proposal was submitted calling for the establishment of an additional Commission to deal with the 'Expansion of Production, Industrialization and Employment.' "

4. In view of the fact that the Joint Committee of Committees I and II was referring the question of machinery to the Economic and Social Council for advice, it was agreed that the matter would have to be left over for the present, to be considered later by the Drafting Committee and the next session of the Preparatory Committee.

5. The Drafting Committee should take such action as it deems appropriate with reference to this matter, in the light of the discussion which took place in Committee V, the recommendations of the Joint Committee of Committees I and II and such action as the Economic and Social Council may decide upon.

Article 76 - Interpretation and Settlement of Disputes

1. In connection with paragraph 3 of this Article, the delegate for the Netherlands strongly urged that all rulings of the Conference whether they concern justifiable issues or other questions be open to appeal to the

International Court of Justice or to arbitration. A memorandum setting out the agreed views of the delegations of the Netherlands, Belgium and France on this subject was later circulated. It was agreed that this Memorandum should be transmitted directly to the Drafting Committee for its consideration in conjunction with the report of Committee V's discussion. A copy of the memorandum is accordingly appended hereto. The Drafting Committee should give appropriate consideration to this paper.

2. With reference to paragraph 4 of this article, it was the desire of the majority that the Organization should be granted a general blanket authorization to seek advisory opinions from the International Court. However, in view of the fact that the General Assembly has still to decide on this question in connection with the agreements that have been negotiated with other specialized agencies, it was decided after a full discussion that, for the time being at least, the wording of this paragraph should merely refer to paragraph 2 of Article 96 of the Charter of the United Nations. If, in the meantime, the General Assembly agrees to grant to other specialized agencies a general authorization in terms of the relevant Article of the Draft Agreements with the International Labour Organization, the Food and Agricultural Organization and the United Nations Educational Scientific and Cultural Organization, the Drafting Committee should consider the desirability of redrafting paragraph 4 accordingly.

Article 77 - Payment of Contributions

I. Doubt was expressed by several delegates whether the provisions of this Article should appear among the miscellaneous provisions of the Charter or be included either in Article 55 on the subject of powers and duties of the Conference, or in Article 53 on the subject of voting.

2. In considering the most appropriate and logical arrangement of the provisions of the Charter, the Drafting Committee should pay particular attention to this matter.

Article 78 - Entry into Force

1. The Delegate for the United Kingdom proposed, with reference to paragraph 2 and having regard to the suggestions his delegation had made on the subject of **weighted** voting, that an alternative method of bringing the Charter into force would be to provide for its taking effect when a certain proportion of the world's trade was covered by the countries which were prepared to accept its provisions.

2. The Drafting Committee might bear this suggestion in mind in connection with any alternative provisions which they may decide to prepare.

3. The attention of the Drafting Committee is drawn to the reservations entered by the delegates for Australia, France and the Netherlands with respect to paragraph 4 of this Article.

Article 79 - Withdrawal

1. The question was raised whether there would be any possible conflict between the provisions of Article 30 and paragraph 1 of article 79. It was suggested that to make the position quite clear a reference to Article 30 could be inserted in paragraph 1 of article 79 or alternatively that the words "except as otherwise provided" might be added at the beginning of Article 79. It was agreed, however, that since other points of the same nature would no doubt arise, the observations made on this matter in **Committee V** should be passed on to the Drafting Committee for its consideration.

2. The Drafting Committee should therefore carefully review the provisions of the Charter as a whole with this consideration in mind.

General

1. In the case of Articles 53, 57 and 58 on Voting and Executive Board Membership, no very specific conclusions were arrived at. The attention of the Drafting Committee is called to the exchange of views which occurred with reference to these matters at the Fifth, Eighth, Twelfth and Fourteenth Meetings of the Committee and to the written statements submitted to the Committee by the delegation of the United Kingdom and by the delegations of Belgium and the Netherlands respectively, and the redraft of Article 57 presented by the delegation of Brazil. Reference should also be made to the review of the deliberations on these questions as set out in its Report to the Preparatory Committee together with the alternative texts of Article 57 contained in the appendix thereto.

2. The Drafting Committee, in so far as it is able to do so within its terms of reference, should formulate alternative schemes that will take account of the suggestions:

(a) that a weighted system of voting should be adopted;

(b) that there should be equal voting but some kind of provision for permanent seats on the Executive Board.

3. Any drafts, which it might prepare with respect to Articles 53, 57 and 58, should take due account of the various suggestions and observations made in the course of the Committee V's deliberations.

4. In connection with paragraph 1 of Article 57, fixing the membership of the Executive Board at fifteen, attention was drawn by the delegates for China and New Zealand to the fact that provision might need to be made for a smaller Executive Board in the event of the Charter being brought into force in accordance with the provisions contained in paragraph 3 of Article 78. The Drafting Committee should give this point consideration. It will be noted that in Article 55 (2) and (8) and in Article 75, reference is made to a two-thirds majority of the members of the Organization. This expression gave rise to a certain amount of discussion

as a result of which the Committee agreed upon the following formulae:

- (a) "by the affirmative votes of two-thirds of the Members"
- (b) "by the affirmative votes of two-thirds of the Members present and voting"

5. It was considered that the first formula should be used in those cases where by virtue of their importance matters should be decided by an affirmative vote of at least two-thirds of the total membership and that the latter formula should apply in the cases of relatively less important decisions. Some delegates, however, considered that these formulae were not entirely free of ambiguity.

6. The Drafting Committee should, therefore, examine this question with a view to incorporating in the text of the Charter where necessary such wording as clearly conveys what is intended.

7. The suggestion was made that paragraph 2 of Article 70 together with paragraph 1 of Article 71, since they are of a temporary character, might more suitably be placed in a separate chapter in the Charter. The Drafting Committee should bear this suggestion in mind in connection with such attention which it will give to the general arrangement and form of the provisions of the Charter.

APPENDIX I

TEXT OF ARTICLE H OF COMMITTEE III
(DOCUMENT E/FC/T/15)

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.

APPENDIX II

REPORT OF COMMITTEE IV (DOCUMENT E/PC/T/17)

SUGGESTIONS FOR THE ASSIGNMENT OF FUNCTIONS AND
ORGANIZATIONAL RELATIONSHIPS

Throughout the above Draft Chapter, though not in one instance, the term "Organization" has been used without specifying a particular part of the Organization. However, the ideas of the Committee on Inter-Governmental Commodity Arrangements as to the allocation of functions in connection with such arrangements to various parts of the Organization were forwarded to the Committee dealing with Administration and Organization. These suggestions are set out in the following table.

REFERENCE TO
CHAPTER VI AS
REDRAFTED

FUNCTION

SUGGESTED AUTHORITY
WITHIN
ORGANIZATION

Article 3 Paragraph 2	Invitation to certain Members and non-Members to appoint representatives to a Study Group.	Executive Board on the recommendation of the Commodity Commission; the latter will carry out actual administrative arrangements for the Study Group.
Article 3 Paragraph 3	The Study Group makes recommendations to the Organization as to how best to deal with difficulties.	Recommendations received by Commodity Commission and transmitted to Members of ITO through Executive Board.
Article 4 Paragraph 1	Convening of Commodity Conference.	Executive Board.
Article 4 Paragraph 2	Invitation to non-Members to participate in Commodity Conference.	ditto.
Article 5 Paragraph 1	Receipt of studies, or of request for studies, from specialized agencies.	Commodity Commission.
Article 5 Paragraph 2	Requests to specialized agencies to take part in the work of the Commodity Conference.	Executive Board on the recommendation of the Commodity Commission.
Article 6 Paragraph 1	Determination of whether terms are "no less favourable". Approval of terms of subsequent participation.	Executive Board on the recommendation of the Commodity Commission.
Article 6 Paragraph 2	Invitation to non-Members to participate in arrangements.	ditto.
Article 7 Paragraph 3	Decision whether exceptional circumstances exist which would justify a regulatory agreement for a non-primary commodity.	Executive Board advised by the Commodity Commission, subject to procedures established by the Conference.

(NOTE: with reference to paragraphs 1 and 2 of Article 7, it would appear that the determination whether the circumstances in fact exist in which a regulatory agreement may be used will be made "by consultation among the Members having an important interest in the trade in the product concerned". See Draft Charter, Article 55, paragraph 6, read together with Article 66, paragraph 3, and Article 45, paragraph 2 (b)).

REFERENCE TO
CHAPTER VI AS
REDRAFTED

FUNCTION

SUGGESTED AUTHORITY
WITHIN
ORGANIZATION

Article 9 Paragraph 3	Appointment of non-voting Members to Commodity Council.	Executive Board on the recommendation of the Commodity Commission.
Article 9 Paragraph 4	Nomination of non-voting Chairman at request of Commodity Council.	Commodity Commission (Ref. Article 66 paragraph 8 of Draft Charter.)
Article 9 Paragraph 5	Consultation re Secretariat.	ditto.
Article 9 Paragraph 6	Approval of rules of procedure.	Commodity Commission (Ref. Article 66 paragraph 7 of Draft Charter).
Article 9 Paragraph 7	Receipt of reports from Commodity Council, and requests to latter for special reports.	Commodity Commission (Ref. Article 66 paragraph 9 of Draft Charter.)
Article 10	Preparation and publication of a review of operation of an agreement.	Preparation by the Commodity Commission; publication by authority of the Executive Board.
	Disposal of archives, etc. on termination of an agreement.	Documents in charge of Director-General.
Article 12 Paragraph 1	Receipt of information regarding existing commodity arrangements; review and decision regarding continued participation.	Executive Board (subject to approval of the Conference) upon recommendation of the Commodity Commission.
Article 12 Paragraph 2	Similar function in connection with negotiations.	Executive Board (subject to approval of the Conference) upon recommendation of the Commodity Commission.

NOTE: General matters not specifically referred to in the Draft Charter which involve the Organization will normally fall within the province of the Commodity Commission in its advisory capacity to the Executive Board.

APPENDIX III

MEMORANDUM (DOCUMENT E/PC/T/C.V/35)

Submitted by the Belgian, French and Netherlands Delegations relating to the settlement of disputes which might arise out of the working of the ITO

(Article 54, paragraph 4 and Article 76, paragraph 2 of the American Suggested Charter)

The Belgian, French and Netherlands Delegations consider that the International Trade and Employment Organization will only be able to achieve its aims if all Members have full confidence in it and, in particular, feel convinced that disputes arising from the application of the Charter will be settled with perfect equity.

Therefore it seems essential for the future of the ITO that any Member exposed to serious injury by reason of decisions of the Organization should be entitled to appeal to an independent tribunal, where impartial judges, free from any political bias, will pronounce final judgement.

Failing such right of appeal, there would be a danger of conditions of tension arising within the Organization, which could only be resolved by the withdrawal of the Members who considered themselves injured.

Far from impeding the working of the Organization or threatening its prestige, the possibility of appeal to an international high tribunal, enjoying sufficient authority to discourage any rash or unjustified appeal, would be a safeguard for the ITO itself and one of the essentials of co-operation between all Members.

Committee V has already recognized the significance of these observations:

1. When, during the preliminary discussions on the powers of the Commissions, several Delegates were unwilling to accord the latter the right of judging in the first instance disputes between Member states.

2. When the Committee proposed to amend article 76 of the Suggested Charter with a view to providing for recourse to arbitration and the right of appeal to the International Court of Justice against decisions of the Conference.

However, it would seem that the present text might well give rise to difficulties of interpretation. Therefore the three Delegations are of the opinion that it would be advisable to redraft the new article 76 so as to specify that:

- (a) Any dispute between Members of the Organization shall be submitted in the first instance to the Executive Board, which may either give a ruling, or, with the agreement of both parties, refer the dispute to arbitration.
- (b) Appeal to the Conference may be made against any decision of the Executive Board.
- (c) Appeal to the International Court of Justice against any decision or recommendation of the Conference detrimental to the interests of a Member, may be made at the request of the Member concerned.

As it is clear that the settlement of disputes of a commercial and economic character postulates the existence of a specialized tribunal with suitably qualified judges, the three Delegations request the Conference on Trade and Employment to recommend to the United Nations the setting up within the International Court of Justice of an Economic Chamber to hear and determine disputes arising out of the application of the Charter of the International Trade Organization, and, to this end, to recommend an increase in the number of judges by enlisting the services of persons with the requisite experience.

Having made these proposals, the three Delegations suggest that this Memorandum be annexed to the Report of Committee V, to be submitted to the Preparatory Committee in Plenary Session.