United Nations | *Nations Unies*

ECONOMIC AND SOCIAL COUNCIL | **CONSEIL ECONOMIQUE ET SOCIAL**

RESTRICTED

E/PC/T/C.6/W.35
31 January 1947

ORIGINAL: ENGLISH

CHAPTER VI. RESTRICTIVE BUSINESS PRACTICES

MODIFICATIONS PROPOSED BY THE DELEGATE FOR CANADA

ARTICLE 39

Policy Toward Restrictive Business Practices

1. Members agree to take appropriate measures, individually [and] or through the Organization, to prevent [in international trade,] business practices affecting international trade 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 3 below:

when they are engaged in or 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;

and 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

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 1 of this Article.

3. (f) extending the use of rights under patents, trade marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

ARTICLE 40

Procedure with Respect to Complaints and Conferences

Members agree that the Organization shall:

1. /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/ particular practices exist which have or are about to have the effect described in paragraph 1 of Article A.

2. /b/ Consider each written complaint submitted by any member /or with the permission of a member/ or submitted with the permission of a member by any affected person, organization or business entity within that member's jurisdiction, claiming that /specific/ particular 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.

3. /c/ Request each member concerned to obtain such information as the Organization may deem necessary, including, for example, /statements/ information or data from commercial enterprises within its jurisdiction, review any relevant information secured by the Organization from other sources, and then determine whether further investigation is justified.

4. /d/ If it /is considered/ considers that further investigation is justified notify all members of each such complaint; request the

/complainant

complainant or any member to provide such information relevant to the complaint as /it/ the Organization may deem necessary and conduct or arrange for hearings; /at which any member/ provided that any member and the parties alleged to have engaged in the practice will have opportunity to be heard at such hearings.

5. /e/ Review all information and come to its findings whether the practices in question have or are about to have the effect described in paragraph 1 of Article A.

6. /f/ Report fully to all members the findings reached and the /information on which such findings are based/ reasons therefor; if it finds that the practices have had or are about to have 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.

8. /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/ reasons therefore 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 Organization 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.

9. /i/ Report to all members, and make public if it /is desired/ deems

/desirable,

desirable, the action which has been taken by the members concerned to achieve the results described in paragraph 6 /f/ of this Article.

ARTICLE 41

Studies Relating to Restrictive Business Practices

The Organization shall be authorized to:

1. /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

   a. /i/ types of restrictive business practices in international trade;

   b. /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.

2. /b/ Make recommendations to members concerning such conventions, laws and procedures as are relevant to their obligations under this Charter.

3. /c/ Arrange conferences /when requested by members/ for purposes of general consultation on any matters relating to restrictive business practices.

ARTICLE 42

Obligations of Members

/1/ In order to implement the preceding Articles in this Chapter, each Member undertakes to:

/1. /e/

1. [a]

2. [b] [to] Take fullest account of the Organization's findings, requests, and recommendations made under paragraph [f] 6 of Article 40 [, in the light of its obligations under Article 39, in considering the initiation of action] and determine appropriate 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 [or to be about to have] such effect.

3. [2]

[3. Conduct such investigations as may be necessary and practicable to secure information requested by the Orgenization or to prevent practices which have the effect described in paragraph 1 of Article 39.]

[6] [Take part in conferences upon the request of the Organization in accordance with sub-paragraph (c) of Article 41.]

ARTICLE 45

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.

(c) (Consider re-insertion)

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) of this Article which may have the effect described in paragraph 1 of Article A.

[ARTICLE 76

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Functions of the Commission on Business Practices

The Commission on Business Practices shall have the following functions:

1. In accordance with Article 40 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;

2. In accordance with Article 41 and subject to the approval of the Executive Board, to conduct studies relating to types of restrictive 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, insofar as they are relevant to restrictive business practices, [designed to carry out the objectives of Article 40 or to those which may effect such objectives,] and to make recommendations when appropriate to the Executive Board for Action by Members.