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ORIGINAL: ENGLISH

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

COMMISSION B

SUMMARY RECORD

Second Meeting held Thursday, 29 May 1947, at 3 p.m.
at the Palais des Nations, Geneva.

Chairman: Hon. L. D. WILLGESS (Canada)

1. The Chairman stated that the debate, conducted during the morning session, had clearly shown that the Commission is divided in its opinion on the subject of services in a three-fold way. One group favours the inclusion of services in Chapter VI, one group the exclusion of services from Chapter VI, and a third group is satisfied with having services not expressly excluded from this chapter. In view of this division of opinion, it would be necessary to vote on the issue unless any compromise proposals acceptable to a majority of the committee were forthcoming.

The Delegate of CUBA expressed himself against the proposal of voting on the issue of services at this stage of the proceedings. He felt it would be preferable to defer a decision on this issue for the moment and to take up a debate of Chapter VI in the sequence of Articles 39 to 45. This procedure would allow to develop in the meantime a text with regard to services which would be acceptable to all delegates.

The Delegate of the UNITED STATES, seconding this motion, suggested the appointment of a sub-committee which should be charged with the development of an appropriate text, acceptable

to all delegations. In elaborating such a text, the sub-committee might also take into due consideration the text of sub-paragraph (c) of article 40 of the original United States Draft Charter.

The Delegate of the UNITED KINGDOM, seconding the motions of the Delegates of Cuba and the United States, stated that he originally did not consider the issue of services as a suitable object for the deliberations of a sub-committee. However, he was now not inclined to the opinion that a sub-committee might be able to compromise the various views expressed on this issue and he therefore seconded the motion to take up the debate of the Articles in their regular sequence, starting with the debate of Article 39. Upon the query of the Delegate of SOUTH AFRICA, whether countries not represented on the sub-committee would be authorised to have access to the sub-committee and to voice their opinions on the issue, the Chairman clarified that every interested country would have free access to the sub-committee in the same manner as has been established for the sub-committees of Commission A. He asked for the decision of the Commission with regard to the appointment of a sub-committee, and registering the approval of the Commission, suggested the following composition of the sub-committee: CUBA, CZECHOSLOVAKIA, INDIA, the NETHERLANDS, the UNITED KINGDOM and the UNITED STATES. The Commission approved this composition of the sub-committee and it was decided that a sub-committee should meet on Friday, 30 May, at 10.30 a.m., to elaborate a compromise text with regard to the issue of services.

2. Debate on Article 39, Paragraphs 1 and 2

The Chairman directed the attention of the Commission to the reservations mentioned in Points 1 and 2 of the

general notes of Document EPCT/W/132, and proposed to discuss these reservations in due course. He then opened the debate on Article 39, Paragraph 1, inviting a discussion of the Canadian and Belgian amendments proposed for this paragraph.

The Delegate of CANADA explained that the Canadian amendment of Article 39 aimed to present the subject matter dealt with in Article 39 in a more logical sequence than the arrangement of the New York text. By transferring some of the provisions of Paragraph 2 in the New York Text to Paragraph 1, the Canadian Text states more clearly the conditions which must exist before any practice can be made the subject of an investigation.

The Chairman invited the Commission to debate any considerations of substance raised by the Canadian amendment to Paragraph 1, but to confine the debate to substantial issues and not to pure aspects of drafting.

The Delegate of the UNITED STATES expressed his regret that the ruling of the Chair confined the debate to substantive issues raised by the Canadian amendment to Paragraph 1. He explained that the Canadian amendment constituted an entirely new framework for the whole subject matter of Article 39. In its present form, Article 39 contains two distinct parts, one, dealt with in Paragraph 1, enunciating the general principle, and the other, dealt with in Paragraphs 2 and 3, regulating under what conditions an investigation can take place. He realised that in the present form these two parts of the Article are not correctly tied to each other. However, the United States needed time for further study

of the Canadian amendment in order to determine whether the new framework supplied by the Canadian amendment is a suitable means for the purpose. At first glance it might appear that this new formulation involves a considerable watering down of the original provisions.

The Chairman stated that he realised that the Canadian amendment affected the whole of the Article, and that for this reason it would be admissible to debate the whole of the changes involved in the Canadian draft of the Article.

The Delegate of NORWAY expressed his opinion that the Canadian re-draft constituted a greatly improved formulation over the New York Text. This re-draft made it clear that the I.T.O. should not interfere with any internal national cartel arrangements but should confine its investigations only to practices of international cartels.

The Delegate of BELGIUM stated that the Canadian amendment introduced entirely new aspects. This amendment eliminates any reference to the general purposes of the Charter. In distinction, the Belgian amendment ties the provisions of Chapter VI in with the general purposes of the Charter. Since the text of Article 1 is not yet fully established, it would not be permissible at this time to single out any specific purposes in establishing criteria for harmful cartel practices. Instead, the correct course would be to refer to the general purposes of the Charter in the manner proposed by the Belgian amendment.

The Delegate of the UNITED KINGDOM explained the need for the most careful consideration of the wording of the Canadian amendment quite apart from the structural aspects of the re-arrangement. He concurred with the Delegate of Belgium and explained his preference for the original London Text, noting that the Canadian amendment introduced a number of very un-clear concepts which did not add to the text but which introduced an element of judgment.

The Delegate of SOUTH AFRICA considered the Canadian amendment a considerable improvement over the New York Text and suggested the acceptance of the Canadian draft as a basis of discussion of Article 39.

The Delegate of BRAZIL, expressing his consent to the adoption of the Canadian amendment as a basis of discussion, stressed two points previously proposed by Brazil: First, Brazil had proposed to mention expressly economic development in Article 39. This proposal had been met with the observation that the reference in Article 39 to Article 1 obviated any need for specific mentioning of economic development. However, since the text of Article 1 is not yet established, Brazil reiterates her desire to have economic development expressly mentioned in Article 39. Second, Brazil had entered a reservation with regard to the inclusion of public enterprises. This reservation is being fully maintained.

The Chairman explained that there exists a text for Article 1 in the New York draft, which for the time being must be presumed to be the final text. If, in the later course of the deliberations of the Preparatory Committee changes should be made in this text, it would be always

possible to amend Article 39 in accordance with the need arising from changes in the text of Article 1.

The Delegate of FRANCE pointed out that the Canadian draft involved changes in form as well as substance. These changes necessitated a re-opening of debate on points which had been compromised in London. For this reason the Canadian amendment could not be accepted as a basis for discussion. The text of the Canadian and the United States amendment should be carefully considered by the Commission, but the basis of discussion should be the New York Text, without prejudice to possible changes in view of the new amendments. Actually, the Canadian amendment does not only involve the whole of Article 39, but all of Chapter VI, and very careful consideration of its wording as well as of its substantive implications is essential.

The Chairman asked for the opinion of the Committee whether the Canadian amendment or the New York Text should be used as a basis for discussion. After a short debate on this question, the Commission agreed to use the New York text as a basis of discussion without prejudice to changes in its text on the basis of the Canadian and United States amendments.

In opening the debate on Paragraph 2, the Chairman directed the attention of the Commission to the reservations mentioned in Notes 1 to 4 inclusive to Paragraph 2 in Document EPCT/W/132.

With regard to the French reservation, mentioned in Note 1, the Committee approved the change in wording made by the Drafting Committee.

The Delegate of CHILE withdrew his reservation.

In opening the debate on the reservations with regard to the inclusion of public commercial enterprises, the Delegates of the United Kingdom, Brazil and China maintain the reservations which they had entered in the Drafting Committee and the Delegate of Czechoslovakia stated his concurrence in these reservations.

The Delegate of the UNITED STATES stressed that it would be incorrect in principle to establish a double standard for public and commercial enterprises. During the London Session, those countries who used the instrumentality of public commercial enterprises had been stressing the fact that such enterprises were operating according to general commercial principles. For this reason, and in view of the fact that international agreements of such enterprises with other public or private commercial enterprises cannot be ruled out, the possibility of investigation must be established for both types of enterprises.

The Delegate of CZECHOSLOVAKIA pointed out that public commercial enterprises should be subject only to the rules of State trading, while the Delegate of the UNITED KINGDOM expressed the view that a Government allowing its public enterprises to indulge in restrictive business practices would commit a breach of faith which would call into play complaints in accordance with Article 35.

The Delegate of CHINA explained that the operations of public commercial enterprises are not always strictly commercial, but often primarily designed to raise revenue. Consequently, their operations did not follow strictly commercial lines and should not be subject to the same rules as the operations of private enterprises.

In view of the divergence of views expressed on the issue of inclusion of public commercial enterprises, the Chairman, with the approval of the Committee, referred the issue to the sub-committee.

The Committee referred the amendments proposed by the United States and Canada with regard to Article 39, Paragraph 2, to the sub-committee, and the Delegate of the United Kingdom expressed his view that the Canadian re-draft widened the scope of Article 39 in two major substantive points: The New York Text had provided for the investigation of particular cases upon a specific complaint, whereas particular and "related practices" were subject to investigation, without any clear understanding what the term "related practices" involved. Secondly, the Canadian amendment added the phrase "in any particular instance" and the meaning of this phrase was unclear and seemed to enlarge the scope of Article 39.

The Delegate of CANADA explained that his amendment would empower the I.T.O. to make recommendations if, in investigating any specific practice, it discovered the existence of related practices which had not been the subject of a specific complaint.

The Delegates of the UNITED STATES and the UNITED KINGDOM agreed that the phrase "in the particular instance" should be substituted for the words "in any particular instance", this being acceptable to both of them.

The Delegate of BELGIUM stated that the phrase "related practices" as used in the Canadian amendment was not acceptable to Belgium.

In explaining the proposal of Czechoslovakia to delete the words "or to about to have" (Note 7 to Paragraph 2 of EPCT/W/132), the Delegate of CZECHOSLOVAKIA stressed that any investigation of the I.T.O. should bear only on established facts. The inclusion of this phrase would result in guess-work and in the possibility of too wide an interpretation of Paragraph 3.

The Chairman remarked that this phrase occurs repeatedly in various places in Chapter VI. Since reservations against this phrase in other places had also been tabled by other Delegations, the right procedure would be to refer the Czech proposal to the sub-committee. Upon the suggestion of the Chairman, the Commission appointed a second sub-committee composed of the Delegates of BELGIUM, BRAZIL, CANADA, FRANCE, the UNITED KINGDOM and the UNITED STATES. The first sub-committee, which is to meet at 10.30 on Friday, May 30, is solely charged with the elaboration of a text with regard to the inclusion or exclusion of services. The second sub-committee, which is to hold its first meeting on Monday, June 2, at 10.30 will have to deal with the amendments proposed by the United States and Canada and all other issues referred to it by the Commission.

The meeting was adjourned to Friday, May 30, at 3 p.m.

The Commission rose at 6 p.m.