FOURTH COMMITTEE: RESTRICTIVE COMMERCIAL PRACTICES

PRELIMINARY ANNOTATED AGENDA

Prepared by the Secretariat for Discussion
of Chapter V of the Draft Charter

RESTRICTIVE BUSINESS PRACTICES

This agenda incorporates comments as noted in the footnotes to the Report of the Second Session of the Preparatory Committee and the proposals reported to the Secretariat by delegations by Tuesday, 2 December 1947.

Where possible underlining has been used to indicate proposed additions, and square brackets to indicate proposed deletions.
CHAPTER V

RESTRICTIVE BUSINESS PRACTICES

Article 44 - General Policy Towards Restrictive Business Practices

General Notes

1. The delegation of Norway reserved its final position in regard to this Article in Geneva and intends to present an amendment at a later stage. (Report of the Second Session of the Preparatory Committee, footnote, page 38)

Paragraph 1

2. The delegation of Argentina proposes the revision of this paragraph as follows: (E/CONF.2/11/Add.3).

"Each Member shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade (whether engaged in by private or public commercial enterprises) which restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives set forth in Article I."

3. The delegation of Ecuador proposes the addition of the following paragraph after paragraph 1 as a new paragraph 2: (see also E/CONF.2/11/Add.2)

"2. The provisions of paragraph 1 shall not be construed as applying to governmental measures taken by a Member in respect of basic foodstuffs when such measures are intended to counter speculation and consequently are transitional in character and provided that they are communicated to the Organization in due time."

4. The delegation of Ecuador proposes the addition of the following paragraph as paragraph 3: (see also E/CONF.2/11/Add.21)

"3. The provisions of paragraph 1 of this article shall not apply to monopolies in the production, processing and sale of common salt, tobacco, alcohol and liquor established by Members as a source of revenue."

Paragraph 2

5. The delegation of Argentina proposes the following amendment to this paragraph: (E/CONF.2/11/Add.3)

"Without limiting the generality of paragraph 1 of this Article, and in order that the Organization may investigate in a particular instance whether certain practices have or are about to have any of the effects described in paragraph 1 of this Article, the Members agree that complaints regarding any of the practices listed in paragraph 3 of this Article shall be subject to investigation in accordance with
accordance with the procedure regarding complaints provided in Articles 45 and 47, whenever"

6. The delegation of Argentina proposes the revision of the sub-paragraph (b) as follows: (E/CONF.2/II/Add.3)

"(b) the practices are engaged in or are made effective by one or more private /or public/ commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises whether between private commercial enterprises, /between public commercial enterprises, or between private and public commercial enterprises/ and"

Paragraph 3

7. The delegation of Argentina proposes that the word "other" be inserted in sub-paragraph (c): (E/CONF.2/II/Add.3)

"(c) discriminating against other particular enterprises".

Paragraph 4

8. The delegation of Argentina proposes the deletion of this paragraph. (E/CONF.2/II/Add.3)

"In this Chapter the term 'public commercial enterprises' means
(a) trading agencies of governments, and
(b) enterprises mainly or wholly owned by public authority and over which there is effective control by public authority, including control of engagement in a practice listed in paragraph 3 of this Article.
The term 'private commercial enterprises' means all other commercial enterprises".

Article 45 - Procedure with respect to Investigations and Consultations

Paragraph 1

9. The delegation of Argentina proposes the revision of this paragraph as follows: (E/CONF.2/Add.3)

"The Organization shall arrange, if it considers such action to be justified on the basis of information submitted by the Members concerned, for particular Members to take part in a consultation requested by any affected Member which considers that in any particular instance a practice exists /whether engaged in by private or public commercial enterprises/ which has or is about to have the effect described in paragraph 1 of Article 44."

Paragraph 2

10. The delegation of Argentina proposes the deletion of the last part of this paragraph: (E/CONF.2/II/Add.3)

"2. A complaint may be presented in writing to the Organization by any affected Member on its own behalf or by any Member on behalf of any affected person, enterprise or organization within that Member's jurisdiction;"
Jurisdiction; provided that in the case of a complaint against a single special commercial enterprise acting independently, such complaint may be presented only by a Member on its own behalf and only after the Member has resorted to the procedure under paragraph 1 of this Article."

Paragraph 7

11. The delegation of Argentina proposes the following amendment to this paragraph: (E/CONF.2/11/Add.3)

"The Organization shall notify all Members of its decision and the reasons therefore the result of the investigation made."

Paragraph 8

12. The delegation of Argentina proposes that the word "Considers" be substituted for the word "Decides": (E/CONF.2/11/Add.3)

"If the Organization considers that in any particular case the practices complained of have had, have or are about to have the effect described in paragraph 1 of Article 44, it shall request each Member concerned to take every possible remedial action, and may also recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures."

Article 46 - Studies Relating to Restrictive Business Practices

13. No comments.

Article 47 - Obligations of Members

Paragraph 1

14. The delegation of Argentina proposes the deletion of the words "private and public": (E/CONF.2/11/Add.3)

"Each Member shall take all possible measures by legislation or otherwise to ensure, within its jurisdiction, that commercial enterprises do not engage in practices which have the effect described in paragraph 1 of Article 44, and in addition it shall assist the Organization in preventing these practices, such assistance to be given in accordance with the Member's system of law and economic organization."

Article 48 - Supplementary Enforcement Arrangements

15. No comments.

Article 49 - Domestic Measures Against Restrictive Business Practices

16. No comments.

Article 50 - Procedure with respect to Services

17. The delegation of Norway in Geneva reserved its final position concerning this Article in view of the fact that the Inter-governmental Maritime Consultative Committee would have a meeting in November 1947, and only after /the results of
the results of that meeting were known would it be possible for the Norwegian Government to define its final attitude to this Article. That delegation has informed the Secretariat that it is maintaining this reservation.

18. The French delegation in Geneva adhered to the reservation of the Norwegian delegation as indicated under number 17 above.

19. The delegation of Argentina proposes that this Article be deleted entirely. (E/CONF.2/11/Add.3)

20. The delegation of Ecuador proposes the deletion of the word "telecommunications" in paragraph 1 of this Article: (See also E/CONF.2/11/Add.21)

"1. The Members recognize that certain services, such as transportation, telecommunications, investments and banking, are substantial elements of international trade, and that any restrictive business practices in relation to them may have harmful effects similar to those described in paragraph 1 of Article 44. Such practices shall be dealt with in accordance with the following paragraphs of this Article."

Article 51 - Exceptions to the Provisions of this Chapter

21. No comments.