FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

ANNOTATED AGENDA

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

This agenda incorporates comments as indicated in the footnotes to the Report of the Second Session of the Preparatory Committee and the proposals reported to the Secretariat by delegations by 6.00 p.m., Saturday, 6 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

Paragraph 1

1. 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 1."

2. The delegation of Ceylon proposes the addition of the following words to this paragraph (E/CONF.2/0.4/1/Add.3).

"1. Each Member shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade, or the provision of services such as banking, insurance, transportation and telecommunication, which are intimately connected with 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
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 1."

3. The delegation of Czechoslovakia proposes that the following words be inserted in this paragraph (E/CONF.2/C.4/Add.4).

"1. Each Member shall take appropriate measures, individually or through the Organization, or in both ways, to prevent business practices, resulting from agreements between enterprises, 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 1."

4. The delegation of Mexico proposes the revision of this paragraph as follows: (E/CONF.2/C.4/Add.5)

"1. Subject to the provisions of paragraph 4 of this article, 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 1."

5. The delegation of Norway reserved its final position in regard to this Article in Geneva (Report of the Second Session of the Preparatory Committee, footnote page 58). That delegation is now proposing the revision of paragraph 1 of this Article as follows: (E/CONF.2/C.4/Add.6)

"1. 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 1."

(a) Such practices are engaged in or made effective by one or more private or public commercial enterprises or by a combination, agreements or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises or between private and public commercial enterprises.
Paragraph 6

6. The delegation of Argentina proposes the following amendment to this paragraph: (E/CONF.2/C.4/Add.3)

"Without limiting the generality of paragraph 1 of this Article, and in order that the Organization may [decide] 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 the procedure regarding complaints provided in Articles 45 and 47, whenever."

Paragraph 7

7. The delegation of Italy proposes that in this paragraph the word "establish" be substituted for the word "decide". (E/CONF.2/C.4/Add.2)

"Without limiting the generality of paragraph 1 of this Article and in order that the Organization may [decide] establish 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 the procedure regarding complaints provided in Articles 45 and 47, whenever."

Paragraph 8

8. The delegation of Mexico proposes the following revision of this paragraph: (E/CONF.2/C.4/Add.5)

"2. Without limiting the generality of paragraph 1 of this Article, and in order that [the Organization may decide] it may be decided 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, subject to the provisions of paragraph 4 of this Article, be subject to investigation in accordance with the procedure regarding complaints provided in Articles 45 and 47, whenever."

Paragraph 9

9. The delegation of Norway proposes that the following words be added at the end of this paragraph: (E/CONF.2/C.4/Add.6)

*See page 13 for amendments No. 5A and 5B proposed by the delegation of Ecuador.*

"2. Without
"2. Without limiting the generality of paragraph 1 of this Article, and in order that the Organization may decide 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 the procedure regarding complaints provided in Articles 45 and 47, whenever such complaint is presented to the Organization;"

10. Sub-paragraph (a): No comments.

11. Sub-paragraph (b): The delegation of Argentina proposes the revision of the sub-paragraph (b) as follows: (E/CONF.2/11/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".

12. The delegation of Mexico proposes the deletion of the following words: (E/CONF.2/C.4/1/Add.5)

"(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".

13. Sub-paragraph (c): The delegation of Ceylon proposes that the following words be inserted at the end of this paragraph: (E/CONF.2/C.4/1)

"(c) such commercial enterprises, individually or collectively, possess effective control of trade between two or more countries in one or more products, or possess effective control of the provision in one or more countries of a service, such as banking, insurance, transportation or telecommunication, which is intimately connected with international trade".

Paragraph 3

14. Sub-paragraph (a): The delegation of Ceylon proposes the addition of the following words at the end of this paragraph (E/CONF.2/C.4/1):

"(a) fixing prices or terms, or conditions to be observed in dealing with third parties, in the purchase, sale or lease of any product; or in the provision of a service, such as banking, insurance, transportation or telecommunication, which is intimately connected with international trade".

/15. Sub-paragraph
15. Sub-paragraph (b): No comments.

16. Sub-paragraph (c): The delegation of Afghanistan proposes that the following words be inserted at the end of this paragraph (E/CONF.2/C.4/Add.7):

"(c) discriminating against particular enterprises including the discriminatory establishment of exclusive agencies, detrimental to a Member's economy."

17. 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".

18. Sub-paragraph (d): No comments.

19. Sub-paragraph (e): No comments.

20. Sub-paragraph (f): No comments.

21. Sub-paragraph (g): The delegation of Mexico proposes the revision of this sub-paragraph as follows (E/CONF.2/C.4/Add.5):

"(g) any similar practices which the Organization may from time to time decide are restrictive business practices, subject to the provisions of paragraph 4.

22. The delegation of Greece proposes that the following new paragraph be inserted as a paragraph between paragraphs 3 and 4, or as an explanatory note to paragraph 3 of this Article (E/CONF.2/C.4/Add.3):

"The provisions of paragraph 2 of this Article shall not, however, be construed as referring to all practices involving the fixing of prices, or terms, or conditions of sale in cases where such practices are intended not to establish barriers to international trade, but to stabilize domestic prices and the income of national producers."

Paragraph 4

23. 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".

24. The delegation of Mexico proposes that the following be substituted for the present text of this paragraph (E/CONF.2/C.4/Add.5):

"For the purposes of this Chapter, the term 'monopolistic practices' shall be understood to mean practices adopted or attempted by private
by private enterprises or by combinations of private enterprises, whether of producers, buyers or sellers. The term shall not include State enterprises or enterprises of social interest or of interest to the State operating under legal provisions of Member countries. Nor shall this Chapter be regarded as including such of the practices as are referred to therein which are authorized by the constitutional or basic legislation in force in Member countries and by regulations resulting from such legislation.

Article 45

Procedure with Respect to Investigations and Consultations

Paragraph 1

25. 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."

26. The delegation of Mexico proposes the revision of this paragraph as follows (E/CONF.2/C.4/1/Add.5):

"1. 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. The Members invited to take part in a consultation shall be chosen in equal number from each group proposed for this purpose by the parties affected by the dispute."

Paragraph 2

27. The delegations of Argentina (E/CONF.2/11/Add.3) and Mexico (E/CONF.2/C.4/1/Add.5) propose the deletion of the last part of this paragraph:

"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; provided that in the case of a complaint against a single special commercial enterprise acting independently, such /complaint
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 3
28. No comments.

Paragraph 4
29. The delegation of Mexico proposes the revision of this paragraph as follows (E/CONF.2/C.4/1/Add.5):

"h. The Organization shall consider each complaint presented in accordance with paragraph 2 of this Article. If the Organization deems it appropriate it shall request Members concerned to furnish supplementary information, for example, information from commercial enterprises within their jurisdiction. After reviewing the relevant information the Organization, after hearing the opinion of the Members referred to in the final part of paragraph 1 of this Article, shall form an opinion as to whether an investigation is justified.

Paragraph 5
30. The delegation of Mexico proposes the following changes (E/CONF.2/C.4/1/Add.5):

"5. If the Organization decides, if, in accordance with the foregoing paragraph, it is considered that an investigation is justified, it shall notify all Members of the complaint, request any Member to furnish such additional information relevant to the complaint as the Organization may deem necessary, and shall conduct or arrange for hearings on the complaint. Any Member, and any person, enterprise or organization on whose behalf the complaint has been made, as well as the commercial enterprises alleged to have engaged in the practice complained of, shall be afforded reasonable opportunity to be heard."

Paragraph 6
31. The delegation of Italy proposes that the word "establish" be substituted for the word "decide" (E/CONF.2/C.4/1/Add.2):

"6. The Organization shall review all information available and establish whether the practices in question have had, have or are about to have the effect described in paragraph 1 of Article 44."

32. The delegation of Mexico proposes that the paragraph be reworded as follows (E/CONF.2/C.4/1/Add.5):

"6. The Organization shall review all information available and make recommendations based on the opinions presented by the Members referred to in paragraph 1 as to whether the practices in question
question have had, have or are about to have the effect described in paragraph 1 of Article 44."

Paragraph 7
33. 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."

34. The delegation of Italy proposes the following changes in this paragraph (E/CONF.2/C.4/1/Add.2):

"The Organization shall notify all Members of its decision establishment and the reasons therefore."

35. The delegation of Mexico proposes the revision of this paragraph as follows (E/CONF.2/C.4/1/Add.5):

"7. The Organization shall notify all Members of its decision the recommendations referred to in the previous paragraph and the reasons therefore."

Paragraph 8
36. The delegation of Argentina proposes that the word "Considers" be substituted for the word "Decides" (E/CONF.2/11/Add.3):

"If the Organization decides/ 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."

37. The delegation of Italy proposes the following changes in this paragraph (E/CONF.2/C.4/1/Add.2):

"If the Organization decides establishes 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 recommend 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 of procedure."

38. The delegation of Mexico proposes that this paragraph be revised as follows: (E/CONF.2/C.4/1/Add.5)

"If it is found in any particular case, other than the exceptions provided for in paragraph 4 of Article 44, the practices complained of have had, have or are about to have the effect described in paragraph 1 of Article 44 quoted above, the Organization shall request each Member declared to be responsible to take /every
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."

Paragraph 9

39. The delegation of Italy proposes the elimination of this paragraph: (E/CONF.2/C.4/1/Add.2)

"[The Organization may request any Member concerned to report fully on the remedial action it has taken in any particular case."

40. The delegation of Mexico proposes the following changes in this paragraph: (E/CONF.2/C.4/1/Add.5)

"9. the Organization may request any Member [concerned] referred to in paragraph 8 to report fully on the remedial action it has taken in any particular case."

Paragraph 10

41. The delegation of Italy proposes the deletion of this paragraph: (E/CONF.2/C.4/1/Add.2)

"[10. As soon as possible after its proceedings in respect of any complaint under this Article have been provisionally or finally closed, the Organization shall prepare and publish a report showing fully the decisions reached, the reasons therefor and any measures recommended to the Members concerned. The Organization shall not, if a Member so requests, disclose confidential information furnished by that Member which if disclosed would substantially damage the legitimate business interests of a commercial enterprise."

Paragraph 11

42. No comment.

Article 46

Studies Relating to Restrictive Business Practices

43. The delegation of Ceylon proposes the revision of this Article as follows: (E/CONF.2/C.4/1/Add.3)

1. The Organization is authorized:

(a) to conduct studies, either on its own initiative or at the request of any Member or of any organ of the United Nations or of any other inter-governmental organization relating to

(i) general aspects of restrictive business practices affecting international trade or the provision of services such as banking, insurance, transportation, and telecommunication, which are intimately connected with international trade.

(ii) conventions, laws, and procedures concerning, for example, incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade marks, copyrights, patents and the exchange and development

of technology,
of technology, insofar as they are relevant to restrictive business practices affecting international trade or the provision of services such as banking, insurance, transportation, and telecommunication, which are intimately connected with international trade.

(b) to request information from Members in connection with such studies.

2. The Organization is authorized:
(a) to make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter; and
(b) to arrange for conferences of Members to discuss any matters relating to restrictive business practices affecting international trade or the provision of services such as banking, insurance, transportation, and telecommunication, which are intimately connected with international trade.

Article 47

Obligations of Members
Paragraph 1

44. 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."

45. The delegation of Mexico proposes the revision of the text as follows: (E/CONF.2/14/Add.5)

"1. Each Member shall take all possible measures by legislation or otherwise consistent with their existing legislation, within its jurisdiction, that commercial enterprises do not in the future engage in practices which have the effect described in paragraph 1 of Article 44, subject to the provisions of paragraph 4 of Article 44, and in addition it shall assist the Organization in preventing these"
these practices, such assistance to be given in accordance with the Member's system of law and economic organization."

Paragraph 2
46. No comments.

Paragraph 3
47. No comments.

Paragraph 4
48. The delegation of Italy proposes the deletion of the word "decision" in this paragraph: (E/CONF.2/C.1/Add.2)

"Each Member shall take full account of each request and recommendation of the Organization under Article 45 and, in accordance with its system of law and economic organization, take in the particular case the action it considers appropriate having regard to its obligations under this Chapter."

Paragraph 5
49. No comments.

Paragraph 6
50. No comments.

Article 48

Supplementary Enforcement Arrangements

51. The delegation of Mexico proposes that this Article be deleted entirely:
(E/CONF.2/C.4/1/Add.5)

"Article 48.
Supplementary Enforcement Arrangements.

1. Members may co-operate with each other in prohibitive, preventive or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any Member in furtherance of the objectives of this Chapter.

2. Members participating in or intending to participate in such co-operative action shall notify the Organization."

Article 49

Domestic Measures Against Restrictive Business Practices

52. No comments.

Article 50

Procedure with Respect to Services

53. The delegations of Argentina (E/CONF.2/11/Add.3) and Mexico (E/CONF.2/C.4/1/Add.5) propose that this Article be deleted entirely.

"Article 50.
Procedure with respect to Services.

1. The Members recognize that certain services, such as transportation, telecommunications, insurance and banking, are substantial elements of international trade, and that any restrictive 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.

"f. If any Member considers that there exist restrictive business practices in relation to a service referred to in paragraph I of this Article which have or are about to have such harmful effects, and that its interests are thereby seriously prejudiced, the Member may submit a written statement explaining the situation to the Member or Members the private or public enterprises of which are engaged in the services in question. The Member or Members concerned shall give sympathetic consideration to the statement and to such proposals as may be made with a view to affording adequate opportunities for consultation, with a view to effecting a satisfactory adjustment.

"g. If no adjustment can be effected in accordance with the provisions of paragraph 2 of this Article, and if the matter is referred to the Organization, it shall be transferred to the appropriate inter-governmental organization if one exists, with such observations as the Organization may wish to make. If no such inter-governmental organization exists, Members may ask the Organization, under Article 69 (c) to make recommendations for, and promote international agreement on, measures designed to remedy the particular situation so far as it comes within the scope of this Charter.

"h. The Organization shall, in accordance with paragraph 2 of Article 64, co-operate with inter-governmental organizations in connection with restrictive business practices affecting any field coming within the scope of this Charter and those organizations shall be entitled to consult the Organization, to seek advice, and to ask that a study of a particular problem be made."

54. The delegation of Ceylon proposes the deletion of the paragraphs 1, 2 and 3 of this article. (E/CONF.2/C.4/1/Add.3)

55. The delegation of Ecuador proposes the deletion of the word "telecommunications" in paragraph 1 of this Article: (E/CONF.2/C1/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."

56. 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 that meeting were known would it be possible for the Norwegian Government to define its final attitude to this Article. That delegation is maintaining this reservation pending the decision on the Norwegian proposal for a new Article 18A which had been presented in Committee 3. (E/CONF.2/C.4/SR.4)

The French delegation in Geneva adhered to the reservation of the Norwegian delegation.

**Article 51**

**Exceptions to the provisions of this Chapter**

**Paragraph 1**

57. (a) The delegation of Mexico proposes the deletion of the word "and" at the end of this paragraph: (E/CONF.2/C.4/1/Add.5)

"(a)" inter-governmental commodity agreements meeting the requirements of Chapter VI; and

58. (b) No comments.

59. (c) The delegation of Mexico proposes that the following sub-paragraph (c) be added to this paragraph: (E/CONF.2/C.4/1/Add.5)

(c) practices engaged in by Central Banks for the purpose of regulating credit and the circulation of money; and

60. (d) The delegation of Mexico proposes that this new paragraph (d) be added to this paragraph: (E/CONF.2/C.4/1/Add.5)

(d) governmental measures connected with the provision of the services referred to in the previous Article.

**Paragraph 2**

61. No comments.

5A. The delegation of Ecuador proposes the addition of the following paragraph after paragraph 1 as a new paragraph: (see also E/CONF.2/11/Add.21)

"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."

5B. The delegation of Ecuador proposes the addition of the following after paragraph 1 as a new paragraph: (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."