FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUB-COMMITTEE A

Draft Agenda prepared by the Secretariat for the Sixteenth Meeting

To be held, 29 December 1947, at 10.30 a.m.

1. Consideration of the proposals submitted by the Ad Hoc Committee as follows (E/CONF.2/C.4/A/W.4):

(a) to substitute the words "among a number of countries" for the words "between two or more countries" in sub-paragraph (c), paragraph 2, Article 44.
(b) to add the word "trading" before the word "enterprises" in the beginning of sub-paragraph (b), paragraph 4, Article 44.
(c) to add the following paragraph 5 to Article 44 and delete Article 51:

"5. Any business practices described in this Article, insofar as they are specifically subjected to control by the provisions of Chapter IV and VI or any other Chapter of this Charter, shall not be subject to the procedures of this Chapter".

(d) To revise paragraph 2 of Article 45 (now paragraph 1, Article 45 A) as follows:

"A complaint may be presented in writing to the Organization by any affected Member acting on its own behalf or by any Member on behalf of any affected person, enterprise or organization within that Member's jurisdiction may present a written complaint to the Organization that in any particular instance a practice exists (whether engaged in by private or public enterprises) which has or is about to have the effect described in paragraph 1 of Article 44. Provided that in the case of complaints against a single public commercial enterprise acting independently of any other enterprise such complaints 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 in Article 45.

(e) To add the
(e) To add the following text at the end of paragraph 8 of Article 45 (now paragraph 7, Article 45 A):

"Provided that if the Organization finds that the practices concerned have the effect and are as described in Article 44 and have been specifically required by law, the provisions in paragraphs 7, 8, 9 and 10 of this Article shall not apply, and the complaining Member shall have further recourse only in accordance with the procedures provided in Chapter VIII or other relevant provisions of this Charter".

(f) to revise paragraph 1 of Article 47 as follows:

"1. Each Member shall take all possible measures by legislation or otherwise, in accordance with its constitution or system of law and economic organization, to ensure within its jurisdiction that private and public commercial enterprises do not engage in practices which have the effect and are as described in 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]."

(g) To revise paragraph 1 of Article 50 as follows:

"The Members recognize that certain services such as transportation, telecommunications, insurance and the commercial services of banks [banking] are substantial elements of international trade and that any restrictive business practices [in relation to them] by enterprises engaged in these activities in international trade 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".

(h) To substitute "and shall afford" for the words "with a view to affording" in paragraph 2 of Article 50.

(i) The statement to be inserted in the report of the Sub-Committee to the Fourth Committee to clarify and define the meaning of the words "decide" and "decision" as they are used throughout Chapter V:

"The words 'decide' and 'decision' as used in Articles 44, 45 A (except in paragraphs 3 and 4) and 47 relate to a conclusion whether or not particular practices have had, have or are about to have the harmful effects described in paragraph 1 of Article 44. Such 'decisions' of the Organization shall not be construed as binding the legislative, executive or judicial authorities of a Member State. Members' obligations regarding these 'decisions' are set out in paragraph 4 of Article 47".
2. The amendment proposed by the delegation of Mexico for the addition of a new sub-paragraph (d) to paragraph 1, Article 51 (No. 60 of E/CONF.2/C.4/4) as follows:

"(d) Governmental measures connected with the provision referred to in the previous Article".

3. The amendment proposed by the delegation of Argentina for the insertion of the word "other" in sub-paragraph (c) paragraph 3, Article 44 (No. 17 of E/CONF.2/C.4/4).