PREPARATORY COMMITTEE OF THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

DRAFTING COMMITTEE

TEXT OF ARTICLES TENTATIVELY AGREED AT THE TWELFTH AND THIRTEENTH MEETINGS

Article 40

Procedure with Respect to Complaints and Conferences

Members agree that the Organization shall:

(a) Arrange, if it considers such action to be justified, for particular Members to take part in a conference requested by any Member which considers that any particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39.

(b) Consider each written complaint submitted by any Member or submitted with the authorization of a Member by any affected person, organization or business entity within that Member's jurisdiction, claiming that particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39, and prescribe the minimum information to be included in such complaints.

(c) Consider, and request each Member concerned to furnish, such information as the Organization may deem necessary including, for example, information or data from commercial enterprises within its jurisdiction, and then determine whether further investigation is justified.

(d) If it considers that further investigation is justified notify all Members of each such complaint, request the complainant or any
Member to provide such information relevant to the complaint as the Organization may deem necessary and conduct or arrange for hearings provided that any Member and the parties alleged to have engaged in the practice will have the opportunity to be heard at such hearings.

(e) Review all information available and come to its findings whether the practices in question have or are about to have the effect described in paragraph 1 of Article 39.

(f) Report fully to all Members the findings reached and the reasons therefore; if it finds that the practices have had or are about to have the effect described in paragraph 1 of Article 39, 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.

(g) Request all Members concerned to report fully the action they have taken to achieve these results.

(h) Prepare and publish, as expeditiously as possible after enquiries have been provisionally or finally closed, reports on all complaints dealt with under sub-paragraph (d) of this Article, showing fully the decisions, findings or other conclusions reached, the reasons therefore and any action which the Organization has recommended the Members concerned to take; provided that:

(1) publication of such reports or any portion thereof may be withheld if it deems this course justified; and

(ii) the Organization shall not, if a Member so requests, disclose confidential information furnished by that Member which would materially damage the legitimate business interests of a commercial enterprise.

(i) Report to all Members, and make public if it deems desirable, the action which has been taken by the Members concerned to achieve the
purposes described in sub-paragraph (f) of this Article.

Article 41

Studies Relating to Restrictive Business Practices

The Organization may:

(a) Conduct studies, either on its own initiative or at the request of any Member of the United Nations or any specialized agency brought into relationship with the United Nations, relating to

(i) types of restrictive business practices in international trade;

(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.

(b) Make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter.

(c) Arrange conferences for purposes of general consultation on any matters relating to restrictive business practices.

Article 42

Obligations of Members

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

(a) Take all possible steps by legislation or otherwise to ensure that private and public commercial enterprises within its jurisdiction do not engage in practices which have the effect described in paragraph 1 of Article 39.

/(b) Take
(b) Take fullest account of the Organization's findings, requests and recommendations made under sub-paragraph (f) of Article 40 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 the effect described in paragraph 1 of Article 39.

(c) Establish procedures to deal with complaints, conduct investigations, prepare information and reports requested by the Organization and generally assist in preventing practices which have the effect described in paragraph 1 of Article 39, these measures to be taken in accordance with the particular system of law and economic organization of the Member concerned.

(d) Conduct such investigations as may be necessary and practicable to secure information requested by the Organization or to prevent practices which have the effect described in paragraph 1 of Article 39.

(e) Furnish to the Organization, as promptly as possible and to the fullest extent practicable, such information as is requested by the Organization under sub-paragraphs (c), (d) and (g) of Article 40 and under sub-paragraph (a) of Article 41 provided that the Member:

(i) may withhold confidential information relating to its national security; or

(ii) on proper notification to the Organization, may withhold information which is not essential to the Organization in undertaking an adequate investigation and which, if disclosed, would materially damage the legitimate business interests of a commercial enterprise. In notifying the Organization that it is withholding information pursuant to this clause, the Member shall indicate the general character of the information withheld.

/(f) Report,
(f) Report, as requested by the Organization under sub-paragraph (g)
of Article 40, the action taken, independently or in concert with
other Members, to implement recommendations made by the Organization
under sub-paragraph (f) of Article 40, and, in cases in which no
action is taken, to explain to the Organization the reasons therefore
and discuss the matter further with the Organization if requested
to do so.

(g) Take part in conferences upon the request of the Organization in
accordance with sub-paragraph (e) of Article 40 and sub-paragraph (c)
of Article 41.

Article 43
Supplementary Enforcement Arrangements

1. Members may, by mutual accord, 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.

NOTES

Article 40

1. The Delegate for France suggested that the beginning of paragraph (b)
of Article 40 should be re-drafted to read as follows:

"Consider each written complaint submitted by any Member, or
submitted, with the support of such Member, by any affected
person ............"

This suggestion was supported by some delegates and opposed by others.
It was agreed that the suggestion, together with the arguments in support
of it, should be mentioned in the Report. The Delegate for the
United Kingdom proposed that to meet the Delegate for France's point the

/following
following wording should be substituted for sub-paragraph (b):

"Consider each written complaint submitted by any Member on its own behalf or, with the authorization of a Member, by any affected person ..........."

It was also agreed that this proposal should be recorded in the Report.

2. It was agreed to mention in the Report that once a complaint had been lodged with the Organization, one of the Organization’s first tasks would be to approach the Member within whose jurisdiction the person or business entity alleged to be engaged in a restrictive business practice was operating, for information.

3. Several delegates suggested the addition to sub-paragraph (f) of Article 40 and to sub-paragraph (b) of Article 42 of the words "or are about to have" which are placed in square brackets. This addition was suggested, it was said, to make these sub-paragraphs conform with paragraph 1 of Article 39 and with sub-paragraphs (a) and (b) of Article 40. On the other hand it was argued that this alteration would amount to a change of substance outside the competence of the Drafting Committee. It was agreed to mention this proposal in the Report.

Article 42

1. The Delegate for Australia questioned whether sub-paragraph (g) of Article 40 was necessary in view of sub-paragraph (f) of Article 42. This point was referred to the Legal Drafting Sub-Committee.

2. The Delegates for Belgium-Luxembourg and France reserved their positions regarding the words "which is not essential to the Organization in undertaking an adequate investigation".

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