1. The text of Chapter VI as redrafted by the Drafting Committee appears in documents E/PC/T/C.6/W.66 and E/PC/T/C.6/W.79, and as redrafted by the Legal Drafting Sub-Committee, in this document.
CHAPTER VI

RESTRICTIVE BUSINESS PRACTICES

Article 39

Policy Towards Restrictive Business Practices

1. Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set forth in Article 1.
CHAPTER VI

RESTRICTIVE BUSINESS PRACTICES

GENERAL COMMENTS

1. The delegates of Brazil, Chile, Cuba, India, and South Africa sustained their reservation from the First Session of the Preparatory Committee against the exclusion of services from the purview of Chapter VI. The delegate of Cuba went on record with the opinion that services fell under the terms of reference of the Preparatory Committee and that in this respect there was no necessity to request a ruling of the Economic and Social Council of the United Nations.

2. The delegates for Brazil and Chile maintained the reservations which their delegations had made at the First Session regarding the compulsory registration of restrictive business practices with the Organization. The delegate for Czechoslovakia made a similar reservation. The delegate for Brazil also maintained the reservation which his delegation had made at the First Session, that the register of restrictive business practices kept by the Organization should be given some degree of publicity.

SPECIFIC COMMENTS

Article 39

Policy Towards Restrictive Business Practices

Brazil's original motion to include the mention of economic development in paragraph 1 was met by the wording of paragraph 1, which, through its reference to all the purposes of the Organization as set forth in Article 1 implicitly included economic development.
2. Without limiting the generality of paragraph 1 of this Article, the practices listed in paragraph 3 below shall be subject to investigation in accordance with the procedure with respect to complaints provided by the relevant Articles of this Chapter, if the Organization considers them to have or to be about to have any of the harmful effects enumerated in paragraph 1 of this Article, whenever

(a) they are engaged in or made effective by one or more private commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises, (i.e., trading agencies of government enterprises in which there is effective public control), or between private and public commercial enterprises; and

(b) such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products.

3. The practices referred to in paragraph 2 of this Article are as follows:
COMMENTARY

1. The arrangement of the text of paragraph 2, using the same wording as the London draft, has been changed in order to improve the style.

2. In the first sentence of paragraph 2 the words "in accordance with the procedure with respect to complaints provided by the relevant articles of this Chapter" have been inserted on the motion of the French delegate in order to make it clear that the investigation procedure provided for in Article 40 should only follow upon a specific complaint in accordance with Article 40, and not as a consequence of studies undertaken by the Organization in accordance with Article 41. The Drafting Committee was not certain whether this addition did not constitute a substantive change of the original text, by limiting the authority of the Organization to investigate restrictive business practices on the Organization's own initiative. The Committee decided to include the sentence but to refer the question of the substantive change to the Second Session of the Preparatory Committee.

39:2(a) 3. The term "public control" has been substituted for the term "government control" to clarify that enterprises under the control of subordinate public bodies, such as municipalities and others, also fall under this sub-paragraph.

The delegates of China and Brazil reserved their position with regard to the inclusion of public commercial enterprises in this sub-paragraph.
a) fixing prices or terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;

(b) excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business activity, allocating customers, or fixing sales or purchase quotas;

(c) discriminating against particular enterprises whether by boycott or otherwise;

(d) limiting production or fixing production quotas;

(e) suppressing the application or development of technology or invention, whether patented or unpatented;

(f) extending the use of rights under patents, trade marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

Article 40

Procedure with Respect to Complaints and Conferences

1. 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;
39:3(c) 1. The rewording of this sub-paragraph was approved to meet a reservation on the part of Belgium which had claimed at the First Session of the Preparatory Committee that boycotts constituted not a specific practice but only a special case of discrimination.

39:3(e) 2. The words "or development" were added to the text on the suggestion of the Secretariat.

39:3(f) 3. The words "of the authorized grant" were added on the motion of Canada, so as to clarify the wording.

4. The delegate for the Netherlands maintained his reservation from the First Session regarding the technical character of this sub-paragraph.

Article 40

Procedure with Respect to Complaints and Conferences

GENERAL COMMENTS

1. The London draft of this Article was arranged in lettered paragraphs and, in order to make the editorial arrangement of this article conform to the arrangement generally adhered to throughout the Charter, the Drafting Committee arranged the Article into numbered paragraphs and lettered sub-paragraphs.

2. The delegate for the Netherlands maintained the reservation his delegation had made at the First Session regarding the reference of complaints to the International Court of Justice.

3. An Australian rearrangement and partial redraft of Article 40 was referred to the Second Session of the Preparatory Committee.
(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 information or data from commercial enterprises within its jurisdiction, and then determine whether further investigation is justified;
Specific Comments

1. The word "permission" was changed to "authorization" to meet the observation of the French delegation that the member states would have to accept a certain amount of responsibility and acquiescence (French: "assistance") for private complaints, since the procedure following such complaints involved an international organization and sovereign governments. More "permission" is insufficient because it would involve no more than a kind of "visa".

The United Kingdom delegation, seconding this view, suggested the following formulation: "consider each written complaint submitted by a Member on its own behalf or on behalf of any affected person, organization or business entity, within that Member's jurisdiction". The Drafting Committee decided to retain the London text, merely substituting the word "authorization" for "permission", because the acceptance of responsibility on the part of governments would constitute a substantive change from the London text, by narrowing down the right of private persons and organizations to file complaints with the Organization. The Drafting Committee decided to refer this issue to the Second Session of the Preparatory Committee and to add the observation that in case of a change in the text restricting the right of private persons to complain to the Organization it would also be necessary to restrict the right of private organizations to appear before the Organization under Article 40, paragraph 1, sub-paragraph (d).

2. The Drafting Committee wished to state that in its opinion it would be one of the first tasks of the Organization, once a complaint had been received, to approach those Members for information within whose jurisdiction the person or business entity alleged to be engaged in the restrictive business practice was operating.
CHARter

(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 will deem necessary and conduct or arrange for hearings provided that any Member and the parties alleged to have engaged in the practice shall have the opportunity to be heard at such hearings.

(a) review all information available and determine whether the practices in question have or are about to have the effect described in paragraph 1 of Article 39.

2. The Organization shall

(a) report fully to all Members its determination reached and the reasons therefor; if it finds that the practices have had or are about to have the effect described in paragraph 1 of Article 39, it shall request each Member concerned to take every possible action to prevent the continuance or recurrence of the practices, and may recommend to the Member concerned remedial measures to be carried out in accordance with their respective laws and procedures;

(b) request all Members concerned to report fully the action they have taken to achieve these results;

(c) prepare and publish, as soon as possible after enquiries have been provisionally or finally closed, reports on all complaints dealt with under paragraph 1 (d) of this Article, showing fully its decisions, findings or other conclusions, the reasons therefor and any action which the Organization has recommended to the Members concerned; Provided, that

(i) 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 request
40:1(e) 3. The Drafting Committee inserted the words "or are about to have" into the text of this sub-paragraph in order to make the text consistent with the wording of Article 39, paragraph 2.

40:2(a) 1. Three delegations objected to the insertion of the clause "or are about to have" in this paragraph because they considered such an insertion to contain a substantive change by increasing the authority of the Organization under this paragraph. The Committee consequently put the phrase in this context into square brackets and referred the decision on the issue to the Second Session of the Preparatory Committee.

40:2(c) 2. The words "provisionally or finally closed" were substituted for the word "completed" to clarify that the Organization, according to the circumstances of the case, would not always be obliged to complete its enquiries, but if its findings warranted such procedure could temporarily discontinue investigations.

40:2(c)(i) 3. For reasons of better drafting, the clause was sub-divided into clause (i) and (ii) and in (ii), the words "to any person" were deleted to clarify that in the case of (ii) such information should also not be divulged to organizations other than individual persons.
disclose confidential information furnished by that Member which would materially damage the legitimate business interests of a commercial enterprise.

(d) report to all Members and make public if it deems desirable, the action which has been taken by the Members concerned to realize the purposes described in paragraph 2.(a) of this Article.

Article 41

Studies Relating to Restrictive Business Practices

1. The Organization may

(a) conduct studies, either on its own initiative or at the request of any Member, or of the United Nations, or of 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 concerning for example incorporation, company registration, investments, securities, prices, markets, fair trade practices, trademarks, copyrights, patents and the exchange and development of technology, insofar as they are relevant to restrictive business practices;

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

2. The Organization may

(a) make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter;

(b) arrange conferences for purposes of general consultation on any matters relating to restrictive business practices.
Article 41

Studies Relating to Specific Business Practices

General Comments

1. The London draft of this Article was arranged in lettered paragraphs and in order to make the editorial arrangement of this article conform to the arrangement generally adhered to throughout the Charter, the Drafting Committee arranged the Article into numbered paragraphs and lettered sub-paragraphs.
CHAPTER

Article 42

Obligation of Members

1. In order to implement the preceding Articles in this Chapter, each Member shall

(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 fullest account of the Organization's determinations, requests and recommendations made under paragraph 2 (a) 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 find to have had or to be about to have the effect described in paragraph 1 of Article 39.

2. It shall further

(a) 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 country concerned;

(b) 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;

(c) furnish to the Organization, as promptly as possible
COMMENTARY

Article 42

Obligations of Members

General Comments

1. The London draft of this Article was arranged in lettered paragraphs and in order to make the editorial arrangement of this article conform to the arrangement generally adhered to throughout the Charter, the Drafting Committee arranged the Article into numbered paragraphs and lettered sub-paragraphs.

Specific Comments

42:1(b)

1. The Drafting Committee decided to insert the phrase "or to be about to have" in square brackets in the text because the same doubts with regard to substance prevailed as regarding the insertion of this phrase in Article 40, paragraph 2 (a).
and to the fullest extent practicable, such information as is requested by the Organization under paragraphs 1 (c), (d) and 2 (b) of Article 40 and under paragraph 1 (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;

(d) report, as requested by the Organization under paragraph 2 (b) of Article 40, the action taken, independently or in concert with other Members, to implement recommendations made by the Organization under paragraph 2 (a) of Article 40, and, in cases in which no action is taken, to explain to the Organization the reasons therefor and discuss the matter further with the Organization if requested to do so;
1. This new clause was inserted to provide for the adequate protection of legitimate business interests of commercial enterprises against damaging disclosures. Upon the motion of the United Kingdom, Committee III of the First Session, in its last meeting, had agreed to incorporate such a proviso into the text of Chapter VI and the clause newly inserted under (i) implements this decision.

2. The Belgian, French and Luxembourg delegations recorded a reservation against the phrase "which is not essential to the Organization in undertaking an adequate investigation", as a substantive departure from the agreement reached at the First Session.
(c) take part in conferences upon the request of the Organization in accordance with paragraph 1 (a) of Article 40 and paragraph 2 (b) of Article 41.

Article 43

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 44

Continued Effectiveness of Domestic Measures against Restrictive Business Practices

Any act or omission to act on the part of the Organization shall not preclude any Member from enforcing any national stature or decree directed towards preventing monopoly or restraint of trade.

Article 45

Exceptions to the Provisions of this Chapter

1. The obligations in this Chapter shall not apply to

   (a) inter-governmental commodity arrangements meeting the requirements of Chapter VII;

   (b) the international arrangements excepted in Article 59.
COMMENTARY

1. The Drafting Committee inserted a reference to paragraph 1 (a) of Article 40 because it believed that the intention of the First Session had been to include in this paragraph conferences under Article 40 as well as conferences under Article 41, and that the omission of a reference to Article 40 had been a mere drafting mistake.

2. The United Kingdom reserved its position on the insertion of the reference to paragraph 1 (a) of Article 40.

Article 45

Exceptions to the Provisions of this Chapter

1. The Drafting Committee examined the desirability of re-inserting paragraph 1 (c) of Article 40 of the United States Draft Charter into the text of Article 45. One group of countries, especially Belgium, Brazil, China and India, expressed the view that the insertion of this sub-paragraph
2. Notwithstanding the foregoing paragraph, the Organization may make recommendations to Members and to appropriate inter-governmental organizations concerning any features of the arrangements referred to in paragraph 1 (b) of this Article which may have the effect described in paragraph 1 of Article 39.
COMMENTARY

would constitute a substantive change of the London draft, since the question of services had been exhaustively debated in London without reaching agreement. Another group of countries, specifically Australia, Canada and France, held that the question of inclusion of services in the scope of the International Trade Organization was a substantive issue to be decided at the Second Session of the Preparatory Committee; however, the Drafting Committee under its terms of reference ought to draft provisions on the issue of which specific services would be excluded from this Chapter, even if services in general should fall within the scope of the Charter. The United Kingdom delegation expressed itself in favour of the complete exclusion of services.

2. The delegate for Chile proposed the re-insertion of the following clause as Article 45, paragraph 1, sub-paragraph (c):

"Inter-governmental agreements under the sponsorship of the Economic and Social Council of the United Nations, the International Trade Organization and other specialized agencies concerning railway transportation, aviation, shipping and telecommunications services".