Amendments to Draft Articles of Chapter VI, submitted by Sub-Committee 2.

Proposed by South African Delegation.

Article 39, paragraph 2 to read as follows:

2(a). To enable the Organization, without limitation of the generality of paragraph 1 of this Article, to decide whether in any particular case practices, specified in a complaint concerning the practices listed in paragraph 3 of this Article, have or are about to have any of the effects mentioned in paragraph 1, the complaint shall be subject to investigation in accordance with the procedure prescribed in Articles 40 and 42.

(b) Such an investigation shall be made whenever a complaint is submitted to the Organization that practices, being any of the practices listed in paragraph 3, are being engaged in, or are being made effective by commercial enterprises which, individually or collectively, exercise effective control over trade in one or more products among two or more countries, irrespective of whether such enterprises be public or private commercial enterprises or whether they engage in such practices by combination, agreement or other arrangement as between private commercial enterprises, between public commercial enterprises or between private and public commercial enterprises.
EXPLANATORY NOTE BY THE DELEGATION.

As the present draft of paragraph 2 reads, all of the practices listed in paragraph 3 would become subject to investigation whenever a complaint is lodged with the Organization, when obviously only practices complained of should be subject to investigation.

Secondly, an investigation is to be made not when (a) a complaint is made..... (b) practices are engaged in ..... and (c) commercial enterprises possess control ..... but whenever a complaint is received that practices of the nature of those listed in paragraph 3 are being engaged in or made effective by commercial interests who have effective control.

The proposed amendment is intended to clarify this. Paragraph 3, "the following" to replace "as follows" in line 2.

Article 40:
Paragraph 2. "may request any Member" to replace "shall request all Members" in line 1, and "it" to replace "they" in line 2.

NOTE: For obvious reasons no obligation should rest on the Organization to request Members to report upon remedial actions taken by them.

Article 42:

Delete ",as requested by the Organization," in lines 1 and 2.

NOTE: See note to proposed amendment of Article 40, paragraph 9.

Each Member should report, but it should not be incumbent on the Organization to request them to report upon, remedial action taken by it.