

CHAPTER V.—RESTRICTIVE BUSINESS PRACTICES. (Articles 44–51)

The Chapter on restrictive business practices is the first codification that has been made by a group of countries of the principles to which it is desirable to have international adherence in order to limit, or to eliminate business practices having harmful effects on world trade which monopolists, whether individual entities or cartel organizations, are in the position to pursue. The Charter would be inadequate in its scope if it did not provide for the correction of harmful conduct of that type by commercial enterprises. However, since international trade is not carried on by privately-owned commercial enterprises only, the Preparatory Committee agreed that the Charter should not leave the way open for one standard of conduct in those respects for State enterprises, and a different standard for others. The Chapter as drafted does, nevertheless, make a distinction between State and other enterprises in the operation of the complaints procedure prescribed in paragraphs 1 and 2 of Article 45, but this does not extend to relaxation in the standard of conduct expected.

In paragraph 3 of Article 45 an enumeration is made of what are regarded as the main restrictive business practices, but it is not claimed that it is an exhaustive specification. It is important when considering Chapter V to appreciate that it does not condemn such practices, but is designed to eliminate them when they have harmful effects. Some delegates held the view that whenever the practices listed are pursued their effect must be harmful, but others saw merit in them in circumstances, for instance, when a cartel arrangement :

- (1) Brings stability to industries requiring large investments and depending mainly on external markets ; or
- (2) When it leads to exchange of technical information and thus facilitates the establishment of new industries in, for example, the less industrialized countries.

The Chapter represents the compromise made between the extremes of these points of view. Its essence is that business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control and which have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives of the Organization are the ones to which Members are expected to give their attention.

The significance of the Chapter will be more readily appreciated if paragraph 1 of Article 44 is identified as a statement of general policy towards restrictive business practices to which Members subscribe. If there were the likelihood that all Members of the Organization could agree on whether or not any particular practice had harmful effects on the expansion of production or trade and interfered with the achievement