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DRAFT REPORT OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES ON ITS THIRTEENTH SESSION

Rapporteur: Mr. Gomi Tharaka Senadhira (Sri Lanka)

ITEMS 3, 4 AND 5 (continued)

<u>Speakers</u> :	Germany	Republic of Korea
	Italy	Zambia
	Jamaica	Spain
	United Kingdom	Georgia
	Malaysia	

Note for Delegations

This draft report is a provisional text circulated for clearance by delegations.

Requests for amendments - to be submitted in English or French - should be communicated by Friday, 4 November 1994 at the latest to:

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ITEMS 3, 4 AND 5

(continued)

20. The representative of Germany stated that the most convincing way of expressing commitment to the Set of Principles and Rules was to ensure a vigorous enforcement of the national competition laws in the classic areas of competition such as restrictive horizontal agreements, abuse of market power, and anticompetitive mergers and acquisitions. He gave some examples of this in recent German enforcement activities. In view of the increasing international dimension of competition policy and recent trends and changes in the political and competition environment, he stressed the growing need to secure the beneficial functions of competition at the global level. In particular, the liberalization of market access negotiated by GATT parties should be protected from being circumvented by private activities. He felt, however, that globally binding general competition rules and institutions to implement such rules were premature at this time. But the Intergovernmental Group was still the only universal body which could pave the way for, and actively take part in, the forthcoming discussions which might lead to a new international competition order. Germany, therefore, continued to support this initiative.

21. The representative of Italy described some aspects of the experience of his country's competition authority in implementing its recently adopted competition law. The authority had laid emphasis on its advisory role vis-à-vis other Government agencies to try and ensure that liberalization and privatization would be enhanced by competition. It had paid particular attention to the control of regulatory monopolies, including the question of how to avoid abuses by such monopolies through cost-subsidization in contingent markets.

22. The representative of Jamaica described the main functions of the Jamaican Fair Trading Commission since its establishment in September 1993. Among others, investigations had been undertaken into restrictive practices in the stock exchange and telecommunications, as well as the water, cement and petroleum industries. Other investigations had concerned bakers, the milk industry and professional bodies. The Commission's advocacy functions were used in the privatization programme, particularly with respect to the National Investment Bank of Jamaica. As part of its broader function, the Commission had launched a public education exercise in the form of video, advisory opinions, pamphlets

and press releases. The Commission held seminars for members of parliament and judges. Seminars were also held with the United States Federal Trade Commission and Justice Department, as well as with UNCTAD. Finally, he indicated his willingness to share with other countries his experience in setting up a competition authority.

23. The representative of the United Kingdom highlighted the publication by the Office of Fair Trading of a code of practice which set out timetables for preliminary enquiries and substantive responses to complaints in different areas of investigatory work. This code was aimed at ensuring rapid decision-making and transparency without sacrificing the quality of work or the commitment to effective competition enforcement.

24. The representative of Malaysia referred to the economic growth and the trends towards liberalization, privatization and globalization in her country, which had contributed to an increase in foreign investment, including through mergers, takeovers and joint ventures. These trends had influenced the decision to adopt a competition law. In the formulation of the law, assistance had been received from the UNCTAD secretariat in the form of seminars and other technical cooperation. Some difficulties were being experienced in drafting the law, and her country was seeking advice from experts in this area.

25. The representative of the Republic of Korea said that in the 14 years of existence of his country's Fair Trade Act, the Act had already been amended four times in order to enable it to fulfil its role effectively. Significant recent changes in the domestic and global economic environment made necessary yet another amendment, which was now under consideration by the National Assembly and was likely to be passed by the end of 1994. Under the new amendment it was expected that: (i) the investment limit of large business groups would be lowered to 25 per cent from the current 40 per cent; (ii) the mandatory notification of international contracts would be abolished; and (iii) remedies to counter violations of the law would be strengthened. He added that the Korean Fair Trade Commission had strengthened its cooperation with the competition policy authorities of other countries as well as with relevant international organizations. In 1993, for example, the Republic of Korea had obtained observer status in the OECD Competition Law and Policy Committee.

26. The representative of Zambia stated that, since 1991, his country had undertaken a comprehensive economic reform programme including legal reform to support the private sector. Specifically, the programme was aimed at encouraging competition in the economy and ensuring efficient use of resources. In this process, privatization was being used as a means to dismantle monopolistic structures in the economy. The Competition and Fair Trading Act 1994 provided for the establishment of a Competition Commission, and his country had requested technical assistance from UNCTAD to set up the Commission. Finally, Zambia welcomed the request of the States members of the Preferential Trade Area (PTA) for a Workshop on Competition to be held in Lusaka.

27. The representative of Spain outlined the legislative measures adopted for consolidating the application of his country's Law for the Protection of Competition of 1979. In this connection, the Tribunal for the Safeguard of Competition (Tribunal de Defensa de la Competencia) had been actively involved in proposing several legislative measures aimed at creating a more competitive environment in the Spanish market. He also referred to his Government's technical assistance activities in the area of competition policy, in particular in Latin American countries, and he pledged his country's willingness to cooperate with UNCTAD in the area of technical assistance. Finally, he stated that Spain was convinced of the usefulness of the Set of Principles and Rules in future multilateral work in the area of competition.

28. The representative of Georgia stated that when his country had decided to adopt a market economy system, competition had become of crucial importance. Thus in 1992, a Decree on Competition had been issued on the model adopted by other economically larger countries. In its application, the Decree had been found wanting in many respects, and so legislation tailored to his country's needs was being drafted with the assistance of the World Bank. In view of the situation he had described, his country wished to request technical assistance from UNCTAD in order to offer training to officials who would enforce the law.