



United Nations Conference on Trade and Development

Distr.
LIMITED

TD/B/RBP/L.64
26 October 1994

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on
Restrictive Business Practices
Thirteenth session
Geneva, 24 October 1994

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

Rapporteur: Mr. Gomi Tharaka Senadhira (Sri Lanka)

INTRODUCTION AND ITEMS 3, 4 AND 5

<u>Speakers</u> :	Officer-in-charge of UNCTAD	Russian Federation
	Officer-in-charge of ITD	France
	Poland	United States
	Slovakia	China
	Romania	Canada
	India	The Netherlands

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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INTRODUCTION

1. The Intergovernmental Group of Experts on Restrictive Business Practices held its thirteenth session at the Palais des Nations, Geneva, from 24 to 28 October 1994.

2. In the course of the session, the Group held ... plenary meetings and ... informal meetings.

Opening statements

3. The Officer-in-Charge of UNCTAD noted that, since the adoption of the Set of Principles and Rules, there had been increased economic globalization and interdependence among countries, widespread adoption of market-oriented economic reforms and of competition laws, greater convergence in competition regimes, and the adoption of the Uruguay Round Agreements. While the Agreements as a whole were relevant to competition, several of their provisions dealt specifically with competition questions. This was particularly the case with the Agreements on safeguards, services (especially telecommunications), intellectual property rights, and investment measures where there was a commitment to consider within five years whether the existing agreement should be complemented with provisions on competition policy, and therefore to start examining such issues at the multilateral level. Since the Uruguay Round Agreements did not, however, address all the relevant issues, it was also necessary to update and build upon the principles contained in the Set so as to better reflect the new global conditions. In particular, there was a need to examine how to control RBPs affecting global trade and competition, to ease tensions arising in this area from governments' enforcement efforts, and to reconcile possible conflicts between competition and trade policies.

4. He recalled that the Trade and Development Board had agreed that UNCTAD should undertake policy analysis and build a consensus on new issues on the trade agenda, including competition policy, and an executive session of the Board would be examining their likely implications for developing countries. The Intergovernmental Group could contribute to this exercise, in preparing for the 1995 Review Conference, by analysing the Uruguay Round's implications for competition policy, as well as by assessing the implementation of the Set and

making proposals thereon to the Conference. This might lead the Review Conference to initiate work on identifying universal principles of competition policy, complementing the principles contained in the Set; on strengthening consultations and cooperation mechanisms; and on identifying how best to mobilize resources for UNCTAD's technical cooperation activities.

5. The Officer-in-Charge of the International Trade Division stated that the extensive experience of the Intergovernmental Group and its important contribution to the establishment of competition regimes could now serve as a basis for assessing how international cooperation on competition policy could be further strengthened in the light of recent changes in the global economic environment. He emphasized the need for further efforts to protect the vitality of competition at the global level in order to safeguard economic efficiency and consumer welfare, to facilitate access to international markets by producers and consumers from all countries, particularly the weaker ones, and to minimize tensions among governments in this area. The attainment of such objectives would be facilitated by the existence of internationally agreed norms.

6. In reviewing the work of the Intergovernmental Group in the areas of the model law on competition, technical cooperation and consultations on RBP issues, he stated that the secretariat would be unable to respond to most of the requests for technical cooperation received from governments unless substantial additional resources could be mobilized.

7. Finally, he invited member States to initiate discussions on the agenda for the fourteenth session of the Intergovernmental Group and on the preparatory process for the 1995 Review Conference. He also called for guidance on how UNCTAD might intensify cooperation with other international organizations which were active in the field of competition policy.

Chapter I

STUDIES RELATED TO THE PROVISIONS OF THE SET AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES

(Agenda item 3)

THE MODEL LAW OR LAWS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, AND THE HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES COMPETITION LEGISLATION

(Agenda item 4)

WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES, AND PREPARATION OF THE THIRD REVIEW CONFERENCE

(Agenda item 5)

8. The representative of Poland said that the documents prepared by the UNCTAD secretariat were extremely useful as they provided information concerning other countries implementing competition policy. As already stated at previous sessions of the Intergovernmental Group, Poland was pursuing a dynamic policy of market reforms, including privatization. The Antimonopoly Office was now working on, inter alia, deregulation of such sectors as energy and telecommunications. For this purpose, the Office was interested in the experience of other countries with regulatory bodies in this area. Poland was also in the process of preparing amendments to its competition legislation, particularly the area of mergers and acquisitions, in order to harmonize its competition legislation, and in particular its manner of enforcement, with that of the European Union. Poland was very keen to learn from the experience of other countries in this sphere, in order not to repeat any mistakes that might have been made.

9. The representative of Slovakia said that, after some years of experience and on the basis of a broad comparison of modern antitrust legislation worldwide, including the Model Law prepared by UNCTAD, his country had adopted new legislation on 1 August 1994. Although the new law recognized that competition was not a goal in itself, it sought to promote competition since it contributed to the economic efficiency. Competition also had as its ultimate goal consumer

welfare and the control of abuse of dominant power. After outlining the main characteristics of the new legislation, he emphasized that the law contained special provisions which would enable the Antimonopoly Office to redress actions of State and local administrative bodies that had an adverse impact on competition. In parallel, the Antimonopoly Office was also involved in advising the Government in the process of privatization undertaken in his country.

10. The representative of Romania, describing the measures taken in her country to achieve a transition to market economy, stated that, in order to protect through a legal framework free competition in the economy, a draft law on protection of competition had been prepared, which was modelled on the legislation of countries that had a tradition in market economy, in particular the European Union. In this regard, UNCTAD's Handbook on RBP legislation and the Model Law had been of great support. The recommendations contained in the Set of Principles and Rules had also been taken into consideration. After describing the main features of the draft legislation, which was now being considered by the relevant parliamentary commission, she said that the proposed sanctions were high as they aimed at discouraging the anticompetitive behaviour of both the private and the State sector. Meanwhile, under the existing legal provisions, a Directorate General for Policy and Protection of Competition had been established. Finally, she expressed the gratitude of her country to the international organizations and national competition authorities of countries that had provided technical cooperation in training the officials who would be responsible for enforcing the new law.

11. The representative of India, having described the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, and its main objectives, said that as from 1991 India had embarked on a new industrial policy of liberalization, globalization and deregulation, with the emphasis on exports and higher productivity. With the growing complexity of industrial structures and the need to achieve economies of scale to ensure higher productivity and competitive advantage in the international market, the main thrust of industrial policy was the control and regulation of the monopolistic, restrictive and unfair trade practices, making it necessary for monopoly houses to obtain prior approval of the Government for the establishment or expansion of firms, and for mergers. As a result, the restrictions under the MRTP Act on investment decisions had been abolished.

12. As a result of the new industrial policy, the country's exports had grown, the balance-of-payments position had improved and adequate foreign-exchange reserves had been created. However, the policy of liberalization and globalization had also resulted in a growing number of mergers, takeovers and technical collaborations, heavily increasing the work of the Commission. The Commission also addressed issues arising out of unfair and deceptive terms and conditions offered to the public. In addition, the Consumer Protection Act, 1986, was also aimed at protecting the interests of consumers against deficient goods or services, or unfair trade practices. A three-tier quasi-judicial Consumer Disputes Redressal Mechanism had been established under this Act to promote and protect various rights of the consumer

13. The representative of the Russian Federation observed that the thirteenth session of the Intergovernmental Group was particularly important as it was taking place immediately after the conclusion of the Uruguay Round, which had resulted in new areas of trade liberalization such as services, foreign investment (TRIMS) and intellectual property rights (TRIPS). However, without competition rules at the enterprise level, these gains could be lost. Hence, the importance of the work of UNCTAD, in particular work on devising competition rules at the multilateral level.

14. In the Russian Federation, market economy, demonopolization and competition had taken pride of place. A special governmental body, the Anti-Monopoly Commission, had been established with the very important task of creating market structures in the Russian Federation. In the first half of 1994 alone, it had dealt with 1,872 cases. For well-known historical reasons, the Commission was working in difficult circumstances. The economy was highly concentrated, and every effort was being made to ensure that enterprises would not abuse their dominant position of market power. Measures were also being taken with respect to competition in foreign trade relations. The scope and complexity of demonopolization called for highly qualified legislators. The Russian competition law was based on internationally accepted standards and rules based on the work done by the Intergovernmental Group. In the preparation of the Russian law, UNCTAD's Model Law had proved very useful. Countries in transition needed to overcome in a very short period of time the consequences of State monopoly. Such countries, and in particular the members of the Commonwealth of Independent States, needed technical assistance in this area. For this purpose,

the Russian Federation was proposing that a comprehensive technical assistance programme be provided by UNCTAD to the CIS member States.

15. The representative of France reported on the main aspects of his country's competition policy in the year since the twelfth session of the Intergovernmental Group. Much thought had been devoted to the issue of previously heavily regulated sectors and monopolies in the face of deregulation and privatization efforts. For entities such as electricity and gas, it was necessary to ensure that their activities were in conformity with competition principles, and in particular that such firms would not use their monopoly power in order to subsidize their activities in sectors where they did not have a monopoly, thus distorting competition in such sectors. The Directorate-General on Competition had intensified its efforts to combat anti-competitive behaviour on the part of enterprises; it had devoted a great deal of effort to educational activities at the national level, organizing seminars and workshops with academics, magistrates and lawyers. Finally, reflecting the process of globalization of competition issues, the French Government was organizing a world competition seminar in Paris, scheduled for 29-30 November 1994, in which OECD, UNCTAD, the World Bank and GATT were invited to participate.

16. The representative of the United States of America described two important developments in his country's antitrust enforcement legislation: (i) the enactment on 8 October 1994 of the International Antitrust Enforcement Assistance Act of 1994. This legislation authorized the Attorney-General of the United States and the Federal Trade Commission to provide, in accordance with antitrust mutual assistance agreements, evidence to foreign antitrust authorities on a reciprocal basis; and (ii) the publication by the Department of Justice and the Federal Trade Commission of proposed new Antitrust Guidelines for International Operations, which will replace the Department of Justice's 1988 International Guidelines. The proposed new guidelines reflected policy and legal changes that had taken place since 1988.

17. The representative of China described the national economic process whereby his country was seeking to achieve a socialist market economy. To this end, China had adopted several legislative measures, among which the adoption, in December 1993, of the Law of the People's Republic of China Against Unfair Competition. The laws had been formulated with a view to safeguarding the

healthy development of the socialist market economy by encouraging and protecting fair competition and by protecting the legitimate rights and interests of business operators and consumers. The law had been successfully implemented so far, but China was still at the experimental stage with regard to RBP legislation. There was need to enrich experience in this area and to increase efforts to pass legislation on demonopolization. In this regard, he hoped UNCTAD would provide the necessary technical assistance. In this respect, he expressed gratitude for the assistance given so far, in particular for the national workshop in Shanghai and Senzhen, in March 1994.

18. The representative of Canada stated that Canada's competition authority had improved its management procedures and enforcement strategies in the light of fiscal constraints. While maintaining its focus on enforcement activities against RBPs, the authority had placed increased emphasis on international cooperation and on intervention in such sectors as telecommunications. Finally, he indicated some types of cases and some sectors on which special emphasis had been placed, described activities undertaken to educate the public about competition issues and referred to new enforcement guidelines which were in preparation.

19. The representative of The Netherlands described how his country had adopted per se prohibitions against price-fixing, market-sharing and collusive tendering. Applications for exemptions from these prohibitions had mostly been rejected. A new competition law modelled on the European Union standard was about to be adopted. In the implementation of the new law, efforts would be made to minimize the burden of compliance, and to examine the need for controls of mergers and market concentration in a small open economy. Emphasis was also being placed on the reform of other regulations, since many such regulations adopted for public interest purposes might have collateral anti-competitive effects and might not be adapted to modern conditions.

[To be continued]

Chapter II

CONSIDERATION OF TEXTS AND PROCEEDINGS AT THE CLOSING PLENARY

A. Consideration of texts

[To be completed]

B. Closing statements

[To be completed]

Chapter III

ORGANIZATIONAL MATTERS

A. Opening of the session

(i) The thirteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices was opened on 24 October 1994 by Mr. Carlos Fortin, Officer-in-Charge of UNCTAD.

B. Election of officers

(Agenda item 1)

(ii) At the 1st plenary meeting of its thirteenth session, on 24 October 1994, the Intergovernmental Group of Experts elected the following Bureau:

Chairman: Mr. Donald Partridge (Canada)

Vice-Chairmen: Mr. H. Wangemann (Germany)
Mr. B. Alipur (Islamic Republic of Iran)
Mr. P. Paulwell (Jamaica)
Mr. T. Teodorovitch (Russian Federation)
Mr. C. Mbegabolawe (Zimbabwe)

Rapporteur: Mr. Gomi T. Senadhira (Sri Lanka)

C. Adoption of the agenda and organization of work

(Agenda item 2)

(iii) Also at its 1st plenary meeting, the Intergovernmental Group adopted its provisional agenda (TD/B/RBP/99) as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Studies related to the provisions of the Set and consultations on restrictive business practices

4. The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Competition Legislation
5. Work programme on restrictive business practices including technical assistance, advisory and training programmes on restrictive business practices, and preparation of the Third Review Conference
6. Provisional agenda for the fourteenth session of the Intergovernmental Group of Experts
7. Other business
8. Adoption of the report of the Intergovernmental Group of Experts.

**D. Provisional agenda for the fourteenth session of
the Intergovernmental Group of Experts**

(Agenda item 6)

[To be completed]

**E. Adoption of the report of the Intergovernmental
Group of Experts**

(Agenda item 8)

[To be completed]