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**REVIEW OF CAPACITY-BUILDING AND TECHNICAL ASSISTANCE
ON COMPETITION LAW AND POLICY**

Note by the UNCTAD secretariat

Executive summary

UNCTAD provides capacity-building and technical assistance on competition law and policy to developing and least developed countries as well as countries in transition in accordance with requests received, the needs of the countries concerned and resources available. This includes both national and regional assistance in drafting competition laws and policy guidelines as well as capacity-building in the implementation of competition policy with a long-term perspective in line with the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the requests made by the Fourth United Nations Conference to Review All Aspects of the Set. UNCTAD's activities in this field also respond to the request contained in paragraph 24 of the Doha Declaration, namely to help developing and least developed countries "better evaluate the implications of closer multilateral cooperation" in the field of competition law and policy for their development objectives. Accordingly, this note contains a progress report on the capacity-building and technical cooperation activities of the UNCTAD secretariat, which are described under three main subheadings, namely national activities, regional and subregional activities, and participation in seminars and conferences. In addition, it contains extracts from replies of member States and international organizations to the note by the Secretary-General of UNCTAD requesting information on technical cooperation activities in the field of competition law and policy. Also included are extracts from the replies received, which are related to requests for technical assistance with identification of specific competition law and policy areas or issues which the States would wish to see receive priority attention.

CONTENTS

	<i>Page</i>
I. INTRODUCTION	3
II. PROGRESS REPORT ON UNCTAD CAPACITY-BUILDING AND TECHNICAL COOPERATION ACTIVITIES	3
A. National activities	4
B. Regional and subregional activities	5
C. Participation in seminars and conferences	7
III. CAPACITY-BUILDING AND TECHNICAL COOPERATION ACTIVITIES OF MEMBER STATES AND INTERNATIONAL ORGANIZATIONS	8
A. Assistance provided, planned or received	8
B. Requests for assistance	17

I. INTRODUCTION

1. The United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, adopted by the General Assembly in 1980 (General Assembly resolution 35/63 of 5 December 1980-TD/RBP/CONF.10/Rev.2), calls in Section F, paragraphs 6 and 7, for technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries. In line with the Set, the Fourth United Nations Conference to Review All Aspects of the Set, in paragraph 14 of its resolution (TD/RBP/CONF.5/16), took note with appreciation of the voluntary financial and other contributions for capacity-building and technical cooperation, and invited all member States to assist UNCTAD on a voluntary basis in its technical cooperation by providing experts, training facilities and resources; requested the UNCTAD secretariat to continue and, resources permitting, to expand its technical cooperation activities; and invited the Secretary-General of UNCTAD to explore the feasibility of mobilizing financial and human resources on a more predictable and regular basis and to address the cooperation needs of developing countries and economies in transition in the relevant official languages of the United Nations.

2. Subsequently, in the agreed conclusions of its fourth session (TD/B/COM.2/42-TD/B/COM.2/CLP/32), the Intergovernmental Group of Experts on Competition Law and Policy I (July 2002) took note with appreciation of the voluntary financial and other contributions received from member States; invited all member States to assist UNCTAD on a voluntary basis in its capacity-building and technical cooperation activities by providing experts, training facilities or financial resources; and requested the UNCTAD secretariat to pursue and, where possible, expand its capacity-building and technical cooperation activities (including training) in all regions, within the available resources, taking into account the deliberations and the consultations that took place at that session. It further requested the UNCTAD secretariat to prepare for consideration by the next session of the Intergovernmental Group of Experts an updated review of capacity-building and technical assistance, taking into account the information to be submitted by member States and international organizations no later than 31 January 2003.

3. Accordingly, this note contains a progress report on the capacity-building and technical assistance activities of the UNCTAD secretariat in 2002, as well as extracts from replies of member States and international organizations to the note by the Secretary-General of UNCTAD requesting information on technical cooperation activities in the field of competition law and policy (TDN 915 (1) (DITC) of 25 November 2002). The Secretary-General is grateful for the replies to his note.

II. PROGRESS REPORT ON UNCTAD CAPACITY-BUILDING AND TECHNICAL COOPERATION ACTIVITIES

4. UNCTAD provides assistance on competition law and policy to developing countries and countries in transition in accordance with requests received, the needs of the countries concerned and resources available. The main types of the secretariat's technical cooperation activities are as follows:

(a) Provision of information about anti-competitive practices, their existence and possible adverse effects on the economy. This may involve a study of restrictive business practices in a specific country;

(b) Introductory seminars directed at a wide audience, including government officials and academics, as well as business and consumer-oriented circles;

(c) Assistance to States that are in the process of drafting competition legislation in the form of provision of information on such legislation in other countries or advice as to the drafting of their competition legislation;

(d) Advisory services for the setting up of a competition authority. This usually includes training of officials responsible for the actual control of anti-competitive practices and may involve training workshops and/or on-the-job training with competition authorities in countries that have experience in the field of competition;

(e) Organization of seminars for States that have already adopted competition legislation, have experience in the control of anti-competitive practices and wish to consult one another on specific cases and exchange information;

(f) Assistance to States that wish to revise their competition legislation and seek expert advice from competition authorities in other States, so as to amend their laws in the most effective manner possible.

(g) Assistance to developing countries, including the least developed countries as well as economies in transition, so that they may better evaluate the implications of closer multilateral cooperation in the competition area for their development.

5. The main capacity-building and technical cooperation activities of the UNCTAD secretariat in 2002 are described below.

A. National activities

6. Technical assistance related to preparation, drafting or revision of national competition policies and legislation was provided to Viet Nam, Lesotho, Botswana, Swaziland, Malaysia, Mauritania, China, the Lao People's Democratic Republic, Kenya, Burkina Faso, Senegal, Madagascar, Mauritius, Thailand, Pakistan, Zimbabwe and Uruguay. Furthermore, a number of national seminars organized by UNCTAD contributed to capacity-building in the field of competition and consumer protection as well as in the area of consensus building in closer multilateral cooperation on competition policy, including the work mandated to UNCTAD by the WTO Doha Declaration in paragraphs 23-25.

(a) A national seminar on competition law and policy within the framework of globalization was held by UNCTAD in cooperation with the Government of Mauritania in Nouakchott from 20 to 22 January 2002;

(b) A Reference Group on Competition Policy Meeting was co-organized by UNCTAD and the Government of Botswana from 23 to 25 January 2002 in Gabarone with a view to furthering the work on the finalization of the economic mapping, legislative inventory and formulation of competition legislation of Botswana;

(c) A workshop on the Swaziland competition bill was held in Mbabane, Swaziland, from 28 to 29 January 2002 within the framework of the work on the completion of the draft national competition bill;

(d) A national workshop on competition law and policy was organized jointly by UNCTAD and the Ministry of Domestic Trade and Consumer Affairs of Malaysia from 7 to 8 May 2002 in Kuala Lumpur;

(e) A “National Seminar on Competition Law and Policy” was held by UNCTAD in cooperation with the Ministry of Foreign Trade and the Ministry of Economy and Finance of Uruguay from 9 to 10 September 2002 in Montevideo to discuss various competition policy and consumer protection issues;

(f) A seminar on the implementation of competition legislation was held by UNCTAD in cooperation with the Government of Gabon from 14 to 18 October 2002 in Libreville for the purpose of training national experts working in the competition area;

(g) A national seminar on competition issues and policy enforcement was organized by the Government of Thailand, the International Institute for Trade and Development and UNCTAD from 11 to 12 November 2002 in Bangkok to consider various issues related to implementation of Thai competition legislation;

(h) A “National Training Workshop on Competition Law and Policy” was held by UNCTAD in cooperation with the Government of Zimbabwe from 25 to 27 November 2002 in Kariba;

(i) National competition seminars were also organized by UNCTAD in cooperation with respective national Governments: (a) from 2 to 3 December in Livingstone (Zambia) to strengthen the capacity of the Zambia Competition Commission in the area of competition law and policy enforcement; and (b) from 17 to 19 December 2002 in Maseru (Lesotho) to build the awareness of the Government on competition and consumer protection issues.

B. Regional and subregional activities

7. Together with assisting in the drafting and revision of competition legislation by member States of the Common Market for Eastern and Southern Africa (COMESA) and of the West African Economic and Monetary Union (UEMOA), UNCTAD organized a number of conferences, seminars and workshops which contributed to capacity-building and multilateral cooperation in the area of competition and consumer protection.

8. In line with the part of the Doha Ministerial Declaration related to competition issues, UNCTAD organized a first round of four regional meetings for developing countries and economies in transition. The meetings had similar agendas and their aim, as indicated in paragraph 24 of the Doha Declaration, was to assist those countries “to better evaluate the implications of closer multilateral cooperation” in the field of competition. The WTO secretariat and relevant international organizations took part in all four meetings, the first of which was entitled “Regional Conference on Competition Law and Policy for Latin America and the Caribbean” and held in Panama from 21 to 23 March 2002. It was followed by a “Regional

Seminar on Competition Policy and Multilateral Negotiations” for Africa and Arab countries held in Tunis from 28 to 29 March, a “Regional Seminar on Competition Policy and Multilateral Negotiations” for Asia and the Pacific (Hong Kong, China, 16-18 April 2002) and by an “International Competition Seminar for CIS and Black Sea Economic Cooperation (BSEC) countries”, held in Odessa (Ukraine) from 25 to 26 April 2002. In the first half of 2003, with respect to the mandate of the Doha Ministerial Declaration, UNCTAD will continue to organize further regional meetings for developing and least developed countries as well as economies in transition. The first of these meetings, the “Asian Conference on the Post-Doha WTO Competition Issues”, was held in Kuala Lumpur from 26 to 27 February 2003 and was followed by the “Asian Conference on Consumer Protection, Competition Law and Policy”, held in Kuala Lumpur from 28 February to 1 March 2003. The latter conference was more specifically oriented towards a dialogue with civil society.

9. A number of other regional and subregional seminars and conferences were held in other countries in 2002:

(a) An expert group meeting on identification of common grounds on competition law and policies in the ESCWA region was held from 27 to 30 January 2002 in Abu Dhabi. It was co-organized by UNCTAD, the Economic and Social Commission for Western Asia (ESCWA), the Foreign Advisory Service/World Bank, the Friedrich Naumann Foundation, the Abu Dhabi Chamber of Commerce and the Emirates Society for Consumer Protection;

(b) Within the framework of the TRAINFORTRADE project a regional seminar on the application of competition legislation was held from 6 to 13 March 2002 in Ouagadougou (Burkina Faso) for high-level officials and competition experts from Benin, Burkina Faso and Mali;

(c) An intensive training session for negotiators of international investment and competition agreements from francophone developing countries was organized by UNCTAD and WTO in cooperation with the universities of Alexandria, Tunis and Yaoundé from 27 May to 7 June 2002 in Alexandria (Egypt);

(d) In cooperation with the Government of Argentina, UNCTAD organized a regional meeting for Latin America and the Caribbean entitled “The Role of Competition Policy in Consumer Protection and in Enhancing the Competitiveness of Small and Medium Enterprises” in Buenos Aires (Argentina) from 12 to 14 September 2002;

(e) Together with the Korea Fair Trade Commission and the Organisation for Economic Cooperation and Development (OECD), UNCTAD co-organized from 6 to 8 November 2002 in Seoul (Republic of Korea) the “Seoul Forum on Competition 2002”, which was followed by an international workshop on competition;

(f) A regional seminar on competition law and policy was held by UNCTAD in cooperation with the Government of Zambia from 2 to 3 December 2002 in Livingstone (Zambia) in order to provide experts from COMESA member countries with the opportunity to deepen their understanding of the application of a regional competition regime as well as to discuss other competition-related issues.

C. Participation in seminars and conferences

10. In 2002, staff members of UNCTAD took part in a number of seminars, workshops and conferences related to issues of competition law and policy and consumer protection. In particular, resource persons from UNCTAD made substantive presentations and/or participated in discussions at the following meetings:

- (a) A meeting on the launching of the Southern and Eastern African Forum on Competition was held from 30 January to 1 February 2002 in Pretoria (South Africa);
- (b) OECD meetings: Working Party No. 2 on Competition and Regulation, Working Party No. 3 on International Cooperation, Committee on Competition Law and Policy meeting, Joint Group on Trade and Competition meeting and Global Competition Forum meeting held in February and June 2002 in Paris;
- (c) The IV International Meeting of Economists on Problems of Globalization and Development (Havana, Cuba, 11-15 February 2002);
- (d) The EC Competition and Consumer Protection Meeting held in Madrid on 26 February 2002;
- (e) The Conference Board 2002 Antitrust Conference held in New York from 7 to 8 March 2002;
- (f) A WTO seminar on Competition Law and Policy in the Global Context organized in Cape Town (South Africa) from 17 to 18 March 2002;
- (g) A meeting of the Cartel Investigation Programme held in Brighton from 22 to 26 April 2002;
- (h) A workshop on Bahrain's WTO Commitments and Future Negotiations held in Bahrain on 13 May 2002;
- (i) The Second National Seminar on "Competition, Regulation and Investment: Role in Economic Growth" held in Chennai, India, from 8 to 9 June 2002;
- (j) The National Workshop on Trade and Competition Policy (Beijing, 30-31 July 2002);
- (k) The Arab Regional Seminar for Capacity-Building on Competition and Antitrust Laws held in Cairo from 28 to 30 July 2002;
- (l) The Consumer International and United Kingdom Consumers' Association Seminar on Trade and Competition Issues in the run-up to Mexico (London, 12 July 2002);
- (m) The Asia-Pacific Economic Cooperation (APEC) Training Programme on Competition Policy meeting held in Bangkok from 6 to 8 August 2002;

- (n) The World Trade Forum 2002 held in Bern, Switzerland, from 16 to 17 August 2002;
- (o) The United Kingdom Centre on Regulation and Competition CARG meeting in Manchester on 6 September 2002;
- (p) The International Competition Network (ICN) First Annual Conference (Naples, 28-29 September 2002);
- (q) The WTO Regional Workshops on Competition Policy in the Doha Mandate organized in Guatemala from 16 to 17 September; Libreville (Gabon) from 9 to 13 October, and Mauritius from 12 to 14 November 2002;
- (r) A seminar on international cartels held in Rio de Janeiro from 18 to 20 September 2002;
- (s) The Workshop on Restrictive Business Practices and Consumer Rights held in Kuala Lumpur on 8 October 2002; and
- (t) A national seminar on consumer protection and competition policy held in Vientiane, Lao People's Democratic Republic, from 14 to 15 November 2002.

III. CAPACITY-BUILDING AND TECHNICAL COOPERATION ACTIVITIES OF MEMBER STATES AND INTERNATIONAL ORGANIZATIONS

A. Assistance provided, planned or received

11. Below are extracts from the replies received to the Secretary-General's note TDN 915 (1) (DITC) of 25 November 2002, which requested information on technical cooperation activities in the field of competition law and policy.

Benin

12. Apart from the TRAINFORTRADE 2000 Project (RAF/99/A09) (Benin Faso and Mali) regional seminars on the application of competition legislation held in Porto-Novo (Benin) in November 2001, Ouagadougou (Burkina Faso) in March 2002 and Cotonou (Benin) in June 2002 respectively, Benin has received no assistance in the field of competition policy.

Botswana

13. Two studies were conducted on the legislative inventory of Botswana laws relevant for competition policy and economic mapping study for Botswana. UNCTAD and the United Nations Development Programme (UNDP) funded these studies. Subsequently, meetings were held to discuss the findings of the reports. A consultant has been appointed to draft competition policy for Botswana through technical assistance offered by UNCTAD. A seminar was planned to be held in March 2003 with the stakeholders before the draft competition policy was finalized and presented to the Parliament for approval.

Cuba

14. In 2002, Cuba received UNCTAD funding for:

(a) The participation of a Cuban official at the Latin American and Caribbean Regional Conference on Competition Law and Policies: The Post Doha Agenda, held in Panama City from 21 to 23 March;

(b) The participation of a Cuban official at the fourth session of the Intergovernmental Group of Experts on Competition Law and Policy, which took place in Geneva from 3 to 5 July;

(c) The participation of a Cuban official at the regional meeting on “The Role of Competition Policy in Consumer Protection and Enhancing Competitiveness of Small and Medium Enterprises”, held in Buenos Aires from 12 to 14 September.

Germany

15. In 2001 the Bundeskartellamt (Federal Cartel Office-ECO) provided technical assistance to Lithuania and participated in international seminars/workshops held in Slovenia (seminar in Ljubljana in February), Romania (seminar in Bucharest in February), Austria (case study seminar in Vienna), Hungary (workshop in Budapest in March), Lithuania (seminar in Vilnius in April), Viet Nam (workshop in Halong Bay and Hanoi), Malaysia (workshop in Kuala Lumpur in October) and Latvia (seminar for Baltic countries in Riga in October).

Hungary

16. The principal institution receiving technical assistance in the field of competition law and policy in Hungary is the Hungarian competition authority - the Office of Economic Competition (OEC) - established in 1991. The main sources of technical assistance provided to the Office were as follows:

(a) In recent years, the OEC benefited from technical assistance provided by the European Union within the framework of the PHARE programme. This assistance consisted of training seminars for experts on competition law and policy issues organized within the framework of technical assistance projects launched in 1993/1994 and 2000, as well as the “twinning light” project implemented from 2002. It also consisted of study visits to and secondments (“stagierships”) at the Competition Directorate-General of the European Commission, as well as of the Commission’s financial contribution to the development (modernization and extension) of the OEC’s information technology (IT) system and library;

(b) In the early 1990s, the OEC received technical assistance from the OECD and the United States. OEC staff members participated in the OECD seminars hosted by the Joint Vienna Institute and learned about basic concepts of competition policy. Experts from the United States Department of Justice and the Federal Trade Commission passed on, during their visits lasting several weeks, the US experience of antitrust implementation and of competition policy approaches to the staff of the OEC and to other members of the Hungarian judiciary. Moreover, OEC officials were also able to learn from such experience and approaches during

their short- or long-term stays hosted by the above-mentioned United States institutions. From 1991 onwards United States technical assistance has been renewed in the form of international antitrust seminars held in Budapest for experts from Central European countries;

(c) German technical assistance provided to Hungary consisted, in particular, of seminars held in Budapest in the mid-1990s and regular round-table discussions, held during the same period with the involvement of experts from the Federal Cartel Office and other German institutions, which were organized by the Foundation for International Legal Cooperation.

Japan

17. The Japan Fair Trade Commission (JFTC), taking into consideration the growing demands of developing countries and transitional countries for the introduction of competition law or the review of competition policy, has been providing a wide variety of technical assistance programmes namely long-term training courses (lasting approximately one month) and short-term seminars (three to five days), as well as the dispatch of competition policy experts. The JFTC's technical assistance programmes welcome various competition experts from developing or transitional countries, particularly Asian developing countries.

(a) Long-term training courses

The JFTC, in cooperation with the Japan International Cooperation Agency (JICA), has been providing since 1994 group training courses on antimonopoly and competition law and policy with the support of the academic community and international organizations. A one-month training course focuses on a wide range of themes and issues, from theoretical to practical ones, reflecting the needs of participants from different countries, and aims to contribute to the effective enforcement of competition law and the encouragement of competition culture in those countries. During a 9-year period starting from 1994, 88 participants from 34 countries attended the courses. The JFTC will continue to organize this training course annually and provide technical assistance to participants from a wider range of countries. Moreover, since 1998 the JFTC has been providing a one-month country-focused training course to China, aimed at contributing to the drafting of a new comprehensive competition law in that country. Ten participants are supposed to join the programme annually. Earlier, the JFTC also provided a country-focused training course to Thailand and the Russian Federation;

(b) Short-term seminars-APEC programme

(a) Partners for Progress Programme (PFP). From FY 1996 to FY 2000 the JFTC, in partnership with the Thai competition authority, organized a training programme as a part of the APEC "Partnership for Progress (PFP)" programme. Over the five-year period about 190 competition experts from developing economies and about 70 experts from developed countries participated in this programme. It focused on exchanging opinions and sharing experiences, for example, on best-practice cases and problems in promoting competition policy in individual member economies, and came to a successful conclusion, having contributed to capacity-building not only in developing economies but also in developed countries.

(b) APEC training programme on competition policy. After the successful conclusion of the PFP programme, taking into account the APEC member countries' requests that it be continued, Japan in collaboration with Thailand, Viet Nam and Malaysia proposed that a new series of training programmes be organized with a view to promoting capacity-building through the exchange of opinions and the sharing of experiences. The programme was aimed at implementing the APEC Principles to Enhance Competition and Regulatory Reform, focusing mainly on competition policy. The JFTC in collaboration with Thai competition authority held the first seminar in August 2002 in Bangkok. This seminar was attended by approximately 50 participants from 17 economies, international organizations and the academic community. The second seminar was scheduled to be held in Hanoi, Viet Nam in March 2003, and the third one is scheduled to be held in Malaysia in summer/autumn 2003;

(c) Dispatch of Competition Policy Experts. The JFTC has also dispatched competition policy experts to a number of countries, including Thailand, Malaysia, Viet Nam, Indonesia, Lithuania and the Russian Federation.

Latvia

18. An international technical assistance project was implemented by PHARE in 1998 to improve the professional knowledge of the staff of the Competition Council. In 1999 the Council benefited from Japan's technical assistance programme. An adviser held consultations with the Council's staff and organized seminars to share experiences, and appropriate publications were provided. A PHARE project seminar entitled "Implementation and Enforcement of Competition Policy" was held in October 2001. An exchange of experience also took place with Swedish experts.

19. The Competition Council's experts participated in many seminars organized within the framework of PHARE, OECD and other technical assistance programmes. The OECD Baltic Regional Programme has been implemented since 1999 in the form of annual workshops on regional competition policy. The last workshop on competition policy in the Baltic region was held in Riga in October 2002.

20. The PHARE Twinning Light project "Strengthening the Competition Council" is expected to start in September 2003. It will be implemented for six months with the aim of strengthening the administrative capacity of the Competition Council and improving the effectiveness of its enforcement activities.

Lithuania

21. Substantial technical assistance was provided under special programmes and projects funded by PHARE. The PHARE project "Strengthening Enforcement of Competition Policy" was implemented in 2000-2002 with Lithuania, Germany and Sweden as partners. Its objectives were to strengthen the administrative capacity of the Competition Council in the implementation and enforcement of competition and state-aid-related legislation, to implement an extensive staff training programme, and to raise awareness of competition policy.

22. The OECD Baltic Regional Programme was launched in 1998 and is directed mainly at assisting the Baltic competition authorities in implementing law enforcement and advocacy activities. It has provided each Baltic competition authority with a written evaluation of selected issues and held annual seminars that targeted topics identified by the evaluations.

23. Significant technical assistance, mainly in the form of workshops, training courses and conferences, was provided by the Directorate-General of the European Commission and the TAIEX Office. Also, representatives of the Competition Council participated in many international seminars and conferences organized by various international organizations and national competition agencies.

The former Yugoslav Republic of Macedonia

24. The Monopoly Authority (MA) received the following assistance:

(a) Seminars held abroad with an average duration of four to five days and covering a broad range of antitrust issues were organized mainly by such donors as the OECD (seminars in Bucharest, Belgrade, Sofia and Vienna), the United States Federal Trade Commission and the Department of Justice (Budapest), the United Kingdom Department of Trade and Industry and the United Kingdom Foreign and Commonwealth Office (London);

(b) Home seminars organized by the MA and sponsored by the German Technical Assistance Corporation (GTZ), the German Foundation for International Legal Cooperation (IRZ) and PHARE Macedonia Mission (Struga, Ohrid) for the purpose of raising public awareness of competition policy. Study tours have been organized to Bundeskartellamt in Bonn, the Norwegian Competition Office in Oslo, the Italian Competition Office in Rome and the Dutch Competition Office in The Hague. The MA has also received technical assistance from GTZ in the form of the dispatch of a competition law expert to work as a consultant at the MA. The GTZ has also financed local seminars and workshops organized by the MA, and covered the costs of attending seminars and study tours abroad. Generally speaking, the MA received more assistance related to international and regional events than country-specific activities (95 per cent of seminars were held abroad). The main advantage of country-specific events is that they are, on average, tailored to the needs of the beneficiary. International events contribute to networking, which has already been more or less developed by MA. Country-specific events are also preferable for improving law enforcement activities.

Malawi

25. UNCTAD has provided assistance in the following areas:

(a) In the country's efforts both to formulate the competition policy and to draft the Competition Bill by providing technical assistance (i.e. provision of a competition expert to aid the process of drafting the Competition Bill);

(b) In organizing training programmes;

(c) By inviting and funding the country to participate in various forums in various global venues;

(d) Affording the country an opportunity to interact with member States and international organizations and share experiences with one another in the area of competition policy and law;

(e) Providing experts to workshops as resource persons;

Assistance was received from other sources as follows:

(a) UNDP provided the financial resources to pay for the services rendered by the competition expert during the drafting of the Competition Bill;

(b) The country has benefited from studying the experience of neighbouring countries which had already gone through the earlier stages of introducing competition policy and law, namely South Africa, Zimbabwe, Zambia and Kenya;

(c) The Competition Commission of South Africa formed part of the team that compiled a national competition document entitled "Towards Competition Policy in Malawi: A Situational Analysis", together with an UNCTAD competition expert;

(d) The newly launched Southern and Eastern African Competition Commission offers a forum for capacity-building, member States having indicated their willingness to open their doors to Malawian officials to enable them to gain hands on experience of the establishment and operation of competition authorities;

(e) The Monopolies and Prices Commission of Kenya, in conjunction with UNCTAD, has invited and sponsored participants from Malawi to a number of workshops;

(f) In the same way as in (e) above, the Competition Commission of South Africa involves Malawi in various forums (including training);

(g) COMESA also organizes and solicits the participation of Malawian delegates in its training and other forums.

Mauritius

26. A few officials from the Ministry of Commerce and Industry participated in capacity-building workshops on competition law and policy organized by the OECD in collaboration with the Competition Commission of South Africa. Other government officials benefited from the Regional Seminar on Trade, Competition Policy, Economic Development and the Multilateral Trading System, which was organized by WTO in collaboration with UNCTAD and aimed at capacity-building.

Mozambique

27. Under the auspices of the Competition Commission of South Africa, a Southern and Eastern Africa Forum was established in order to discuss and set up a mechanism for bilateral and multilateral cooperation among members of the Southern African Development Community (SADC) and Kenya. This Forum was supposed to be launched in July 2002 in Harare, but was later cancelled.

Namibia

28. At a multilateral level, Namibia received technical assistance from the EU-funded Trade and Investment Development Programme (TIDP), which enabled the Ministry of Trade and Industry to draft modern competition legislation. The bill in question subsequently underwent refinements in line with the UNCTAD Model Law on Competition and was tabled in Parliament, where it is being debated before being promulgated.

Philippines

29. Assistance received by the Philippines is described below.

(a) The Korean Development Institute conducted a two-day seminar on competition policy in Manila on 20 and 21 June 2002.

(b) An official from a relevant Philippine agency participated in a regional workshop on consumer protection and competition law organized by the Australian National University under the sponsorship of the Australian Agency for International Assistance and Development (AusAID)

(c) AusAID was requested through the Philippines - Australia Short-Term Training Facility (PASTTF) to submit a project proposal on "Mechanics for the Implementation of a Comprehensive Competition Policy in the Philippines". PASTTF instead suggest the conduct of a Workshop on Strategic Planning and Human Resource Development be held before the proposal on competition policy is considered.

(d) AusAID sponsored a Consumer Protection and Competition Law Project among officials from the Philippines, China and Viet Nam. The project aimed at sharing and developing knowledge and skills in relation to consumer protection and competition policy among the participating countries.

Russian Federation

30. The Ministry of the Russian Federation for Antimonopoly Policy and Support of Entrepreneurship (MAP) receives technical assistance at multilateral and bilateral levels and also brings its own experience for the consideration of international institutions and foreign partners. At the bilateral level, MAP appreciates very much cooperation and technical assistance provided by the Republic of Korea, Italy, France, Germany and Finland, as well as regular expert meetings and consultations organized with the competition authorities of Eastern European countries, Finland, the Republic of Korea and other countries. In most cases bilateral cooperation is undertaken on the basis of inter-State agreements or bilateral programmes of cooperation in the competition field.

31. At the multilateral level, the cooperation between OECD and MAP is organized on the basis of an annual cooperation plan between OECD and the Russian Federation. The OECD assistance includes legal advice on basic antimonopoly legislation and its modernization, seminars for staff of the antimonopoly authorities and judges on competition law enforcement, consultations on the methodology of competition policy and meetings on the deregulation of natural monopolies. Recommendations in the field of competition elaborated in the OECD in

recent years have provided MAP with excellent guidelines for the improvement of legislative and methodological work. Participation in the Global Competition Forum provides MAP with a good opportunity to be involved in the intensive international dialogue, while the expertise provided by OECD on amendments to competition legislation and recommendations for its enforcement is very useful. A number of events were organized by OECD together with APEC and USAID; in particular, several seminars were held by OECD and USAID in different regions of the Russian Federation.

32. UNCTAD significantly contributes to the process of developing Russian competition legislation and policy. MAP regularly participates in the United Nations Review Conferences and meetings of the Intergovernmental Group of Experts on Competition Law and Policy. The exchange of opinions among experts from different countries and high-quality documents distributed at these meetings make these events very useful. UNCTAD is also actively contributing to the promotion of regional cooperation between competition authorities in the Commonwealth of Independent States (CIS) and regularly provides assistance to the CIS Antimonopoly Council.

33. Cooperation with the European Commission is based on the Agreement on Partnership and Cooperation. In 1998-1999, within the framework of TACIS, an important technical assistance programme for MAP largely contributed to encouraging competition in the Russian Federation by means of effective competition law and policy. In 2002 a new TACIS project, "Antimonopoly Policy and State Aid", was launched. This programme envisages the provision of legal advice, staff training in the European Commission and European competition authorities, consultations on key issues of antitrust enforcement, and so forth. Also in 2002, Russian and European experts continued consultations in Brussels and Moscow.

34. The Russian Federation is a member of the International Competition Network, which aims to promote more efficient and effective antitrust enforcement worldwide by enhancing convergence and cooperation. The activity within the framework of this organization enables MAP to participate in the harmonization of competition legislation and the settlement of disputes at the international level.

35. After 10 years of implementation of competition policy in the Russian Federation, MAP has accumulated experience in this area and its experts could share it with developing countries. For example, UNCTAD and the German Foundation for International Development invited in 2000 specialists from the Russian Ministry to Viet Nam to share their experience in the seminar on competition issues. Moreover, Russian experts could be more actively involved as panellists and moderators in different international events. For instance, in recent years MAP officials were involved as panellists in OECD and APEC conferences on general competition problems and regulatory reform issues.

Tunisia

36. The Tunisian Competition Council cooperates with the French Competition Council and the French Department of Competition, Consumer Affairs and Fraud Prevention. Since 1997, the parties have established an annual cooperation programme. Consequently, Council officials

have made a number of visits to France, notably to participate at workshops on competition and to become familiar with the working methods for conducting investigations and processing cases. Furthermore, high-level French officials have made visits to Tunisia and have contributed to the success of round tables and competition-related activities.

37. Within the framework of the Commercial Law Development Programme (CLDP), which is a United States Government initiative to support economic reforms, high-level American officials from the Federal Trade Commission have visited Tunisia and have helped to organize round-table discussions and seminars on competition. In addition, two officials from the Competition Council visited the United States Federal Trade Commission and the Antitrust Division of the Department of Justice to see America's experience in the field of consolidation.

World Trade Organization

38. Paragraph 24 of the Doha Ministerial Declaration states that WTO Members "recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity-building in [the area of trade and competition policy], including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs". In 2002, a range of activities was undertaken by the WTO secretariat in response to this mandate, including the organization of several regional and national workshops in addition to a symposium in Geneva and participation in a number of workshops organized by other intergovernmental organizations, notably UNCTAD.

39. More specifically, the following regional workshops were organized by the WTO secretariat in 2002: (a) a regional workshop for Central American countries, organized in cooperation with the Inter-American Development Bank and the Government of Guatemala in Guatemala City; (b) a regional workshop for French-speaking African countries, organized in cooperation with the Government of Gabon in Libreville; and (c) a regional workshop for English-speaking African countries, organized in cooperation with the Government of Mauritius in Port-Louis. In addition, national workshops were organized for China and for Lesotho. Responding to the mandate for technical assistance in paragraph 24 of the Doha Declaration, both the regional and national workshops had a dual focus on: (i) the relationship between competition policy and economic development; and (ii) the role of international cooperation in the implementation of competition policy and the pros and cons of a possible multilateral framework on such policy.

40. During the year, the secretariat also organized a Symposium on Trade and Competition Policy for Geneva-based and capital-based delegates attending the April meeting of the WTO Working Group on the Interaction between Trade and Competition Policy in Geneva. The programme for the symposium was organized around the work programme of the WTO Working Group as set out in paragraph 25 of the Doha Ministerial Declaration, and included presentations by prominent academic and other experts from developed and developing countries.

41. In addition to the above-noted activities organized by the WTO secretariat itself, representatives of the secretariat participated in a number of regional workshops and seminars organized by UNCTAD during the year, including events held in Abu Dhabi (for countries of the Arab region); in Panama City (for Latin American countries); in Tunis (for African countries); in Hong Kong, China (for Asian countries); in Odessa (for the countries of Central and Eastern Europe and the Black Sea region); and in Livingstone (for southern African countries). Furthermore, the secretariat participated in an international forum and workshop that was organized by the Republic of Korea in cooperation with UNCTAD and the OECD, and had a particular focus on the role of competition policy in economic development and issues relating to international cooperation in this area, including at the multilateral level.

42. Cooperation with UNCTAD was a hallmark of the secretariat's technical assistance programme on trade and competition policy throughout the year. In particular, UNCTAD contributed speakers to all of the above-noted regional and national workshops organized by the secretariat and chaired a session at the Geneva symposium. In reciprocal fashion, the secretariat contributed speakers to the various workshops organized by UNCTAD on the post-Doha mandate. The secretariat appreciates the cooperation of UNCTAD in this regard.

43. In 2003, the WTO secretariat will continue its programme of activities in response to the mandate contained in paragraph 24 of the Doha Ministerial Declaration, referred to above. In the course of the year, further regional workshops will be organized for countries of the Asia-Pacific region, the Caribbean region, Latin America, Africa, and Central and Eastern Europe. In addition, the secretariat's plans call for another Geneva symposium, possible national workshops and participation in a number of activities to be organized by UNCTAD and other intergovernmental organizations and bilateral donors.

B. Requests for assistance

44. Below are extracts from replies received by the UNCTAD secretariat which are related to requests for technical assistance, with identification of specific competition law and policy areas or issues, which the States concerned would wish to receive priority attention.

Algeria

45. With the implementation of competition law, Algeria was hoping to benefit from a major bilateral and multilateral technical assistance programme from its partners, enabling it to build up its capacities to monitor trade restrictive practices. Nevertheless, to date no large-scale programme has materialized. Since 1997, no steps have been taken to implement a technical assistance programme that was prepared and discussed with the European Union.

The priority areas for technical assistance include:

- (a) Cooperation between competition authorities in information exchange;
- (b) Establishing market monitoring tools;
- (c) Methods to detect signs of restrictive practices; and

(d) The creation of a data bank on markets, businesses and the development of competition law.

Bahamas

46. The Bahamas does not have competition legislation. In this connection, the Government is seeking technical assistance from the secretariat of the Free Trade Area of the Americas (FTAA), the Organization of American States (OAS) and the Inter-American Development Bank (IDB).

Barbados

47. The Trading Commission of Barbados would like to consider the feasibility of a two-three day workshop open to all stakeholders with an additional one-day or half-day workshop for Commission staff focusing on institutional capacity-building, for example investigation and analytical techniques, and setting of domestic enforcement priorities. The programme should focus on the domestic fair competition law and address the following topics:

(a) General introduction and background - the role of competition law for economic development in small open economies; interaction with trade policy; interaction with utility regulation, particularly as the Commission is also the utility regulator; international and regional developments in competition law and policy;

(b) Competition analysis and introductory economic concepts, including market definition, market power and entry barriers;

(c) Discussion on substantive provisions of the Barbados Fair Competition Act focusing on abuse of dominance, horizontal agreements, vertical restraints, merger review with case studies and also the authorizations process (we anticipate that this session will last at least one and a half days);

(d) FTC institutional capacity-building and dealing with challenges facing a new competition agency.

Benin

48. Benin has only recently started to implement its competition law and policy. Consequently, it is interested in all competition-related fields and issues, among the administrative officials monitoring the application of the various laws adopted or in preparation and among the economic operators involved in implementing them. It would, therefore, be useful if Benin could benefit from study tours and experience sharing with countries with a strong liberal tradition in which competition is firmly rooted. Benin has chosen to give the highest priority to the issues and areas already set out in the draft model law on competition, which was submitted by the UNCTAD secretariat.

Botswana

49. Assistance was requested from UNCTAD for drafting the framework of competition law for Botswana, which is a complex piece of legislation that requires expertise. A stakeholder's

seminar on the draft competition legislation was planned to be held in July 2003 with the assistance of UNCTAD. Once the competition authority is in place, it can only be effective if qualified staff are recruited or trained. Technical assistance is therefore requested in order to build necessary capacity for the implementation of the competition law.

Latvia

50. The Competition Council has identified areas for eventual development where international technical support could be successfully used. The IT system development can be considered one of those areas.

Lithuania

51. The ongoing process of Lithuanian accession to the EU mainly determines the current needs for technical assistance in the competition policy area. The essential objectives in this context are to reinforce the Competition Council and to prepare it for EU accession, to get ready to apply the EC antitrust rules and to work in the European law environment. These objectives are the core elements of the two new technical assistance projects described below.

A project on “Drafting of Competition Legislation in Lithuania” provided by the Danish Ministry of Foreign Affairs was envisaged to start in January 2003. Within the framework of this project the experts of the Danish European Institute would assist the Lithuanian Competition Authority in drafting the following four elements of competition legislation: (a) block exemption for specialization agreements; (b) block exemption for research and development agreements; (c) guidelines on the application of the block exemption for vertical agreements; and (d) guidelines on the application of the block exemptions for horizontal agreements. To initiate the project, the Danish experts would organize a seminar on drafting techniques for EU implementation.

In view of the modernization and decentralization of the EC antitrust rules and the need to apply EC competition law after the accession date, the Competition Council is seeking assistance from the PHARE Twinning Light programme to further the Council’s capacities so as to ensure the effective application and enforcement of the antitrust rules and to prepare officials to work in the European law environment (project on “Reinforcement of the Competition Council in the Antitrust Sector”). The specific objectives of the project are: (a) to ensure further alignment of Lithuanian competition policy in view of the accession to the EU, including modernization/decentralization of the EC antitrust rules; (b) to establish a procedure for case- and legislation-related cooperation with the Commission and the competition authorities of member States; (c) to ensure effective implementation and enforcement of the antitrust rules; (d) to intensify the training of the staff of the Competition Council in the antitrust field; and (e) to increase awareness of the antitrust rules. This project was scheduled to be launched in April 2003.

Former Yugoslav Republic of Macedonia

52. The Monopoly Authority needs assistance in the following areas (the possible means of meeting these needs are indicated in brackets):

- (a) Legislative assistance - secondary legislation and guidelines development (consultations/short-term experts);
- (b) Operational assistance - conducting law enforcement investigations (separate projects);
- (c) Assistance in competition advocacy: (a) assistance in analysis of specific regulated sectors (consultations provided by short-term experts); and (b) assistance in the public-awareness-raising campaign (seminars, workshops, conferences and publications);
- (d) Staff training - investigation techniques (short-term experts, internship, study tours).

Malawi

53. Malawi requires assistance in the following areas:

- (a) Competition culture advocacy/consumer education;
- (b) Training at various levels - attachments, internships, in-house training, seminars, workshops;
- (c) Staff exchange programmes;
- (d) Study tours;
- (e) Institutional framework review;
- (f) Development of Terms of Reference for the Malawi Competition Commission's secretariat and board;
- (g) Technical assistance in the area at the regulations, guidelines and investigations;
- (h) Advisory services;
- (i) Institutionalization of the Malawi Competition Commission;
- (j) Networking with other competition authorities, UNCTAD, COMESA, SADC etc;
- (k) Identification of other cooperating partners, e.g. USAID, World Bank, EU, Norway;
- (l) Any other relevant technical assistance that may be required.

Malaysia

54. The Ministry of Domestic Trade and Consumer Affairs requires technical assistance in the following areas:

- (a) Designing an advocacy programme syllabus for the Government and the private sector. The programme is intended for: (i) ministries/central agencies; (ii) State governments; (iii) local authorities; (iv) trade associations; (v) statutory bodies; and (vi) NGOs;
- (b) General education programme for members of the public on the concept of rationale for a competition law and its regulatory bodies, including experiences of other countries;
- (c) Specialized training programme for judicial executive personnel of the competition authorities, including: (i) Ministry of Domestic Trade and Consumer Affairs (MDTCA) officials; (ii) public prosecutors in the Attorney-General's Chambers; and (iii) judges of the Magistrates Courts, the Sessions Courts and the High Court;
- (d) Providing finance and technical support for: (i) launching of the advocacy programme; (ii) staff assistance on an ongoing basis;
- (e) Technical assistance and institutional support in developing the following establishments: (i) Office of Fair Trade, under the MDTCA; (ii) an independent Fair Trade Commission; and (iii) a Competition Research Centre for MDTCA;
- (f) To conduct a mergers and acquisitions study in Malaysia, especially to determine the following: (i) current market situation and practice; and (ii) appropriate threshold/trigger levels;
- (g) To develop competition resources and a database including: (i) an extensive library at MDTCA with sufficient data/materials on fair trade/competition; (ii) a dedicated competition web site for MDTCA; and (iii) educational materials on competition for public consumption;
- (h) Review of Malaysia's draft competition law.

Mauritius

55. Mauritius is still at an initial stage in the implementation of its competition law. In view of the specificity of Mauritius as a small island developing country and of the fact that competition policy has an international dimension, there is a dire need for technical assistance for enhanced capacity-building in this field.

Mozambique

56. Mozambique does not have any competition law. It would be helpful and useful if it could receive technical and financial support for developing and drafting such a law and policy, as well as for capacity-building for officials who will be in charge of the future competition agency and related matters.

Namibia

57. Technical assistance might be required in respect of the implementation of the competition law, the development of infrastructure and training of officials once the law is in place. Should the need arise and after proper needs assessment, the Ministry of Trade and Industry would request technical assistance from UNCTAD.

Philippines

58. Technical assistance which should receive priority attention includes:

- (a) A national seminar on competition policy with the participation of the World Trade Organization;
- (b) A project proposal on “Information Exchange on Competition Policy in APEC Member Economies” with the APEC national secretariat;
- (c) Development of physical and human capital, i.e. training of judges, and education of consumer, business community and government officials;
- (d) Advocacy for competition policy to facilitate and implement the required reforms in government policy. Importance should be given to government procedures with direct impact on competition, particularly with regard to natural monopoly regulations for example power and shipping;
- (e) An information and education campaign, with greater focus on consensus, the business sector and government officials, to raise public awareness of the need for and benefits of a pro-competition environment.

Russian Federation

59. Taking into account the lack of the literature on competition law and policy in Russian, the antimonopoly authorities in Russia and other CIS countries need publications in Russian in this area. The Ministry of the Russian Federation for Antimonopoly Policy and Support of Entrepreneurship (MAP) appreciates very much the technical assistance provided in this regard by UNCTAD and the EU, but the needs in this area are still much greater than the assistance provided. MAP stresses again the importance of technical cooperation directed at competition advocacy in transitional countries, which may be realized by means of publications. This aim may also be achieved by organization of different round tables and press conferences with the participation of governmental officials, civil society and business circles.

60. A specific feature of MAP as a recipient of technical assistance (as well as other CIS antimonopoly structures) is that very few of its staff speak foreign languages. This creates barriers to the exchange of information and consultations. MAP therefore needs the inclusion of translation services in the technical assistance provided to it, and particularly the organization of courses in business English for its staff.

Togo

61. The Togolese Government's technical assistance needs in competition law and policy include:

(a) Areas of technical assistance activity: (i) capacity-building for competition structures, particularly the National Commission for Competition and Consumer Affairs; (ii) training of administrative officials (including judges) and economic operators to develop a competition culture; and

(b) Specific areas: (i) anti-competitive policies; (ii) restrictive practices and abuse of dominant position; (iii) official export assistance; (iv) transparency and non-discrimination in competition; and (v) settlement of competition-related disputes.

Tunisia

62. Despite the changing legal and institutional environment, the application of competition rules has proved difficult. In general, the causes are tied in with the market structure, the attitude of economic operators and consumers and the lack of effective means of communication. Aware of this situation, the Tunisian Competition Council intends to introduce a broad programme with the following objectives: (a) Capacity-building for the Council to act in the event of a failure on the domestic market; (b) Increased awareness of competition rules among economic agents and in judicial circles. This programme consists of four key components: (i) Training of Council staff; (ii) Technical assistance to create a database; (iii) Promotion of a competition culture; and (iv) Equipment. The Competition Council hopes to receive technical and financial assistance for the implementation of this programme within the framework of bilateral or multilateral cooperation.
