



**United Nations  
Conference  
on Trade and  
Development**

Distr.  
LIMITED

TD/RBP/CONF.4/L.1/Add.1  
17 November 1995

Original: ENGLISH

THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL  
ASPECTS OF THE SET OF MULTILATERALLY AGREED  
EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL  
OF RESTRICTIVE BUSINESS PRACTICES  
Geneva, 13 November 1995  
Agenda item 11

**DRAFT REPORT OF THE THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL  
ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES  
AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES**

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Addendum

**AGENDA ITEM 8 (continued)**

Speakers: Brazil  
Algeria  
Zambia  
Sri Lanka  
European Commission  
Russian Federation  
OECD  
Italy  
Consumers International  
Ukraine

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, 1 December 1995 at the latest** to:

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Chapter I

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED  
EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF  
RESTRICTIVE BUSINESS PRACTICES:

- (a) REVIEW OF 15 YEARS OF APPLICATION AND IMPLEMENTATION  
OF THE SET;
  
- (b) CONSIDERATION OF PROPOSALS FOR THE IMPROVEMENT AND  
FURTHER DEVELOPMENT OF THE SET, INCLUDING INTERNATIONAL  
COOPERATION IN THE FIELD OF CONTROL OF RESTRICTIVE  
BUSINESS PRACTICES

(Agenda item 8)

(continued)

56. The representative of Brazil outlined the profound market-oriented economic reforms undertaken by his country, the paradigms of which were competitiveness and efficiency. The creation of economic blocs were forcing countries to revise their policies of development. In this context, the restructuring of the Brazilian economy was being conducted by increasing the competitiveness of enterprises through market liberalization, privatization and deregulation of many public utilities, as well as by strict action in defence of competition. It was important to note that, in this process, public monopolies should not be transformed into private monopolies which continued to enjoy captive markets where competition would be absent. It was essential to avoid the creation of concentrated sectors achieving control of "natural" monopolies. As for the role of competition policy as an instrument of development, he considered that consultation and cooperation mechanisms among competition authorities, as agreed under the Set, was an essential element if one wished to achieve progress towards increased convergence of competition laws and policies. Technical cooperation, as had been emphasized in the conclusions of the Caracas meeting of Latin American and Caribbean countries as well as in the Declaration of Tunis, was also essential in this respect.

57. The representative of Algeria recalled that UNCTAD IX would be discussing issues linked to competition, and the role the Intergovernmental Group of Experts on Restrictive Business Practices should play in the area of RBPs and competition policy in the light of the Uruguay Round Agreements. The Model Law was, in his view, very useful for helping countries to adopt appropriate legislation to

control RBPs and to adapt their laws to the new realities of the global economy. The Set of Principles and Rules should contribute to strengthening international cooperation in this area and encourage transparency and fairness of business practices at the international level. UNCTAD also had a very important role to play in technical assistance in this area, and his delegation supported the proposal to organize regional and subregional meetings to allow developing countries to consult and exchange relevant experiences. He also supported the proposal to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to Intergovernmental Group of Experts on Competition.

58. Algeria had undertaken important economic reforms in recent years, including structural adjustment reforms and trade liberalization, to establish the mechanisms necessary for the transition from a planned to a market economy and to encourage competitiveness. New legislation had also been adopted on investment, privatization and competition. The new competition law aimed at reinforcing the legislative framework for economic reform, allowing liberalization to take place under the right conditions, promoting transparency and fairness in business practices, and sanctioning any infraction of competition rules. He described the principles and main provisions of the Algerian competition law, as well as the organization, functions and powers of the Conseil de la Concurrence, which was responsible for implementing the law.

59. The representative of Zambia stated that the Model Law on restrictive business practices prepared by the UNCTAD secretariat was useful in drafting her country's competition legislation. From the time of the independence of Zambia, the Government had embarked on building a planned economy dominated by State enterprises. However, since 1991, when the present Government had come to power, the country had been implementing a structural adjustment programme financed by the World Bank and the donor community. The following economic measures had been taken: trade liberalization; withdrawal of subsidies and deregulation of prices of major commodities; introduction of legislation to promote private-sector participation in the economy, such as the Privatization Act; introduction of a stock exchange and adoption of a Securities Act, and the adoption of the Competition and Fair Trading Act. The latter Act provided for the establishment of a Competition Commission - hence the need for technical assistance to train personnel who would be charged with enforcement of the Law. The technical assistance could also take the form of seminars and workshops.

60. The representative of Sri Lanka stated that technical assistance was of paramount importance especially for developing countries in their efforts to establish effective competition agencies. Recalling the statement he had made

at the previous meeting, he reiterated that his country was working on the establishment of a Consumer Protection and Fair Trading Commission.

61. The representative of the European Commission stated that, following the conclusion of the Uruguay Round, an independent group of experts entitled the Van Miert Commission had been appointed to look into agreements, in particular those with the United States of America, EFTA, Central Europe and the Mediterranean countries. The task was to come up with a minimum set of principles and arbitration arrangements. The group had made several recommendations, of which the most relevant were:

- The need for effective enforcement of competition rules;
- The need for provision of technical assistance, especially for developing countries;
- The deepening of bilateral relations and exchange of information;
- Dispute settlement mechanisms.

62. The representative of the Russian Federation recalled the sweeping changes that had transformed a strictly centralized economy into a market economy system in an extremely short period, with the help of the Antimonopoly Committee. After describing his country's legislation related to unfair competition, misleading advertising, consumer protection, support for entrepreneurs and demonopolization, he said that in economies in transition such as his own country's, practice was moving forward faster than competition theory. Demonopolizing the economy was an extremely difficult task in practice. Other countries in transition faced similar difficulties. UNCTAD's activities on competition was very useful for defining universally recognized principles and rules. These activities should be continued and stepped up in order to promote implementation.

63. He then described the close cooperation activities in the area of antimonopoly policies that were being pursued by CIS member countries, since the Treaty signed on 23 December 1993 in this field, and the joint inter-State agreement signed with Bulgaria in 1994. Up to now, five meetings had been held, the last of which had taken place on 7 November 1995 in Kishinev, Republic of Moldova. At that meeting, among other issues, a joint position of CIS countries had been agreed for the Third Review Conference (as circulated in TD/RBP/CONF.4/12) and a joint declaration on the need to strengthen technical cooperation in the field of competition law and policy had been adopted. A draft project for technical assistance, with UNCTAD acting as executive agency, had

been agreed upon, and he called upon donors to support this important project financially.

64. Turning to the outcome of the Review Conference, he expressed the hope that it would ensure progress of the work of the IGE in the coming five years, and since in the field of competition UNCTAD was the most appropriate forum to undertake work aimed at improving the existing Set of Principles and Rules and building a worldwide consensus aimed at preparing an agreement on trade-related aspects of competition.

65. The representative of the Organisation for Economic Cooperation and Development (OECD) stated that a revised Council Recommendation concerning cooperation between member countries on anti-competitive practices affecting international trade had been adopted in July 1995 to prevent anti-competitive behaviour in international transactions. Copies of this document (C(95)130/FINAL) were available in the conference room. Its main provisions included:

- Notification;
- Exchange of information and coordination of action in the process of investigations, including mergers when taking place in more than one country, as well as consultation and conciliation procedures;
- Confidentiality of information.

Annexed to the revised Council Recommendation were important guiding principles, setting out detailed procedures for notifying and principles of confidentiality in the sharing of information.

66. The representative of Italy stated that his country had established two independent regulatory authorities in the area of utilities. The major objectives were to ensure competition, efficiency and quality. The relationship of these authorities to the Antitrust Authority was through notification and the provision of advisory opinions by the Authority in contentious cases. In addition, decisions by the authorities could be referred to administrative courts.

67. The representative of Consumers International recalled the prime role of consumer welfare in competition policy. However, her organization considered that competition authorities should interact more than they had done so far with consumer organizations and take greater account of their viewpoints in the

application of competition policy. Competition policy should also be propagated to a wider audience, and UNCTAD and its member Governments could undertake training seminars for non-governmental organizations and enterprises, thus broadening the constituency for effective and consumer-friendly competition law. She supported the proposal to develop a database: a similar proposal had been made by a conference on consumers and competition law jointly organized in Delhi by her organization and a local member organization, which had been supported and attended by UNCTAD. She also supported work by UNCTAD on the interaction between competition and trade law, particularly anti-dumping laws. Her organization had also expressed support for work on an international competition code under the auspices of the World Trade Organization, stressing the vital role of UNCTAD and OECD in this process. The work on the Set of Principles and Rules could help to promote a consensus on this issue among WTO members.

68. The representative of the Ukraine stated that the Antimonopoly Committee had little or no power to take action against anti-competitive behaviour by enterprises which were not deemed to be abusing a position of dominant power since they enjoyed a "natural" monopoly. Thus, independent commissions were being set up in such utilities sectors as electricity. Soon, communications and transport sectors would be subject to legislation as well. In this respect, the work of the UNCTAD secretariat had been useful to his Government.