



**United Nations
Conference
on Trade and
Development**

Distr.
LIMITED

TD/RBP/CONF.4/L.2
20 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

Draft resolution

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,

Having reviewed all aspects of the Set, 15 years after its adoption, and
recognizing the positive contribution made by the Set of Multilaterally Agreed
Equitable Principles and Rules for the Control of Restrictive Business Practices and
Intergovernmental Group of Experts on RBPs to the promotion of competition,

Noting especially the radical changes, which took place in the developing
countries and countries in transition in the last years towards liberalization of
economies and development of competition,

Reaffirming as well the Resolution on Strengthening the Implementation of the
Set adopted by the Second United Nations Conference to Review all Aspects of the Set
of Multilaterally Agreed Equitable Principles and Rules for the Control of
Restrictive Business Practices,

Taking note of the decision taken by UNCTAD VIII that "UNCTAD should pursue,
through the IGE on RBPs, its work with regard to policies and rules for the control
of RBPs in order to encourage competition, to promote the proper functioning of
markets and efficient resource allocation, and to bring about further liberalization
of international trade",

Noting that the agreed annotations to the provisional agenda for the ninth session of the United Nations Conference on Trade and Development provide that the Conference should cover the area of the interrelationship between trade and competition policy, and that policy measures will be considered in an integrated manner covering the area of the interrelationship between competition and enterprise development,

Taking into account the proposals contained in the Agreed Conclusions of the Intergovernmental Group of Experts on Restrictive Business Practices at its fourteenth session, as well as the recommendations made by the regional African Workshop on Competition Policy, the meeting on Competition Policy in Latin America and the Caribbean, and the fifth session of the Interstate Council for Anti-monopoly Policies of the Commonwealth of Independent States (CIS) in preparation for the Third Review Conference and expressing its appreciation to all Governments and organizations contributing to their success,

1. Takes note with appreciation of the documentation prepared by the UNCTAD secretariat for the Conference and requests the secretariat to revise documents in the light of comments by Member States made at the Conference or to be sent in writing by 31 January 1996 for submission to the fifteenth session of the IGE;

2. Takes note in particular of the Model Law and its commentary as a guide to the competition approaches followed on various points by different countries. It should be understood that the Model Law and its commentary do not affect the discretion of countries to choose policies considered appropriate for themselves, and that they should be periodically reviewed in the light of reforms and trends at the national and regional levels;

3. Requests the UNCTAD secretariat to revise periodically the commentary to the Model Law in the light of legislative developments and comments made by Member States for consideration by future sessions of the IGE, and to disseminate widely the Model Law and its commentary as revised;

4. Further requests the UNCTAD secretariat, taking into account increased needs for technical cooperation and technical assistance in developing countries, countries in transition and other countries, to carry out a review of technical cooperation activities undertaken by UNCTAD and other international organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance for capacity building in the area of competition law and policy by:

- (i) Encouraging providers and recipient of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;
- (ii) Encouraging developing countries and countries in transition to identify specific competition law and policy areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;
- (iii) Identifying common problems encountered in the competition law and policy area which might receive attention in regional and sub-regional seminars;
- (iv) Enhancing cost-effectiveness, complementarity and collaboration among providers and recipients of technical cooperation, both in terms of the geographical focus of technical cooperation activities, taking into account the special needs of African countries, and the nature of cooperation undertaken;
- (v) Preparation and execution of national, regional and sub-regional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries, or sub-regions which have not received such assistance so far, especially in the field of law-drafting and staff-training, and enforcement capacity;
- (vi) Mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area;

and to prepare a report thereon for submission for consideration by IGE sessions;

5. Calls upon Governments to make efforts to increase the participation of experts/delegates particularly from developing countries, least developed countries and countries in transition, including those countries which have not yet adopted competition policy or laws, in future sessions of the Intergovernmental Group of Experts on RBPs, and in the Fourth Review Conference if approved by the General Assembly;

6. Urges intergovernmental organizations and financing programmes and agencies to provide resources for the activities mentioned in paragraphs 4 and 5 above;

7. Appeals to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned in paragraphs 4 and 5 above;

8. Further requests the UNCTAD secretariat to prepare a draft outline of a possible study on empirical evidence of the benefits (including benefits for consumers) to be gained by developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development, for submission to the fifteenth session of the IGE;

9. Decides that:

- (i) Future Intergovernmental Group of Experts sessions should include at least three days for informal multilateral consultations among delegates on competition law and policy issues with special focus on practical cases. Countries wishing to participate in the consultations are encouraged to give advance notice of their proposed RBP issues, in order to maximize the opportunities for exchange of views and experiences with member countries. After an understanding is reached as to the subject-matter of the consultations, a detailed agenda and timetable for the consultations should be disseminated by the secretariat at least one month in advance of the session of the Intergovernmental Group of Experts so as to permit delegations from all member States to participate in the informal consultations, and the likelihood of participation in the consultations by competition experts from all regions should be ascertained;
- (ii) As part of such consultations, the Intergovernmental Group of Experts should undertake a comprehensive informal exchange of views and experiences of several developed and other interested countries on issues relating to cases concerning RBPs and other issues relevant to competition which have been raised by developing or other countries.
- (iii) As part of such consultations the Intergovernmental Group of Experts should organize several small workshops at which the secretariat and a few experts from developed and other countries would exchange informally views and experiences with developing and other countries wishing to take advantage of such an exchange of views for the purpose of developing their analysis of specific issues of RBPs in a given country;

10. Calls upon States to strive to implement all provisions of the Set to ensure its effective application;

11. Decides that, in the light of the strong worldwide trend towards the adoption or reform of competition laws and the development of national competition laws and policies over the period since the Set was adopted, the IGE should embark on an exercise upon request from member States and in collaboration with national and regional competition law and policy authorities, to map out and further strengthen common ground among States in the area of competition law and policy in identifying restrictive business practices that affect the economic development of countries. In this context, the focus of the exercise, *inter alia*, should be on:

- (i) Identifying "common ground", i.e. broad similarities in the approaches followed on different competition law and policy questions by governments;
- (ii) Shedding light and encouraging exchanges of views in those areas where the identification of "common ground" is more difficult, e.g. where there are differences among economic theories, or among competition laws or policies, such as:
 - (a) The role of competition law and policy in the strengthening and improvement of the economies of developing and other countries and, in particular, the development of the business community;
 - (b) Taking into account economic globalization and liberalization of the economies of developing and other countries, to identify appropriate measures to help those countries that might be hampered by RBPs;
 - (c) The interface between competition law and policy, technological innovation and efficiency;
 - (d) The competition law and policy treatment of vertical restraints and abuses of dominant positions;
 - (e) The competition policy treatment of the exercise of intellectual property rights (IPRs) and of licences of IPRs or know-how;

- (f) In-depth analysis of differences in the scope of competition laws and policies in individual sectors, in the light of the process of economic globalization and liberalization;
- (g) In-depth analysis of the effectiveness of enforcement of competition laws, including enforcement in cases of RBPs having effects in more than one country;

12. Invites Governments, during future consultations in meetings of the Intergovernmental Group of Experts, to clarify the scope or application of their competition laws and policies, with a view to improving mutual understanding about substantive principles and procedures of competition law and policy, taking into account relevant provisions of the Uruguay Round Agreements. In the context of this exercise, Governments may wish to discuss:

- (i) How the Set of Principles and Rules might be better implemented, particularly those provisions which have not been adequately implemented so far;
- (ii) The competition policy implications at the national, regional and international levels of globalization and liberalization;
- (iii) Techniques and procedures for detecting and sanctioning collusive tendering, including international cartels and other anticompetitive practices;
- (iv) The strengthening of information exchange, consultations and cooperation in enforcement at the bilateral, regional and multilateral levels;
- (v) How competition laws and policy should apply to State activities such as regulation of State enterprises, State monopolies, natural monopolies and enterprises with exclusive rights granted by the State;

13. Affirms the fundamental role of competition law and policy for sound economic development and recommends the continuation of the important and useful work programme within UNCTAD's intergovernmental machinery that addresses competition law and policy issues, and proceeds with the active support and participation of competition law and policy authorities of member countries;

14. Recommends to the General Assembly to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to that of Intergovernmental Group of Experts on Competition Law and Policy;

15. Further recommends that the General Assembly convene a Fourth Review Conference on the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices under UNCTAD auspices, to be held in Geneva in the year 2000.