

**UNITED
NATIONS**



**United Nations
Conference
on Trade and**

Distr.
LIMITED

TD/B/COM.2/L.1/Add.1
21 November 1996

Original : ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues
First session
Geneva, 18 November 1996
Agenda item 8

**DRAFT REPORT OF THE COMMISSION ON INVESTMENT, TECHNOLOGY
AND RELATED FINANCIAL ISSUES ON ITS FIRST SESSION
(18-22 November 1996)**

Rapporteur: Mr. Atsuyuki Oike (Japan)

ADDENDUM

Speakers:

Director, ITCD
Vice-Chairman, Expert Meeting on
Competition Law and Policy
Morocco (for African Group)
Panama (for Latin American and Caribbean Group)
Pakistan (for Asian Group and China)
United States of America

Japan
Russian Federation
Consumer International
Ethiopia
Mexico
China
Bangladesh

Note for Delegations

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

Requests for amendments to statements of individual delegations - to be submitted in English or French - should be communicated by Friday, 29 November 1996 at the latest to:

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GE.96-52160

Chapter II

ISSUES RELATED TO COMPETITION LAW OF

PARTICULAR RELEVANCE TO DEVELOPMENT

(Agenda item 4)

1. For its consideration of this item, the Commission had before it the following documentation:

"Issues related to competition law of particular relevance to development: note by the UNCTAD secretariat" (TD/B/COM.2/1 and Add.1);

"Agreed recommendations of the Expert Meeting on Competition Law and Policy" (TD/B/COM.2/EM/L.2);

"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" (TD/RBP/CONF.4/15) (background document).

General statements

2. The **Senior Programme Manager of the Division of International Trade in Goods and Services, and Commodities**, having referred to UNCTAD's mandates on competition law and policy and to the documentation on this issue made available to the Commission, discussed the implications of globalization and liberalization for competition policy and the need to strengthen international cooperation in this area. The secretariat had organized a panel discussion within the framework of the Commission's session involving presentations by Mrs. E. Gachuri of Kenya on "The problems faced by competition authorities in relation to the business community (the Kenyan experience)", Ms. C. Curiel of Venezuela on "The competition advocacy role of the competition authority in creating a level playing field for market players", and Mr. M. Ben Fraj of Tunisia on "The experiences of Tunisia in implementing its competition law and policy". The tasks of the Commission under this agenda item were to undertake general deliberations on the issue, to take decisions on the agreed recommendations of the Expert Meeting, and to provide broad guidance for the work of future expert meetings in the field of competition law and policy.

3. The **Vice-Chairman of the Expert Meeting on Competition Law and Policy**, speaking on behalf of the Chairman of that Meeting, introduced the report and agreed recommendations of the Expert Meeting, which had been held in Geneva from 13 to 15 November 1996. During the consultations held in the course of the Meeting, presentations had been made on the challenges faced by competition authorities in implementing competition law and policy; the treatment of vertical price restraints, by a representative of the European Commission; on the application of competition law to monopolies and enterprises with special rights, by a panel of experts from Venezuela, Tunisia, Slovenia and France; and

on the protection of confidential information, by an expert from the United States Justice Department. Rich debates on these issues had ensued, and special mention was made of the practical methods of work used by the experts in the informal consultations. He then presented the agreed recommendations of the Expert Meeting (TD/B/COM.2/EM/L.2), which contained several recommendations for the Commission.

4. The spokesman for the African Group (Morocco) said that his Group attached great importance to the issue of competition law and policy. African countries were engaged in deep reforms in this field and had been very interested in the intergovernmental consultations held during the Expert Group created within the framework of the RBP Set. At the national level, efforts in this field were hampered by the international dimension of RBPs and by the lack of human resources and inadequate institutional structures available in Africa. For these reasons, technical assistance on competition and consumer protection was essential in supporting African countries' efforts to formulate competition law and policy, as recommended by the Third Review Conference and UNCTAD IX in paragraph 91 (iii) of the "Partnership for Growth and Development", which placed special emphasis on Africa.

5. His Group fully supported the agreed recommendations of the Expert Meeting on Competition Law and Policy and greatly appreciated the work of the Meeting in bringing about a convergence of views in this field. The working methods of the Expert Meeting should serve as a model for other UNCTAD expert meetings. Funding the cost of participation of experts from developing countries would ensure that a broad spectrum of views were heard in the deliberations of the Expert Meeting.

6. He expressed his Group's support for UNCTAD's work on RBPs and for the technical assistance activities which the secretariat provided to interested countries in the area of competition law and policy. Furthermore, his Group believed that UNCTAD provided the most appropriate forum for dealing with the issue of competition law and policies.

7. The spokesman for the Latin American and Caribbean Group (Panama) pointed out the importance of competition policy legislation in the establishment of a well-functioning market economy, as well as in enhancing the international competitiveness of national industries. It was important that competition legislation favoured the undisrupted flow of goods and services beyond national borders. He also stressed the importance of international assistance in developing national competition laws and regulations, and thanked the UNCTAD secretariat for the help it had provided with respect to the enactment of competition legislation and the setting-up of national competition authorities. His Group was very pleased with the quality of the work of the Expert Meeting held the previous week, while regretting the insufficient presence of experts from developing countries due to lack of funds. His Group gave its full support for the continuation of UNCTAD's work in the field of competition law and policy.

8. The spokesman for the Asian Group and China (Pakistan) said that it was not easy for developing countries in particular to ensure that a competitive environment prevailed and that benefits of liberalization were not eroded by the

emergence of RBPs. To undertake this task, technical assistance for the establishment of sound laws and institutions was necessary, and he therefore fully endorsed the Expert Meeting's recommendation that the secretariat should continue its technical cooperation activities in accordance with the relevant resolutions. It was necessary to address anti-competitive tendencies emanating from both domestic and external markets. Liberalization and technological changes had greatly increased the role of transnational corporations (TNCs). As discussed in TD/B/COM.2/2/Add.1, this might make it more difficult to detect RBPs and to enforce competition policy, and it reinforced the need to assist developing countries' national efforts and to strengthen international cooperation in this area. He welcomed the Expert Meeting's recommendation that the secretariat prepare for consultations during the next meeting on international aspects of competition and the problems of competition law enforcement, including international mergers and industrial concentration, and requested a background document placing this issue in the context of TNC operations impinging on competition policy issues and enumerating policy options for host countries. He emphasized that, since the representation of developing countries at the Expert Meeting had not been adequate, it was necessary to operationalize the related trust fund quickly to enhance the participation of experts from these countries.

9. The representative of the United States of America said that he shared the views expressed by other delegations on the usefulness of the work of the Expert Meeting on Competition Law and Policy. He noted that the agreed recommendations of the Expert Meeting were silent about the status of the Intergovernmental

Group of Experts. It had been agreed by the General Assembly in 1980 that UNCTAD was an appropriate forum to discuss competition law and policy issues. He would not make any judgement about the relative value of UNCTAD as a forum *vis-à-vis* other possible multilateral forums for discussing such issues.

10. The representative of Japan said that the Set had played an extremely important role in drawing the attention of the international community to the issue of restrictive business practices and contributed to the transparency and convergence of national regulations. The disciplines in the Set, which dealt with business practices by enterprises, were non-binding, and this should not be changed at this stage. Since competition laws and policy represented an extremely multidimensional and complicated issue, more international organizations would be involved in its consideration in the years to come. His delegation recognized UNCTAD's important contribution to the promotion of the smooth implementation of the Set, helping to promote international harmonization of rules and improving transparency in respect of restrictive business practices in developing countries. After reporting on his country's technical assistance activities in support of developing countries' efforts to adopt and implement competition laws and policy, he proposed that UNCTAD should formulate model courses on competition policy corresponding to the stage of development of countries and their experience in the implementation of competition law and policy.

11. The representative of the Russian Federation said that great changes had occurred in the area of competition and entrepreneurship in the CIS countries. The Russian Federation had made many positive changes in transforming the highly

monopolistic economy inherited from the Soviet Union. It had adopted an Antimonopoly Act and created an Antimonopoly Commission, and it was now working on further improvements. However, the Russian Federation lacked skilled manpower and research institutions in the field of competition, and CIS countries had not received much technical assistance from UNCTAD. The Russian Federation therefore appealed to the UNCTAD secretariat to respond favourably to the CIS countries' request for technical assistance submitted to the Secretary-General of UNCTAD in 1995. He hoped that international organizations would cooperate in work towards multilateral rules on competition promoting market access. He also proposed that a Manual on Competition and Investment dealing with RBPs should be prepared.

12. The representative of Consumer International said her organization, in cooperation with the Civil Unity and Trust Society (CUTS) of India, had recently organized a seminar on "Investments: Consumers, Development and the Environment". It was the strongest economies which would gain most from greater trade liberalization, while some of the poorest countries would lose out in the short term. With regard to a multilateral agreement on investment (MAI), corporate

rights and the freedom to invest must be balanced with responsibility towards employees, customers and local governments. Consumer International was concerned that the interests of business were being allowed to override those of consumers, workers and the environment in a rush to provide the greatest incentives possible to investors. It strongly supported UNCTAD's role in the area of competition law and policy and its provision of technical assistance. She urged member States to consider a discussion of international competition policy under the auspices of WTO in order to strengthen national sovereignty in relation to global corporations.

13. The representative of Ethiopia said that his country had initiated the process of drafting competition legislation and would therefore be requesting the UNCTAD secretariat to provide appropriate technical assistance.

14. The representative of Mexico described his country's projects aimed at developing internal and external competition in the period 1996 through 2000. With respect to efforts aimed at protecting competition at the level of external trade, he drew attention to Mexico's important anti-dumping procedures.

15. The representative of China expressed gratitude to the secretariat for its work in the field of competition law and policy and hoped that the study that had been requested would be completed by the secretariat at an early date and distributed to all member States. He also expressed the hope that the secretariat would be able in the future to extend technical assistance to all States, and especially least developed countries, taking into account their specific situation and in accordance with their needs.

16. China had started work on competition legislation in 1987, and by 1993 it had passed laws against unfair competition. It was now in the process of refining its competition legislation. Apart from the central Government, local governments had also adopted rules and regulations on competition. He recalled that four workshops on competition had been held in China under the auspices of UNCTAD, with the participation of experts from a number of individual countries.

17. The representative of Bangladesh said that the least developed countries (LDCs) needed special protection if they were to become meaningful players in the new global economy. The LDCs had already taken steps towards making their economies competitive through privatization and liberalization. They had even put in place free trade zones. However, in order to achieve their development objectives, they needed continuous assistance from UNCTAD, OECD, WTO and other development partners. Referring to the statement made by Consumer International, he stated that his country could count on a strong consumer movement.

Action by the Commission

18. The Commission endorsed the agreed recommendations of the Expert Meeting on Competition Law and Policy.