

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**Report of the Fourth United Nations Conference to  
Review All Aspects of the Set of Multilaterally Agreed  
Equitable Principles and Rules for the Control of  
Restrictive Business Practices**

held at the Palais des Nations, Geneva,  
from 25 to 29 September 2000



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## Chapter I

### RESOLUTION ADOPTED BY THE REVIEW CONFERENCE

*The Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices,*

*Having reviewed* all aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices, 20 years after its adoption, and *recognizing* the positive contribution made by the Set, by the Expert Meeting on Competition Law and Policy and the 1998 and 1999 sessions of the Intergovernmental Group of Experts on Competition Law and Policy to the promotion of competition,

*Noting* the major changes which have taken place in the world economy, including the role of TNCs and the reforms introduced by the developing countries and countries with economies in transition in recent years towards liberalization of economies and development of competition laws and policies,

*Taking note* of the decisions on competition issues adopted by UNCTAD X in paragraphs 140-143 of the Bangkok Plan of Action (TD/386),

*Noting also* the concern that globalization should be made more efficient and equitable, as called for in the Bangkok Declaration (TD/387, para. 4) in which the Conference declared that “in addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the fields of trade, investment, competition and finance”,

*Taking into account* the proposals contained in the agreed conclusions adopted by the Intergovernmental Group of Experts on Competition Law and Policy at its second session (TD/B/COM.2/19), as well as the recommendations made by the regional and subregional seminars in Jaipur (India) for Asia and the Pacific; Kiev (Ukraine) for Central and Eastern Europe and the CIS member countries; Casablanca (Morocco) for African and Arab countries; Livingstone (Zambia) for Southern and East Africa; and San José (Costa Rica) for Latin America and the Caribbean,

*Recalling* the Bangkok Declaration, which emphasizes the interlinkages which still exist between equity and efficiency in the globalization process and the crucial role that competition law and policy, with its concern for both economic efficiency and consumer welfare, play in making such interlinkages operational; without controls on anti-competitive practices, it is unlikely that all the benefits of liberalization and globalization will be passed on to consumers,

*Convinced* of the need to disseminate the culture of competition,

1. *Reaffirms* the validity of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, *recommends* to the General Assembly to subtitle the Set for reference as “UN Set of Principles and Rules on Competition”, and *calls* upon all member States to implement the provisions of the Set;
2. *Reaffirms* further the fundamental role of competition law and policy for sound economic development, and *recommends* the continuation and strengthening of the important and useful work programme within UNCTAD’s secretariat and the 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;
3. *Further recommends* that the General Assembly convene a Fifth United Nations Conference to Review all Aspects of the Set of Principles and Rules on Competition, to be held in Geneva, under UNCTAD auspices, in the year 2005;
4. *Invites* UNCTAD’s Commission on Trade in Goods and Services, and Commodities, at its next session, to consider convening an Expert Meeting on Consumer Policy as a distinct body from the Intergovernmental Group of Experts on Competition Law and Policy;
5. *Calls upon* States to increase cooperation at all levels between their competition authorities and Governments in order to strengthen effective action in the field of merger control and against cartels as covered by the Set, especially when these occur at the international level;
6. *Notes* that, while bilateral competition cooperation efforts are essential, there is need to promote regional as well as multilateral competition initiatives, particularly for smaller and developing economies, and *requests* the UNCTAD secretariat to study the possibility of formulating a model cooperation agreement on competition law and policy, based on the UN Set of Principle and Rules on Competition;
7. *Takes note* with appreciation of the documentation prepared by the UNCTAD secretariat for the Conference, and *requests* the secretariat to revise documents TD/RBP/CONF.5/4, TD/RBP/CONF.5/5, TD/RBP/CONF.5/6 and TD/RBP/CONF.5/7 in the light of comments by member States made at the Conference or to be sent in writing by 31 January 2001 for submission to the next session of the Intergovernmental Group of Experts on Competition Law and Policy, and make them available through UNCTAD’s Website;
8. *Decides* that the Intergovernmental Group of Experts on Competition Law and Policy at its 2001 session will consider the following issues for better implementation of the Set, in relation to the studies prepared by the UNCTAD secretariat:
  - (a) Cooperation regarding merger control;
  - (b) The interface between competition policy and intellectual property rights;

9. *Requests further* the Secretary-General of UNCTAD to take stock of anti-competitive cases with effects in more than one country, and the problems encountered in investigating the cases, to study the degree of efficiency of cooperation between competition authorities and governments in solving them;

10. *Commends* the secretariat on the revised Model Law (TD/RBP/CONF.5/7) and its new format, *takes note* that the commentaries contained therein do not affect the discretion of countries to choose policies considered appropriate for themselves, and *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 Intergovernmental Group of Experts on Competition Law and Policy, and to disseminate widely the Model Law and its commentary as revised;

11. *Requests* the secretariat to prepare for the Intergovernmental Group of Experts on Competition Law and Policy in 2001 a new chapter of the model law on the relationship between a competition authority and regulatory bodies, including sectoral regulators;

12. *Requests* the secretariat to continue to publish the following documents on a regular basis and to make them available on the Internet:

- (a) Further issues of the Handbook on Competition Legislation, including regional and international instruments, which should be complemented with a summary of the main provisions of competition laws on the basis of inputs to be submitted by member States;
- (b) An updated version of the Directory of Competition Authorities; and
- (c) An information note on recent important competition cases, with special reference to competition cases involving more than one country, and taking into account information to be received from member States;

13. *Takes note* with appreciation of the new UNCTAD Competition Law and Policy Website, and *requests* that forecasted events such as seminars and other assistance be indicated as far as possible in advance to allow member States to be informed and to be in a position to participate in the technical assistance activities organized or sponsored by UNCTAD;

14. *Takes note* with appreciation of the voluntary financial and other contributions for capacity building and technical cooperation, and *invites* all member States to assist UNCTAD on a voluntary basis in its technical cooperation by providing experts, training facilities or resources; *requests* the UNCTAD secretariat to continue and, resources permitting, expand its technical cooperation activities; and *invites* 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;

15. *Decides* that, in the light of the UNCTAD X Plan of Action (TD/386) as it relates to competition issues, the Intergovernmental Group of Experts on Competition Law and Policy should draw up its work plan along the lines indicated below.

**A. Institutional capacity building**

16. In accordance with the mandate given in the Bangkok Plan of Action and within available resources, UNCTAD should continue to provide and where possible expand, in coordination with member States and with other international organizations active in this field, its technical assistance, advisory and training services by *inter alia*:

- (a) Exploring and clarifying methodologies for defining relevant markets and assessing market power;
- (b) Increasing the effectiveness of training and technical assistance through regular experience sharing and by setting up regional forums;
- (c) Supporting efforts to advise and coordinate competition initiatives in national, regional and international fora, in particular by providing advice on all aspects of the establishment of competition authorities and continuing to organize regular meetings of competition authorities at the regional level;
- (d) Including the subject of competition law and policy in the syllabus of training courses envisaged in paragraph 166 of the Bangkok Plan of Action; developing a syllabus on competition law and policy, including economic analysis used in enforcing competition law, to be used by trainers in interested countries, including through available regional training centres and postgraduate programmes in universities.

**B. Competition advocacy and educating the public**

17. UNCTAD should:

- (a) Provide support to public authorities on competition and on consumer protection and assist them in educating the public and representatives of the government and private sectors in the field of competition law and policy;
- (b) Promote competition advocacy activities by competition authorities in developing countries and countries with economies in transition;
- (c) Study the feasibility of establishing a UN World Competition and Consumer Day as a means of publicizing benefits to consumers of competition policy and educating the public at large.

**C. Studies on competition, competitiveness and development**

18. UNCTAD should continue to study the issues of competition, competitiveness and development with particular emphasis on:

- (a) Merger control issues, including in the process of privatization;
- (b) Recalling paragraph 143 of the Bangkok Plan of Action, studying, clarifying and monitoring, including through specific country and case studies, the relationship between competition and competitiveness, as well as trade-related aspects of competition in accordance with the Set;
- (c) Periodically publishing information on mergers and acquisitions, particularly as they affect the development and integration of developing countries and countries in transition into the world economy;
- (d) Priorities of implementation and enforcement of competition policy and their relationship with the existence of an important informal sector in developing countries;
- (e) The benefits of competition law and policy for consumers and in poverty alleviation;
- (f) The benefits of competition policy for economic development;
- (g) The links between competition policy and foreign investment;
- (h) The implications of competition policy for small and micro economies and the opportunities for regional integration schemes in this field;
- (i) The importance of competition policy in privatization and deregulation exercises;
- (j) Undertaking, through a comparative study, an inventory of the scope and coverage of existing competition legislation, including sectoral exceptions, and implications for developing countries' development policies;
- (k) The relationship between competition policy and promotion of SMEs.

**D. Inputs to possible international agreements on competition**

19. UNCTAD should continue to provide inputs to deliberations on possible international agreements on competition, including with respect to the following items:



- (a) Pursuing consensus building activities by organizing national and regional meetings that could clarify competition issues and contribute to a better understanding of such issues;
- (b) Contributing to identifying the goals and objectives of developing countries in competition law and policy;
- (c) Exploring the effectiveness and complementarity of cooperation at bilateral, regional, plurilateral and multilateral levels;
- (d) Clarifying the ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view to enabling them to introduce and enforce competition law and policy;
- (e) Studying the roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy.

## Chapter II

### OPENING STATEMENTS

1. Opening the Fourth Review Conference, the **President of the Third Review Conference** referred to the important work done during the five years since the Third Conference by the UNCTAD secretariat and the Intergovernmental Group of Experts on Competition Law and Policy to carry out the recommendations of the Third Conference. He emphasized the important relationship between competition and non-ethical behaviour in business, which came from the mistaken idea that competition meant conquest. In his view, the main objective of a competition authority was to safeguard fair play in the market.

2. The **President of the Fourth Review Conference** commended the UNCTAD secretariat for the high quality of the documentation prepared for the Conference. He recalled the work accomplished by UNCTAD in the area of competition law and policy during the last decade and particularly the role played in consensus building around core issues of mutual interest to member countries. He also drew the attention of delegates to the Bangkok Plan of Action (TD/386) and, in particular, to the call for the international community to ensure an enabling global environment which could make globalization more efficient and equitable for economic growth and consumer welfare.

3. The **Secretary-General of UNCTAD** stressed the fact that, in his view, the competition issue had never been as important as it was now, not only with respect to economic matters, but for the interest of the general public as well. The UN Set of Principles and Rules had been adopted almost 21 years previously, and it was paradoxical that, to date, it was still the only universal multilaterally agreed instrument on competition. It had taken almost one generation for competition to become a central issue in the world economy. As mega-mergers filled the first pages of economic newspapers, an increasing number of countries were realizing that competition needed to be regulated. The optimism shared at the time of the Third Review Conference regarding the benefits to be derived from globalization, liberalization and market-oriented reforms, especially for the poorer partners of the international community, was now somewhat mitigated. The demonstrations at Seattle and afterwards had made it clear that globalization had its winners but also its losers, unless appropriate measures were taken to spread its benefits more evenly.

4. UNCTAD X had taken a close look at the problems of marginalization and at the need to achieve a balance between the greater efficiency brought about by increased reliance on free-market mechanisms and an equitable distribution of the wealth created. In that connection, the World Bank's *World Development Report* had recently devoted its attention to the fight against poverty. Increased competition resulting from globalization was apparent at all levels of economic activity, and especially in the accelerated pace of international mega-mergers and acquisitions, as studied in this year's *World Investment Report*.

5. There existed a clearer perception among Governments that competition policy could no longer be pursued effectively through national action alone. This meant that competition authorities needed to have in place, and to strengthen, cooperation mechanisms among

themselves at the bilateral, regional and multilateral levels in order to respond effectively to M&As and to the anti-competitive practices of firms that affected their countries. Co-operation was also highly necessary among international organizations, and he valued greatly UNCTAD's co-operation with the WTO, OECD and the World Bank and with individual countries providing expertise in the competition field.

### Chapter III

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

(Agenda item 6)

6. The representative of **Tunisia** said that many developing countries had adopted competition legislation since the adoption of the Set, and Tunisia had adopted a law in 1990 which had since been amended in the light of the liberalization of its economy and globalization. Another amendment was being prepared to strengthen the competition authority's powers. Efforts were also being undertaken to train officials and to educate the public in this area, and he expressed appreciation for the technical assistance provided by UNCTAD in this connection. Tunisia required more technical assistance to improve the functioning of its competition authority, to promote co-operation and exchange of information among competition authorities, and to establish a data base on RBPs and market structures in order to help control international mergers.

7. The representative of the **Russian Federation** stressed the importance of the UN Set of Principles and Rules on Restrictive Business Practices, which was the first international document containing rules to promote efficient market competition. The Set and the institutional mechanism on competition in the form of the Intergovernmental Group of Experts on Competition Law and Policy continued to play a very important role. The Set had demonstrated its universal nature and importance for both countries with market economies and countries with economies in transition. Issues of privatization and competition were regarded as matters of primary importance in the economic reforms undertaken in countries of the Commonwealth of Independent States (CIS) and Eastern and Central Europe. The availability of UN international guidelines and institutions assisted these countries in the elaboration of economic strategy and the implementation of government policy, while co-operation with UNCTAD had proved to be useful in the elaboration of competition legislation and policy. The issue of competition played a special role in regional cooperation of CIS countries, and the last session of the CIS Antimonopoly Council had stressed the importance of international co-operation on competition and of the strengthening of UNCTAD's role in this area. He stressed that the work of UNCTAD should be complemented by activities in the field of consumer protection, and an expert group on consumer protection should be established in UCTAD to complement the work of the existing Intergovernmental Group of Experts on Competition Law and Policy. It was also important to expand further UNCTAD's technical assistance, as well as its research activities.

8. The representative of **Madagascar** said that, in the context of the liberalization policies adopted by his country and its adhesion to regional and multilateral agreements, a draft competition law had been prepared with the co-operation of national bodies, as well as of UNCTAD, the World Bank and the French and Tunisian Governments. The draft law took into account national specificities and UNCTAD'S Model Law, and an expert from the Tunisian competition authority had helped to bring it into line with a developing country

environment and the country's priorities in terms of training personnel, organising institutions and undertaking pedagogical work to create a competition culture. An UNCTAD seminar had also been held in Madagascar, and a secondment had been organized for the head of Madagascar's competition authority with the Tunisian competition authority, which had provided very useful information. He expressed his Government's appreciation for the co-operation received and its desire for further co-operation to help implement the law once adopted.

9. The representative of the **Republic of Korea** expressed his delegation's support for the review of the application and implementation of the Set, which was taking place at a very opportune time. His country had amended its competition law to ensure that market principles prevailed. He noted with satisfaction the holding of a workshop of APEC member countries earlier in the year, and he informed participants about the fifth Workshop, which was scheduled to take place in Seoul in early November 2000.

10. The representative of **Kenya** pointed out that the Conference should take note of the special needs of developing countries in the areas of capacity building and sensitization of communities to competition policy and law. He thanked UNCTAD for the work already done in that connection and requested further support in these areas. Kenya had benefited from technical assistance to train competition officials with the help of UNCTAD and the Japanese Government, which had in the past three years trained Kenyans in the yearly antimonopoly training programmes organized by the Japanese Fair Trade Commission. He also thanked the Governments of the United States, Italy, Germany, Australia and the United Kingdom for accepting Kenyan officials for secondment to their competition Authorities. Kenya had implemented competition policy for 11 years and had found the analysis of mergers and the tackling of certain RBPs a real challenge. He therefore appealed for continued support from UNCTAD.

11. The representative of **Indonesia** noted that mergers and acquisitions could have both positive and negative effects. The negative effects resulted mainly from the increased dominant or monopoly power of the merged firm, and this made competition between large multinational corporations and companies of developing countries ever more difficult. He called for international efforts to correct the effects of market failures and to avoid marginalization of developing countries by focusing on creating an international framework regulating anti-competitive practices and checking the power of large TNCs. Recognizing that competition was the foundation of an effective market system, his delegation strongly supported the UNCTAD X Plan of Action as it related to competition. His country had recently adopted a competition law, and called for expanded assistance for developing countries in order to allow them to benefit from the global economy.

12. The representative of **Zambia** stressed the importance of the Conference as another opportunity to share ideas on the challenges faced by developing countries as they implemented competition policy and law in the context of globalization. In the four years of his country's implementation of competition policy, a total of 188 cases had been handled involving mergers and acquisitions, RBPs, trade agreements, unfair trading, and consumer interests, among others. He stressed the importance of merger control in Zambia, which had

registered a steady increase in the number of cases, contrary to the general view that small countries did not need merger control. He thanked UNCTAD for its involvement in the preparation of Regional and National Seminars on Competition Law and Policy in 1999 and 2000. The Regional Seminars had been organized under the auspices of COMESA, and the Seminar in July 2000 had produced the Livingstone Declaration which called for enhanced regional co-operation in the field of competition policy and law. It also emphasized Article 55 of the COMESA protocol, which addressed competition policy, as a basis for future work in the region. Finally, he underlined the need for further technical assistance for developing countries in the areas of human and institutional capacity building for developing countries.

13. The representative of **Morocco**, drawing attention to the Casablanca Declaration, emphasized the crucial role of UNCTAD in strengthening multilateral co-operation, ensuring the harmonization and convergence of competition law and policy, and promoting a worldwide culture of competition with a view to securing an equitable division of the benefits of globalization while minimizing its adverse consequences. He also insisted on the role of UNCTAD in providing technical assistance to developing countries to strengthen their capacity to implement competition law.

14. The representative of **Malaysia** pointed out that her country did not have a specific competition policy or competition law yet and that she was on an information gathering mission as her country was trying to assess the economic benefits of having a competition law. She stressed that one of the areas of concern or fear in having a competition law was the marginalization of local companies. With regard to the issue of exemptions, she expressed the hope that such provisions would not be subject to objections in some quarters. She also welcomed the opportunity to learn from the experiences of other countries attending the Conference.

15. The representative of **China** said that, although the UN Set had been broadly accepted by all member States, international economic conditions had changed radically since its adoption, hence the need for a review of some of its substantive provisions. He referred in particular to the issue of mergers and acquisitions and their impact on the development of developing countries. He commended UNCTAD on the revised competition model law. Economic reforms and trade liberalization had brought to the forefront the need to address competition issues. He reported on the progress made by his country in the process of preparing its draft competition law and expressed his country's thanks to UNCTAD, OECD and other international organizations for the technical support that they continued to provide to his Government.

16. The representative of **Ukraine** said that, with the significant changes that had occurred in the world economy, it had become evident that successful economic development depended on the availability and effective enforcement of national competition legislation, while international co-operation on competition law and policy was of primary importance. The recent Regional Conference on Competition Policy for CIS and Central and Eastern European countries, in its Kiev Declaration, had called for the further strengthening of UNCTAD's role in international co-operation on competition, along with the expansion of its technical assistance to the countries of the region, as well as of its research activities.

Concerning the possibility of taking preliminary steps for the elaboration of international rules on competition, first UNCTAD could initiate the preparation of an international agreement on competition dealing with anticompetitive actions of both Governments and economic entities. Second, it could formulate basic principles of such an agreement, including issues of national treatment, most favoured nation treatment and transparency of competition laws and policies. Third, it could establish basic mechanisms, including means of co-operation among competition authorities, for prohibition of dangerous cartels, implementation of decisions on them and notification of export cartels; for rules on the control of economic concentration; for creation of special conditions for developing countries and countries with economies in transition; and for provision of technical assistance and establishment of a dispute settlement mechanism.

17. The representative of **Costa Rica** referred to the Declaration of San José adopted at the Regional Seminar on Competition Law and Policy for Latin America and the Caribbean, held in San José, Costa Rica, from 30 August to 1 September 2000. He drew attention to the ways globalization affected competition and highlighted the need to undertake specific studies on the experiences of countries in different sectors such as telecommunications, energy, etc. He stressed the relationship between competition and consumer protection and highlighted the fact that there should be a legal framework to protect consumers. He also referred to the relationship between competition policy and intellectual property. As regards UNCTAD's role in fostering competition policy, it should aim at providing support to competition advocacy programmes and at helping countries to ensure that any multilateral agreement on competition reflected the needs of developing countries.

18. The representative of **Trinidad and Tobago** expressed his appreciation to UNCTAD and the European Union for having organized a subregional workshop on competition policy for the CARICOM countries. She also reported on the progress made by her Government in the preparation of a draft competition law. Her delegation fully supported the San José Declaration, and in particular the emphasis placed on the protection of consumer interests. She expressed her support for the proposal that UNCTAD should undertake a study on the effects of competition on micro economies such as the small islands of the Caribbean. She urged that competition law and policy issues be included in the terms of reference of the regular training courses envisaged in paragraph 166 of the Bangkok Plan of Action (TD/386).

19. The representative of **Thailand** expressed satisfaction with the secretariat's revised model law and said that its new format would be helpful to countries seeking to introduce or enforce competition legislation. The Fourth Review Conference provided a timely opportunity to reflect on ways and means of improving the existing framework on competition in order to be responsive to changing economic conditions and international market structures. He emphasized the need for international co-operation among member countries in this area, and in this connection called for stricter observance of the principles contained in the UN Set, so as to be more responsive to the needs of developing countries. He expressed his delegation's support for the Jaipur Declaration and called for UNCTAD to continue its technical support for developing countries in the area of competition.

20. The representative of the **European Commission** supported the views expressed by other delegations on the subject of globalization and liberalization. He emphasized the trend towards liberalization and the opening of markets, but also towards the globalization of certain anti-competitive practices of firms, and he called for firm and coordinated global responses to such practices. The European Union had tabled a proposal in the WTO working group on the interface between competition and trade which referred to: (i) a possible agreement on core principles of competition law and policy, including the principles of non-discrimination, transparency, guaranteed due process and effective enforcement of competition law; (ii) the need for international cooperation, including the exchange of information and experiences; and (iii) technical support for competition institutions in developing countries.

21. The representative of the **Islamic Republic of Iran** drew attention to an UNCTAD seminar on different aspects of competition law and policy which had been held in Teheran in early 1998. The Seminar and its domestic follow-up had helped accelerate national plans to establish, in a rational way and in an appropriate timeframe, Iranian competition policy and law. A draft competition law was being prepared as part of the Third Economic, Social and Cultural Development Plan, currently being considered by the Administration before ratification by Parliament. In this regard, he stressed the need to foster UNCTAD cooperation activities in this area, as set out in the mandate given to UNCTAD in Bangkok.

22. The representative of the **United States of America** said that his Government considered it premature to start multilateral negotiations on competition policy, as only around half of the member States of the United Nations or of the World Trade Organization had competition laws. He also disagreed with the representative of the European Commission that there should be a simple division of tasks in this area, with UNCTAD undertaking technical assistance and other international organizations assuming responsibility for the elaboration of rules and dispute settlement. The Assistant Attorney-General of the Department of Justice had proposed work to be done at the multilateral level, with a role for UNCTAD in this connection.

23. The representative of **Canada** highlighted his country's support for WTO work on competition and stressed the need to include the subject in a next round of negotiations.

24. The representative of **Namibia** noted that the Review Conference was being held at a time when Namibia was in the process of putting competition legislation in place. The Namibian competition bill was at an advanced stage and would enable Namibia to participate effectively in shaping the future competition rules for SADC and COMESA, of which it was a member. The Namibian economy was small and featured a high degree of concentration, a situation that had the potential to encourage many different forms of collusion among economic undertakings to the detriment of the consumer. In addition, foreign firms dominated many sectors of the economy, which might impair the potential growth of domestic firms, mainly small-scale enterprises, and hinder new entrants into the Namibian economy. He therefore underscored the need for a vibrant and competitive environment to overcome the difficulties prevailing. He stressed the need for technical assistance from UNCTAD to support the Namibian Competition Authority, which would implement the



competition law, and to train staff through detachments to experienced competition authorities, especially in the region. He called for further support for the region in the form of seminars from which Namibia would also benefit. He also reported that the draft Namibian bill had been developed in cooperation with the Italian consultancy firm Agora 2000 with financial assistance from the EU's Transitional Trade and Investment Development Programme for Namibia.

25. The representative of **India** said that globalization and the economic changes which had occurred had made it necessary for a new competition law to be prepared in India. In October 1999 a committee of eminent persons had been constituted to examine the Monopolies and Restrictive Trade Practices (MRTP) Act and make appropriate recommendations. The conclusions of the committee's work, which were contained in a policy report, had been submitted to the Prime Minister and were available on the Website of the Department of Company Affairs, Government of India. It indicated that the new competition law should shift from curbing monopolies to promoting competition. The new competition bill was being drafted. The report of the committee had been circulated to various departments of the Government of India, institutions, non-governmental organizations and chambers of commerce for their feedback and reactions before the formulation and finalization of policy and law. Considerable interest had been evinced by persons, enterprises and organizations in and outside India. There was concern not only over the law to be formulated but also about various aspects of its implementation. There was also concern for not so strong players in the market. The Jaipur seminar, which had been organized in cooperation with UNCTAD in April 2000, had been a useful exchange of views and a sharing of experiences of other countries of the region.

26. The representative of the **World Trade Organization** emphasized the importance of intense cooperation between UNCTAD and WTO. During the last year WTO had participated in different regional seminars organized by UNCTAD, and UNCTAD had similarly participated in events organized by WTO. With regard to the continuing work on competition policy at WTO, interest among delegations in the relevant Working Group was very high, with a total of 152 submissions to the Group in three years. The development dimension of the issues had been central in the discussions of the Working Group. The issue of WTO dispute settlement in the field of competition policy was becoming less significant in the debate, while alternative mechanisms such as transparency requirements or voluntary peer reviews were being considered.

27. The representative of the **Philippines** said that his country had focused on the removal of governmental restraints and the enhancement of market contestability, including through trade liberalization. Although the Philippines had a securities and exchange law dealing with mergers and acquisitions, it had no enforcement machinery to control RBPs, as so far little interest had been shown in this area. However, this might change in the light of globalization and concerns about the market power of TNCs. In deciding whether to strengthen its competition regime, the Philippines would prefer any applicable multilateral rules on competition policy to be general in character and not involve dispute settlement, as with the rules established by APEC.

28. The representative of **Pakistan** drew attention to his country's Antimonopoly and Restrictive Practices Act drafted in 1969, which controlled and prevented concentration of economic power. He noted that the Monopoly Control Authority was a quasi judicial and autonomous agency that dealt with unreasonable monopoly power and restrictive business activities. As an example of international cooperation in competition, he mentioned a regional seminar held by the German Foundation for International Economic Development (DSE) in Pakistan. He added that in Pakistan the law covered private monopolies, not State monopolies. As the country had faced serious problems with mergers of huge multinational companies and private monopolies resulting from privatization, he stressed the need for feedback on how to tackle these challenges.

29. The representative of **Thailand** expressed appreciation to UNCTAD for the technical assistance provided during the enacting process of his country's competition legislation. He drew attention to difficulties encountered by the newly established competition agency when enforcing competition law and expressed the need for technical assistance for this agency. Increased coherence in areas of technical assistance and capacity building between UNCTAD and other international organizations could be beneficial to recipient developing and least developed countries. Thailand required technical assistance in the form of learning from other countries' experiences in implementing competition legislation creation of public awareness and educating the private sector about the effects of implementing competition legislation, as well as in provision of training to the officers of the competition commission.

30. The representative of **OECD** said that, at the 2000 OECD Council meeting at Ministerial level, Ministers had decided on follow-up work to strengthen the application of the 1998 Council Recommendation concerning Effective Action against Hard Core Cartels. In the Recommendation, non Member countries were invited to associate themselves with the Recommendation. The globalization of pernicious cartel activities made it necessary to fight them at a global level. Competition authorities around the world must to be able to cooperate in vigorous anti-cartel enforcement, and for that to happen there must be cooperation in capacity building. For countries without a competition law or with a law but little experience, international organizations could help greatly through their programmes of technical assistance. Each international organization active in the competition field had different constituencies and missions. However, they were not alternatives, but were rather complementary. In this regard, OECD welcomed the fact that the Secretary General of UNCTAD had acknowledged the co-operation between UNCTAD and OECD in the field of technical assistance. There were complementarities and synergies between UNCTAD and OECD in the competition law area. OECD believed that this cooperation should progress further, insofar as resources and other factors permitted.

31. The representative of **Venezuela** drew attention to the major achievements of his country's Law for the Promotion and Protection of Free Competition, which had been adopted in 1992 and was enforced by the Superintendency for the Promotion and Protection of Free Competition (PROCOMPETENCIA). The Law dealt with restrictive business practices and the analysis of economic concentration. It had been complemented by guidelines on the analysis of economic concentration and a regime of exceptions. The Superintendency had provided comments on the process of privatization, as well as feedback

on the possible negative effects on free competition resulting from the sectoral economic policies implemented by the Government. Finally, he referred to issues of regional interest such as Decision 285 of the Andean Community dealing with business practices hindering free competition and Venezuela's participation in the FTAA negotiating group, and emphasized the need to strengthen UNCTAD's support for developing countries in the field of competition law and policy.

32. The representative of **Senegal** said that his country's competition law, adopted in 1994, was aimed primarily at awareness-raising and was based on the independence of the competition authority. The main changes introduced since 1994 concerned the creation of a group of specialized investigators and measures to enhance the powers of the Competition Commission. It was now intended to establish a multisectoral regulatory body for the energy, telecommunications and water sectors. With regard to future areas of activity, the West African Economic and Monetary Union was seeking to introduce community-wide competition rules, and UNCTAD's technical assistance would be useful in that connection. With regard to merger control, care would have to be exercised in developing countries, since the latter usually did not have the capacity to exercise effective control, and the bureaucratic procedures involved could end up by generating corruption. Finally, with respect to technical assistance financing, possible sources that should be explored included an enterprise creation or transformation tax or UNDP funding.

33. The representative of **Ghana** thanked UNCTAD for the assistance it had provided in connection with work on his country's Competition and Fair Trade Practices Bill. The Bill was the result of a dialogue involving the Government, large enterprises, and consumer and trade associations. The main features of the Bill included the prohibition of certain cartels, the prevention of abuse of concentration of economic power, control of mergers and acquisitions and other restrictive business practices, and consumer protection. Once passed, the law would certainly help invigorate business activity in the country. UNCTAD's technical assistance would be sought to raise awareness, train the staff of the national authority and structure the institutions of the national authority.

34. The representative of the **Islamic Development Bank** said that the Bank's principal focus was on promoting trade as a means of development. Since the WTO agreements had been in effect, the Bank had been seeking to upgrade the institutional and human resource capacity of its member countries in fields relating to those agreements. It recognized the importance of competition law and policy and its role in creating a conducive environment for trade. The Bank would be pleased to join hands with the UNCTAD secretariat in future efforts to improve understanding of competition policy and enhancing national capacities in that area.

35. The representative of **Gabon** said that new competition legislation had been adopted in Gabon in 1998 with the aim of decontrolling prices, preventing anti-competitive practices, and ensuring transparency of transactions. At the same time, a series of measures had been taken to attract foreign direct investment, with foreign investors now being able to acquire capital in privatized companies, and it would be important to ensure that the old public monopolies were not just replaced by new private ones. Competition policy therefore

remained a central element in the country's economic development, and technical cooperation from UNCTAD, OECD and WTO would be important in that respect. Healthy competition would help the country not only improve the operation of its own markets but also access international markets.

36. The representative of **Turkey** said that the Turkish competition law had come into force in 1994 and the Competition Board had been in operation since 1997. The law had been applied effectively to all goods and services markets for the last three years. With the shift from a mixed to a liberal economy, a tremendous privatization programme had been launched, and it would be crucial to ensure that consumers were properly protected. A study was currently under way on the country's procurement law with a view to harmonizing it with the law of the European Union and ensuring competition and transparency in that area. The work of the Conference would play a crucial role in promoting competition law and policy throughout the world as a tool for economic development.

37. The representative of **South Africa** said that her Government was keenly aware of the potential benefits of a multilateral competition policy. In discussions on such a policy, it would be important to determine the rights and obligations that it should encompass and to look at how well equipped countries were to deal with those rights and obligations. Technical assistance would be important, and in fact many organizations were already providing such assistance, but it was not clear to what extent all these efforts were being coordinated. A synchronized effort should be made to progress towards a multilateral competition policy.

38. The representative of the **Republic of Korea** said that UNCTAD should give the necessary priority to work on competition law and policy and in particular to the objectives of the Set of Principles and Rules. Paragraph 143 of the Bangkok Plan of Action (TD/386) was of great importance, since it referred to the link between competition and trade, and this link was crucial in terms of deriving the benefits from the liberalization of trade.

39. The representative of **Morocco** said that Morocco had recently enacted competition legislation and attached the greatest importance to further consideration of restrictive business practices by the United Nations. In a constantly changing world, the issue of competition, and especially its legal aspects, must be regarded as one of the key aspects of globalization. Technical assistance in the area of competition law and policy should get special attention from UNCTAD.

40. The representative of **Malaysia** said that the experience of countries in applying competition law and policy should be documented and made available on the Internet. Her country would be particularly interested in obtaining empirical evidence of the benefits of competition law and policy for economic development.

#### *Action by the Conference*

41. At its closing plenary meeting, on 20 September 2000, the Conference adopted a resolution (see Chapter I above).

*Closing statement*

42. The **President** said that the Fourth Review Conference augured well for competition law and policy in the twenty-first century. The discussions during the Conference had shown the crucial importance attached to ensuring that the liberalization of economies would be accompanied by the establishment of competition law and policy institutions at the national, regional and multilateral levels. Cartels were one of the major challenges for competition authorities, both old and new, and the control of concentration and international cooperation in the field of competition law and policy would be at the centre of attention in all countries in the years ahead. Another question that was likely to be a major issue concerned the economic role and characteristics of the informal sector.

## Chapter IV

### ORGANIZATIONAL MATTERS

#### A. Opening of the Conference

(Agenda item 1)

43. Further to General Assembly resolution 52/182 of 18 December 1997, the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was opened on 25 September 2000 by the President of the Third Review Conference.

#### B. Election of the President and other officers

(Agenda item 2)

44. At its opening plenary, on 25 September 2000, the Conference elected its President and other officers as follows:

President:	Mr. François Souty (France)
Rapporteur:	Mr. George K. Lipimile (Zambia)
Vice-President:	Mr. Ernesto Marzota (Cuba)
Vice-Presidents:	H.E. Mr. Federico Alberto Cuello Camilo (Dominican Republic)
	Mr. Jorge Geraldo Kadri (Brazil)
	Mr. G.P. Prabhu (India)
	Mr. Suegeng Rahardjo (Indonesia)
	Mr. Saleem Asghar Mian (Pakistan)
	Mr. Falou Samb (Senegal)
	Ms. Shalini Kisten Rajoo (South Africa)
	Mr. Massimiliano Gangi (Italy)
	Mr. Koichi Hosoda (Japan)
	Mr. Won-Joon Kim (Republic of Korea)
	Mrs. Reyes Fernandez Düran (Spain)
	Mr. Edward T. Hand (United States of America)
	H.E. Mr. Ilya Yuzhanov (Russian Federation)
	Ms. Mirna Pavletic Zupic (Croatia)
	Mr. Olexander L. Zavada (Ukraine)
	Mr. Wang Xuezheng (China)

45. The Conference further decided that the regional coordinators would be associated with the work of the Bureau during the Conference.

**C. Adoption of the rules of procedure**

(Agenda item 3)

46. Also at its opening plenary, the Conference adopted the rules of procedure as approved by the previous three Conferences (TD/RBP/CONF.3/2).

**D. Adoption of the agenda and organization of work of the Conference**

(Agenda item 4)

47. The Conference adopted its agenda, as contained in document TD/RBP/CONF.5/1. (For the agenda, see annex I.)

48. In accordance with rule 44 of the rules of procedure, the Conference established a Negotiating Group.

**E. Credentials of the representatives to the Conference**

(Agenda item 5)

(a) Appointment of a Credentials Committee

49. The Conference established a Credentials Committee whose composition would be based on that of the Credentials Committee of the fifty-fifth session of the General Assembly, namely Bahamas, China, Ecuador, Gabon, Ireland, Mauritius, Russian Federation, Thailand and United States of America. The Conference agreed that, if any country member of the Credentials Committee of the General Assembly was not represented in the Review Conference, the regional group to which that country belonged would designate another country to replace it. Subsequently, Bahamas was replaced by Cuba, Ecuador by Venezuela and Ireland by Germany.

(b) Report of the Credentials Committee

50. At its plenary meeting on 20 September, the Conference adopted the report of the Credentials Committee (TD/RBP/CONF.5/14), thereby approving the credentials of the states participating in the Conference.

**F. Adoption of the report of the Conference**

(Agenda item 8)

51. At its closing plenary meeting, on 29 September 2000, the Conference adopted its draft report (TD/RBP/CONF.5/L.1 and Add.1-2) and agreed that the final report should be submitted through the Trade and Development Board to the General Assembly under the authority of the President.

**Annex I**

**AGENDA OF THE FOURTH REVIEW CONFERENCE**

1. Opening of the Conference
2. Election of the President and other officers
3. Adoption of the rules of procedure
4. Adoption of the agenda and organization of work of the Conference
5. Credentials of the representatives to the Conference:
  - (a) Appointment of a Credentials Committee
  - (b) Report of the Credentials Committee
6. Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the control of Restrictive Business Practices:
  - (a) Review 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
7. Other business
8. Adoption of the Report of the Conference



## Annex II

### ATTENDANCE \*

1. The following States members of UNCTAD, were represented at the Conference:

Angola	Mali
Azerbaijan	Mauritius
Belarus	Mexico
Benin	Morocco
Bolivia	Nepal
Brazil	Nicaragua
Canada	Norway
China	Pakistan
Comoros	Panama
Costa Rica	Paraguay
Côte d'Ivoire	Peru
Croatia	Philippines
Cuba	Poland
Democratic People's Republic of Korea	Republic of Korea
Democratic Republic of the Congo	Romania
Dominican Republic	Russian Federation
Egypt	Senegal
Ethiopia	Sierra Leone
Finland	South Africa
France	Spain
Gabon	Sri Lanka
Germany	Sudan
Ghana	Sweden
Hungary	Switzerland
India	Thailand
Indonesia	The Former Yugoslav Republic of Macedonia
Iran (Islamic Republic of)	Togo
Israel	Trinidad and Tobago
Italy	Tunisia
Japan	Turkey
Kazakhstan	Ukraine
Kenya	United Arab Emirates
Libyan Arab Jamahiriya	United Kingdom of Great Britain and Northern Ireland
Madagascar	
Malaysia	

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\* For the list of participants see TD/RBP/CONF.5/INF.1/

United States of America  
Uruguay  
Venezuela

Viet Nam  
Zambia  
Zimbabwe

The European Community was also represented

2. The following intergovernmental organizations were represented at the conference:

Arab Labour Organization  
Islamic Development Bank  
League of Arab States  
Organisation for Economic Co-operation and Development

3. The following specialized agencies and related organization were represented at the conference:

World Intellectual Property Organization  
United Nations Industrial Development Organization  
World Trade Organization

4. The Economic Commission for Latin America and the Caribbean was represented at the Conference.

5. The following non-governmental organizations were represented at the conference:

*General category*

Friends World Committee for Consultation (Quakers)  
International Confederation of Free Trade Unions  
International Council of Women  
World Federation of United Nations Association  
World Wide Fund for Nature International

### Annex III

#### CHECKLIST OF DOCUMENTS

TD/RBP/CONF.5/1	Adoption of the agenda and organization of the work of the conference
TD/RBP/CONF.5/2	Rules of procedure of the Conference
TD/RBP/CONF.5/3	Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices - Review of application and implementation of the Set
TD/RBP/CONF.5/4 and Corr.1	Experiences gained so far with international cooperation on competition policy issues and the mechanisms used Report by the UNCTAD secretariat
TD/RBP/CONF.5/5 and Corr.1	Review of technical assistance, advisory and training programmes on competition law and policy Note by the UNCTAD secretariat
TD/RBP/CONF.5/6	Competition policy and the exercise of intellectual property rights Report by the UNCTAD secretariat
TD/RBP/CONF.5/7	Continued work on the elaboration of a model law or laws on restrictive business practices Draft commentaries to possible elements for articles of a model law or law
TD/RBP/CONF.5/8	Kiev Declaration
TD/RBP/CONF.5/9	Casablanca Declaration

TD/RBP/CONF.5/10	Declaration of the Commonwealth of Independent States Antimonopoly Authorities
TD/RBP/CONF.5/11	Jaipur Declaration
TD/RBP/CONF.5/12	Livingstone Declaration
TD/RBP/CONF.5/13	San José Declaration
TD/RBP/CONF.5/14	Report of the Credentials Committee
TD/RBP/CONF.5/15	Resolution adopted by the Conference
TD/RBP/CONF.5/L.1 and Add. 1-2	Draft report of the Fourth 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.5/L.2	Draft resolution
TD/RBP/CONF.5/CRP.1	Consultations on competition policy Croatian Agency for the Protection of Competition
TD/RBP/CONF.5/Misc.1	Provisional list of participants
TD/RBP/CONF.5/INF.1	List of participants