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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  
Geneva, 25-29 September 2000

**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**

**Geneva, 25 - 29 September 2000**

Rapporteur: Mr. George K. Lipimile (Zambia)

**INTRODUCTION, AGENDA ITEM 6, AND ORGANIZATIONAL  
MATTERS**

Speakers

President of the Third Review Conference  
President of the Fourth Review Conference  
Secretary-General of UNCTAD  
Tunisia  
Russian Federation  
Madagascar  
Republic of Korea  
Kenya  
Indonesia  
Zambia  
Morocco

Malaysia  
China  
Ukraine  
Costa Rica  
Trinidad and Tobago  
Thailand  
European Commission  
Islamic Republic of Iran  
United States of America  
Canada

**Note for delegations**

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## INTRODUCTION

1. 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 met at the Palais des Nations, Geneva, from 25 to 29 September 2000.

### Opening statements

2. 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.

3. 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.

4. 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.

5. 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*.

6. 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 I

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

(Agenda item 6)

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. The representative of **Malaysia** pointed out that her country did not have a competition policy yet. She however stressed that she was on an information gathering mission as her country was trying to assess the economic benefits of having a competition law. There were fears that having a competition law would marginalize local companies, and she welcomed the opportunity to learn from the experiences of other countries attending the Conference. With regard to the issue of exemptions, she stressed how effective they could be in protecting local industries.

16. 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.

17. 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.

18. 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.

19. 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).

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

## Chapter II

### ORGANIZATIONAL MATTERS

#### A. Opening of the Conference

(Agenda item 1)

25. 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)

26. 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. B.R. 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 (Venezuela)  
Mr. Wang Xuezheng (China)

27. 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)

28. 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)

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

30. 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**

31. 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.



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**AGENDA ITEM 6 (continued)**

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

(Agenda item 6)

*(Continued)*

1. 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.

2. 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 commission of eminent persons had been established to examine the Monopolies and Restrictive Trade Practices (MRTP) Act and make appropriate recommendations. The conclusions of the Commission's work, which were contained in a Policy Report submitted to the Prime Minister and which were available on the Internet, indicated that the objective of a new competition law should shift from curbing monopolies to promoting competition. The new competition bill had been drafted and was being widely circulated for advice. Advice would also be sought from foreign experts as well as international organizations such as UNCTAD. The Jaipur seminar, which had been organized in cooperation with UNCTAD in April 2000, had been a useful occasion for a first exchange of views and a sharing of experiences with other countries of the region.

3. 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.

4. 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.

5. 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.

6. 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.



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**AGENDA ITEM 6 (continued)**

Speakers

Representative of OECD

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(Agenda item 6)

*(Continued)*

1. 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. OECD believed that this cooperation should progress further, insofar as resources and other factors permitted.