

**Speech at the Launch of Professor David Gerber's Book
"Global Competition: Law, Markets and Globalization".**

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

* This address was delivered by Mr. James Zhan, acting as Officer-In-Charge of UNCTAD on 10 November 2010

It is UNCTAD's privilege to be associated with the launch of Professor David Gerber's book "*Global Competition: Law, Markets and Globalization*". This Sixth UN Review Conference is a celebration of the work that has been done to ensure the use of competition laws, policies and systems to promote economic development. Professor Gerber's work highlights perfectly our goals here at UNCTAD. At UNCTAD we have long since recognised the need for developing countries to formulate and implement policies that enhance the competitive process. But we also work to encourage convergence on competition laws and policies among developed and developing countries. Our dual goal is to seek out economic development and also accord on competition law and policy among countries in the global trading system. No one country's agenda can be ignored. Globalisation-- whether through its advantages or disadvantages-- will impact all countries.

Globalised trade is a fact. While the Doha Round works to further wear away State imposed restrictions on liberalised trade, it is the case that private restraints of trade will continue to be a threat to the global trading system. The idea that competition law and policy must be adopted at the national level to prevent these private restraints on trade from reducing consumer welfare and fostering domestic growth and development seems more palatable than the idea that States will need to reach global consensus on a system to ensure that private restraints of trade do not thwart competition in the global market place. Perhaps the former is in evidence and the latter is still under investigation. But, competition law specialists and practitioners alike know that where there is a cartel to fix prices in one market in any one country there is sure to be one in the same market in another country. Even this small inkling of truth suggests that there is a need. Where there is a need human thought will have to be redirected and refocused to answer to that need.

The economic recession has also brought into stark focus the need to engage in discourse at the international level; to dialogue so we can exchange experiences, and to reach consensus that can ensure convergence and transparency if not harmony or uniformity in the way fiscal and economic laws and policies are managed; and indeed, the way competition laws are enforced. We can choose to adopt a business as normal approach and allow the framework to take shape in an ad hoc way and through non-formalised channels. But we are still -- and the developing countries can attest to this --- weathering the effects of a battering economic recession. Prior to the recession the approach was to be individually reactive to globalisation's impact on our economies. While it is true that many countries worked to develop best practices and reached consensus through bilateral treaties those efforts did not prevent the world economic crisis. It suggests that something more is needed.

Even businesses may now seek out the streamlining of competition law enforcement. We have seen that multijurisdictional reviews and extraterritorial cartel enforcement have resulted in increased transactional costs for businesses: one transatlantic merger can lead to a multiplicity of agency reviews and accompanying filing fees; and one international cartel can lead to the payment of settlement fines beyond the country where the conduct originated. Outside of the transactional costs, variation and conflicts in outcomes and remedies for a single anticompetitive conduct can impact the way businesses allocate their resources and create disparities in the way that business strategies are adapted from one country to the next. In the end all costs are passed on to the consumer and disparities in law lead ultimately to disparities in levels of development and growth among countries.

We have been reminded at this Conference that unity of purpose is an inescapable reality for all countries and that by reaching accord on law and policy we are able to bridge cultural, social and economic gaps and champion development, growth and prosperity for all. Professor Gerber's text is a timely reminder that we must refocus our obligations and challenge ourselves to meet our obligation as far as maintaining global trade and competition is concerned. We cannot have broken down State imposed barriers to trade only to stand back and allow the

erection of private barriers to trade in the global market place. While we must work to deepen bilateral cooperation, we must strive to use forums to encourage dialogue on the viability of multilaterally agreed upon principles for the application of competition law and policy.

The text therefore underscores the relevance of the ongoing debate. Currently it is global competition which seems to be shaping the ad hoc legal framework for interaction among markets beyond domestic borders. The hesitation seems to be that international convergence on competition law and policy is an obstruction of global commerce -- the very liberalised trade that we are working so hard to foster. But the paradox is inescapable even in the domestic context. Nevertheless it is as Professor Gerber states, competition law is "*a form of law that interferes with the competitive process in order to maintain its vigor.*"

And so this evening we congratulate Professor Gerber on a well delivered treatise and on the instructive and didactic discourse in his text. We encourage all in attendance to seek out Professor Gerber's work as it opens our minds to the challenge we have ahead of us. We hope that this Conference can pave the way for the work that is needed to meet the demands of global trade and competition.