

Report of the meeting of the UNCTAD Ad Hoc Expert Meeting on Competition International Cooperation

8 April 2019

The representative of the Japan Fair Trade Commission (JFTC) presented the current draft “Guiding Principles and Procedures under Section F of the UN Set on Competition” (hereinafter GP), which consists of five parts: Preamble, I. Guiding Principles, II. Toolkit for Cooperation in Competition Cases, III. The Role of UNCTAD in Facilitating Cooperation under Section F of the UN Set and Annex. The GP is drafted based on discussions held at the UNCTAD Discussion Group on International Cooperation (DGIC). JFTC stated that the draft is a consolidated text of the Russia-Japan proposal and the US-Japan proposal and emphasized that the draft only contains most common factors which the members of the drafting committee reached consensus.

JFTC representative referred to different laws and procedures in different countries regarding the exchange of information and confidentiality. He referred to Article 12 of the GP and stressed the need to make a reference to different degrees of cooperation in different cases.

The representative of the United States Federal Trade Commission (FTC) presented the Preamble of the GP. He expressed his appreciation to the delegation of the Russian Federation for initiating the project on international cooperation and the drafting committee within the DGIC. He further recognized the progress made thanks to JFTC, which collected and worked on different drafts and put together a common text.

Russian Federation recognized the efforts of the drafting committee in reaching a consensus text. Russia stated that there is consensus both on the text itself and the format of the text. Russia suggested to use the wording “draft for consideration at the 18th session of the IGE” and requested to maintain the reference to the UN Review Conference since the draft is meant to be adopted at that Conference. Austria agreed with the Russian Federation.

UNCTAD clarified that the consensus on the text of the GP and the Toolkit will be reached at the 2020 UN Review Conference after an agreement has been reached by the IGE on Competition law and policy in July 2021, hopefully, and that neither the DGIC nor the Drafting Committee can move the text any further on this point.

The representative of Italy facilitated the discussion on Section I - Guiding Principles - of the GP. The discussion helped in clarifying the general framework for cooperation. Many delegations offered comments and suggestions.

The morning session concluded with a revised text for the GP, including alternative wording suggested by the Member States.

In the afternoon, the Russian Federation presented the draft on the “Guiding Principles and Procedures under Section F of the UN Set on Competition” Part II on the Toolkit for Cooperation in Competition Cases. Russian Federation recognized the efforts of the drafting committee and the wider Discussion Group efforts in bringing the text of the toolkit part to a point of consensus after discussions and revisions of the text.

The Russian Federation lead discussions through each paragraph of the text and delegations including observers from the UK make comments for revisions of texts, luggage, additions to the texts and requests for explanation of terns used, which were reflected in the draft.

Austria facilitated Part III on the role of UNCTAD in Facilitating Cooperation under section F of the UN Set. At the beginning of this session, Japan requested UNCTAD Secretariat to explain its experience in dealing with consultations with member States. UNCTAD Secretariat to explained by giving an example of informal cooperation among Chile, Colombia and Peru based on the liquid oxygen cartel, which culminated into a signing of the Lima Declaration between the three Agencies. The UN rules on confidentiality were also presented to delegates present.

The delegate from Palestine proposed that a header should be drafted to include UNCTAD mandate and work to guide the other points of this part of the text. This idea was supported by other delegates attending as they echoed the appreciation of UNCTAD’s role in providing a platform for member states to discuss competition issues and to provide technical assistance.

UNCTAD Secretariat proposed to revise, proof read and provide a clean version for distribution to participants also the IGE contact list as suggested by Russian Federation and ready for discussion during the IGE in July. The UNCTAD IGE Discussion Group on international cooperation will continue working and refining the draft text. Russian Federation also suggested that there could be a physical side meeting during the forthcoming ICN conference in Colombia to discuss the latest developments.

Delegates discussed the Annex containing the list of documents available which lists documents from various sources, including UNCTAD, OECD, ICN among others, on international cooperation. The US and Japan said that the documents listed are too many for young competition authorities to read. So, the documents need to be selected and categorized in different areas and it was suggested that it will be useful to also include some cooperation agreements materials especially bilateral ones signed by authorities because this could be more practical for young authorities.

The Drafting committee would work with the UNCTAD Secretariat to clean the draft and a final meeting of the Discussion group would be held before the 2019 IGE for a final run through the text.