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FIFTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY
AGREED EQUITABLE PRINCIPLES AND RULES FOR
THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Antalya, Turkey, 14–18 November 2005
Agenda item 8

**REPORT OF THE FIFTH 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 Antalya, Turkey,

from 14 to 18 November 2005

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Chapter I

RESOLUTION ADOPTED BY THE CONFERENCE

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

Recalling that General Assembly resolution 55/182 of 20 December 2000 reaffirmed the role of competition law and policy for sound economic development, took note of the important and useful work of the United Nations Conference on Trade and Development in this field, and, in this regard, decided to convene in 2005 a fifth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, under the auspices of the United Nations Conference on Trade and Development,

Having reviewed all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, 25 years after its adoption,

Recognizing the role that competition policy plays in promoting competitiveness, building entrepreneurship, facilitating market access and entry, enhancing the equity of the international trading system and ensuring that trade liberalization brings about development gains,

Reaffirming the benefits that derive from competition policy for consumers, in the light of the UN Guidelines for Consumer Protection,

Reaffirming further the role which competition policy can play in facilitating market entry by small and medium-sized firms and the informal sector, in promoting a dynamic enterprise sector and in enhancing competitiveness in national and international markets,

Convinced of the need to disseminate the culture of competition,

Noting the continuing prevalence of anticompetitive practices at the national and international levels,

Noting further the continuing adoption, application or reform of national competition laws and policies and the increase in relevant bilateral and regional agreements and in international cooperation in this area,

Taking note of the provisions relating to competition issues adopted by UNCTAD XI in the São Paulo Consensus (TD/410), including the provisions in paragraphs 89, 95 and 104 of the São Paulo Consensus,

Taking into account the agreed conclusions adopted by the Intergovernmental Group of Experts on Competition Law and Policy at its sixth session (TD/B/COM.2/48),

Recognizing the positive contribution made by the Set and by UNCTAD to the promotion of competition policy as a tool for assuring successful economic reform conducive

to sustainable development and the need to further promote the implementation of the Set of Principles and Rules,

Recognizing further the need for effective competition law enforcement,

1. *Reaffirms* the fundamental role of competition law and policy for sound economic development and the validity of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices;

2. *Calls upon* all member States to make every effort to implement fully the provisions of the Set;

3. *Calls upon* States to increase cooperation between their competition authorities and Governments for the mutual benefit of all countries in order to strengthen effective international action against anticompetitive practices as covered by the Set, especially when these occur at the international level; such cooperation is particularly important for developing countries and economies in transition;

4. *Notes with appreciation* the voluntary financial and other contributions received 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;

5. *Recommends* that the General Assembly convene a Sixth United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices under UNCTAD auspices in 2010;

6. *Decides* that, in the light of the São Paulo Consensus (TD/410) as it relates to competition issues, UNCTAD should continue to work as appropriate on the subjects indicated by the Fourth UN Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and should also work on the following additional subjects, within existing resources, in a manner which takes into account interlinkages among different subjects in this area and within the framework laid down below:

(a) Monitoring of trends and developments in the competition law and policy area at the national and international levels, including the prevalence of anticompetitive practices or concentrated market structures, as well as measures taken by Governments to address these;

(b) Assisting developing countries in their efforts to adopt competition laws and policies, establish competition authorities, tailor the laws and policies to their development needs and objectives, as well as their capacity constraints, and implement them effectively, including by studying *inter alia*:

(i) The role of competition law and policy in facilitating market entry by small and medium-sized firms and in promoting economic development, and the relationship between competition policy and the informal sector;

- (ii) The links between competition policy and consumer welfare and protection;
 - (iii) Competition policy treatment of cartels, abuse of dominance/ monopolization, abuse of buyer power and the exercise of intellectual property rights;
 - (iv) Competition at national and international levels in specific sectors of interest to developing countries;
 - (v) Techniques for gathering evidence on cartels;
 - (vi) Difficulties of developing countries in enforcing competition laws, including in cases with international elements, and the application of competition laws to cross-border anticompetitive practices;
 - (vii) The long-term economic benefits of an effective competition policy, in particular its contribution to the growth and export competitiveness of developing countries;
 - (viii) Competition law and policy and its benefits for the alleviation of poverty;
 - (ix) The interaction between economic policy and control of market concentration;
 - (x) Evaluation of the effectiveness of leniency programmes;
- (c) Facilitating stronger international cooperation in this area, including by:
- (i) Identifying how competition rules in bilateral and regional agreements might be further developed and might appropriately address developing countries' development needs, national policy objectives and capacity constraints;
 - (ii) Promoting wider participation in international cooperation and more cooperation among developing countries in the competition policy area; and
 - (iii) Further efforts to enhance the implementation of the provisions of the Set of Principles and Rules, in particular Parts E and F.
- (d) Technical assistance, advisory and training services, and information and advocacy;
- (e) Periodic revision of the commentary to the Model Law in the light of legislative developments and comments made by member States, and wide dissemination of the Model Law and its commentary as revised, it being understood that these do not affect the

discretion of countries to choose competition laws and policies considered appropriate for themselves;

7. *Underlines* the value of the voluntary peer review process in UNCTAD as a useful tool for exchange of experiences and cooperation, it being understood that this should not affect the discretion of countries to choose competition laws and policies considered appropriate for themselves; *expresses appreciation* to the Governments of Jamaica and Kenya for volunteering for peer reviews during the Fifth Review Conference and to all Governments participating in the review; *invites* all member States to assist UNCTAD on a voluntary basis by providing experts or other resources for future activities in connection with voluntary peer reviews; and *decides* that UNCTAD should undertake, in the light of the experiences with the voluntary peer reviews undertaken during the Fifth Review Conference and in accordance with available resources:

(a) Further voluntary peer reviews on competition law and policy of member States or regional groupings of States, back-to-back with sessions of the Intergovernmental Group of Experts on Competition Law and Policy;

(b) Arrangements whenever appropriate for conduct of voluntary peer reviews back-to-back with the investment policy reviews conducted by UNCTAD, so as to identify linkages between the competition and investment policies of the country or region being reviewed;

(c) Deliberations on the scope, criteria and conduct of such voluntary peer reviews in the light of their objectives and available financial and human resources; and

(d) Periodic assessment and synthesis of the main types of issues, including relevant experiences with international cooperation, encountered by countries or regions reviewed in the process of developing and implementing their competition laws and policies in the light of their development needs, national policy objectives and capacity constraints;

8. *Recommends* the continuation and strengthening of the important and useful work programme within UNCTAD's secretariat and 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 States;

9. *Takes note* of concerns that United Nations documentation is not always made available in a timely manner in all official languages;

10. *Takes note* with appreciation of the documentation prepared by the UNCTAD secretariat for the Conference, and *requests* the secretariat to revise documents, including TD/RBP/CONF.6/3, TD/RBP/CONF.6/9 and TD/RBP/CONF.6/11, in the light of comments by member States made at the Conference or to be sent in writing by 31 January 2006 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;

11. *Further requests* the UNCTAD secretariat to continue publishing the following documents:

(a) Further issues of the Handbook on Competition Legislation, including bilateral, regional and international instruments, which should be complemented with a summary of the main provisions of the competition laws or of the instruments, on the basis of inputs to be submitted by member States parties to these instruments or competent institutions set up under such instruments, as appropriate;

(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;

12. *Decides* that the 2006 session of the Intergovernmental Group of Experts on Competition Law and Policy will consider the following issues for better implementation of the Set:

(a) The relationship between competition authorities and sectoral regulators, particularly with respect to abuse of dominant positions;

(b) International cooperation in investigating and prosecuting hard-core cartels affecting developing countries;

(c) Analysis of cooperation and dispute settlement mechanisms relating to competition policy in regional free trade agreements, taking into account issues of particular concern to small and developing countries;

(d) Relationship between competition law and policy and subsidies.

Chapter II

OPENING STATEMENTS

Opening of the Conference

1. The **President of the Turkish Competition Authority** noted that, in economies where the allocation of economic resources was not left to the market and where resources were distributed by a central authority, distress was experienced in meeting even the basic needs of citizens, with consequent losses in social welfare. By comparison, in market economies, competition policies appeared to be the most efficient way of preventing the welfare losses that occurred in an imperfectly competitive environment. A well-functioning market economy based on free competition was also important for generating economic growth and development. The Turkish Competition Authority, which was an independent organization, had gained an excellent reputation since its establishment because of both its efficient operation and the substantive quality of the decisions taken over almost a decade. International cooperation in the area of competition law and policy was continually gaining an importance. Such cooperation enabled the exchange of information and experiences between competition agencies and assisted in the effective enforcement of competition law against international hard-core cartels. This cooperation was facilitated by common approaches to competition law and policy among cooperating countries.

2. The **Secretary-General of UNCTAD** highlighted the benefits of competition policy, which had been underlined at UNCTAD XI and which would further the Millennium Development Goals and the Monterrey Consensus. A suitable theme for the Conference would be "Building New Bridges" between competition policy, trade liberalization and development, between national and international efforts in this area, and between all relevant stakeholders. He reviewed current trends in this area, including the prevalence of anticompetitive practices at the international level, which caused considerable losses to developing countries, as well as the increasing adoption and application of competition legislation and of bilateral and regional agreements with competition policy provisions, which had all triggered stronger international cooperation. Further efforts were required to push things forward, because competition-related provisions of international agreements had often not been fully implemented and might not suffice to deal with problems of weaker players. UNCTAD was a key player in such efforts, because of its general trade and development mandate and because it was responsible for the implementation of the Set of Principles and Rules, the sole fully multilateral and universally applicable instrument in this area. Future UNCTAD work should reflect the directives provided by the São Paulo Consensus and might focus on monitoring trends in the area of competition, assisting in the development and implementation of developing countries' competition regimes, and strengthening international cooperation through bilateral and regional agreements and reinforced implementation of the Set, in line with developing countries' needs, objectives and capacity constraints.

3. The **Acting Prime Minister of Turkey** said that competition policy encouraged innovation, which in turn further stimulated R&D and thereby generated competitiveness. A well-functioning market helped to create an enabling business environment for the development of small and medium-sized enterprises. The proper application of competition law levelled the playing-field for market players and thus increased the number of enterprises that could compete in global markets. In this connection, he stressed that creating a

competition culture among consumers and enterprises should be among the main aims of competition law and policy. He described the experiences of the Turkish Competition Authority since its establishment in 1997, stressing that, as an independent organization, the Authority had fulfilled its responsibilities effectively and in a transparent manner. This had been noted and appreciated by various international organizations on different occasions. The general aim of competition policy in Turkey was, in line with international trends, to increase social welfare and to give consumers access to cheaper but better products. Ensuring that markets remained open played an important role in the preservation of democracy. Moreover, when foreign direct investment was taken into account, especially from the developing countries' perspective, it was easy to see the significance of a competition policy that did not discriminate between foreign and local enterprises and that provided a fair and level playing-field for all. Finally, international competition helped spread the benefits of the globalization process. He underlined that UNCTAD continued to play a very important role in guiding countries towards the application of competition policies aimed at promoting growth and development.

Opening plenary

4. The outgoing **President of the Fourth Review Conference** said that, since the Fourth Review Conference, UNCTAD had responded in an exemplary manner to the expectations of its member States in the competition area. It had in particular responded to developing countries' expectations by reinforcing the capacity of their competition authorities, including where necessary by promoting regional cooperation; cooperating with other bodies, in particular the OECD and the ICN; and by appropriately addressing developing countries' disadvantages, including by implementing training programmes in the languages of the countries or regions concerned.

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)

A. Statements

5. The representative of **Germany** recalled the importance of the Set of Principles and Rules. The review of the achievements under the Set should be undertaken in the light of the objective of promoting international competition policy that would meet the challenges of globalized markets despite the national character of competition law. In response to the increased competitive pressures arising from globalization, firms were engaging in anticompetitive practices, and intensified international cooperation was therefore needed both at the political level and among competition authorities. Many countries had now adopted competition laws, and new issues were arising, such as determining the laws applicable to cross-border competition cases, whether laws should aim at protecting national or international markets, and how competition authorities could cooperate and on the basis of which rules. He emphasized the importance of UNCTAD's activities in this area, including the Model Law and technical assistance activities, in which his Government had participated. UNCTAD should cooperate closely with other international organizations active in the area of competition, including OECD and the International Competition Network (ICN). He emphasized that the ICN's approach was voluntary in nature and its work resulted in non-binding recommendations. He considered that not only firms but also Governments were resisting the competitive pressure arising from liberalization by various means such as subsidies, as a result of the influence of interest groups. This underlined the importance of advocacy activities and regulatory impact assessments for all proposed legislation.

6. The representative of **Angola** said that competition in liberalized economies assisted some developing countries in achieving high levels of development but made others poorer. Globalization had led to an increase in anti-competitive practices at the international level, and a new discussion was emerging as to whether it was necessary to establish multilateral competition norms within the WTO or whether the Set should be strengthened.

7. The representative of **Zambia** described the Zambian competition authority's experiences during the nine years of its operation. The authority had been very successful in supporting market-oriented economic reforms. This could not have been achieved without the continuous technical assistance received from UNCTAD, including the provision of material on competition enforcement and competition advocacy, particularly a manual on the formulation and application of competition law, as well as seminars for investigators, judges and practitioners of competition law. UNCTAD had also enabled developing countries to participate in various national, regional and international events, thus enhancing exposure to discussions on current issues, information exchange and professional contacts. Generally speaking, UNCTAD's programmes for the establishment or strengthening of competition authorities in the region had contributed to economic reform in these countries. He called upon UNCTAD to reinforce its technical assistance programmes in the Southern and Eastern African region and, on behalf of the COMESA member States, welcomed the recent establishment of the Malawian Competition Commission.

8. The representative of **Jordan**, recalling that a competition law had been adopted by her Government in 2002, described how the competition authority was organized, its initial

decisions, and the training programmes that had been implemented. Additional assistance in capacity building was needed.

9. The representative of **Zimbabwe** said that the Zimbabwean competition authority's mandate covered both private and publicly owned economic sectors. Its merger with the institution responsible for tariffs had provided synergies through the interaction between competition policy and trade policy. His country had participated actively in UNCTAD and COMESA activities and had also cooperated with neighbouring countries in the area of competition. He called for UNCTAD to further extend its technical cooperation relating to competition enforcement.

10. The representative of the **European Community** emphasized the importance of the Review Conference for exchanging views on competition and of UNCTAD's activities in this area, including the Model Law. He described the EU's recent activities in the area of competition, including accession negotiations for aspiring members, the OECD peer review of European competition law, and the progress achieved in the International Competition Network, particularly in combating international cartels. The European Commission had decided to cooperate more closely on issues of unilateral conduct.

11. The representative of **China** noted that many developing countries had drawn from the provisions of the Set in formulating their competition laws. He praised UNCTAD's efforts in this respect and the emphasis placed on the interests of developing countries, which had also received substantial technical assistance. He described existing and proposed Chinese antimonopoly legislation. He stressed the need to strengthen international cooperation in the competition area, given the process of globalization and the consequent increase in transnational mergers. With the rapid growth of international trade, the distinction between national and international economic activities had become blurred. There were major differences between countries' competition legislation, which caused additional transaction costs, while international cooperation efforts had not led to substantive change. It was therefore necessary to start long-term work on the formulation of uniform international antimonopoly rules.

12. The representative of **India** recalled that India had adopted new competition legislation in 2002 that would soon become fully operational. The Set should be developed in the form of a guide, which countries could adapt as they wished. Uniformity was not feasible in the area of competition, and the focus should be on attaining consensus on broad objectives, with adjustments to suit local needs. In recommending a model competition agreement, attention should be paid to the needs of developing countries, and any multilateral competition framework should include special provisions and carve-outs for developing countries. There might first be a model cooperation agreement for use between equally placed developing countries, and that could later be upgraded to a multilateral cooperation agreement. More active steps were needed to enable developing countries to deal with international cartels and to ensure effective cooperation by developed countries for that purpose. There should also be more focus on abuse of international dominance by transnational companies through market behaviour or intellectual property. An enabling mechanism should be provided to enforce decisions against entities headquartered in developed countries engaging in anticompetitive practices. Developed countries should recognize decisions of developing country competition authorities against international cartels based in developed countries' territories and should assist in the prosecution of cartel members. Competition laws in developing countries should recognize the special needs of the

informal sector and accept the need for special preferences and incentives for that sector. He also stressed the need for advocacy and capacity building on competition issues in developing countries to be widely targeted at all stakeholders. An UNCTAD emphasis on capacity building within the South Asian region would be welcome.

13. The representative of **El Salvador** said that his country's competition law would be operational in 2006. UNCTAD had played an important role in assisting developing countries, especially through its capacity-building and research activities. He highlighted the positive results which the COMPAL Programme had achieved for beneficiary countries, and suggested it could be used as a model for other Latin American countries.

14. The representative of **Indonesia** referred to the market-oriented reforms that had taken place in his country in recent years, leading to an open and fair competition system. Adjustments to competition policy were needed in developing countries to allow enterprises to prepare for the rigours of full competition through such means as flexibility or exemptions. Since it had started operating, the Indonesian competition authority had faced difficulties resulting from insufficient budgets, differing legal interpretations from the courts, lack of understanding by other governmental bodies, reluctance of businesses to comply with the law, and lack of political support. Thus, developing countries still did not have sufficient experience to participate in a multilateral competition framework. Sharing of experiences and practice in undertaking cooperation was needed first to improve effective implementation of the competition law.

15. The representative of **Namibia** said that the reluctance of enterprises within his region to undertake cross-border investments reinforced the need to increase domestic competition. He described the initial experiences of his country's competition authority in implementing its recently adopted competition law in respect of transactions involving both domestic and foreign firms. His competition authority was ready to contribute to the implementation and development of the competition policy provisions of the Southern African Customs Union.

16. The representative of **Mexico** emphasized that economic evidence demonstrated the benefits of competition for competitiveness. A multilateral framework was needed to address international cartels and establish rules to combat abuse of dominance in large-scale network industries. It was unfortunate that the Doha Round would not cover competition norms, but UNCTAD should take up the promotion of multilateral norms, because these were needed to promote development.

17. The representative of **El Salvador**, speaking on behalf of the **Latin American and Caribbean Group**, said that UNCTAD had played an important role in support of developing countries in the competition policy area, and that work should be strengthened through the allocation of additional resources. He encouraged UNCTAD to take all necessary steps to obtain such resources in order to enable it to respond better to his region's priorities, which included training for officials and experts, cooperation among authorities and organizations responsible for competition matters, maintenance of an updated comparative matrix of competition laws and authorities, studies on competition in specific sectors, organization of internships and visits to more experienced competition authorities, and awareness programmes targeting civil society and economic agents. He also referred to the results of the COMPAL project, which should be used as a model for programmes with similar outreach in the Latin American and Caribbean region.

18. The representative of **Senegal** said that special and differential treatment should enable developing countries to implement their competition policies in the light of their level of development and their specific needs. In this connection, technical cooperation was needed to build and strengthen the capacities of developing countries. The Senegalese competition authority had recently released its first report, which had increased public awareness of its activities. The West African Economic and Monetary Union's community competition law had now superseded national competition laws in each member State, so institutional arrangements needed to be brought into line with the community law.

19. The representative of **Cuba** referred to the importance of operationalizing special and differential treatment in the field of competition. The enforcement of competition policy at the international level should not affect developing countries' sovereignty, and should allow enough flexibility for adaptation in line with national interests. He proposed concrete measures to operationalize special and differential treatment, including measures against hardcore cartels, especially when they affected developing countries; provision of sufficient flexibility for developing countries to establish sectoral exemptions in line with their industrial policies; and elimination of obstacles faced by developing countries in accessing international markets and of barriers imposed by developed countries.

20. The representative of **Tunisia** said that the application of competition policy was crucial for the country's economy, and his Government was therefore modernizing and strengthening the investigative and judicial framework and institutions for enforcing competition law. He emphasized the key role that cooperation from other Governments and international organizations, including UNCTAD, had played in the effective implementation of Tunisian competition policy. A new project financed by the EU aimed at creating a partnership between the French and Tunisian competition councils in order to strengthen the Tunisian council's capacity.

21. The representative of **Saudi Arabia** said that important steps had been taken by his country to meet the needs of a globalized world and to ensure solidarity with other developing countries. The process of Saudi Arabia's accession to the WTO was being finalized, and that would step up the development process. A new free market system was being established, although much remained to be done to that end. The competition concepts being built up by UNCTAD would be applied.

22. The representative of the **Russian Federation** said that her Government was undertaking a thorough revision of its competition law and its code on administrative violations. A number of new basic terms and principles and stricter sanctions were being introduced. Cooperation agreements had been concluded with some EU member countries. Important work was also being undertaken to create a single economic space among CIS countries; 19 intergovernmental agreements were being elaborated, as well as agreements on common principles and implementation rules for competition policy.

23. The representative of **Mozambique** said that liberalization had induced anti-competitive practices that were damaging the economy. Efforts to deal with these practices had been hampered by economic and institutional handicaps, the absence of competition regulations, and inadequate experience with competition concepts. With the support of UNCTAD technical assistance programmes, as well as bilateral support, a competition law and a competition policy were being adopted

24. The representative of **Morocco** said that his country had adopted a law on prices and competition in 2001, and its provisions had been designed to meet the specific needs of the country's economy. The law had been applied in parallel with other reforms to improve the regulatory framework for business. Enterprises in developing countries had to face competition in both national and international markets, but national competition authorities were unable to obtain the information required to address effectively anticompetitive practices of firms operating in international markets. An international competition code was therefore needed to overcome such practices. He suggested that the Conference adopt recommendations relating to the harmonization of competition rules and the provision of technical assistance to developing countries in this area, and commended the work already done by UNCTAD in that connection.

25. The representative of **Nigeria** said that, although his country already had sector-specific regulations, it was in the process of adopting a comprehensive competition law and policy, in line with the recommendations of the Fourth Review Conference. Liberalization of the Nigerian economy in recent years had created an enabling environment for the enactment of the competition law. The new body which would be formed, namely the Nigerian Trade and Competition Commission, would administer all matters relating to competition, anti-dumping, consumer protection, and weights and measures.

B. Chairperson's summary of panel discussions and business forum

26. Under this agenda item, in the context of the review of application and implementation of the set and of the consideration of proposals for the improvement and further development of the set, including international cooperation in the field of control of restrictive business practices, panels and related discussions were held on the following six subjects: Competition policy and international cooperation, including regional agreements; how to operationalize special and differential treatment in the application of competition law and policy; the role of economic analysis in competition law enforcement; the role of the judiciary in competition law enforcement; techniques for gathering evidence on cartels; and the application of competition law and policy to the informal sector. The discussions under Panels I and II were combined. A Business Forum was also held on the role of competition law and policy in promoting private sector development. Written presentations relevant to the subjects dealt with by one or more of these panels and/or the Business Forum were received from: the Governments of Algeria, Argentina, Azerbaijan, Benin, Bolivia, Brazil, Burkina Faso, Chile, Colombia, Costa Rica, Cuba, El Salvador, France, Gabon, Germany, Jamaica, India, Italy, Jordan, Morocco, Peru, Poland, Portugal, Russian Federation, Senegal, South Africa, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Zambia and Zaire; the European Union and the West African Monetary Union (UEMOA); the non-governmental organizations ActionAid and Consumers International, as well as the Turkish Industrialists' and Businessmen's Association (TUSIAD); and the Hong Kong Polytechnic University and the University of St. Gallen (Switzerland). This summary, prepared under the personal responsibility of the Chairperson, presents some of the main points arising from the keynote speeches, the interventions from the floor and the written presentations.

Panel I on Competition policy and international cooperation, including regional agreements; and Panel II on How to operationalize special and differential treatment in the application of competition law and policy

27. The keynote speakers for these two panels were from the Governments of France, Germany, India, Mexico, Switzerland, Turkey and the United States, as well as from New York University. In the light of their relevance to these panels, the UNCTAD secretariat presented four of the reports submitted to the Conference (TD/B/RBP/CONF.6/3, 9, 11 and 12). It also officially launched and summarized the principal findings of an UNCTAD publication *Competition Provisions in Regional Trade Agreements: How to Assure Development Gains* (UNCTAD/DITC/CLP/2005/1), prepared with the aid of a grant from the Canadian International Development Research Centre (IDRC). The discussants for this publication were from the Governments of Brazil, Colombia and Zambia, as well as from the IDRC, the University of St. Gallen (Switzerland) and CUTS International.

28. The publication sheds light on the competition-related provisions (CRPs) in a range of bilateral and regional trade agreements (RTAs). It highlights the fact that, of the RTAs in force or under negotiation, over 100 include competition-policy related provisions, with 80 per cent of these having been adopted over the previous decade. The adoption of competition clauses in such agreements is part of a trend towards ‘deeper’ RTAs aiming to liberalize trade in services, investment and other areas. The publication also identifies which types of cooperation on competition issues work best for developing countries. Subjects covered include: the reasons for including CRPs in RTAs; a typology of CRPs; the implementation record by developing countries concerning such CRPs; cost-benefit considerations; special and differential treatment (S&D treatment) in CRPs; and coherence between regional integration objectives and specific competition provisions. The publication was highly praised by delegations, and translation into UN working languages was requested.

29. Other issues covered in the presentations, discussions or documentation included the following:

- Reduction of the benefits of trade liberalization and regional integration by cross-border anti-competitive practices;
- Enhanced need for cooperation arising from increases in the numbers of enterprises operating across national borders and of competition regimes with significant differences;
- Difficulties for developing countries in enforcing their laws in cross-border cases;
- The importance of informal cooperation in this area;
- Distinctions among types and objectives of cooperation instruments (including instruments under the aegis of UNCTAD, OECD, ICN or the European Competition Network) and lessons from their operation;
- The unsuitability of recommending “model” provisions, as opposed to the development of a toolkit in this area;
- Common rules, supranationality, consistency or harmonization of substantive or procedural competition rules or basic principles across RTA members and between national and regional competition legislation, coordination and allocation of competence

between national and regional competition authorities, overlaps among regional systems, and the potential of regional peer review mechanisms;

- Linkages with anticompetitive effects arising from subsidies, investment incentives and concessions;
- Prevalence of competition-related S&D provisions within RTAs and their potential to balance costs and benefits of CRPs;
- Effects of CRPs in encouraging cooperation and experience-sharing among competition authorities and in disseminating competition legislation to more countries;
- Constraints upon cooperation, including through concerns about private actions or the award of treble damages;
- Implications for cooperation (including through investigatory assistance) of the distinction between criminal anticompetitive practices covered under Mutual Legal Assistance Treaties (MLATs) and other types of practices;
- The desirability of increased cooperation among competition authorities and civil society, including on regional competition matters;
- The need to strengthen regional cooperation among developing countries, and possible UNCTAD assistance in that connection;
- Operationalization of S&D elements in the Set of Principles and Rules and equity considerations in addressing developing countries' problems;
- Elimination of exemptions for export cartels, easier sharing of information, and limits upon the extent of protection of confidential information;
- The implications of the *Empagran* case in the United States for anti-cartel action and international cooperation.

Panel III on The role of economic analysis in competition law enforcement

30. The keynote speakers for this panel were from the Governments of Costa Rica, Italy, Poland, South Africa, Turkey, Zambia and Zimbabwe. Salient points addressed included the following:

- The role of economists in: defining markets; evaluating market concentration, market power, entry barriers and efficiency arguments; identifying collusion; determining damages suffered from anticompetitive activities and enhancing the effectiveness of fines through comparisons with benefits received; clarifying dynamic interactions between agents and identifying efficiencies in vertical agreements; developing arguments for convincing courts; quantifying benefits of competition law enforcement for advocacy purposes; and setting up a research agenda;
- Difficulties arising from lack of resources, non-availability of reliable information (particularly in developing countries), analysis of costs and prices with respect to alleged abuse of dominance through excessive pricing or predatory pricing, calculation of “reputation costs”, and analysis of practices and activities of large foreign companies;

- Instruments, methodology and models for undertaking economic analysis for specific cases, and the risk that different methods may produce different results;
- The importance of flexibility, of taking due account of practical experience and changes over time, and of being understandable to non-economists;
- The importance of enhancing in-house capacity in this respect, having recourse to external viewpoints in appropriate cases and benefiting from the knowledge of more experienced competition authorities.

Panel IV on The role of the judiciary in competition law enforcement

31. The keynote speakers for this panel were from the Governments of Argentina, Chile, Germany, Jordan, Malta, Senegal, Tunisia and Zambia, as well as from the EU. The following were among the points covered:

- The dual role of the judiciary as guardians of public policy relating to the operation of the market and of the competitive process on the one hand and as guarantors of economic liberty and of the protection of investments by entrepreneurs on the other;
- The need for judges to apply the law in a fair and consistent manner and in conformity with the fundamental guarantees provided by the constitution, applicable international treaties and general legal principles, thus providing legal security and legitimizing and ensuring public acceptance of economic policy;
- Respect by judges of social, public-interest or developmental reasons for exemptions or derogations from competition principles
- The discretion judges have in interpreting and applying competition norms and their consequent responsibility for guiding the development and promoting the effectiveness of competition policy;
- The key importance of expeditious handling of competition cases, ensuring speedy termination of anticompetitive practices, and sufficient dissuasive power and credibility on the part of the law;
- The need for judges to take into account economic aspects of competition cases while ensuring predictability, and hence the need for them to work together with economists and to be trained in economic matters;
- The need to foster mutual understanding and consistency between judges and competition authorities through regular exchange of expertise and experiences, for example through information exchange forums or training workshops;
- How to guarantee the independence of the judiciary through such means as security of tenure;
- Experiences and variations among national and regional legal systems relating to the role of the judiciary in competition law enforcement;
- The relative merits of dealing with competition matters through criminal, civil or administrative laws and through proceedings of courts or competition authorities, for

example with respect to quality of decisions, speedy and informal resolution of cases through cease-and-desist or consent orders, the possibility of private actions, proof of collusion, reliance upon circumstantial evidence or presumptions, or the dissuasive nature of sanctions such as fines or declarations of contractual nullity;

- Trends and procedures relating to handling of competition cases through special tribunals or commercial courts with specialized judges, or through administrative or quasi-judicial proceedings of competition authorities;
- Separation of investigative, prosecutorial and adjudicative functions of competition authorities through structural or other mechanisms so as to ensure fair adjudication;
- The appellate or reviewing role of judges, the grounds, standards and procedures applied, and the extent to which the merits of cases and economic analyses applied would be reconsidered;
- The role of administrative tribunals in controlling ultra vires anticompetitive administrative policies or measures relating to procedures for delegation of public service responsibilities or for public procurement;
- The desirability of publishing judgements and expert commentaries on them;
- Rights of access to investigative files, rights of reply to complaints, participation of competition authorities as amicus curiae in civil proceedings before judges, and conditions and procedures for suspension of judgements or sanctions pending appeal;
- The desirability of learning from the experiences of other countries in this area.

Panel V on Techniques for gathering evidence on cartels

32. The keynote speakers for this panel were from Brazil, El Salvador, France, the United States and the University of St. Gallen. Salient points addressed included the following:

- The impact of cartels and collusive practices on consumer welfare and development;
- Practices in a range of sectors such as poultry, flour, bread, milk processing, fish processing, cotton distribution, cement, bus transport, shipping and banking in several developing countries;
- The role of trade associations and professional organizations in cartel formation;
- Difficulties of proof given the tacit means whereby cartels are often formed, particularly in concentrated industries, through the use of price signaling and indirect communications;
- Further difficulties arising in small economies from the lobbying power of the business community;
- The large losses inflicted on developing economies by international cartels, particularly on the poorest developing countries.
- The need for anti-cartel enforcement to be a priority for competition authorities in developing countries;

- The use of tools for cartel detection or dissuasion, such as: surveys of markets prone to cartelization; press surveys; complaints from the public or other firms, and information received through other investigations or other governmental bodies; advocacy initiatives; antitrust compliance and leniency programmes; search and seizure procedures, compulsory testimony, consensual recording, wire-tapping or border watches/Interpol red notices; penalties for obstruction of investigations; optimally deterrent sanctions calibrated to gains obtained from cartels; other sanctions such as adverse publicity, bans from future bidding, personal liability, civil actions or imprisonment; and recourse to informal cooperation, enforcement cooperation agreements and mutual legal assistance treaties;
- Coordination and complementarity between criminal and administrative procedures and competent institutions, with consequent training needs for prosecutors, police, government attorneys and competition officials;
- International coordination of leniency programmes in cross-border cases.

Panel VI on Application of competition law and policy to the informal sector

33. The keynote speakers for this panel were from Burkina Faso, Peru, Tunisia, Turkey and Zimbabwe, as well as from UEMOA. Salient points addressed included the following:

- Distinctions within the informal sector between micro-enterprises operating on a subsistence level and wealthier firms evading legal obligations, with consequent implications for the application of competition policy ;
- Cost advantages, flexibility, competitiveness, employment, price decreases and other socio-economic benefits of the informal sector; problems arising such as erosion of tax revenues, lack of transparency, inaccuracy of economic and social statistics, poor product quality, unfair competitive advantages of firms operating informally or firms buying from them, disincentive effects on investment and on growth of firms to operate at optimum scale ;
- Importance of universal application of competition laws to all market transactions and commercial entities irrespective of ownership or legal form;
- Non-problematic nature of many informal sector transactions because of lack of substantial impact upon markets, thus falling within *de minimis* exemptions or below thresholds for merger investigations;
- Enforcement difficulties arising from enterprises not being registered or being easily reached, difficulties of determining market shares or dominance, incentives provided to firms in the formal sector to collude in protection against the unfair advantages of the informal sector, difficulties of calculating turnover for determining appropriate fines;
- Need for action by competition authorities to both protect the informal sector from anticompetitive practices and to address anticompetitive informal transactions in a cost-effective manner;
- Elements to be considered when applying competition law and policy to the informal sector, including its nature, its market share and relevant legal provisions;

- Need to sensitize civil society and strengthen general enforcement capacities and resources of developing country competition authorities;
- Targeting by competition authorities of competition advocacy towards promotion of regulatory reforms, curbing of barriers to entry and improvement of tax systems facilitating transition from the informal to the formal sector;
- Other action, including application of unfair competition laws or town planning regulations.

Business Forum on the Role of Competition Law and Policy: Creation of an international enabling environment to enhance the productive capacity of developing countries and improve their ability to compete on regional and global markets

34. The keynote speakers for this panel were from the Governments of Jamaica, the Republic of Korea, Tunisia and Namibia; the European Commission, the International Trade Centre and the OECD; the non-governmental organization ActionAid; the Union of Chambers and Commodity Exchanges of Turkey (TOBB), including representatives of Mercedes Benz-Turk and of the Turkish Contractors Association, as well as TUSIAD; and the Technical University Azerbaijan and the Hong Kong Polytechnic University. Salient points addressed included the following:

- How competition can enhance the national and international competitiveness of firms by inducing them to produce better-quality products more efficiently and at lower cost;
- Different possible objectives of competition policy and the current emphasis on economic efficiency and consumer welfare in many countries;
- How competition law and policy has been integrated in some countries within the context of rules regulating the market;
- Experiences from different countries demonstrating how their application of competition law and policy has guaranteed the freedom of market actors as long as they do not unfairly harm competitors or consumers, facilitated market entry and exit, protected small and medium-sized enterprises against abuse by dominant firms, lowered input prices, promoted regulatory reform, supported privatization and utility regulation and enhanced allocative and dynamic efficiency, thus enhancing the competitiveness, economic growth and social welfare of these countries;
- The need for competition laws even in small open economies in order to erode the power of vested interests and business lobbies, combat monopolies and cartelization through a clear regulatory framework with “teeth”, promote market entry and competitiveness, and follow international best practice;
- The desirability of competition authorities assessing the effects of their enforcement and advocacy activities upon competitiveness and publicizing such effects to strengthen public support and the competition culture;
- Possible reforms such as the adoption of leniency programmes, controls upon State aid, speedy elimination of anti-competitive legislation, or steps to reduce informal markets and discriminatory conditions relating to energy supply;

- National, regional and global market concentration in agribusiness, food retailing and commodity trading; the current insufficiency of competition policy to prevent abuse of buyer power, particularly at cross-border level, despite legislation, cases or supermarket codes of practice on unfair practices or below-cost selling in retailing; and the consequent need for national action and cross-border cooperation in this area or supermarket codes of practice.

C. Voluntary peer reviews

Jamaica voluntary peer review – Chairperson’s summary

35. The consultant responsible for preparing the voluntary peer-review report said that the report’s 28 recommendations fell into four categories; legislative review; shift in priorities; communications; and capacity building. Under legislative review, he highlighted the need to address the finding of the Appeal Court that the Fair Trading Commission (FTC) was in contravention of the principles of natural justice. With regard to priorities, he stressed the need for more resources to enforce core competition provisions and for the FTC to limit its activities under the unfair trade practices provisions to conduct that had a significant impact on competition. Concerning communications, he stressed the need for the effective dissemination of information on the benefits of competition enforcement.

36. The Executive Director of the FTC commented on the peer review process and on how to improve it, and outlined FTC’s expectations on the outcome. The Chairman of the FTC said that the review report was thorough, balanced and helpful. He provided information on a number of FTC initiatives already under way in line with the report’s recommendations.

37. The reviewers asked why it was taking so long to act on the 2001 ruling by the Appeal Court and why the FTC did not, in the interim, channel all adjudication through the Supreme Court. They also asked about the likelihood of the competition legislation being amended to address the inconsistencies highlighted by the review report. The representatives of the FTC responded that they were working on finding a solution to the natural justice question, but it implied a number of other legislative reforms requiring parliamentary approval. FTC was aiming to remove all inconsistencies at once, and this had resulted in some delay. It particularly wanted to avoid a separation of adjudicatory and investigatory functions, since that led to a situation where the Commissioners were totally divorced from investigations and met very infrequently. In the interim, aggrieved parties were being encouraged to seek redress directly through the courts where possible. However, this was costly, and some provisions of the Act required the FTC to make a finding before a matter could be referred to the courts.

38. In response to a query, the representatives of the FTC admitted that resource constraints impacted on its image, but the problem was partly mitigated by the strategy of concentrating on consumer matters in order to gain greater visibility. Under current conditions of limited fiscal flexibility, the FTC’s ability to demonstrate that competition enforcement resulted in tangible benefits for the economy would be a key element in convincing the Government to increase its resource allocation. The reviewers asked whether the enactment of a consumer protection act and the subsequent shifting of consumer protection functions to another authority might not damage the FTC’s image and whether merging the two entities might not be worth considering. The representatives of the FTC responded that the FTC retained responsibility for consumer matters of wider market relevance that had an impact on competition, and the division of labour between themselves

and the consumer protection body afforded the FTC the opportunity to develop its skills in core competition issues; merging the two entities could be considered in the longer term.

39. In response to a question from the reviewers on the FTC's jurisdiction over regulated sectors, the representatives of the FTC explained that in their view the 2001 ruling by the Appeal Court did not exclude regulated areas from the purview of the Fair Competition Act (FCA). However, in order to avoid ambiguity, the FCA could be amended to specify that it applied to all sectors and include a requirement for the explicit exemption of regulated sectors where appropriate. Also, future regulatory legislation could follow the approach of the Telecommunications Act, which set out the interface between the FTC and the regulator.

40. The representatives of the FTC then sought the opinion of participants on the merits of developing a merger policy that exempted tradables. The representative of the United Kingdom Office of Fair Trading responded that such a discriminatory approach would be difficult to put into practice and in a situation where merger control was unpopular could further antagonize the business community. A fairly applied, consistent merger regime was preferable and would be unlikely to harm small and medium-sized Jamaican firms. The representatives of the FTC asked if there was any benefit to be gained from setting out a list of specific infringements in addition to general competition rules in a competition law. The representative of the EC responded that indicative rules as encompassed in a competition law could not cover all possible infractions but should be flexible enough to respond to changing conditions in markets, particularly in dynamic sectors. However, setting out a list of specific offences provided useful guidance to the business community and contributed to transparency and voluntary compliance. In this respect, soft law instruments such as guidelines were to be recommended, as had been done in the EC.

41. The JFTC further requested views on requiring informants to provide some minimum amount of information in support of their allegations. The representative of the Swiss competition authority responded that, although such guidelines might be useful, care should be taken not to discourage informants from coming forward. Measures to safeguard the confidentiality of information and the anonymity of the informant were key in gaining the trust of informants. In conclusion, the representatives of the JFTC enquired whether a competition authority could successfully pursue cartel investigations without a leniency programme. The representative of the United States Federal Trade Commission commented that, although a leniency programme had proved the most effective investigatory tool in cartel prosecution, the United States had prosecuted cartels successfully before it introduced a leniency programme. Severe sanctions and sufficient investigatory powers were key. Once the credibility of the authority had been established, a leniency programme could be a very effective tool.

42. In conclusion, the representative of the UNCTAD secretariat announced that UNCTAD had developed a project to assist the FTC to implement the review report's recommendations and had secured seed funding from the IDB. He invited other development partners to cooperate on the project. The Chairperson encouraged Jamaica to implement the recommendations of the report.

Kenya voluntary peer review – Chairperson's summary

43. The Chairperson said that the review was taking place at a time when there was a strong commitment on the part of the Kenyan Government to review its competition law. The

country report put forward recommendations in six areas, all touching on the review of legislation, including such issues as the autonomy of the competition authority, its advocacy role, the relationship between the competition commission and sector-specific regulators in dealing with competition issues, merger control provisions with thresholds and timeframes, and consumer protection provisions to be included in the competition law in line with COMESA competition regulations and the ECA proposed competition law.

44. The Commissioner from the Kenyan Monopolies and Prices Commission (MPC) applauded the peer review process, which had enabled Kenya to determine the challenges faced by a competition authority that had to implement an outdated piece of legislation. The Kenyan Government had recently appointed a task force to review the competition law, and the terms of reference of the task force more or less addressed the concerns raised in the recommendations in the country report. However, he was open to any comments and questions from the reviewers that might assist in the review of the law.

45. The reviewers asked why the Commission had only 30 staff members currently in place, since it had 63 posts; what was meant by informal cooperation between competition authorities in the region; what type of autonomy was envisaged in the forthcoming revised competition law – financial or administrative – and how financial autonomy might affect the budget of the commission; how Kenyan politicians had contributed to the advocacy of competition issues through their speeches; how the Commission handled being under the Ministry of Finance and also having to deal with the Ministry of Trade; whether the Kenya Association of Insurers was not exempted under section 5 of the Act, and if so, how the Commission managed to have a consent agreement signed and whether it was feasible to bring in sector regulation aspects of price determination and quality under competition law; whether the lack of thresholds in merger provisions might have prompted the low number of merger applications; whether the Commission had blocked any mergers or conditionally approved some; whether the use of employment criteria for merger analysis was not an avenue to promoting inefficiency; and whether there were plans to include abuse-of-dominance clauses in the proposed revised law.

46. The representatives of the MPC said that, on the staff issue, posts had been inherited from the price control regime which had not yet been abolished, but the Commission was satisfied with 30 staff members, given the current workload. On informal cooperation between competition authorities in the region, the competition authorities cooperated in case handling in terms of exchange of information, networking, sharing of relevant opportunities for training, and staff exchange. On autonomy, both financial and administrative aspects were envisaged, and even though the Commission's funds would come from government consolidated funds, as was the practice with other regulatory bodies, the use of the funds would be managed by the Commission; donors would be called upon to assist also. On the contribution of politicians through public speeches, it was actually a private motion raised by a member of parliament in the house that had started the law review process. Other areas where politicians had identified anti-competitive problems and raised them were the motor vehicle industry, fuel retailing and cement.

47. With regard to dealing with both the Ministry of Finance and the Ministry of Trade, that situation was due to the fact that the MPC had its roots in price control, which was the responsibility of the Ministry of Finance. However, due to the mandate of the Ministry of Trade on trade issues, including UNCTAD and WTO, the Commission also had to deal with the Ministry of Trade. The Commissioner chaired the WTO National Committee on Trade

and Competition Issues. On the consent agreement with the Kenya Association of Insurers, the insurance law did not give the Commissioner of Insurance an explicit mandate to set premium rates, which were therefore not exempted under section 5 of the Competition Act, and it was therefore easy to negotiate the consent agreement. On sector-specific regulation under competition law, only aspects dealing with competition would be subject to competition law, and since there was no bidding requirement in sector-specific regulator laws, the competition law should include such provisions. On merger thresholds, timeframes, blocking and approval with conditions, the Commission had set its own operational thresholds and timeframes, and it did not appear that this had enabled firms to avoid filing merger applications. Certain mergers had been blocked, and others had been approved with conditions. It was true that using employment or labour-intensity criteria could be detrimental to efficiency, and the revised law would seek to separate these issues. Abuse-of-dominance provisions would be included in the revised law.

48. The representatives of the MPC sought views from participants concerning the convergence of national and regional laws and the link with consumers in terms of their involvement, the ways in which other competition authorities interacted with sector regulators, and the balance between cartel leniency programmes and penalties. The response to the convergence problem was that Governments would choose what to adopt from the review; UNCTAD had a mandate to deal with consumer matters. On sector regulators, one delegate shared his country's experience with a system of concurrency in handling competition cases. On leniency programmes, a delegate said that the leniency programme was unbeaten in cartel investigations, but in some jurisdictions the competition authority had to convince the Government of its usefulness.

49. In conclusion, the representative of the UNCTAD secretariat reported on the efforts already made to develop a programme between UNCTAD and UNDP, Nairobi, to implement the recommendations of the peer review over a period of two years. Other development partners were invited to cooperate in the project. The Chairperson encouraged Kenya to consider the recommendation of the peer review report in its review of competition law.

D. Action by the Conference

50. At its closing plenary meeting, on 18 November 2005, the Conference adopted draft resolution TD/RBP/CONF.6/L.5. (For the text of the resolution as adopted, see chapter I above.)

Chapter IV

ORGANIZATIONAL MATTERS

A. Opening of the Conference

(Agenda item 1)

51. Further to General Assembly resolution 55/182 of 20 December 2000, the Fifth 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 14 November 2005 in Antalya, Turkey.

52. At the inaugural ceremony, the Conference was addressed by Mr. Abdüllatif Şener, Acting Prime Minister of Turkey; Mr. Supachai Panitchpakdi, Secretary-General of UNCTAD; and Mr. Mustafa Parlak, President of the Turkish Competition Authority.

53. The first plenary meeting of the Conference was opened by Mr. François Souty (France), President of the Fourth Review Conference.

B. Election of the President and other officers

(Agenda item 2)

54. At its opening plenary, on 14 November 2005, the Conference elected its President and other officers as follows:

President:	Mr. Mustafa Parlak (Turkey)
Rapporteur:	Mr. Rahim Huseynov (Azerbaijan)
Vice-Presidents:	Mr. Bruno Lasserre (France)
	Mr. Ulf Böge (Germany)
	Mr. Hanspeter Tschaeni (Switzerland)
	Mrs. Berenice Napier (United Kingdom)
	Ms. Melissa Kehoe (United States)
	Ms. Ludmila Solontsova (Russian Federation)
	Mr. Dan Ioan Pencu (Romania)
	Mr. Ismael Malis (Argentina)
	Mr. Byron Fernando Larios Lopez (El Salvador)
	Ms. Mariana Tavares De Araujo (Brazil)
	Ms. Komal Anand (India)
	Mr. Syamsul Maarif (Indonesia)
	Ms. Luna Abbadi (Jordan)
	Mr. Hassan Dabzat (Morocco)
Mr. Moudjaïdou Soumanou (Benin)	
Mr. Peter Njoroge (Kenya)	
Mr. Kening Zhang (China)	

55. 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)

56. Also at its opening plenary, the Conference adopted its rules of procedure as contained in document TD/RBP/CONF.3/2/Rev.1.

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

(Agenda item 4)

57. At the same meeting, the Conference adopted its agenda, as contained in document TD/RBP/CONF.6/1. (For the agenda, see annex I.)

E. Credentials of the representatives to the Conference

(Agenda item 5)

(a) Appointment of a Credentials Committee

58. The Conference established a Credentials Committee based on the composition of the Credentials Committee of the sixtieth session of the General Assembly, namely Cameroon, China, Panama, Portugal, Saint Lucia, Samoa, Sierra Leone, the Russian Federation, and the 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, Panama was replaced by El Salvador, Samoa by India, and Sierra Leone by Malawi.

(b) Report of the Credentials Committee

59. At its plenary meeting on 18 November 2005, the Conference took note of the oral report of the Chairperson of the Credentials Committee, whereby the credentials of States participating in the Conference were found to be in due and proper form.

F. Provisional agenda for the seventh session of the Intergovernmental Group of Experts on Competition Law and Policy

60. At its closing plenary meeting, on 18 November 2005, the Conference approved the provisional agenda for the seventh session of the Intergovernmental Group of Experts on Competition Law and Policy, as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. (a) Consultations and discussions regarding peer reviews on competition law and policy; review of the Model Law; and studies related to the provisions of the Set of Principles and Rules
- (b) Work programme, including capacity-building and technical assistance on competition law and policy

4. Provisional agenda for the eighth session of the Intergovernmental Group of Experts
5. Adoption of the report of the Intergovernmental Group of Experts

G. Adoption of the report of the Conference
(Agenda item 8)

61. At its closing plenary meeting, on 18 November 2005, the Conference adopted its draft report (TD/RBP/CONF.6/L.1 and Add.1), took note of the Chairperson's summaries contained in documents TD/RBP/CONF.6/L.2 and 3, authorized the inclusion of the summaries in its report, authorized the President to prepare summaries of panel discussions for inclusion in the report, and agreed that the final report should be prepared for submission to the General Assembly.

Annex I

AGENDA OF THE 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 the 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. Representatives from the following States members of UNCTAD attended the Conference:

Albania	Japan
Algeria	Jordan
Angola	Kenya
Argentina	Lao People's Democratic Republic
Azerbaijan	Latvia
Bangladesh	Lesotho
Benin	Madagascar
Bhutan	Malawi
Bosnia and Herzegovina	Malaysia
Brazil	Mali
Bulgaria	Malta
Burkina Faso	Mauritania
Cambodia	Mexico
Cameroon	Morocco
Canada	Mozambique
Chad	Namibia
Chile	Nepal
China	Niger
Colombia	Nigeria
Costa Rica	Oman
Cuba	Pakistan
Cyprus	Peru
Czech Republic	Philippines
Egypt	Poland
El Salvador	Portugal
Ethiopia	Republic of Korea
France	Romania
Gabon	Russian Federation
Germany	Saint Lucia
Hungary	Saudi Arabia
India	Senegal
Indonesia	South Africa
Italy	Spain
Jamaica	Swaziland

* For the list of participants, see TD/RBP/CONF.6/INF.1.

Sweden	Ukraine
Switzerland	United Kingdom of Great Britain and Northern Ireland
Tajikistan	United Republic of Tanzania
Thailand	United States of America
The former Yugoslav Republic of Macedonia	Uzbekistan
Togo	Zambia
Tunisia	Zimbabwe
Turkey	

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

European Commission
Organization for Economic Cooperation and Development
West African Economic and Monetary Union

3. The following non-governmental organization was represented at the Conference:

General Category

Actionaid

4. The following organizations were specially invited to attend the Conference:

Centre on Regulation and Competition
Consumer Unity and Trust Society

5. The following invitees contributed to the Conference:

Mr. Allan Asher, Energy Watch, United Kingdom
Mr. Esref Biryildiz, Mercedes-Benz Turkey, Istanbul
Mr. Julian Clark, Professor, Fribourg University, Switzerland
Mr. Serdar Dalkir, Principal Administrator, MICRA Microeconomic Research and
Consulting Associates, Inc., Washington D.C., United States of America
Ms. Pamela W.S. Chan, Chief Executive, Consumer Council, Hong Kong, China
Mr. Simon Evenett, Professor, University of St. Gallen, Switzerland
Ms. Eleanor Fox, School of Law, New York University, United States of America
Ms. Gertruida Maria Hartzenberg, Executive Director, Trade Law Centre for
Southern Africa, (TRALAC), Stellenbosch, South Africa
Mr. James Hodge, GENESIS, Greenside East, South Africa
Mr. Peter Holmes, Professor, University of Sussex, London, United Kingdom
Mr. Frederic Jenny, ESSEC, Cergy-Pontoise, France
Ms. Susan Joekes, Project Officer, International Development Research Center
(IDRC) Paris, France
Mr. Bahri Ozgur Kayali, University of Manchester, United Kingdom
Mr. James Mathis, Professor, University of Amsterdam, Netherlands

Mr. Gilles Menard, Private Consultant, Gatineau, Canada

Mr. Gesner Oliveira, Expert in Competition Laws, São Paulo, Brazil

Mr. Anestis Papadopoulos, London School of Economics, United Kingdom

Mr. Güven Sak, Managing Director, Economic Policy Research Institute, Ankara

Mr. Khalid Sekkat, Professor, Free University of Brussels, Belgium

Mr. Jeffry Senduk, DLA Piper Rundwick Law Firm, The Hague, Netherlands

Ms. Anna Sydorak, University of Sussex, London

Mr. Mark Williams, Associate Professor of Law, School of Accounting and Finance,
Polytechnic University, Hong Kong, China

Annex III

List of documents

TD/RBP/CONF.6/1	Adoption of the agenda and organization of the work of the Conference – annotated provisional agenda and organization of work
TD/RBP/CONF.6/2	Handbook on Competition Legislation – Note by the UNCTAD secretariat
TD/RBP/CONF.6/3	A presentation of types of common provisions to be found in international, particularly bilateral and regional, cooperation agreements on competition policy and their application – Report by the UNCTAD secretariat
TD/RBP/CONF.6/4	A synthesis of recent cartel investigations that are publicly available – Note by the UNCTAD secretariat
TD/RBP/CONF.6/5	Recent important cases involving more than one country – Report by the UNCTAD secretariat
TD/RBP/CONF.5/6	Review of capacity-building and technical assistance on competition law and policy – Note by the UNCTAD secretariat
TD/RBP/CONF.6/7	Voluntary Peer Review on Competition Policy: Jamaica – Overview
TD/RBP/CONF.6/8	Voluntary Peer Review on Competition Policy: Kenya – Overview
TD/RBP/CONF.6/9 TD/B/COM.2/CLP/46/Rev.1	Ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view of enabling these countries to introduce and enforce competition law and policy consistent with their level of economic development
TD/RBP/CONF.6/10 TD/B/COM.2/CLP/45/Rev.1	Assessment of the Application and Implementation of the Set

TD/RBP/CONF.6/11 TD/B/COM.2/CLP/37/Rev.2	Roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy – Revised study by the UNCTAD secretariat
TD/RBP/CONF.6/12 TD/B/COM.2/CLP/21/Rev.3	Experiences gained so far on International Cooperation on Competition Policy Issues and the Mechanisms used – Revised report by the UNCTAD secretariat
TD/RBP/CONF.6/13 TD/B/COM.2/CLP/44/Rev.1	Best practices for defining respective competences and settling of cases which involve joint action of competition authorities and regulatory bodies – Study by the UNCTAD secretariat
TD/RBP/CONF.6/14	Review of All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices – Resolution adopted by the Conference at its closing plenary meeting on 18 November 2005
TD/RBP/CONF.6/15	Report of the Fifth 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.6/L.1 and Add.1	Draft Report of the Fifth 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.6/L.2	Jamaica Voluntary Peer Review – Chairperson’s summary
TD/RBP/CONF.6/L.3	Kenya Voluntary Peer Review – Chairperson’s summary
TD/RBP/CONF.6/L.4	Draft Provisional Agenda for the Seventh Session of the Intergovernmental Group of Experts on Competition Law and Policy

- TD/RBP/CONF.6/L.5 Review of All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices – Draft resolution
- UNCTAD/DITC/CLP/2005/1 Competition Provisions in Regional Trade Agreements: How to Assure Development Gains
- UNCTAD/DITC/CLP/2005/2 Review of Recent Experiences in the Formulation and Implementation of Competition Law and Policy in Selected Developing Countries – Thailand, Lao People’s Democratic Republic, Zambia, Zimbabwe
- UNCTAD/DITC/CLP/2005/3 The Southern African Custom Union (SACU) Regional Cooperation Framework on Competition Policy and Unfair Trade Practices – A report prepared for UNCTAD at the request of the SACU Member States
- UNCTAD/DITC/CLP/2005/4 Exclusionary anti-competitive practices, their effects on competition and development, and analytical and remedial mechanisms
- UNCTAD/DITC/CLP/2005/5 Voluntary Peer Review on Competition Policy: Jamaica
- UNCTAD/DITC/CLP/2005/6 Voluntary Peer Review on Competition Policy: Kenya

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