SUMMARY RECORD OF THE 79TH MEETING OF THE COMMITTEE ON COMPETITION LAW AND POLICY HELD ON 5 AND 6 JUNE 2000

-- Report by the UNCTAD Coordinator --

The attached note is submitted to the CLP FOR INFORMATION. It reproduces the oral report made by the UNCTAD Co-ordinator at the June 2000 meeting of the CLP.
REPORT
by
the co-ordinator for UNCTAD concerning the organisation and outcome of UNCTAD X,
held in Bangkok from 12-19 February 2000, in the realm of competition law and policy

1. From the standpoint of work on competition policy aimed at the developing countries, and of international co-operation on competition, and within the context of advocacy work, this session of UNCTAD highlighted the concern, but also the growing interest, of the developing countries regarding a topic that lies at the core of this Committee’s work.

2. Indeed, a number of the statements by eminent personages or groups of countries made competition a major theme of the Conference for the first time since the early 1980s (when “the Set” was adopted in its initial version). This proves that the subject of competition in the developing countries is firmly entrenched, even if these statements cannot be taken ipso facto as reflecting a uniform position of the developing countries vis-à-vis the work being carried out at the WTO by the Working Group on the Interaction between Trade and Competition Policy; in other words, there is less than total permeability between the two fora, whose missions differ significantly. But real convergence is taking shape between the approaches to competition issues that are being taken by UNCTAD, OECD and WTO, with a goal that is shared by all of the competition authorities represented on the OECD Committee on Competition Law and Policy: that the developing countries should institute and effectively apply rules of competition that would enhance their own economic efficiency, but also that of international trade in general, while increasing the transparency of economic relations and combating all forms of discrimination.

3. The Bangkok Conference also enabled the international community to adopt a plan of action in the area of competition, while acknowledging for the first time since Singapore that competition issues are on a par with themes such as international trade and investment. This plan of action, along with the final declaration of the Conference—which henceforth places competition law and policy on the same plane as trade or investment policy among economic policy instruments intended to promote economic development—are annexed to this report.

4. The essential discussions, speeches and outcomes for the representatives of the competition authorities of the OECD countries taking part in the work of the UNCTAD group of intergovernmental experts can be summarised in the following five points.

1. An important statement by Malaysia, which is highly influential in the south-east Asia region, with broad support from Indonesia

5. The first significant statement was made on Saturday, 12 February by Dr. Mahathir bin Mohamad, the Prime Minister of Malaysia, who explicitly raised the issue of mega-mergers, concentration and globalisation of markets leading to the formation of narrow oligopolies that facilitate anticompetitive agreements and abuse of dominant positions, both at the level of developing countries or regions and world-wide.

6. The statement was made in such a way as to place competition policy issues essentially at the interface between “trade and competition” addressed by the aforementioned WTO working group on that topic. Inter alia, Dr. Mahathir said: “Frankly speaking I am worried and frightened at the preparations being made by corporations in certain industries and business activities in order to take advantage of liberalisation and globalisation. I am referring to the mergers and acquisitions which are making big
corporations even bigger. Now many of these corporations are financially more powerful than medium sized countries. While we welcome their collaboration with our local companies, we fear that if they are allowed into our countries unconditionally they may swallow up all our businesses.”

7. “A situation of world-wide oligopoly seems already to be emerging. If market forces are allowed free play then oligopolies may end up as monopolies. I believe that the general consensus is that monopolies are unhealthy. Can it be possible that a corporation is not a monopoly in its country of domicile but a monopoly in the rest of the world? In such a case whose laws will apply? And if we restrain them would we be accused of not subscribing to globalisation and liberalisation?”

8. This excerpt exhibits elements of a line of reasoning that takes an approach in terms of national law (reflecting upon the imperative needs for competition policy at national level), but in terms of multilateralism as well, with the fear that implementation of national competition law may, in certain market configurations, lead to trade disputes. While Malaysia was clearly of the opinion that its work should be carried out within the framework of UNCTAD, at least in the short term, its thinking no longer seemed to preclude the prospect of working within the WTO. Lastly, it should be emphasised that the President of the Republic of Indonesia, Mr. Wahid, speaking immediately after the Malaysian Prime Minister, firmly and fully supported Prime Minister Mahathir’s statement in its entirety. This is significant, especially in view of the frictions that can often exist between these two neighbouring countries, whose economic institutions are very similar and are in competition with each other.

2. The G77 and China take an unambiguous position in support of work on competition policy as an instrument of economic development.

9. This position was summed up in the clear statement by Morocco, as Chair of the “Group of 77”, and China, speaking on behalf of most developing countries, at the Ministerial meeting of policy representatives from that group during UNCTAD X. The statement fairly clearly echoes Dr. Mahathir’s line of reasoning.

10. It asserts that globalisation and liberalisation have unleashed competitive forces that, paradoxically, can lead to a concentration of market power, primarily through mergers and acquisitions, at national as well as global market levels. It is therefore essential for the developing countries to be able to rely on sound competition policy and law in order to correct the restrictive practices of corporations when those practices affect those countries’ trade and development. It states that UNCTAD is well equipped to provide the necessary assistance in that regard.

11. Numerous informal contacts between this Committee’s co-ordinator and delegations from developing countries (India, Morocco, Malaysia, United Arab Emirates, Qatar, Bahrain, Viet Nam, Pakistan, and African and Latin American countries) and countries in transition (China and Russia, whose delegation included the Minister-Chairman of the Russian competition authority) confirmed this unanimous interest in competition law and policy as elements of economic policy that can foster development. This unanimity explains the results achieved by the Conference in the realm of competition—results that are dealt with under points 4 and 5 below.

3. A noted position of civil society as represented by non-governmental organisations and consumer movements

12. A number of eminent speakers (the Secretary-General of UNCTAD, Mr. Ricupero; the Director-General of the IMF, Mr. Camdessus; and the Conference Chairman, Mr. Supachai) repeatedly emphasised the need to take the views and aspirations of civil society into account as fully as possible. Dr. Mahathir
emphasised that UNCTAD and WTO had to find ways to incorporate the views of civil society without giving its representatives no alternative but to organise protests as they had in Seattle and Bangkok.

13. The NGOs (diverse international associations including ecologists, consumer movements and trade unions from the developed and developing countries) met on February 8 to constitute an advisory body (the “NGO Plenary Caucus”) during the Conference. They formulated a document which, *inter alia*, invited UNCTAD to pursue or “undertake independent analysis, from a development perspective, of new proposals in areas such as labour, finance, investment, government procurement and competition, building on its ongoing work such as that of the *Trade and Development Report*.” It should be noted that the NGOs, along with several developing countries, also called for the formation of a group of experts on consumer policy to complement the intergovernmental group of experts already at work in the area of competition.

14. Consumers International, a federation of 250 consumer associations in 111 countries, also made an explicit series of proposals during UNCTAD X, urging in particular that “UNCTAD should generally promote a competition culture that supports the welfare of consumers” and “set up an Intergovernmental Expert Group on consumer policy”.

4. Within the OECD, only the European Union and a number of Member countries have explicitly developed messages incorporating competition policy concerns

15. Portugal, holding the Presidency of the Council in the first half of 2000, affirmed the attachment of the European Union Member States to UNCTAD’s work on competition law and policy. A number of Member States explicitly referred to this in their plenary declarations (apart from Portugal, these included Belgium, the Netherlands, Germany and the United Kingdom).

5. A series of competition-related commitments were made at the UNCTAD Conference: technical details of those commitments were to be set forth at the 4th Review Conference, to be held in Geneva from 25 to 29 September 2000.

16. First, the final proceedings of the Bangkok Conference (the so-called “Bangkok Declaration”) affirmed that “the international community as a whole has the responsibility to ensure an enabling global environment through enhanced co-operation in the fields of trade, investment, competition and finance ... so as to make globalization more efficient and equitable.”

17. Second, and more practically, the Conference agreed to adopt a “Plan of Action”, the competition-related provisions of which are as follows:

“140. UNCTAD should continue and expand its help to interested countries in developing their national regulatory and institutional framework in the area of competition law and policy.

“141. UNCTAD’s work in this area should, in cooperation with UNDP, the World Bank and other relevant organizations, strengthen the capacity of public institutions for competition and consumer protection in developing countries and help them to educate the public and representatives of the private sector in this field.

“142. UNCTAD should continue to examine issues related to competition law and policy of particular relevance to development. It should prepare periodical reports on restraints in strategic sectors and their impact on developing countries and countries with economies
in transition, particularly on their competitiveness. UNCTAD should study in depth the developmental impact of possible international agreements on competition.

“143. UNCTAD should also further study, clarify and monitor, including through specific country and case studies, the relationship between competition and competitiveness as well as trade-related aspects of competition.”

18. These four points constituted the core agenda of the next UNCTAD Review Conference, which was to be held in Geneva in September 2000. They in fact confer a fairly extensive mandate on the Secretariat of that organisation, the objectives of which are highly convergent with those of the WTO Working Group on the Interaction between Trade and Competition Policy (the difference stemming essentially from the faith that the developing countries place in UNCTAD, as opposed to their far warier attitude towards WTO). From the particular viewpoint of the Committee on Competition Law and Policy, these classic and essential objectives are: dissemination of a culture of competition and of competitive principles based on economic efficiency, consumer welfare, transparency and the battle against discrimination within the framework of the institutions of competition law and policy in the OECD non-Member economies. These objectives have now been most forcefully embraced by UNCTAD. The competition authorities of the OECD Member countries should therefore make special efforts to foster this trend.

Conclusion

19. The requests involving competition policies made at UNCTAD by the developing countries clearly reflected a fear of the market power that stems from anticompetitive practices affecting international trade, and in particular of firms that base their expansion strategies on market segmentation and the formation of monopolies or agreements that can victimise the economies of the developed OECD Member countries and developing countries alike.

20. Lastly, this interest of the developing countries should not hide the fact that a great deal of explanation and co-operation at national and regional level remains to be done: much is expected in this area from the contribution of the Secretariat of UNCTAD, which, among economics-oriented international organisations, enjoys the greatest unreserved confidence of the developing countries in the realm of competition. The OECD Secretariat, along with the competition authorities represented on the Organisation’s Committee on Competition Law and Policy, can usefully augment their audience in the developing countries by reinforcing these efforts to provide explanations and technical co-operation.

François Souty
Competition

69. Liberalization of trade and investment inside and outside WTO has accelerated globalization and, together with technological progress, enabled TNCs to pursue world-wide strategies. Major TNCs now focus on the entire world market and seek to achieve leading world market positions in their core business through mergers, acquisitions, strategic alliances, investment or trade. While dominant market positions are not anti-competitive in themselves, certain practices applied by companies enjoying such positions can limit international competition and market entry by competitors. Anti-competitive practices raise import costs and limit market access and market entry. In this situation, some developing countries find it difficult to establish and enforce national competition rules to safeguard market forces and free market entry. In order to enable those countries to better address and discipline anti-competitive practices, it is essential for countries which have national competition rules in place to back them up with an appropriate system of enforcement. Technical assistance, training and other related measures towards this end should be supported.

70. RBPs should not impede or negate the realization of benefits arising from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries. Efforts to tackle the negative effects of RBPs are also necessary to attain greater efficiency in international trade and development by, inter alia, promoting competition, controlling concentration of economic power and encouraging innovation. There is a need to prevent enterprises from re-establishing market barriers where governmental controls have been removed. Developing countries, which do not have many world-wide TNCs, have a major interest in seeing that their access and entry to their major export markets is kept open and unrestricted by anti-competitive practices.
(vii) Competition issues

140. UNCTAD should continue and expand its help to interested countries in developing their national regulatory and institutional framework in the area of competition law and policy.

141. UNCTAD’s work in this area should, in co-operation with UNDP, the World Bank and other relevant organizations, strengthen the capacity of public institutions for competition and consumer protection in developing countries and help them to educate the public and representatives of the private sector in this field.

142. UNCTAD should continue to examine issues related to competition law and policy of particular relevance to development. It should prepare periodical reports on restraints in strategic sectors and their impact on developing countries and countries with economies in transition, particularly on their competitiveness. UNCTAD should study in depth the developmental impact of possible international agreements on competition.

143. UNCTAD should also further study, clarify and monitor, including through specific country and case studies, the relationship between competition and competitiveness as well as trade-related aspects of competition.
The Setting

1. We came to Bangkok to deliberate on developmental strategies in an increasingly interdependent world, and on how to make globalization an effective instrument for development. In the context of the opportunities created by the technological revolution, the opening of markets, and globalization, the paramount objectives of our endeavours have been the promotion of growth and sustainable development, and the quest for equity and participation by all. Our deliberations have reminded us of the enormity and the urgency of the challenge of translating broadly agreed concepts into effective action. We leave Bangkok with the conviction that we will be able to advance in the effort of achieving more effective coordination and co-operation among governments and among international institutions in dealing with global interdependence and development.

2. Globalization is an ongoing process that presents opportunities, as well as risks and challenges. It has expanded the prospect for technological advances and for effective integration into the international economy. It has increased prosperity and the potential for countries to benefit. However, globalization also raises the risk of marginalization of countries, in particular the poorest countries, and the most vulnerable groups everywhere. Income gaps within and among countries remain wide, and the number of people living in poverty has increased. Asymmetries and imbalances in the international economy have intensified. Instability in the international financial system continues to be a serious problem and requires urgent attention.

3. The tenth United Nations Conference on Trade and Development took place in a country and a region that were at the centre of one of the most severe financial and economic crises of recent times, which had an adverse effect on almost all developing countries. Despite their adverse economic and social impact, crises can act as catalysts; they tend to focus the mind and the will of Governments and peoples on decisive action to face the difficulties. This happened, for example, in East and south-east Asia. Within a relatively short period, through various sound national responses, and with the co-operation of the
international community, the countries concerned have been able to meet the challenge of resuming growth and are now emerging from the crisis with a renewed sense of confidence. This demonstrates the power of human spirit when it mobilizes collective efforts to address the challenges of globalization.

4. Formidable challenges remain. Countries affected by the crisis have had to address their structural problems, which have been magnified by social and human suffering and dislocation. They must, with the assistance of the international community, define strategies that will strengthen and sustain growth while allowing for a rapid return to the levels of human and social development seriously undermined by the crisis. They must also transform their institutions into efficient instruments for the implementation of these strategies. The qualities that characterized East and south-east Asia and that are common to all success stories of development remain valid: sound macroeconomic fundamentals, improved governance, high savings rates, investment in human resources, sustainable use of natural resources, strong partnership between the public and private sectors, and export orientation. These characteristics are among the necessary conditions for sustained economic growth and sustainable development. We must take purposeful action to avoid, and mitigate the risks of, future crises. In addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced co-operation in the fields of trade, investment, competition and finance and to contribute to currency stability so as to make globalization more efficient and equitable.

A New Beginning

5. As the first major intergovernmental economic and development conference of the century, UNCTAD X has provided us with a unique opportunity to take stock of and reflect on recent experiences of globalization, to examine strengths and weaknesses in past approaches and policies, and to identify the major challenges ahead: ensuring the effective integration of all countries into the international trading system; improving supply capabilities; overcoming the debt problem; strengthening the commitment to social development; ensuring women’s political, economic and social participation; generating adequate financial flows for development, including addressing the declining trend of Official Development Assistance (ODA) and its effective use; undertaking institutional reforms; reducing financial volatility; and enhancing the technological capabilities of developing countries. It has allowed the international community to focus on the central problems of recent decades, notably acute poverty and growing inequality within and among nations, problems which are threatening international stability. In an increasingly knowledge-intensive world, support for knowledge-based development is necessary for effective participation of developing countries in the world economy.

6. Globalization can be a powerful and dynamic force for growth and development. If it is properly managed, the foundations for enduring and equitable growth at the international level can be laid. For that, it is essential to persevere in the search for consensual solutions through open and direct dialogue that takes account of the fundamental interests of all.

7. The Bangkok Conference has particularly emphasized the need for increased policy coherence at the national and international level. There should be complementarity between macroeconomic and sectoral policies at the national level and between policies at the national and international level. There is also a need for more effective co-operation and coordination among multilateral institutions. National and international institutional frameworks should be strengthened accordingly.

8. Many countries have difficulty in coping with the increased competition and lack the capacity to take advantage of the opportunities brought about by globalization. This requires a decisive effort in favour of those at risk of marginalization. In this regard, Africa, which has as much potential as any other region, should be given special attention. For the international community, just as for each and every national society, the ultimate test lies in the way it treats the weaker members of the community. In this context, the
Conference emphasizes the importance of the forthcoming Third United Nations Conference on the Least Developed Countries, and urges the international community to contribute towards its success.

9. Solidarity and a strong sense of moral responsibility must be the guiding light of national and international policy. They are not only ethical imperatives, but also prerequisites for a prosperous, peaceful and secure world based on true partnership. Such partnership requires more inclusive, transparent and participatory institutional arrangements for international economic decision-making so as to ensure that the benefits of globalization are accessible to all on an equitable basis. In addition, the success of international development efforts depends on account being taken of all stakeholders, including the private sector, non-governmental organizations (NGOs) and academia.

10. The Conference emphasizes commitment to a multilateral trading system that is fair, equitable and rules-based and that operates in a non-discriminatory and transparent manner and in a way that provides benefits for all countries, especially developing countries. This will involve, among other things, improving market access for goods and services of particular interest to developing countries, resolving issues relating to the implementation of World Trade Organization (WTO) agreements, fully implementing special and differential treatment, facilitating accession to the WTO, and providing technical assistance. The Conference reiterates that all countries and international organizations should do their utmost to ensure that the multilateral trading system fulfils its potential in terms of promoting the integration of all countries, in particular the least developed countries, into the global economy. A new round of multilateral trade negotiations should take account of the development dimension. Securing early progress on all these issues remains a matter of urgency for the international community. The Conference emphasizes the role and contribution of regional integration in this process.

Open Dialogue and Full Engagement

11. As the focal point within the United Nations for the integrated treatment of development and the interrelated issues in the areas of trade, finance, investment, technology, and sustainable development, UNCTAD must make a substantial contribution to the pursuit of development objectives. It must also play an active role in consensus building around well-defined trade supporting and development issues.

12. One contribution of UNCTAD X and its preparatory process has been the achievement of open dialogue and frank exchanges of views. A large measure of agreement was possible in Bangkok on the shared moral commitment to a better and fairer world. UNCTAD’s work can serve to address the challenges and opportunities of globalization and inform an open and systematic debate on diverse development-related issues of global interest among partners in the development process, including the private sector, NGOs, academia and parliamentarians. It should pursue this open dialogue to help shape international economic relations in the twenty-first century.

13. The Conference has brought together development partners to propose practical and meaningful solutions. It has inspired reasons for hope in the possibility of creating a fairer and better world economic system, alleviating poverty, redressing imbalances, and improving the protection of our environment, as well as offering all people security and growing opportunities to raise their standards of living and lead a full and meaningful life. We have agreed on a Plan of Action to guide this process. We must all now work together to turn hope into reality.