

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**FINAL CONSOLIDATED REPORT OF REGIONAL
CAPACITY-BUILDING MEETINGS ORGANIZED BY UNCTAD
ON COMPETITION ISSUES WITHIN THE FRAMEWORK OF
THE DOHA MANDATE**

Report by the UNCTAD secretariat



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Contents

	Pages
INTRODUCTION.....	1
I. GENERAL VIEWS ON THE SINGAPORE ISSUES	3
A. Issues to deal with in priority	3
B. New complex issues.....	3
C. Need for explicit consensus on modalities	4
 II. A POSITIVE AGENDA FOR DEVELOPING COUNTRIES.....	 5
A. A possible Multilateral Competition Framework (MCF)	5
B. Detailed proposals at the WTO Working-Group	6
(a) Core-trade principles.....	6
(b) Other principles, including Special and Differential Treatment (SDT).....	8
(c) Competition rules	11
(d) Prohibition on hard-core cartels	11
(e) The case of commodity - and oil-exporting developing countries.....	12
(f) Other anti-competitive restraints	12
(g) Voluntary cooperation.....	13
(h) Dispute mediation mechanisms.....	14
 III. OPTIONS FOR DEVELOPING COUNTRIES AT CANCÚN: POSSIBLE ELEMENTS OF A MULTILATERAL COMPETITION FRAMEWORK	 17
A. A positive agenda on competition law and policy	17
B. Status quo; no Multilateral Competition Framework; extension of sectoral approaches to new areas	17
 Annexes	
1 Frequently asked questions	19
2 Kuala Lumpur conference (agenda).....	33
3 Nairobi conference (agenda)	37
4 Sao Paulo conference (agenda).....	41
5 Tashkent conference (agenda)	47

INTRODUCTION

As part of the post-Doha capacity-building programmes on competition law and policy, UNCTAD provided enhanced support to developing and least-developed countries in line with the request specifically addressed to UNCTAD in paragraph 24 of the Doha Declaration on Competition and Trade Policy, which is reproduced below:

"23. Recognizing the case for a multilateral framework to enhance the contribution of competition policy to international trade and development, and the need for enhanced technical assistance and capacity-building in the area as referred to in paragraph 24, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations.

24. We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity-building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

25. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarifications of core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels, modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity-building. Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them."

In line with the request addressed to UNCTAD in paragraph 24 of the Doha Declaration, UNCTAD contributed, in cooperation with WTO and other relevant intergovernmental organizations such as OECD and the World Bank, to responding to the needs of developing and least developed countries "for enhanced support for technical assistance and capacity-building in this area, including policy analysis and development, so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human institutional development".

In 2002, UNCTAD organized a first series of four regional seminars on the Post-Doha mandate,¹ in Panama City (Panama) for Latin America and the Caribbean; Tunis (Tunisia) for Africa and Arab countries; Hong Kong (China) for Asia; and in Odessa (Ukraine) for East European and Community of Independent States (CIS) countries.

In addition, UNCTAD actively participated in the WTO Working Groups and regional workshops and seminars, including in Libreville (Gabon), Mauritius, Guatemala City, Kingston (Jamaica), Cairo (Egypt), Nairobi (Kenya) and Buenos Aires (Argentina). In return

¹ The main findings of these four meetings are contained in a consolidated report (Closer Multilateral Cooperation on Competition Policies, doc. UNCTAD/DITC/CLP/Misc.23), published in May 2002 and made available to the WTO Working Group on the Interaction of Trade and Competition Policy, and submitted to the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (Geneva, 3–5 July 2002).

the WTO secretariat was represented in all UNCTAD's post-Doha-related meetings and seminars. In 2003, these included a second round of regional meetings, namely the Regional Asian Conference in Kuala Lumpur (Malaysia) on 26 and 27 February 2003; the Conference on Post-Doha Competition Issues for Africa, in Nairobi (Kenya) on 9 and 10 April 2003; the Regional Post-Doha Seminar for Latin America and the Caribbean in Sao Paulo (Brazil) from 23 to 25 April 2003 and the Regional conference for East Europe and CIS member countries in Tashkent (Uzbekistan) on 5 and 6 June 2003. At these meetings, an attempt was made to bring together not only competition experts from capitals but also representatives from Ministries of Trade and in some cases Geneva ambassadors to the WTO in order to enable a full exchange of views to take place between "technical" competition officials from capitals and trade counterparts, along with negotiators in Geneva.

The present Final Consolidated Report contains a compendium of all views collected during these meetings and seminars, and is presented in a simplified-easy-to-read outlay, divided as "pros" and "cons" of each issue, so that the reader can easily browse through the main issues discussed and compare the arguments put forward by the proponents of different proposals with the concerns expressed by the developing countries, including the Group of Like-Minded Countries (LMG).

It should be noted, however, that while the UNCTAD secretariat has listed as faithfully as possible the various views expressed, under "pros" and "cons" of various proposals and elements that could be part of a possible Multilateral Competition Framework (MCF), it is not the intention of the UNCTAD secretariat to convince developing country ministers in making their decision in favour or against negotiating a MCF. It is expected that, having evaluated the various views expressed on different issues and options before them, ministers in their own wisdom will make their own decision.

Once again, it should be recalled that the Doha Declaration does not ask UNCTAD to take a position, but rather to help developing and least developed countries to "better evaluate the implications of closer multilateral co-operation" in this field. Hence the following pages cover the various, often contradictory views expressed throughout the meetings attended and organized by UNCTAD.

I. GENERAL VIEWS ON THE SINGAPORE ISSUES²

At the UNCTAD meetings it became apparent that many developing and least developed countries considered that:

A. Issues to deal with as a priority

There has not been sufficient progress in the core issues of the Doha Round (agriculture, medicines and TRIPS, special and differential treatment (SDT) for developing countries and market access) for still other difficult issues being brought to the negotiating table (the Singapore Issues).

Pros:

It was argued that to date (early June), all deadlines set for the negotiations on the "core issues" and the "built-in agenda" had lapsed without any agreement. Many developing countries are more interested in concrete benefits that would result from a breakthrough in agriculture or medicines than they are in the Singapore issues, which are more theoretical, and in their view more complex and not of priority concern to them.

Cons:

In the countdown to Cancún (September) some breakthroughs might still occur, for example, in agriculture, in medicines and or other issues. Moreover, the European Commission has made it clear that it sees the Doha Round as a "single undertaking" (see Doha Declaration, paragraph. 47 in particular) – hence during the Cancún conference some trade-off with some /or all of the Singapore issues might occur. Hence the need for a detailed fall-back position for the developing countries and LDCs.

B. New complex issues

The Singapore issues are new to many developing and least-developed countries, and they are complex issues for which most are unprepared; many issues still need to be further discussed and clarified, more work needs to be done at the WTO Working Group.

Pros:

Many participants argued that it is true many developing and least-developed countries still do not have, or are not aware of, competition law or policy. For most of those that have adopted such laws, they are new and their experience with implementation is short. Hence, the feeling that developing countries would be heavily disadvantaged if a negotiation on this topic was launched at Cancún.

Cons:

The view was made that the Working Group has examined all issues related to a possible MCF and its work is becoming repetitive. It is only when negotiations will start that developing countries will take the issue seriously. On the other hand, serious concern was expressed that if developing countries decide to accept the "package" because their demands are satisfied in agriculture or elsewhere, they might pay insufficient attention to competition

² Reference is often made to the "Singapore Issues" to mean competition, investment, government procurement and trade facilitation, as they were covered at the WTO Singapore Ministerial Meeting in December 1996.

issues for which they would be unprepared and would risk to accept whatever deal is proposed without having prepared their own positive agenda and struggled to obtain a satisfactory deal

C. Need for explicit consensus on modalities

For negotiations to be launched at/or after Cancún, there is a need for explicit consensus on the modalities. Many developing countries argue that they are not clear about the modalities, hence they cannot start negotiating now.

Pros:

Some participants noted that the issue of modalities has only been indirectly discussed in the WTO Working Group; nobody is very clear about the significance of the term. Some consider that the modalities are both procedural and substantive. Basically, developing countries would like to know more about the substance of an agreement before jumping into a negotiating stage. For example, no assurance has been forthcoming that SDT will be really afforded to the developing countries, other than pledges of technical assistance and capacity-building and offers of “flexibility and progressivity”. For exemptions in competition law, for example, the EU is willing to accept them as quid pro quo for their own exemptions. No SDT in the sense of more strict obligations for developed countries than for developing countries seems forthcoming.

Cons:

A paper on modalities has been submitted by the EC to the General Council, and not to the Working Group. It would seem that this issue will be further clarified in consultations with the Chairman of the General Council.

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