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# Final Report of the II Regional Seminar UNCTAD-SELA on Trade and Competition and Preparatory Meeting for the VI United Nations Conference to Review All Aspects of the Set of Principles and Rules on Competition

*XXXVI Regular Meeting of the Latin American Council*

*Caracas, Venezuela*

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# Final Report on the II Regional Seminar UNCTAD-SELA on Trade and Competition and Preparatory Meeting for the VI United Nations Conference to Review All Aspects of the Set of Principles and Rules on Competition

*II Regional Seminar UNCTAD-SELA on Trade and Competition and Preparatory Meeting  
for the VI United Nations Conference to Review All Aspects of the Set of Principles and Rules on Competition  
Brasília, Brazil  
26 to 28 May 2010  
SP/SRCC-RPVICNUSRCPNSC/IF-10*

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## I. **RAPPORTEUR'S REPORT**

1. The II Regional Seminar UNCTAD-SELA on Trade and Competition and the Preparatory Meeting for the VI United Nations Conference to Review All Aspects of the Set of Principles and Rules on Competition took place from 26 to 28 May 2010 at the headquarters of the Administrative Council of Economic Defence of Brazil (CADE), in Brasilia, Federative Republic of Brazil. The event was jointly organized by UNCTAD and SELA, as a follow up of the Work Programme agreed between both organizations within the framework of the First Regional Seminar on Competition and Development, held at the headquarters of SELA in Caracas, Venezuela, on 20 and 21 April 2009. The event was financed by the Ministry of Industry, Tourism and Trade of the Kingdom of Spain.
2. Representatives from the following countries participated at the II Seminar: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Grenada, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay; and from the following international organizations: United Nations Conference on Trade and Development (UNCTAD), Organization of Eastern Caribbean States (OECS), World Trade Organization (WTO), and the Latin American and Caribbean Economic System (SELA). Also, a delegate from the Embassy of Spain in Brasilia participated as Observer. The list of participants is included in Annex VIII.
3. During the opening session, the following personalities took the floor:

Mariana Tavares de Araujo, Secretary of Economy of the Ministry of Justice of Brazil, welcomed the participants and expressed her satisfaction for the event. She also underscored the importance of exchanging experiences in this area for the different countries.

Hassan Qaqaya, Head of Competition and Consumer Protection Policies of the United Nations Conference on Trade and Development (UNCTAD), welcomed all the participants and thanked Brazil for facilitating the event. The text of his speech is included in Annex II.

Luis Inácio Lucena Adams, Attorney General of the National Treasury of Brazil, welcomed all the participants and stated that the work agenda proposed is very relevant, and heralded important results from this event.

Juan Acuña, Coordinator of Relations with Member States of SELA, took the floor on behalf of the Permanent Secretary of this organization, and underscored the recommendations of the I Regional Seminar, the UNCTAD-SELA Work Programme, and the importance of regional consultation in international events, such as the VI Review of the Set of Principles on Competition. His speech is included in Annex III.

Mauro Luiz Campbell Marques, Ministry of the Brazilian Superior Court of Justice of Brazil, delivered a welcome speech and thanked the participants for their attendance.

Carlos Antonio Sánchez Carrasco, Trade Adviser of the Embassy of the Kingdom of Spain in Brazil, welcomed the participants and thanked the organizers of the event, underscoring the interest of his country in permanently supporting these types of events. He stressed the need to have world-class business groups in the region, both

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in terms of their capacity to compete, as well as their size. Given this circumstance, it is a challenge for the region to compete with strong companies and preserve and strengthen competition. He expressed his wishes for success, and reaffirmed the support of Spain to these regional meetings on competition. His presentation is included in Annex IV.

4. The Agenda as well as the list of the presentations and speeches are included in the annexes to this report. The presentations and speeches can be consulted on SELA's Web page: [www.sela.org](http://www.sela.org).
5. **SESSION I: "ENFORCEMENT OF COMPETITION LAW AND POLICY"**. This session was divided into three parts, and was held on 26 May 2010.
6. The first part was titled "**Judicial review of competition-related cases**". Its moderator was Arthur Sánchez Badín, President of the Administrative Council of Economic Defence (CADE). He stated that the law is a fundamental issue for agencies protecting free competition.
7. Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, delivered a presentation entitled "Interaction between trade and competition policies". He underscored that it is possible that given the opening-up of trade, companies from the different countries may use anti-competition practices to compensate reductions in protection barriers, and if these practices are implemented, they could cancel the benefits that this commercial opening would provide in principle. He considers that opening trade is not sufficient to ensure efficient markets, so a competition policy has a fundamental role to play in the economic policies of the different countries. Governments must have laws and institutions to implement competition policies. He presented the agenda of the Seminar.
8. On this matter, Arthur Sánchez Badin, President of the Administrative Council of Economic Defence (CADE) of Brazil, considered that the previous presentation is the backbone of the discussion of the seminar. He stated that an essential topic is the relation between trade policies and competition policies. In Brazil, they have been managed separately, and the challenge at this time is their joint implementation. His concern is that when they are treated separately, the trade policy usually dominates the one promoting competition. He commented that in Brazil, the defence of competition is becoming a law, due to the institutional maturity of CADE. He mentioned the progress made in the last few years at the institution, and its achievements in fighting cartels. In the area of mergers, these decisions are always accompanied by a political debate. The decisions of CADE are subject to legal review, which he considers to be a positive aspect. He commented that during a review with his counterparts in 2005 at the OECD, they detected that only a small percentage of decisions adopted were actually implemented. That is why in 2006, an investment was made to reinforce and restructure CADE. The main focus of the activity was to be present in litigations, to sensitize magistrates about decisions on competition, and stress the importance of their swiftness. During the second review by his counterparts at the beginning of 2010, the progress made was evident, with an increase in fines, and a higher number of cases where CADE's decisions were backed by the judicial power. He stressed the need to have specialized courts, and judges trained on this subject, as well as the importance of a swift resolution of the cases.

9. Eduardo Pérez Motta, President of the Federal Commission on Competition, continued with a presentation entitled "Judicial Review in Economic Competition". He said that trade and competition are closely related, and regretted that they were not included together at the Doha Agenda. Trade has been the main force for competition in the region, and competition policies have not progressed enough. Besides a trade opening policy, it is necessary to implement internal competition instruments, particularly in sectors that are not exposed to foreign competition. He underscored his preference for competition policies instead of antidumping measures. Competition policies complement commercial policies, and are important in the agendas of developing countries. He made a brief review of the Mexican agency, and stressed the need to invite judges and magistrates to these events in order to ensure that the language used by these organizations is the most adequate, and improve the efficiency of the processes. He stressed the importance of caring for the form, to invest in providing a foundation for resolutions, and improve the work of lawyers.
10. Javier Eduardo Velozo, Tribunal of Defence of Free Competition of Chile, presented the experience of Chile in a "Review of claims about the decisions of the Tribunal of Defence of Free Competition (TDLC) before the Supreme Court". He said that in Chile the system is different from those in other countries. There are two agencies, one that investigates and another that conducts trials. The Supreme Court can also decide on matters *de facto* and *de jure*. He gave some numbers regarding the judgments appealed, and stated that only 20% of the cases are changed. He stressed the need to train the deciding tribunals, give them counselling on economic matters, to have experts in the courts, and to know the limits of their powers.
11. Gilvandro Vasconcelos, Attorney General of the Administrative Council of Economic Defence (CADE) of Brazil, mentioned the positive and negative aspects of the experiences of said Council, and the need to have more professional public officials because up to 2007, none had post-graduate degrees. Since then, all officials either have a specialty or are in the process of obtaining it. Nevertheless, it is not sufficient to have specialized officials if the magistrates aren't. Therefore, since 2008 magistrates are required to have knowledge on economic law. Among the positive aspects, there are two possibilities for compliance, one before the law, and another after it. There are sentences that have been abided by voluntarily by the parties, and the system tries to have voluntary compliance. This shows that the judicial sector makes the parties comply with the resolutions, and generates a proper environment for these agreements. Among the negative aspects, he mentioned delays in some processes, which harms competition. He gave some examples where a modification of decisions without technical foundation, and long terms, jeopardize competition policies. He talked about the plurality of the legal courts of Brazil, and the inconveniences that this causes.
12. The representative of Argentina said that in his country the control of competition is blurred, because there is a serious problem of atomization in several courts, which causes delays in the processes. Cases can take between five and six years to be solved. To change this and to have more centralization, a constitutional amendment is required; he requested comments about the experience of other participants in this regard.

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13. Arthur Sánchez Badín, President of the Administrative Council of Economic Defence (CADE) said that the creation of a competition court in Brazil is very far away. The intention is to defend the thesis that only judges from Brasilia can review the cases of CADE. It is obvious that companies try to contact judges with less training to hinder the work of CADE.
14. Gilvandro Vasconcelos, Attorney General of the Administrative Council of Economic Defence (CADE) of Brazil, said that there is a possibility to centralize the trials in Brasilia, and that it doesn't require a constitutional amend.
15. Eduardo Pérez Motta, President of the Federal Commission of Competition, said that in Mexico the situation is similar, and that companies tend to look for judges that know little about these issues, and can be influenced. It is not an easy situation, because there are cultural and constitutional limitations hindering centralization. He believes that an improvement could occur at the second instance, with the members of the tribunal, where two or three specialized tribunals could be created. This doesn't require changing the law, just a decision of the Supreme Court of Justice. These tribunals should specialize in economic matters, so they could serve not only for competition. They would have the virtue of the economies of scale. In the case of Mexico, this could be easy to do, and it is being promoted.
16. The representative of Cuba commented that the international management of competition policies must take into consideration asymmetries between developed and developing countries. The cartels that damage developing countries should be fined. He said that competition in conditions of equality cannot be accepted, since we are starting from a situation of inequality. Countries must have flexibility to adopt measures favouring their companies. He said that it is useless to have a competition policy if it doesn't contribute to improve the standard of living of the majority.
17. The representative of El Salvador underscored the good relations that exist with the magistrates of his country, where the tribunals are open to the possibility of having training courses.
18. The representative of Honduras suggested that UNCTAD and SELA should have training courses on competition for judges.
19. The second part of Session I was called "**Appropriate sanctions and remedies**". The moderator was Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, who started the session with a presentation called "Session 1: An effective implementation of Competition Laws and Policies: (ii) Appropriate sanctions and remedies".
20. Humberto Guardia, First Vice President of the National Commission for Defence of Competition of Argentina, mentioned some situations where this Commission has had problems enforcing sanctions. He said that in some cases, judges don't understand well the problems, and before passing a sentence they prefer to study the issue thoroughly. He said that in his country, preventive measures are taken before finally solving the cases. Regarding mergers, he said that the agency does a lot of control and monitoring, because it is difficult to order disinvestments. Fines have been exaggerated to prevent them from being diluted by inflation, always adjusted to the principles of proportionality and transparency. He underscored the need to work on effective sanction mechanisms, and to add interests to fines, so that they don't lose value in time, and stressed the need to have a law for the

tribunals trying these cases. A legislative reform is underway, with the cooperation of Brazil and Spain, which includes the idea of implementing the competition protocol of MERCOSUR.

21. Walter Bonora, Lawyer of the National Commission for Defence of Competition of Argentina, made a presentation entitled "Guidelines for an effective enforcement of competition law. Effective sanctions and remedies". He gave a brief account of the experiences of the last five years with the competition law. The law envisages the elimination of anticompetitive behaviours, and also includes fines. The most important element to apply a fine is the seriousness of the offense, intentionality, and duration of the behaviour.
22. José Argumedo Casula of El Salvador talked about the punitive power of the State. The authority must apply sanctions following due process. The competition authority should not have the power to close businesses, so it must go to a judge with the authority to order it. The competition authority does everything and operates independently. All matters valid in criminal law, are also valid in the administrative sanctioning law. He said that the Judicial Power has legal authority to apply sanctions, because it has the power to administer justice. In El Salvador, only fines established by the Board of Directors exist. The superintendent only presents the evidences, but does not sanction. The Board of Directors analyzes the circumstances, and the fine can be up to 6% of annual sales, or between 2% and 10% of earnings. In some occasions, the Litigation Hall orders the suspension of the act being accused. In others, agreements can be reached with the businessmen. He stressed the need to protect economic freedom when it is violated. Fines must be rational, neither too high because they may not be paid, nor too low because they can incite violations. Fines must be accompanied by the obligation of making the sanction public.
23. Eduardo Pérez Motta from Mexico commented about recent developments regarding sanctions. The sanctions must offset the illegal gain, and the damage caused. Sanctions must have a clear discouraging effect, because companies before getting involved in an action against competition carry out a cost-benefit analysis. The laws are moving towards increasing sanctions. This regime does not function in a vacuum and is based on the probability of detecting these types of actions. Therefore, it not only depends on the seriousness of the sanction, but also on the probability of detection. He said that it is necessary to strengthen the operations capacity of competition organizations. He explained the criteria to estimate sanctions, which are presently too low. That is why a reform is being discussed where the maximum sanction will be 10% of sales, and also penal sanctions will be added while granting the agency greater powers to intervene in the practices once the process is over, even if legal processes are opened.
24. Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, noted that sanctions and remedies cannot be separated from efficiency. Establishing the criteria for sanctions is an area of tension, because the tendency is to have high fines, but these have the inconvenience of making their application difficult. Fines and sanctions must be designed in such a way that they compensate the damage caused, and in a way in which it is possible to collect the fine and execute the sanction. Also, the protection of economic freedom must be taken into account, and there is a possibility that fines and sanctions could jeopardize it.

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25. The representative of Costa Rica said that what is really important is to prevent placing competition at risk, and if it happens, to restore it. For this, it is necessary to have the proper investigation tools. In his country, there is a great concern to restore competition, since there is the feeling that there is some inertia in these conducts, thereby the difficulties in restoring competition, particularly in market distribution. He asked about experiences on this matter in the different countries. He stressed the need to expand the portfolio of sanctions, like disqualifying companies and individuals, and consulted about the existence of other types of sanctions. He said that a greater contribution is required for trans-border collusion practices.
26. Humberto Guardia, First Vice President of the National Commission for Defence of Competition of Argentina, said that the Argentinean law allows disqualification as a sanction.
27. The representative of Honduras commented that some agencies have difficulties collecting the money from sanctions. He explained that establishing interest on arrears could help solve the problem. In his country, there is the possibility that as long as fines are not paid, companies cannot participate in public bids. In Honduras, the Competition Commission issues a sanction and the economic agents have the right to reposition, after paying the fine.
28. The Paraguayan representative of said that Paraguay presently doesn't have a competition law, but there is a bill. The representative asked other participants about the destination of the fine, and the annual budget of the agencies.
29. The representative of the Dominican Republic said that effective sanctions may put an end to monopolistic practices. He said that many tax law writers criticize prior payment of fines, since they consider it unconstitutional given the principle that justice is free of charge. In the Dominican Republic, this practice was established as unconstitutional, and therefore, it cannot be enforced.
30. On the topic of prior payment before sentencing, José Argumedo Casula said that in tax law it is considered unconstitutional because it violates the principle of procedural law. He said that the advantage of Paraguay is that all the defects of the region's legal frameworks can be taken into consideration when writing their law. He said that in El Salvador fines go to a single fund, but separate funds can also be established. They consider inconvenient for the agency to finance itself with the fines.
31. The third part of Session I was entitled **"Use of leniency programmes as a tool for the enforcement of competition law in the fight against hardcore cartels in developing countries"**. Its moderator was Hassan Qaqaya who started the session with a presentation called "Session 1: Effective implementation of competition law and policies: (iii) Use of the leniency programme".
32. Fernando de Magalhaes Furlan, Counsellor of the Administrative Council of Economic Defence (CADE) of Brazil, stated that the tribunal can make agreements with companies, and considers that there have been successful experiences in this area. CADE makes the final decisions, and therefore can reach leniency agreements. This type of agreement was believed to be an imported instrument difficult to implement. These agreements can prevent administrative punishment in case of cooperation. In 2007, the regulatory framework was modified to include the possibility of leniency in the case of cartels. Regarding the requirements to access

the programme, he said that the company cannot be the leader in anti-competitive behaviours, and has to be the first one to make the proposal; it only has one chance to do so, and proposals cannot be modified. The company has to admit the behaviour and stop it. Cooperation must be full. If the agreements have been fulfilled, the company can have total immunity, lowering of fines, and suspension of criminal prosecution. He considers that leniency agreements and the possibility of agreements are useful tools that CADE has to do its work, and saves time and resources. CADE has invested in a technical negotiation group that meets periodically to discuss experiences and practices. They use negotiation techniques and aid the counsellor.

33. The delegate of the Dominican Republic said that the present law in her country does not allow these agreements but they are studying the possibility to include it. She asked if demanding a member of the cartel to abandon the practice wouldn't alert the rest of the members, which could lead to the destruction of evidences.
34. Fernando de Magalhaes Furlan acknowledged that this can have repercussions on the cartel, but clarified that leniency agreements are confidential. Once tried, the information can be released. Leniency agreements are silent, not even the commissioners know who made the agreement or its terms. Obviously, stopping the practice can affect the cartel, but there could even be negotiations to allow the company to continue in the cartel.
35. The representative of Jamaica said that the leniency programme may not be effective when it is preferable for companies to pay the fine.
36. Fernando de Magalhaes Furlan said that it is reasonable argument, and that he has no doubt that in many cases, companies calculate the risk of being trapped in collusion. These cases may exist. There are other legislations that allow imprisonment for directors. In Brazil there is only preventive imprisonment. The American and European experiences indicate how the legislation should be changed.
37. Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, said that some legislations establish that the companies should pay for the cost of publishing the decisions. This is very expensive in terms of the reputation of the companies, and can have a dissuasive effect.
38. Fernando de Magalhaes Burlan, Counsellor of the Administrative Council of Economic Defence (CADE), gave an example of a cartel that is paying 100% of the fine with interests. CADE prohibited making contracts with the public administration, and this enabled the agreement. CADE maintains that the decisions must be made public in mass media.
39. The representative of Mexico, Eduardo Pérez Motta, President of the Federal Commission of Competition, stated that cartelization is most damaging to markets, and it is a true conspiracy against consumers. Fighting against this practice is what is most important, and it is complex, given the secrecy within cartels. Incentives must be aligned, and leniency is one of the most powerful mechanisms. A leniency programme destabilizes cartels. For this programme to be effective, sanctions must be high, and authorities must be efficient enough to identify the cartels. He said that there is a discussion about the value of indirect information. Sanctions can be applied only with hard information, but indirect information must be a mechanism to align incentives. He asked whether the speaker agreed that indirect information can

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lead to sanctions, and how CADE judges the way in which the investigator implemented the leniency programme, and what degrees of freedom CADE has to know if the investigator should have used the leniency programme.

40. Fernando de Magalhaes Burlan, Counsellor of the Administrative Council of Economic Defence (CADE), commented that the law establishes that CADE does not speak about the measures until the sentence is produced, as established in the law. Regarding indirect evidences, he said that the Organization for Economic Cooperation and Development (OECD) estimates that all indications must be considered, to have a more robust decision. In Brazil, there are measures for telephone tapping, protected by a judge.
41. **SESSION II "THE ROLE OF COMPETITION POLICY IN PROMOTING ECONOMIC DEVELOPMENT: INTERACTION BETWEEN TRADE AND COMPETITION"**. This session was divided into four parts, and was held on 27 May 2010.
42. The first part of Session II was entitled **"Evaluating the effectiveness of competition law in the promotion of economic development"**. It was moderated by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, who made a presentation entitled "Session 2: The contribution of competition policies in the promotion of economic development. The interaction between trade and competition".
43. Next, Philip McCl Lauren, Director of Consumer Affairs of the Ministry of Commerce, Investment and Consumer Affairs of Saint Lucia, Organization of Eastern Caribbean States (OECS), delivered a presentation on the "Creation of a Working Group on Trade and Competition". He gave an example on the liberalization of telecommunications at the OECS, and how the experience with monopolies led to high prices and low quality of service. He underscored that the improvements in the telecommunications sector due to the opening process has not extended to the electricity sector, and now they are reviewing the regulations in this sector.
44. The representative of Brazil commented on the successful experience of the construction of the Rio Madera dam, and how exclusivity contracts prevented concurrence. CADE facilitated the entry of participants, lowering the prices and saving the nation resources.
45. The representative of Mexico said that it is assumed that the economies are in the border of production possibilities, but that it isn't so. In many cases, markets are not efficient, so a way to grow in the short term is through increased efficiency resulting from competition. Clearly, the link is efficiency, and there is a relationship between competence and competitiveness. One reason why Mexico has bad evaluations in competitiveness indices is lack of competence. There is an important element that has to do with the distribution of income. He gave some results of studies on these issues that he considered impressive. Therein lays the link between competition and economic development. He mentioned some public bids that lead to collusion, and there have been proposals for redesign and investigation, which led to significant savings. He considers that the link between competition and social well-being is clear, and said that we are witnessing a loss of legitimacy in the markets, which implies some risks. What many times has been called market policies has not promoted competition, and in many cases, they have benefitted interest groups.

46. The representative of Jamaica clarified that it is necessary to know what economic development means. For example, a vision moves us from the primary sector to the industrial, and then to the post-industrial. It is difficult to establish a relationship between competition and development; historically, in developed countries that didn't reach their status using competition policies, the opposite occurred. This doesn't mean that rules haven't changed. We know that there are competing objectives. He asked: How can we evaluate the effectiveness of competition policies within the framework of other competing policy objectives?
47. The representative of SELA, Juan Acuña, gave an example of the opening of telecommunications in Colombia that could have led to collusion, but the competition policy guaranteed the effectiveness of the opening-up process. He also gave examples of opening-up of trade and its relation to competition and the development of air and sea transport, and of ports in that country. He underscored the importance of competition policies in some sectors, and that opening policies have brought benefits, but must be accompanied by other policies, such as competition policies.
48. The representative of UNCTAD, Hassan Qaqaya, asked whether privatization leads to competition, or if it is a necessary but not sufficient condition. He said that in many cases, privatization is only a change of ownership and may lead to monopolies. He noted that competition authorities must be consulted in these cases, and that competition conditions must be included in privatizations, since these are insufficient to generate a market structure.
49. The representative of Paraguay commented again about the process to design the law in her country, and there has been a draft since 2008. She read a letter from a company claiming that there is lack of competition in its sector. She noted that competition policies are not an end in itself, but rather a means to an end.
50. The representative of the Dominican Republic said that this issue is relevant, and that in some cases competition causes damage. The fact that competition displaces inefficient entities from the market must be contrasted with the health of the markets.
51. The representative of Colombia complemented the comments of the representative of Mexico. She said that another link is that of legal certainty. Investors are always careful about whether competition favours judicial security and fosters investment flows. She said that it is essential that competition authorities have credibility. She commented that privatizations help competition due to the change in structure within companies; however, privatization by itself is not enough.
52. The representative of Argentina commented that competition policies are an important tool to make progress in economic development. By controlling concentrations, a surplus is generated for consumers, and mentioned the case of telecommunications in his country, and a recent case where a merger was authorized. Competition policies are a tool for the State.
53. The representative of Honduras said that his agency is very new and that they have a case open with cement companies. He also mentioned the actions taken in the pharmacological sector, where they achieved savings of around five million dollars, equivalent to the budget of the office for five years.

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54. The representative of Paraguay stated that competition is a cross-cutting policy. There is a space for competition policies that can improve efficiency and equality, which she considers essential, and mentioned the privatization of the telephone sector in her country.
55. The representative of Ecuador commented that the initial idea on legal certainty has changed. There could be a case where legal certainty implies not having competition rules. Market distortions cause problems and it is important to strengthen the control of anti-competition practices. Many of the actors interested in not having a competition law are private agents. It is necessary to take into consideration the asymmetries among countries. We want to move forward in the region, but there are differences in the regulations. We need to change the regional approach on these issues. Finally, he noted that if it were true that the competition law favours private investment, how could the investments made when this instrument didn't exist be explained?
56. The representative of Colombia reiterated her conviction that there is a close relation between competition and development. The country has made efforts in this regard. From the side of trade relations, agreements have been made, and all have introduced chapters in competition. Regarding cross-border anti-competition practices, cooperation agreements have been sought. She considers that privatization is not enough, but it is rather only one of the factors to consider, since the State cannot be in charge of some aspects. Regarding monopolies, what is important is for them not to abuse their dominating position, and to adapt themselves to competition rules.
57. The second part of Session II was called "**Appropriate design and enforcement of competition law and policy in countries at different stages of market development.**" The moderator was Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, who made a presentation entitled "Session 2: The contribution of competition policy to the promotion of economic development. Interaction between trade and competition". He stated that, despite the fact that there is no uniformed model, there are certain basic principles and each country has to find its own particular model. The idea is to listen to the experiences of all the others and design the elements of a competition policy. In other words, the bases of the region's policies are built on the knowledge obtained individually.
58. Next on the Agenda was Jaime Luna Ovando, from the Vice Ministry of Internal Trade and Exports of Bolivia, whose presentation was entitled "Design of Competition Laws and Policies in Countries at Different Stages of Development". He pointed out as the main issue the aspect of integration in the region, since there are significant differences among the countries and within the countries. He indicated that Bolivia has undergone a profound reform as of 2005 and that the participation of the State in the market is of great importance; however, the presence of multiple socioeconomic factors will require that a differentiated policy be considered, preserving a certain degree of flexibility. The competition policy is part of a group of measures that can contribute to development. He gave examples of the application of economic policy, where the competition policy has been subject to other policies. Countries gradually adopt the policies based on their own reality, and it is feasible to develop differentiated competition policies.

59. Delroy Beckford, Senior Legal Counsellor of the Fair Trading Commission of Jamaica, delivered a presentation entitled "Appropriate Design and Enforcement of Competition Law and Policy in Countries at Different Stages of Market Development – the Case of CARICOM". He mentioned a design model that includes flexibilities and an institutional structure in line with the internal legal framework and the international agreements of the respective countries.
60. Luis Humberto Guzmán Áreas, President of the National Institute for the Promotion of Competition of Nicaragua (PROCOMPETENCIA), indicated that the opening up process has reduced the economic capacity of the States. He pointed out that the States of the region have many limitations which weaken them. He commented that there are four basic topics to be addressed with regard to the institutional design: the level of autonomy of the agency, its origin, whether a separation should be established between research and decision, and the financing of the agency.
61. Enrique Pasquel Rodríguez, Technical Secretary of the National Institute of Defence of Competition and Intellectual Property Protection (INDECOPI) of Peru, indicated that many of the competition barriers are created by the States. He classified as necessary the reforms whose aim is to eliminate overregulation. These measures should favour the majority sectors of Peru, but they encounter legal barriers that make it difficult for markets to operate. Among the measures to be adopted would be that of permitting courts to abolish certain restrictive measures and to eliminate collusive practices and the restrictions to free assembly. In many cases, a private agent is the one who encourages regulations in the markets, so that the State will be responsible for closing the door to new competitors. This type of regulation should be eliminated so as to generate transparency in public administration.
62. The representative of Paraguay indicated that in her country the private sector should present proposals regarding the Competition Bill. She manifested his doubts as to whether unfair competition should form part of abuse of domain. She would like to hear opinions regarding the aspects which should be considered when designating commissioners and considers that this could generate difficulties. She commented that they are searching for an appropriate design for the Competition Law and that in her country markets are very concentrated and foreign trade depends almost exclusively on MERCOSUR. They will attempt to have a flexible strategy as well as a flexible enforcement environment. She explained the fundamental aspects of the law.
63. The third part of Session II was called "**Role of competition advocacy, merger control, and the effective enforcement of laws in times of economic troubles.**" It was moderated by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, whose presentation was entitled "The role of competition advocacy and merger control in times of economic troubles".
64. The following speaker was Maria Inés Rodríguez, Official of the Foreign Service of the Ministry of Foreign Affairs, International Trade and Cult of the Argentine Republic, who thanked Mr. Qaqaya for his presentation and made a brief introduction concerning the international financial crisis and its effects. She highlighted the fact that this sector presents challenges for competition because greater importance has always been granted to stability, rather than to competition. In this regard, she stressed that the time has come to reassess this position.

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65. Walter Bonora, Lawyer of the National Commission for Defence of Competition of Argentina, commented that in times of crisis, voices emerge to question whether it is possible to maintain a competition policy. In this connection, he pointed out that the principles that govern competition should be unchangeable and should be upheld in times of crisis. Allowing the establishment of cartels is prejudicial to consumers and not being on the alert results in the consumers having to pay for the costs of the crisis. Furthermore, the intervention of the agencies should be guaranteed.
66. Cesar Costa Alves de Mattos, Commissioner of the Administrative Council of Economic Defence (CADE) of Brazil, pronounced the following speech: "Failing Firms and Cartels in Troubled Times". He discussed whether the standards of the competition protection agency should be lowered in times of crisis. As a central theme he stressed that standards should not be allowed to decline, but that their implementation could be more flexible.
67. José Argumedo, Superintendent of Competition of the Superintendence of Competition of El Salvador, commented that the risks involved in mergers should be measured. He also wondered whether there are cases in which mergers can benefit the consumer. There is a need to control concentration. He questioned those cases where there are atomized and inefficient markets, and whether this justifies not permitting mergers. He stressed that support of the law should be equal at all times.
68. The Cuban representative considered that the topic is interesting and that anything done as regards these aspects should be aimed at improving social welfare. In times of crisis, it is not advisable to run the risk of increasing protection and allowing mergers, but it is likewise impossible to obviate the fact that there are countries with greater disadvantages.
69. Mariana Tavares de Araujo, Secretary of Economy of the Ministry of Justice of Brazil, distributed a booklet on Brazil's leniency programme. She indicated that it is the main tool for combating cartels and that it has been instrumental in dismantling several of them. The Brazilian authorities are enthusiastic about the programme and are willing to cooperate in this regard with other Latin American and Caribbean agencies.
70. The representative of Costa Rica asked Brazil about the vitamins cartel, regarding which they benefited from the information gathered in the United States, and consulted as to the difficulty in obtaining information and cooperation from the U.S. agency.
71. In connection with this, Mariana Tavares de Araujo, Secretary of Economy of the Ministry of Justice of Brazil, commented that there is difficulty in investigating international cartels. The case was investigated in Brazil when the results were made known in the United States and, in view of the fact that the same companies operated in Brazil, CADE decided to take action.
72. With regard to the question posed by Colombia as to the possibility of using leniency on a personal basis, Mariana Tavares de Araujo, Secretary of Economy of the Ministry of Justice of Brazil, responded that Brazilian law allowed agreements of this kind only for cartels.

73. In response to a question by the OECS representative as to whether CADE, being aware that some of Brazil's cartels sell products to third parties, has the authority to inform these countries, Mariana Tavares de Araujo, Secretary of Economy of the Ministry of Justice of Brazil, replied that CADE's jurisdiction is limited to Brazil, but that the possibility of cooperating is not prohibited. Decisions are published and that helps to take the necessary measures in other places. However, when there is a leniency agreement, certain information is withheld to protect the participant in the programme.
74. The delegate of the Organization of Eastern Caribbean States (OECS) commented that some consumers from the Caribbean have been affected by anti-competitive practices of U.S. companies.
75. The fourth part of Session II was called **"Creation of a Working Group on Trade and Competition: SELA's Proposal"**.
76. Juan Acuña, Coordinator of Relations with Member States of SELA, made a presentation entitled "Creation of a Working Group on Trade and Competition", in which he emphasized the need for SELA Member States to organize their own institutionality in order to channel mutual cooperation and that coming from outside the region, while promoting regional convergence and facilitating Latin American and Caribbean coordination in international forums (See Annex V).
77. The representative of Argentina emphasized the fact that countless efforts are being made in the region to promote competition. He considered that it would be interesting to exchange knowledge and information, and that establishing a group for this purpose would be very useful.
78. Edgar Odio, Commissioner of the Commission for the Promotion of Competition (COPROCOM) of Costa Rica, delivered a presentation entitled "Comments on the proposal for forming the Working Group on Trade and Competition". In addition to welcoming the initiative, he contributed several ideas to the proposals of the document, such as the importance of defining specific objectives for the annual work programme.
79. Eduardo Pérez Motta, President of the Federal Commission of Competition of Mexico, took the floor to welcome the project and to highlight the importance of promoting interaction between international trade and competition. He stated that it is necessary to coordinate the competition policy with multilateral agencies. In his opinion, it was unfortunate that the topic of competition had been removed from the Doha agenda.
80. Enrique Pasquel, Technical Secretary of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI), commented that he considered this to be a very valuable initiative and requested details as to how the working group would function and what cooperation mechanisms would be used.

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81. Philip McClauren, Director of Consumption Affairs of the Ministry of Trade, Industry and Consumption Affairs of Saint Lucia, Organization of Eastern Caribbean States (OECS), pointed out the importance of identifying consumer protection needs, particularly those regarding cross-border practices. He stressed the relevance of exchanging information, and of strengthening training programmes. He also underscored the importance of establishing these exchange forums and of opening them up to broader audiences by means of video and teleconferencing, and other media. He offered the examples of AISPEN and CONCADECU as initiatives to be followed.
82. Pierre Arhel, Consultant to the World Trade Organization (WTO), made a presentation entitled "Trade and Competition, the WTO Experience". He affirmed that competition continues to form part of the WTO and that competition and free trade are complementary. He asserted that negotiations on competition will not be included until the Doha negotiations have come to a close. He also pointed out that a Working Group on competition exists but that it has not met for a long time.
83. The delegation of Dominican Republic expressed its willingness to support the proposed Working Group and stressed the need to work jointly as a region. Integration occasionally also makes us work internally and when one works in a group, one can perceive the benefits of the organization and of international cooperation. The representation welcomed UNCTAD's support and expressed the opinion that greater efforts are still required; consequently, it did not hesitate to endorse the initiative.
84. The representative of Peru backed the initiative and considered that it would be an ideal space for regional work, taking into consideration the differences which exist among the region's agencies. She pointed out the importance of exchanging experiences and, furthermore, considered that it is of basic importance to have the means and mechanisms to ensure the long-term sustainability of the effort. She mentioned that it would be advisable to carry out surveys to determine the needs of the countries and commence organizing the tasks.
85. The representative of Jamaica considered that opposition to adopting competition measures on an international level might seem contradictory, taking into consideration that they have competition agencies. He inquired as to the causes of these objections.
86. Pierre Arhel, Adviser to the World Trade Organization (WTO), mentioned some of the reasons why developing countries rejected this topic on the Doha Agenda.
87. The representative from Colombia considered the initiative interesting and highlighted the need to grant the Working Group an institutional character. In her opinion, having a global view of competition helps considerably when preparing a negotiation strategy. She welcomed SELA's initiative.
88. **SESSION III "REVIEW OF THE EXPERIENCE GAINED IN THE IMPLEMENTATION OF THE UNITED NATIONS SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES (UN SET), INCLUDING VOLUNTARY PEER REVIEWS.** This Session was divided into four parts and took place on 28 May 2010.

89. The first part of Session III was called **“Modalities for facilitating voluntary consultations among Member States and regional groupings, in line with Section F of the UN Set.”** The session was moderated by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, who made a presentation entitled “Modalities for facilitating voluntary consultations among Member States and regional groupings, in line with section F of the UN Set”. An informative document was also distributed, entitled “First draft, 24 May 2010. Material to be distributed, subject to modifications”, which is included in Annex VI. During his presentation, he reminded the audience that the document is of an informative nature and that providing consultation facilities is voluntary. If the countries consider that there is a need for consultations, agreements can be reached.
90. Next on the agenda was Edgar Odio, Commissioner of the Commission for Promoting Competition (COPROCOM) of Costa Rica, whose presentation was on “Modalities for the implementation of Section F (4) of the UN Set”. He specified that the barriers generated by anti-competitive behaviour constitute a limitation to trade and that, in view of the lack of more efficient tools, cooperation among countries is indispensable. During the consultation processes, the parties can request more pertinent advice from UNCTAD, as the solution of conflicts or arbitration are not the only issues; it is also important to take advantage of UNCTAD’s experience in this matter. He recommends that joint reports refer not only to agreements but that they establish procedures and tasks to be carried out by the agencies involved, and that monitoring instruments be developed. He presented suggestions for a project, regarding which they expect to receive feedback. The procedure should be simple, easy to follow and, above all, it should respect the legality of the countries and be informal enough to allow for broad participation.
91. Fausto Alvarado, Subsecretary of Competition and Consumer Defence of Ecuador, expressed doubts regarding the topic of consultations due to their voluntary nature, as well as regarding the topic of information. Once again, he stressed the importance of the asymmetries among the competition authorities. He observed that many of the countries promote their export cartels. A more profound analysis should be made even of UNCTAD’s participation. He asked himself: What happens when private parties have an influence on State relations? He has doubts as to whether the results compensate the efforts. UNCTAD should give priority to the issues of training and advising the agencies of the countries, and the gaps that currently exist between national agencies should gradually be closed. There is a considerable difference among the agencies in the region and that is not advisable. A survey should be made to determine the status of competition authorities in the region.
92. Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, considers that there has been a misunderstanding. The UNCTAD Secretariat’s participation was required in order to facilitate the consultation process among those countries wishing to take part in said process. The training aspect is a different matter. UNCTAD works at various levels. The Secretariat was instructed by the ministers in Accra to include these facilities. It is aware that there are cross-border aspects to be considered and that the topic of sharing confidential information is not up for discussion. UNCTAD is simply a framework for cooperation.

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93. Juan Acuña, Coordinator of Relations with the Member States of SELA, noted that UNCTAD's support could consist in bringing in for consultation those agreements which the countries already have and cooperate with the analyses. It could also consider giving support to the countries that require it to strengthen their capacity to participate in the working groups.
94. Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, stressed that cooperation is voluntary and for those countries requesting support. He indicated that Section F cannot be rewritten; it is a question of utilizing various modalities. He reminded the audience that the competition authorities did not participate in the drafting of this agreement.
95. The representative of Colombia considers that the effectiveness of the instrument is limited due to its voluntary nature. She indicated that Colombia has established consultation mechanisms on this matter in its trade agreements.
96. Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD, affirmed that large countries are not included in cooperation programmes because they can use them as a means of access to markets. In this case, risks could run in both directions. As an example of voluntary cooperation, he presented the implementation of the agreements within the framework of the Bank for International Settlements (BIs). There are successful examples of voluntary cooperation. He reminded the audience that the topic of sovereignty is always present and that many countries are not willing to discuss it.
97. Pierre Horna, General Assistant to the COMPAL Programme, explained that there are instruments for commercial defence and instruments for the protection of competition. An effort is being made to search for mutual solutions in those situations where trade agreements and consultations are not sufficient. He pointed out that 100 countries have competition laws and that this instrument complements the agreements.
98. Fausto Alvarado, Deputy Secretary of Competitiveness of the Subsecretariat of Competition and Consumer Defence of the Ministry of Industries and Productivity of Ecuador, criticized once again the effectiveness of the instrument, despite the fact that he manifested that he is not against the consultations. He indicated that, at the regional level, institutions have emerged that should be taken into consideration.
99. The representative of Honduras asserted that this is a very important issue and inquired as to the basis on which the agreements are signed. He reminded the audience that giving out information could affect sovereignty and that before signing these agreements, they should be sent to the Ministries of Foreign Affairs. He affirmed that competition agencies are being empowered to cooperate and he believes that it is advisable to take advantage of this opportunity to establish closer ties among the agencies.

100. Philip McClauren, Director of Consumer Affairs of the Ministry of Commerce, Industry and Consumer Affairs of Saint Lucia, Organization of Eastern Caribbean States (OECS), considered the discussion very interesting and stressed the obligation we have of seeing ourselves as part of a global village, in a context where cooperation is essential. He stated that there is a need for mechanisms to request information from and provide information to counterparts. Furthermore, he suggested that these facilities be broadened so as to include the consumer protection agencies.
101. The representative of Honduras considered that, to a certain extent, the consultation process is similar to a roller coaster. An agreement may or may not be reached. The representative inquired as to the criteria for the exchange of confidential information, asserting that this could be an opportunity to request cooperation from UNCTAD.
102. The representative of Cuba took the floor and commented that the discussion had clarified many doubts. He asked whether it is necessary to have a model competition law and whether it is necessary to have trade agreements in order to have access to the mechanism. He considered that it would be advisable to continue discussing these issues in greater depth.
103. Edgar Odio, Commissioner of the Commission for Promoting Competition (COPROCOM) of Costa Rica, commented that not all trade agreements have competition agreements and that even when they do, consultations may not be sufficiently articulated. He emphasized that the mechanism allows for consultations exclusively in the case of competition.
104. The representative of Bolivia stated that all processes take time and that making mechanisms obligatory is not practical. The current mechanism opens the door to cooperation in this matter and UNCTAD should be allowed to study applicability mechanisms.
105. Pierre Horna, Legal Affairs Official of the COMPAL Programme, mentioned several concrete cases related to cooperation issues.
106. The second part of Session III was called "**Evaluation of the experience gained so far in the implementation of the UN Set, including UNCTAD voluntary peer reviews.**" It was moderated by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD.
107. Pierre Horna, Officer of Legal Affairs of the COMPAL Programme, gave a speech entitled "Evaluation of the experience gained in the implementation of the UN Set, including peer reviews".
108. Edgar Odio, Commissioner of the Commission for Promoting Competition (COPROCOM) of Costa Rica, commented on his country's experience with the peer review. He qualified it as a very good experience and asserted that it paved the way for an examination of conscience. He considered UNCTAD's support, as regards ordering the review and the priorities, very favourable. He found the process friendly and extremely fruitful. Nonetheless, it can be improved by allowing the competition agency to participate in the formulation of the State's development policy and in the analysis of specific cases. They have no objections to the

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monitoring process and have had the backing of UNCTAD for promoting the law in their country.

109. Luis Humberto Guzmán Áreas, President of the National Institute of Promotion of Competition (PROCOMPETENCIA) of Nicaragua, took the floor to comment that, as regards his country's experience, they had received cooperation from UNCTAD before having the agency. He considered this assistance very valuable, particularly with the drafting of the law and the creation of a critical mass. With UNCTAD's cooperation the agency did not have to start operations from scratch and this aid was of critical importance in the case of Nicaragua.
110. Fausto Alvarado, Deputy Secretary of Competitiveness of the Subsecretariat of Competition and Consumer Defence of the Ministry of Industries and Productivity of Ecuador, stated that it is not the same to have a consultant to draft the bill than to have one to promote the law in the legislature. A different approach is needed when addressing the private sector. UNCTAD needs to know how to evaluate specific needs. He considered it necessary to present individual cases, explaining the economic and social costs of not having a competition policy.
111. The representative of Belize stated that his country had no legislation in this regard but it does have a project developed with the significant cooperation of UNCTAD, which it wishes to maintain and strengthen.
112. The third part of Session III was called "**Importance of networking in the exchange of non-confidential information to facilitate cooperation among regulatory competition agencies**". It was moderated by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD.
113. José Argumedo, Superintendent of Competition of the Superintendence of Competition of El Salvador, pointed out that this is an important issue and that it should not elicit further controversy. He indicated that in El Salvador there has been an exchange of information with other agencies, and that there is a need to create information networks regarding competition matters.
114. The fourth part of Session III was called "**Effectiveness of the capacity-building and technical assistance activities extended to newly established competition authorities.**" It was moderated by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD.
115. Eduardo Pérez Motta, President of the Federal Commission of Competition of Mexico, made a presentation entitled "Technical assistance and capacity-building activities for Latin American authorities". He indicated that the Latin American and Caribbean region presents common challenges and similar problems. The region also evidences enormous differences among its agencies and those of more advanced countries. Coordination is limited among institutions. There is a lack of balance between weak States and factual powers. There are similar challenges in the region. He considers that this is the moment to propose the creation of a Regional Competition Centre for Latin America.

116. Fausto Alvarado, Deputy Secretary of Competitiveness of the Subsecretariat of Competition and Consumer Defence of the Ministry of Industries and Productivity of Ecuador, indicated that the concept of sovereignty has changed and that there is no greater loss of sovereignty than the loss of the citizens' welfare. He considers it necessary to exchange of information, even confidential information; but that is not the only aspect of cooperation. It is imperative that greater confidence be established among countries.
117. Luciana Macedo, Commissioner of the Commission of Promotion and Defence of Competition of Uruguay, explained how her country's agency was developed. She emphasized that there existed a high level of concentration and that in 2001 the competition rules had been introduced. The law was approved in 2007 and the commission created. She added that despite the fact that there has been some participation, it is too soon to evaluate the technical assistance received. She shared certain information regarding the agency's activities.
118. The representative of Jamaica commented that in his country they have had a problem similar to that of Uruguay, as regards the attorneys' fees.

## II. CONCLUSIONS AND RECOMMENDATIONS

### CONCLUSIONS

1. Participants recognized the quality of the analyses and the information contained in the presentations, which led to major debates and an exchange of valuable experiences.
2. Trade integration has been carried out in some cases on the basis of market access mechanisms without taking into account the importance, for this purpose, of establishing a direct link with competition policies. However, the recent global crisis has shown the need to deepen actions in this connection.
3. A vigorous competition policy ensures competitiveness spaces for those sectors that cannot compete in the international arena. Therefore, such policy requires building institutions with legal, financial and professional strength.
4. For a judicial review, it is absolutely necessary to count on judicial authorities specializing in economic law. Technically, great care should be taken over the form and the fundamental contents of resolutions, and the work in defending cases before judicial authorities should be improved.
5. With respect to sanctions, the objective is to try to put an end to anti-competitive practices. In order to impose sanctions, various factors are taken into account, such as the severity of the actions, the intent and duration of the behaviour. Recent regulatory advances in some countries of the region indicate that sanctions are intended to penalize illegitimate gains and act as deterrent, while compensating for damages and preventing enterprises from making cost-benefit analyses to compare gains from maintaining such practices versus the cost of related sanctions. For this purpose, the system of sanctions should be designed in such a way that, to the largest possible extent, sanctions entail a cost far greater than the expected profit from violating competition rules. The current trend is to impose severe sanctions, including stiff fines. Even so, an issue that requires further analysis is how to restore competition. To this effect, authorities often require a deposit or a prior guarantee in order to prevent infringing enterprises from undertaking administrative actions or legal processes that could lead to delays in the application of sanctions. It should be recognized that such mechanisms have been declared unconstitutional in some countries.
6. With regard to antitrust leniency agreements, it should be noted that any company interested in gaining leniency cannot have led anti-competitive practices. The firm must first offer a proposal, admit its wrongful conduct, and put an end to it. Such collaboration must include evidence to document wrongdoings. The company will then be granted immunity and differential treatment, if it complies with the agreement. Leniency agreements save time and resources to the parties involved, and serve to destabilize monopolies. Moreover, they have proved to be effective when otherwise very severe penalties can be applied.

7. Competition improves productivity and efficiency, thus generating growth. There are several links among growth, competition and competitiveness. Many of the factors that serve to generate competitiveness are related to competition. In terms of income distribution, competition benefits consumers by lowering spending. In addition, it increases the chances for small firms to participate in the markets.
8. An important issue to be borne in mind is the cost of establishing a competition agency vis-à-vis the benefits for consumers and for the economy in general. Another important aspect is that of transnational practices. They should be taken into consideration, particularly, in regional agreements.
9. There isn't a uniformed model for competition policies, but there are certain fundamental principles. Each country has a particular framework for its economic and social policies, which reflects its own legal and political circumstances. For this reason, it is useful to hear the experiences of other countries. Nevertheless, there is a broad variety of initiatives and experiences. While a few countries have comparatively developed regulations and institutions, most nations in the region have put in place such regulations very recently, and there are some countries that are just starting to negotiate such regulations with the legislative or executive authorities. At the subregional level, there have been attempts to make progress, but with limited results, particularly as regards cross-border practices. For the small island countries of the OECS, participants noted, it is not economically viable to have individual competition policies, and for this reason they agreed to create a joint organization.
10. Based on the above, a reflection was made that there are multiple and very different needs for institutional strengthening, which should be addressed by taking into consideration a continuous deepening of integration within the region, and that cooperation among national authorities concerning border issues would be a lot easier if national and subregional organizations had similar levels of strength and technical capacity. This is a question of asymmetry that should be solved as part of the regional integration process in Latin America and the Caribbean.
11. Referring to the crisis, participants noted that governments have firmly intervened to contain it. The challenge is that such interventions usually serve to save large firms and, in some cases, may lead to mergers. However, this solution may have hidden costs in terms of loss of consumer welfare due to the creation of monopolies. Therefore, it is necessary to try to prevent government incentives from undermining competition.
12. With respect to the regional institutional framework for cooperation and consultation, participants in the meeting welcomed the proposal to create a SELA Working Group on Trade and Competition. To this end, suggestions were made about the modalities of work (directly on-site and distance permanent consultation), the design of objectives and long-term programmes, and the definition of specific results from the Group's activities. In addition to strengthening international cooperation for the region, the Group is expected to deepen intra-regional cooperation and reinforce the dialogue between trade and competition authorities.
13. Participants thanked SELA, UNCTAD and the Brazilian authorities for organizing this high-level Second Seminar on Trade and Competition and extending the

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corresponding invitations. They also thanked for the support received from the Kingdom of Spain, and welcomed the confirmation that they may count on such support for future activities.

### RECOMMENDATIONS

1. Due to the recognition that the analyses, the exchanges of views and experiences, and the personalized interaction in the areas of competition, trade and development are very useful for the authorities in charge of competition and trade in Latin America and the Caribbean, a recommendation was made to maintain and intensify cooperation between UNCTAD and SELA, which counts on a substantial financial support from the Kingdom of Spain. In this connection, participants reaffirmed the validity of the UNCTAD-SELA Cooperation Programme for 2009-2012, adopted during the First Regional Seminar. As for the work programme to be developed during the period 2010-2011, a recommendation was made to organize distance learning courses on competition and trade, including the service sector, a regional workshop on the implementation of Section F of the Set of Principles, an analysis of cross-border practices and the Third Regional Seminar. The revised Cooperation Programme is attached hereto.
2. There should be a goal in Latin America and the Caribbean for all countries to have competition rules and institutions which should be strengthened in such a way that they help reduce asymmetries and gaps among competition systems in the region. In this regard, it would be advisable to outline work programmes to create spaces for permanent consultation and cooperation based on the specific needs of each country and subregion.
3. A recommendation was made to request the Latin American Council of SELA to establish the Working Group for encouraging interaction among trade and competition authorities, based on the document submitted in the meeting and taking into account the contributions made by participants during the second Seminar, through additional consultations with the capitals. UNCTAD and SELA will provide the necessary technical support for organizing and conducting the activities agreed to by the Working Group. The Working Group shall decide on its initial activities during its first session, on the basis of the guidelines approved by the Latin American Council. To this end, UNCTAD and SELA shall prepare a draft agenda which will be submitted for consultations with the trade and competition authorities. Whenever possible, remote communication tools, such as video and teleconferencing, will be used in the execution of the work programme.
4. There is interest in documenting cases that may serve as model and reference for competition authorities, judicial bodies and trade organizations in Latin America and the Caribbean, particularly in terms of the criteria for imposing sanctions, undertaking judicial processes, or proposing leniency agreements.
5. The countries of Latin America and the Caribbean endorsed the active participation of the region in the Sixth Revision of the UN Set of Principles on Competition, to be held in November 2010 in Geneva. To this end, a recommendation was made to undertake a process of consultation with negotiators in Geneva, which could be supported by SELA.

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*A N N E X I*

**Agenda**



**WEDNESDAY, 26 MAY 2010**

**MORNING**

**9:00**

**REGISTRATION**

**9:15 – 10:00**

**OPENING SESSION**

Welcome speech by Mariana Tavares de Araujo, Secretary of Economy of the Ministry of Justice of Brazil

Welcome speech by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

Speech by Juan Acuña, Coordinator of Relations with Member States of SELA

Welcome speech by Mauro Luiz Campbell Marques, Ministry of the Brazilian Superior Court of Justice of Brazil

Welcome speech by Carlos Antonio Sánchez Carrasco, Trade Adviser of the Embassy of the Kingdom of Spain in Brazil

**10:00 – 10:30**

Coffee break

**SESSION I:**

**ENFORCEMENT OF COMPETITION LAW AND POLICY**

**10:30 – 12:45**

**(i) Judicial review of competition-related cases**

MODERATOR: Arthur Sánchez Badin, President of the Administrative Council of Economic Defence (CADE)

Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

Arthur Sánchez Badin, President of the Administrative Council of Economic Defence (CADE) of Brazil

Juan Acuña, Coordinator of Relations with Member States of SELA

Eduardo Pérez Motta, President of the Federal Commission of Competition of Mexico

Javier Eduardo Velozo, Tribunal of Defence of Free Competition of Chile

Gilvandro Vasconcelos, Attorney General of the Administrative Council of Economic Defence (CADE) of Brazil

Debate

**12:45 – 14:30**

Free time for lunch

<b>AFTERNOON</b>
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14:30 – 16:15

**(ii) Appropriate sanctions and remedies**

MODERATOR: Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

Humberto Guardia, First Vice President of the National Commission for Defence of Competition of Argentina

Walter Bonora, Lawyer of the National Commission for Defence of Competition of Argentina

José Enrique Argumedo Casula, Superintendent of the Superintendence of Competition of El Salvador

Eduardo Pérez Motta, President of the Federal Commission of Competition of Mexico

Debate

16:15 – 16:45

Coffee break

16:45 – 18:15

**(iii) Use of leniency programmes as a tool for the enforcement of competition law in the fight against hardcore cartels in developing countries**

MODERATOR: Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

Fernando de Magalhaes Furlan, Counsellor of the Administrative Council of Economic Defence (CADE) of Brazil

Remarks by Eduardo Pérez Motta, President of the Federal Commission of Competition of Mexico

Debate

THURSDAY, 27 MAY 2010

MORNING

**SESSION II:**

**THE ROLE OF COMPETITION POLICY IN PROMOTING ECONOMIC  
DEVELOPMENT: INTERACTION BETWEEN TRADE AND COMPETITION**

9:00 – 10:40

**(i) Evaluating the effectiveness of competition law in the promotion  
of economic development**

MODERATOR: Hassan Qaqaya, Head of Competition and  
Consumer Protection Policies of UNCTAD

Hassan Qaqaya, Head of Competition and Consumer Protection  
Policies of UNCTAD

Philip McClauren, Director of Consumer Affairs of the Ministry of  
Commerce, Investment and Consumer Affairs of Saint Lucia,  
Organization of Eastern Caribbean States (OECS)

Debate

10:40 – 11:00

Coffee break

11:00 – 12:45

**(ii) Appropriate design and enforcement of competition law and  
policy in countries at different stages of market development**

MODERATOR: Hassan Qaqaya, Head of Competition and  
Consumer Protection Policies of UNCTAD

Hassan Qaqaya, Head of Competition and Consumer Protection  
Policies of UNCTAD

Jaime Luna Ovando, Vice Ministry of Internal Trade and Exports of  
Bolivia

Delroy Beckford, Lawyer of Customs and International Trade Law of  
Jamaica

Luis Humberto Guzmán Áreas, President of the National Institute of  
Promotion of Competition (PROCOMPETENCIA) of Nicaragua

Enrique Pasquel Rodríguez, Technical Secretary of the National  
Institute of Defence of Competition and Intellectual Property  
Protection (INDECOP) of Peru

Debate

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12:45 – 14:30 Free time for lunch

<b>AFTERNOON</b>
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**14:30 – 16:30 (iii) Role of competition advocacy, merger control, and the effective enforcement of law in times of economic troubles**

MODERATOR: Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

María Inés Rodríguez, Official of the Foreign Service of the Ministry of Foreign Affairs, International Trade and Cult of the Argentine Republic

Walter Bonora, Lawyer of the National Commission for Defence of Competition of Argentina

César Costa Alves de Mattos, Commissioner of the Administrative Council of Economic Defence (CADE) of Brazil

José Enrique Argumedo Casula, Superintendent of the Superintendence of Competition of El Salvador

Mariana Tavares de Araujo, Secretary of Economy of the Ministry of Justice of Brazil

Debate

16:30 – 16:45 Coffee break

**16:45 – 18:45 (iv) Creation of a Working Group on Trade and Competition: SELA's proposal**

Juan Acuña, Coordinator of Relations with Member States of SELA

Walter Bonora, Lawyer of the National Commission for Defence of Competition of Argentina

Edgar Odio, Commissioner, COPROCOM

Eduardo Pérez Motta, President of the Federal Commission of Competition of Mexico

Enrique Pasquel Rodríguez, Technical Secretary of the National Institute of Defence of Competition and Intellectual Property Protection (INDECOPI) of Peru

Philip McClaren, Director of Consumer Affairs of the Ministry of  
Commerce, Investment and Consumer Affairs of Saint Lucia,  
Organization of Eastern Caribbean States (OECS)

Pierre Arhel, Adviser of the World Trade Organization (WTO)

Debate

**FRIDAY, 28 MAY 2010**

**MORNING**

**SESSION III:**

**REVIEW OF THE EXPERIENCE GAINED IN THE IMPLEMENTATION OF THE  
UNITED NATIONS SET OF MULTILATERALLY AGREED EQUITABLE  
PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS  
PRACTICES (UN SET), INCLUDING VOLUNTARY PEER REVIEWS**

**9:00 – 10:00**

**(i) Modalities for facilitating voluntary consultations among Member  
States and regional groupings, in line with Section F of the UN Set**

MODERATOR: Hassan Qaqaya, Head of Competition and  
Consumer Protection Policies of UNCTAD

Hassan Qaqaya, Head of Competition and Consumer Protection  
Policies of UNCTAD

Edgar Odio, Commissioner, COPROCOM

Fausto Alvarado, Deputy Secretary of Competitiveness of the  
Subsecretariat of Competition and Consumer Defence of Ecuador

Juan Acuña, Coordinator of Relations with Member States of SELA

Debate

**10:00 – 11:30**

**(ii) Evaluation of the experience gained so far in the  
implementation of the UN Set, including UNCTAD voluntary peer  
reviews**

Pierre Horna, General Assistant to the COMPAL Programme,  
UNCTAD

Edgar Odio, Commissioner, COPROCOM

Luis Humberto Guzmán Áreas, President of the National Institute of  
Promotion of Competition (PROCOMPETENCIA) of Nicaragua

Fausto Alvarado, Deputy Secretary of Competitiveness of the  
Subsecretariat of Competition and Consumer Defence of Ecuador

Debate

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- 11:30 – 11:45 Coffee break
- 11:45 – 12:15 **(iii) Importance of networking in the exchange of non-confidential information to facilitate cooperation among regulatory competition agencies**
- MODERATOR: Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD
- José Enrique Argumedo Casula, Superintendent of the Superintendence of Competition of El Salvador
- 12:15 – 13:00 **(iv) Effectiveness of capacity-building and technical assistance activities extended to newly established competition authorities**
- Eduardo Pérez Motta, President of the Federal Commission of Competition of Mexico
- Fausto Alvarado, Deputy Secretary of Competitiveness of the Subsecretariat of Competition and Consumer Defence of Ecuador
- Luciana Macedo, Commissioner of the Commission of Promotion and Defence of Competition of Uruguay
- Debate
- 13:00 – 14:00 **Conclusions and recommendations**
- 14:00 **CLOSING SESSION**
- Farewell speech by César Costa Alves de Mattos, Commissioner of the Administrative Council Economic Defence (CADE) of Brazil
- Farewell speech by Juan Acuña, Coordinator of Relations with Member States of SELA
- Final remarks by Hassan Qaqaya, Head of Competition and Consumer Protection Policies of UNCTAD

**Speech by Hassan Qaqaya, Head of Competition  
and Consumer Protection Policies of UNCTAD,  
during the opening ceremony**



Dear Permanent Secretary of SELA, Ambassador José Rivera Banuet;

Honourable Carlos Antonio Sánchez Carrasco, representative of Spain's Ambassador in Brazil;

Distinguished Ambassadors and Representatives of Member States of SELA;

Honourable Representatives of the Brazilian Antitrust System, Mariana Tavares and Arthur Badin;

Ladies and gentlemen:

It is an honour for the UNCTAD and for me to take the floor in this important II Regional Meeting on Competition and Trade for Latin America and the Caribbean.

In the first place, I would like to thank the host government, represented by the agencies of the Brazilian Antitrust System, for their excellent work and warm hospitality.

The topics to be discussed at this meeting are important not only for regional and international integration into the global economy, but they are also urgent issues for development.

Trade is still the engine for growth and development, provided that it is framed within the country's overall strategy of development. Trade *per se* is not only trade, but trade is a tool for development.

We have attested to the fact that trade liberalization in the absence of adequate competition policies and antitrust laws can obviously deny the benefits of trade liberalization.

The economic and financial crisis has revealed and highlighted the need for a robust competition policy, particularly in times of crisis when authorities have fallen into temptation to ease competition laws and implement protectionist measures.

Countries, particularly the developed countries where the global crisis began, have established State aid packages that have clearly distorted the "playing field" for developing countries, including subsidies and trade distorting measures.

In this context, it is essential for developing countries to preserve the progress that has been made in adopting and enforcing and/or implementing regional competition and cooperation policies.

Competition policies are relevant and important throughout the business cycle, both during economic booms and in times of recession. In fact, fighting against the anticompetitive practices that usually emerge during crises is one of the most important strategies to overcome the crisis.

Competition policies are very important to preserve and strengthen the process of regional and trade integration. Overall, developing countries have been relatively immune from the effects of the crisis. Therefore, they should seize this opportunity to maintain and expand the progress made in regional trade and growth.

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Over the next three days, we will address a vast agenda comprising these issues. Further, we will prepare for the forthcoming high-level meeting on competition policy and law and development to be held in Geneva from 8 to 12 November.

We are therefore ready to begin our deliberations and discussions that will enrich ultimately this important subject.

Thank you for your attention.

**A N N E X I I I**

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**Speech by Juan Acuña, Coordinator of Relations with Member States  
of the Latin American and Caribbean Economic System (SELA),  
during the opening ceremony**



## **SELA - OPENING SPEECH AT THE II SEMINAR ON TRADE AND COMPETITION**

**BRASILIA, BRAZIL, 26 MAY 2010**

Your Excellency, Hassan Qaqaya, Head of Competition and Consumer Protection Policies;

Your Excellency, Carlos Antonio Sánchez Carrasco, Trade Adviser of the Embassy of the Kingdom of Spain to Brazil;

Honourable Representatives of the Antitrust Competition System of the Government of Brazil;

Ambassadors and Official Delegates of the Member States of SELA;

Dear Participants, Representatives of the OECS and WTO Secretariats, the Government of Brazil and the Embassy of Spain to Brasilia, who are accompanying us;

Ladies and gentlemen:

First of all, I would like to convey warm greetings from the Permanent Secretary of SELA, Ambassador José Rivera Banuet, who cannot be present on this occasion due to other international commitments.

For the Permanent Secretariat of SELA, it is a very significant opportunity to hold the Second UNCTAD-SELA Regional Seminar on Trade and Competition and the Preparatory Meeting for the VI United Nations Conference to Review All Aspects of the Set of Principles and Rules on Competition.

The objectives of this II Seminar are in line with the recommendations of the First Seminar, held at the headquarters of SELA in Caracas on 20 and 21 April 2009, which can be summarized as follows:

- The need for LAC countries to engage in ongoing analysis of topics related to trade, competition policy and development.
- The desirability that the Secretariats of UNCTAD and SELA keep finding sources of international cooperation in order to further develop activities in this area, including programmes for updating and disseminating information.
- The adoption of the Joint Cooperation Programme between the Secretariats of SELA and UNCTAD on Competition Policy and Development, for the purposes of consolidating a regional forum for exchanging experiences, developing proposals and undertaking cooperation projects among Latin American and Caribbean countries.

Additionally, considering that one of the roles of the SELA is regional coordination in international forums on trade and development, on this opportunity we will focus particularly on preparing Latin American and Caribbean countries for the Sixth United Nations Conference to Review the Set of Principles and Rules on Restrictive Business Practices, which will take place from 8 to 12 November 2010 in Geneva, Switzerland.

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I have been instructed by the Permanent Secretary of SELA to express to the participants of our Member States that the Permanent Secretariat is prepared and willing to continue supporting cooperation, consultation and coordination efforts in the fields of competition policies, consumer protection and their relation with the internationalization strategies of Latin America and the Caribbean and economic development, as well as with regard to regional economic integration.

This Second Regional Seminar is making two very valuable contributions, namely: the determined and flawless organization by the Government of Brazil, through the three Brazilian antitrust authorities, and the financial support provided by the Kingdom of Spain. We thank you sincerely.

Similarly, the UNCTAD Secretariat remains a key pillar for technical cooperation with Latin America and the Caribbean, and the COMPAL Programme and its group of experts are a very important support for achieving the best results, as what we hope on this occasion.

We thank the Secretariats of ALADI, OECS and WTO. Further, we thank the Member States of SELA for their support. This has allowed us to gather a significant number of experts from the region and the host country, and we expect to be able to conduct important and in-depth analyses and discussions, which are necessary for a successful event.

Thank you very much.

**A N N E X I V**

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**Speech by Carlos Antonio Sánchez Carrasco,  
Trade Adviser of the Embassy of the Kingdom of Spain in Brazil,  
during the opening ceremony**



**Opening Session of the II Regional Seminar UNCTAD-SELA on Trade and Competition  
Brasilia, 26 to 28 May 2010**

Spain is very pleased that Brasilia has decided to host the II Regional Seminar UNCTAD-SELA on Trade and Competition.

Spain would like to thank the UNCTAD and the Permanent Secretariat of SELA for organizing and facilitating the elements required for holding the seminar, as well as their logistical support.

This seminar forms part of the cooperation programme between the Permanent Secretariat of SELA and the Secretariat of UNCTAD, which is intended to help Latin America to assess the relations among trade, competition, integration and development issues. This II Seminar was preceded by the seminar held in April 2009, whose results were highly satisfactory, particularly the seven recommendations issued at the end of that seminar.

Spain pays special attention to promoting this type of technical assistance and training activities in the Latin American region, in order to strengthen the technical assistance activities undertaken by UNCTAD.

We are confident that the event will be very attractive, given the interest of the participants in it.

We hope that this seminar will be of great interest to all participants, as Spain is making big financial efforts since 2005 to make contributions to UNCTAD. In this connection, I would like to highlight that in 2007 Spain made a special contribution of US\$ 3 million through the Ministry of Foreign Affairs and Cooperation. All in all, Spain has improved its position as a donor of UNCTAD, moving from ninth to second place among the trust funds for technical assistance of UNCTAD, after Norway.



**Latin American and Caribbean Working Group  
on Trade and Competition Policies**

**Considerations of the Permanent Secretariat of SELA  
on the Importance of its Creation**



**LATIN AMERICAN AND CARIBBEAN WORKING GROUP  
ON TRADE AND COMPETITION POLICIES**

**CONSIDERATIONS OF THE PERMANENT SECRETARIAT OF SELA  
ON THE IMPORTANCE OF ITS CREATION**

INCLUDES COMMENTS BY UNCTAD

**1. OBJECTIVE**

This document is aimed at providing the Member States of SELA with some remarks on the economic and commercial importance of the creation of a Latin American and Caribbean Working Group within the framework of SELA in the area of trade policies and their relation to competition policy.

The idea of creating this Working Group reflects the growing trend towards corporate concentration as a result of the internationalization of world economy, which highlights the need for appropriate and effective mechanisms to preserve the conditions of free competition in markets, whether local or expanded, so that individuals cannot unduly restrict or distort competition without risk of punishment.

Furthermore, it has been stressed that technological advances increasingly encourage innovative ways of distortion of competition, for which authorities should often review and update the rules, working methods and tools for implementation at the global, sectoral and regional levels, if such is the case.

**2. BACKGROUND AND JUSTIFICATION**

Economic integration in Latin America has not stopped despite the international crises and trade and political differences among countries and trade zones. Therefore, Central American, Caribbean, Andean and MERCOSUR countries continuously strengthen and improve mechanisms, agreements and their institutions for trade, political, social and cultural integration at their own pace and with their own possibilities of application.

With the internationalization of the economy, the differences in the procedures to conduct international trade affect the performance of markets, production processes and the ways investments are made. Thus, we are witnessing the emergence of new transnational production processes, the creation of new business networks and vertical integration mechanisms, with profound implications on issues related to national economic development and international trade policy – particularly concerning the promotion and preservation of free competition.

However, it is also true that this scenario does not reflect the current existence of a growing intra-regional Latin American and Caribbean market for goods and services, which tends to diversify the current focus on subregional blocs, to promote productive development in the region, to foster greater and more diversified mutual investment flows and to encourage greater participation of extra-regional investments in our countries. In addition, progress has been made in infrastructure development and transport, and with respect to political rapprochement in the region.

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For this reason, as part of the process to build a regional Latin American and Caribbean market – whose most recent momentum was the proposal made on 23 February 2010 to create the Community of Latin American and Caribbean States (CELAC) –, deepening the integration of Latin America and the Caribbean as a major economic area in the world is considered of crucial importance. However, even though several studies point to the coexistence, in our region, of very dissimilar experiences and approaches as regards regulatory policies, institutions, international commitments on competition, and foreign trade, in order to take real advantage of the benefits of trade liberalization, the Latin American and Caribbean region as a whole should take action to counteract anticompetitive behaviour.

In this context, Latin America and the Caribbean should count on an institutional framework of its own in order to conduct consultations and promote regional cooperation and coordination, as basic tools for the gradual process of convergence to shape up a Latin American and Caribbean regional agenda. To this end, the treatment of trade and competition policies requires new coordinated actions and working methods, so as to support the creation of a regional market in Latin America and the Caribbean and adopt effective sanction mechanisms against anticompetitive practices.

In April 2009, the Secretariats of UNCTAD and SELA organized in SELA's headquarters in Caracas, Venezuela, the First Regional Seminar on Trade and Competition, which raised the possibility of studying the creation of a regional Working Group on Trade and Competition. On the occasion of the Second Regional Forum in Brasilia – held from 26 to 28 May 2010 – which also dealt with the participation of Latin America and the Caribbean in the VI United Nations Conference to Review All Aspects of the Set of Principles and Rules on Competition, a proposal was made once again to study the relations between trade and competition, and to encourage coordination efforts in Latin America in line with the policy foreseen to achieve the regional objectives of CELAC.

### 3. PURPOSE AND SCOPE

A Working Group could promote institutional strengthening, facilitate knowledge sharing, foster regional consultation, and contribute with the identification and provision of economic and technical cooperation from the region itself, from international organizations and other sources. More specifically, it could conduct the following activities:

- Provide a regional framework for interaction between national and regional authorities in charge of trade with their counterparts in the area of competition.
- Strengthen political, institutional and regulatory capacities, as well as the capacities of the system to protect free competition in the context of regional integration.
- Create a mechanism to analyze trends in the treatment of issues related to competition within the framework of agreements and of trade forums at the international, regional and national levels.
- Promote consultation and coordination mechanisms for developing regional convergence processes in Latin America and the Caribbean in the area of competition policy.
- Facilitate the exchange of national and regional experiences as regards actions in the area of competition and trade policies.

- Identify mutual cooperation mechanisms for institutional strengthening and activities related to extraterritorial competition practices. The Voluntary Consultation System foreseen in Section F of the Set of Principles and Rules on Competition of the United Nations is of special relevance in this connection.
- Identify programmes and channel international technical cooperation resources for training, capacity-building and institutional modernization.
- Provide an institutional means for consultation and coordination in Latin America and the Caribbean concerning competition-related issues, with a view to strengthening the participation of the region's countries in international forums.

#### **4. INTERNATIONAL FORUMS ON COMPETITION AND THE WORKING GROUP**

Regional events on competition policies are organized on a regular basis with the main purpose of increasing knowledge of the issue among the authorities responsible for enforcing national and subregional regulations and standards. UNCTAD organizes annual forums on competition. In addition, there is the International Competition Network.

However, the Working Group proposed for Latin America and the Caribbean would also cover matters concerning the region's trade relations, and would be much more formal. In addition to implementing international cooperation mechanisms for the region, the Group would be able to promote consultation, cooperation and coordination among LAC countries, in order to support the creation of a Latin American and Caribbean economic space. It would also promote joint international participation, in accordance with the objectives outlined by the Presidents and Heads of State and Government during the meeting of the Rio Group and the Summit of Latin America and the Caribbean on Integration and Development (CALC), on 23 February 2010, who agreed to establish the Community of Latin American and Caribbean States (CELAC).

#### **5. PARTICIPANTS**

The Working Group would be of an inter-governmental nature. It would be open to the participation of the following officials from Latin America and the Caribbean:

- Heads of national institutions in charge of enforcing competition regulations.
- Officials responsible for competition issues in national foreign trade institutions.
- National officials responsible for international trade negotiations.
- Experts from regional and subregional integration organizations in Latin America and the Caribbean.

UNCTAD would provide technical support, as required by the Working Group.

#### **6. TECHNICAL AND FINANCIAL SUPPORT MECHANISMS**

For the technical activities of the Working Group, SELA requests technical support from UNCTAD in view of its vast expertise in strengthening competition policies in developing countries and its experiences with Latin American and Caribbean countries, as well as other regions, and in multilateral forums.

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International organizations and donor agencies could participate by providing technical and financial support. In addition, the Working Group could identify and channel cooperation from international sources, as well as bilateral, regional and multilateral agencies.

### **7. RULES AND PROCEDURES**

The Working Group would operate under the institutional system of SELA, with technical support from the UNCTAD Secretariat. Initially, it would operate in an informal way until an agreement is reached on its by-laws and regulations and its first work programme, which shall be submitted to the Latin American Council for approval. Once in operation, the Group shall present an annual report of activities and its next work programme to the Council.

### **8. TECHNICAL SUPPORT ACTIVITIES BY THE SECRETARIAT OF UNCTAD**

Pursuant to the mandate of UNCTAD (2008 Accra Agreement) and the UN Set of Principles and Rules on Competition, and under the COMPAL Programme, UNCTAD will contribute to the Working Group, mainly, in conducting the following investigation and research activities:

- Cooperative evaluation of case investigation and research techniques: expansion of the pilot project initiated by Colombia and Peru to other countries.
- Study of cross-border practices: Identification of investigation and research methodologies for those practices, such as splitting-up markets among countries.
- Study of relevant markets: Identification of methodologies to define relevant markets in Latin American economies. (Review of the particular features of Latin American economies – such as the fact that they are highly concentrated markets – barriers to entry that are different from those imposed by developed countries in the wake of the opening-up of markets, which has characterized Central American countries since the signing of FTAs). Methodologies should be defined on the basis of this study.
- Study on Competition Laws in the Latin American and Caribbean region, including comparative legal analyses.
- Organization of distance learning and face-to-face training courses.

### **9. TECHNICAL SUPPORT ACTIVITIES BY THE SECRETARIAT OF SELA**

In addition to acting as the Technical Secretariat of the Working Group, the Permanent Secretariat of SELA could organize some support activities, such as:

- Reports on international standards and agreements of Latin American and Caribbean countries, relating to trade and competition issues.
- Directory of participants in the Working Group.
- Creation of a database and a digital library on competition laws and their amendments, as appropriate, as well as related legislations (e.g., consumer protection, among others), most relevant competition cases in each country, institutional issues, and agreements signed by Latin American and Caribbean countries.
- Follow-up on developments concerning regulations, as well as regional and international debates.

**Guide for procedures of Part 4, Section F,  
of the UN Set of Principles and Rules on Competition.  
“UNCTAD Procedural Guide”**

First Draft  
24 May 2010



**GUIDE FOR PROCEDURES OF PART 4, SECTION F,  
OF THE UN SET OF PRINCIPLES AND RULES ON COMPETITION.  
"UNCTAD PROCEDURAL GUIDE"**

First Draft, 24 May 2010

**Purpose of the guide**

**Article 1.-** This guide implements Part 4 of Section F on "International Measures" of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (hereinafter, "the Set of Principles and Rules on Competition" or "the Set").

**Parties which may make consultations under the Set:**

**Article 2.-** States may make consultations under Section F, in any of the following events:

- a) A State affects another State for an investigation started or to be started under its own laws on competition.
- b) A State is affected by another State for an investigation started under the laws on competition of the latter.
- c) Two or more States investigate the same restrictive business practice, thereby mutual cooperation is needed.
- d) A State is affected by one or more companies located in one or more States due to their restrictive business practice.
- e) Any other situation where the impact of a restrictive business practice may affect markets from different States.

**Requirements for submission:**

**Article 3.-** Under Number 4 (b), Section F, the requesting State shall make a preliminary analysis of the cross-border restrictive business practice. The requesting State does not need to start an investigation under its own laws before making the consultation. The request may be submitted jointly and severally by more than one State. Particularly, the analysis shall include the following aspects, based on the available information:

- a) Description of involved countries and companies.
- b) Factual description of the restrictive business practice (including a preliminary definition of the relevant market, a preliminary analysis of the clout both of the market and the companies engaged in the practice).
- c) List of the available evidence and copy of such evidence.
- d) Description of legal aspects, based on the law of the requesting State, related to the alleged restrictive business practices.
- e) Description of potential harmful effects of the alleged restrictive business practice on the interests of the requesting State.
- f) Thorough description of the cooperation requested from the State to which the consultation is being made.
- g) Proposal for an *ad hoc* proceeding to be followed in the consultation or the adoption of this UNCTAD Procedural Guide.

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- h) Description of the need and scope of the aid of UNCTAD experts, particularly for consultations/assumptions in the event of cross-border practices, including the assistance of UNCTAD to explore potential solutions or remedies to be mutually agreed by the Parties, and drafting of a “joint report” on the consultation and its results. Section F (4, item c.)

### **Notice of the request for consultation**

**Article 4.-** The requesting State shall send a notice to the requested State, including all the items listed in Article 3, directly to the authority of competent jurisdiction of the requested State and by official means, with a copy to UNCTAD.

### **Reply of requested States to the request for consultation**

**Article 5.-** Upon reception of the request for consultation from the requesting State, the requested State shall act as follows:

- a) Keep the request and the information supplied along with said request confidential unless otherwise agreed with the requesting State.
- b) Take notice of the request made by the requesting State.
- c) Promptly reply in the event of taking part in the consultation. If the requested State does not want to take part in the consultation, it is expected anyway to reply soon, noting the reasons for turning down.
- d) If the requested State opts to take part in the consultation, then the requested State shall promptly reply and refer to all the aspects contained in the request (including a preliminary analysis) made by the requesting State. Particularly, the requested State shall note whether it agrees on potential restrictive business practices.
- e) If the requested State opts to take part in the consultation, then the requested State shall join efforts with the requesting State and any other requested States to explore and find a solution to meet the request, jointly and severally agreed and accepted by any and all involved Member States.

### **Request for assistance from UNCTAD**

**Article 6.-** The requesting State and the requested State shall request assistance from UNCTAD to prepare the submission requirements listed in Articles 3 and 4.

### **Services rendered by the UNCTAD General Secretariat**

**Article 7.-** Member States may request assistance from UNCTAD in the following areas:

- a) Conference services.
- b) Procedural matters within the framework of this guide.
- c) Substantive aspects related to the request and the interpretation of the United Nations Set.
- d) Survey and discussion of potential solutions or remedies to be jointly agreed by the parties.
- e) Drafting of the joint report.
- f) Follow-up of the implementation of the report.

### **Meeting of the parties**

**Article 8.-** Upon the reply of the requested State confirming its decision to take part in the consultation, UNCTAD shall call a meeting of the States involved in the consultation in order to explore potential solutions to be jointly agreed on the subject of the consultation. At this meeting, UNCTAD shall endeavour to clarify any matter and may suggest possible solutions.

### **Involvement of private companies**

**Article 9.-** If needed and agreed by the Member States involved in the consultation, UNCTAD shall invite public and private entities engaged in the alleged restrictive business practices, or adversely affected by said practices, to produce evidence and give their opinions on the subject of the consultation, prior to the meeting of the parties. Member States shall cooperate to supply information to said entities and encourage them to give their opinions and produce evidence.

### **Drafting of the joint report**

**Article 10.-** The purpose of the consultation is finding jointly agreed solutions to cross-border anti-competition practices which might harm requesting and requested States. In this process, the parties may work on a "joint report" prior to the end of the consultation. The contents of the report might vary according to the following scenarios:

- a) Consultation resulting in jointly agreed solutions: Member States involved in the consultation shall draft a joint report to be submitted to the UNCTAD General Secretariat and containing a summary of the agreement and the terms on the cooperation measures. Such joint report is expected to contain specific actions to be taken by Member States in order to implement the solutions agreed upon.
- b) Consultation resulting in failure to agree on a joint solution: Member States involved in the consultation shall draft a joint or individual report to the UNCTAD General Secretariat with a summary of the reasons for lack of agreement.

### **Implementation of the joint report**

**Article 11.-** If the consultation results in solutions jointly agreed by the States involved in the consultation, then said States may request the UNCTAD to set the mechanisms intended to follow up and monitor the implementation of the solutions. If the consultation results in failure to reach a joint agreement, then UNCTAD shall prepare a brief report and submit it at the next meeting of the International Expert Group (IEG).



**Joint Cooperation Programme 2009-2012  
between the Permanent Secretariat of SELA and the General Secretariat  
of UNCTAD on Competition Policies and Development  
(Revised on 28 May 2010)**



**JOINT COOPERATION PROGRAMME 2009-2012**  
**BETWEEN THE PERMANENT SECRETARIAT OF SELA AND THE GENERAL SECRETARIAT**  
**OF UNCTAD ON COMPETITION POLICIES AND DEVELOPMENT**  
(Revised on 28 May 2010)

- **Background**

Since the foundation of the Latin American and Caribbean Economic System (SELA), in October 1975, cooperation relations were established between its Permanent Secretariat and the UNCTAD General Secretariat. The latter has the status of Observer at the Latin American Council, the supreme decision-making body of the SELA. Throughout 1975-2008, such inter-institutional SELA-UNCTAD cooperation helped both organizations to jointly take part in projects, meetings and capacity building on several issues related to trade, trade negotiations and economic development of Latin America and the Caribbean (LAC).

This has been recognized more than once by the United Nations General Assembly (UNGA) apropos the biannual report on SELA-UN cooperation. For its part, the latest resolution of the 63rd Regular Session of the UNGA, approved on 3 October 2008 (A/63/L.10), urged specialized agencies and other agencies in the UN System to enhance cooperation with SELA activities and join efforts with the Latin American and Caribbean organization in order to attain globally agreed development goals.

The issue of competition policies and their effects on development is particularly important to redefine some public policies and national development strategies for Latin America and the Caribbean within the current context of global economic crisis, which has led to rethink some of the conceptual basis which backed the prevailing economic policy model over the past 15 or 20 years.

It should be borne in mind that during the United Nations Conference on Restrictive Business Practices, a Resolution was passed on 22 April 1980. Such resolution contains the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. This set was subsequently approved under resolution 35/63 of the UN General Assembly, on 5 December 1980, and directly linked to the issue of competition policies. Lately, specific principles and agreements on said policies have been delved into and updated. Main items include the references to the Accra Agreement (XII UNCTAD Conference) and the documents resulting from the V UNCTAD Conference, which was entrusted with the task of reviewing the whole Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (Anatolia, Turkey, November 2005) and all the issues discussed in the Tenth Session of the Inter-Government Group of Experts on Restrictive Business Practices.

In these forums and other, more recent talks that have been held on competition policies in view of new global realities, recurring concerns of most developing countries include, among others:

- 1.- A favourable and effective environment for competition and development should include both domestic policies on competition (to further it, but also to regulate it), and mechanisms for consumers' advocacy and international cooperation in order to settle related disputes among the States.

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2.- In each country, there is a legal framework and an institutional framework, which regulate competition (in some cases, they are basically conceived as tools to defend competition, but there are also standards to regulate and/or restrain competition), the nature of which mirrors the differences existing among the countries concerning stages of economic development, development models, legal contexts, and cultural traditions.

3.- The analysis of the link between competition policies and poverty reduction is more and more relevant. Accordingly, the issues related to consumers' well-being and economic effectiveness – which are important elements of the main objectives of competition laws – should be completed with economic analyses on the distributed impact of competition and its effects on the productive fabric of each nation.

4.- In this connection, there are serious concerns about the development of micro, small and medium-sized enterprises (MSMEs), frequently endangered by more competitive and larger corporations, thus worsening the negative effects of the current global economic crisis on the MSMEs.

5.- It has been said time after time that the principles, standards and institutions for advocacy and/or regulation of competition should be in line with the broader objectives of the strategies for national development and public policies.

Based on the foregoing, it seems that in terms of competition policies, paraphrasing a statement made at the Sao Paulo Consensus is now more relevant than ever, to wit: "a policy on competition is not an end *per se*, but a means to attain growth and development".

- **Objectives**

The general objective of this programme is to consolidate a regional forum within the context of SELA, with the support of the General Secretariat of UNCTAD, for exchange of experiences, drafting of proposals and development of cooperation projects among Latin American and Caribbean countries about principles, standards and institutions on competition policies and their effects on economic and social development.

Actions to be undertaken as part of this programme shall have the following specific objectives:

1. Promote a permanent dialogue among government agencies of SELA Member States, subregional integration bodies and the General Secretariat of UNCTAD, as well as other public and private parties, in order to discuss national and regional experiences on competition policies and their impact on development.
2. Review extra-regional experiences on competition policies that may help Latin American and Caribbean countries to face any challenges related to competition policy making.
3. Foster a regional space for a systematic exchange of information and preparation of cooperation projects – with regional and international institutions – for the benefit of SELA Member States, on the interplay between competition policies and policies on economic and social development.

4. Promote projects with a view to carrying out activities on capacity building and technical assistance for Latin American and Caribbean agencies responsible for the design, implementation and assessment of competition policies.

- **Expected results**

This programme is expected to be effective for three years (September 2009 – September 2012), with the following results:

1. Organization of distance courses on competition and trade, including the services sector.
2. A regional course on: i) Enforcement of Section F of the UN Set of Principles on Competition, and ii) Cross-border practices.
3. In order to facilitate and promote the exchange of appropriate information and transparency, a recommendation is made to create a regional database containing the following information, among others:
  - Competition laws and related legislations.
  - Case law related to competition.
  - Surveys of competition conditions.
  - Exchange of information.
  - Directory of officials including contact data of agencies engaged in competition in Member States.
  - Information about conferences, events, workshops on competition of interest for Member States.
  - Information about projects on technical assistance to Member States.

Such an initiative would be implemented in coordination with all the 27 SELA Member States, with the support of the General Secretariat of UNCTAD. Additional fund raising is advisable to back the operations.

4. Conduction of an annual Forum of Experts to exchange opinions and experiences on the issue of competition. Such a forum will consider subregional efforts in order to target their needs and priorities. For instance, the Central American Competition Group, CARICOM, etc.
5. Biennial publication of a report on the status of anti-competition practices in Latin America and the Caribbean, based on the contributions from SELA Member States.
6. Surveys of groups of Latin American and Caribbean countries in order to assess the conditions for competition in specific sectors. Such surveys would contain guidelines for countries which are drafting their own competition laws. They would be also helpful for those countries with recently created competition authorities as they could provide elements to create databases, develop methodologies in line with the countries' own realities, train the staff of said competition agencies and understand how their local markets work from a comprehensive view. To that end, the experience shown by the COMPAL Programme about sectoral surveys suggests that the approach should contain a regional scope in data collection, develop a common methodology, apportion the task among participating States and ensure comments, exchange of opinions and follow-up of the findings of such surveys.

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7. The Regional Seminar on Trade and Competition: Prospects and Future Challenges for Latin America and the Caribbean, held on 20 and 21 April 2009, recommended that SELA and UNCTAD should organize yearly meetings and *ad hoc* seminars in the subregions, in addition to the Latin American and Caribbean Regional Meeting with government agencies responsible for competition matters. The subjects of these meeting should be agreed upon each year, including, among others:

- Assessments of salient features of the status of competition policies in Latin America and the Caribbean.
- Existing prospects in the region about the effect of competition policies on economic and social development.
- Experiences of government agencies in Latin America and the Caribbean on enforcement of competition policies, and
- Reaching a consensus for specific positions of Latin America and the Caribbean on competition policies.

SELA shall hold consultations with its Member States prior to the annual meeting about any other additional subjects they would like to include. With a view to coordinating consultations and schedules of events, UNCTAD and SELA shall exchange their own schedules, and shall also attend the appropriate annual meetings.

8. Design and implementation of a project on human resource training and strengthening of institutional capacities for public policy making in SELA Member States with regard to competition and economic and social development. Said projects would entail four (4) seminars-workshops every year for experts and government representatives responsible for competition policies in Latin American and Caribbean subregions.

- **Financial resources**

To undertake the works and activities foreseen in this Joint Cooperation Programme, additional funds will be needed from the governments of SELA Member States, donors in developed countries and international organizations.

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