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Final Report on the II Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean

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Final Report on the II Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean

Intra-Regional Relations

*II Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean
Lima, Peru
18 and 19 June 2012
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I. RAPPORTEUR'S REPORT

1. The "II Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean (WGTC)" was held in Lima, Peru, 18 and 19 July 2012.
2. Participants included delegations from the following Member States: Argentina, Brazil, Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic and Bolivarian Republic of Venezuela; representatives of regional organizations: Andean Community (CAN), Caribbean Community (CARICOM) and the Latin American and Caribbean Economic System (SELA); as well as representatives of the United Nations Conference on Trade and Development (UNCTAD).
3. The meeting was intended to strengthen the institutional framework of Latin American and Caribbean countries through regional consultations and exchange of knowledge and experiences. It also promoted a common and harmonious relation among Latin American and Caribbean countries in terms of general and sectoral competition policies and regulations, as well as their applicability in economic and social policies such as public procurement and health policies. The agenda of the meeting, its documents, speeches, and presentations are available on SELA's Web site: www.sela.org.

II. DEVELOPMENT OF THE MEETING

4. Speakers at the opening session included: Juan Acuña, Coordinator of Relations with Member States of SELA; Hassan Qaqaya, Director of Competition Policy and Consumer Protection of the Trade Division of the United Nations Conference on Trade and Development (UNCTAD); Marcos Paulo Verissimo, Commissioner of CADE-Brazil in his capacity as Chairman of the Working Group on Trade and Competition of SELA; and Hebert Tassano Velaochaga, President of INDECOPI, representing Peru as host country of the event. In addition, Fernando Furlán handed over the Chair of the WGTC to Marcos Paulo, President of CADE of Brazil.
5. Juan Acuña noted that free competition practices have become a basic requirement for economic and social development, productive inclusion, deepening regional integration, and ensuring better living standards in our countries. Acuña also stressed that the Latin American and Caribbean region needs to improve and deepen competition policies and to ensure their effective implementation at national, bilateral and subregional levels. Therefore he recommended the Working Group on Trade and Competition to work with strategic perspective, particularly now that Latin America and the Caribbean are a reference for the recovery of world growth. Finally, he noted that the Permanent Secretariat of SELA recognizes the importance of the process undertaken by this working group in this first year of work.
6. Hassan Qaqaya stated that, as long as it forms part of the country's comprehensive development strategy, trade should be regarded as a tool for development. In addition, he noted that competition policy is very important to preserve and strengthen regional trade and integration. For this reason, he said, it is necessary to keep the momentum given to the adoption and implementation of competition and trade policies, as well as regional cooperation among the authorities responsible for those policies.
7. Marcos Paulo Verissimo acknowledged that this meeting was possible thanks to the efforts and excellent work of a number of persons and authorities, particularly the Trade Authority of Dominican Republic and the Trade and Competition Authority of Costa Rica,

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who are the Vice-Chairmen of the Working Group; the General Secretariat of UNCTAD, as Technical Secretariat; and the Permanent Secretariat of SELA, as Executive Secretariat. Afterwards, he made a brief review of how the subject has been dealt with in the region. The progress of globalization and the transnational actions of companies have led to a paradigm shift and growing interaction between competition and trade defence bodies, so as to promote economic and social development of countries. Now, the goal is not only to defend and promote domestic firms, but also the market, with the purpose of seeking well-being of citizens.

Joint cooperation between UNCTAD and SELA has enabled a growing exchange of experiences among authorities. Despite the different economic and political conditions of each country, such institutional and functional approach allows for developing cooperation frameworks for actions to combat economic concentration and anti-competitive practices and to make progress in terms of studies and analyses of public policies. Standing out in the area of regional cooperation are the supranational regulations of the Andean Community and MERCOSUR, which require an effective application anyway. Cooperation is welcomed within the context of regional integration and development, since the actions of transnational companies can have an influence on the evolution of the integration process.

There are different levels of institutional and human resources in Latin America and the Caribbean. This implies that law enforcement in each country is determined by its particular political and economic conditions. However, at meetings such as this, it is possible to deepen cooperation among authorities in order to promote an exchange of information on management and procedural improvements in activities such as prior control of concentrations, strengthening the fight against cartels and resolution of cases, thus opening a new dimension for the promotion of competition policies and trade policies in the region.

8. Finally, Tassano underscored the importance of giving joint responses and identifying regional best practices in the field of competition to promote their dissemination and improve understanding between policies and institutions. He also noted that trade and competition policies and institutions have begun to play an important role as guarantees of the development of markets and investments. In addition, he highlighted the work carried out by SELA, UNCTAD, the Ministry of Economy and Competitiveness of Spain and the Ministry of Foreign Trade and Tourism of Peru in organizing this Second Annual Meeting in Lima, Peru, with renowned speakers and high-level international officials.

9. The Working Group adopted the following agenda:

- a) Regional Trade Agreements and Competition Clauses
- b) Legal instruments on competition and bilateral, regional and multilateral trade
- c) Research and sectoral studies
- d) Public Procurement, Competition and Trade
- e) Cross-border anti-competitive practices: Challenges for emerging and developing economies
- f) Needs for technical assistance and bilateral, subregional and multilateral cooperation

Regional Trade Agreements and Competition Clauses

10. Fernando Furlán, Member of the Advisory Group of Experts of the COMPAL Programme, referred to the global and regional trends of free trade agreements. The increase in commodity prices during the last decade has benefited exports from many developing countries and consequently has moderated private demands in the negotiation of free trade agreements. However, with the lack of results from the Doha round of the WTO, the negotiation of bilateral or plurilateral agreements has gained relevance. Anyway, the adoption of the WTO agreements, as a condition for accession of a country to that organization, encourages the inclusion of common, although generic provisions on competition.

The elimination of tariffs can encourage the adoption of anti-competitive practices. Therefore, if measures are not taken to defend competition, trade between countries may be affected. Many free trade agreements adopt provisions on cooperation in the area of competition which include rules for the exchange of information and the treatment of confidentiality. In addition, many agreements include trade protection measures (anti-dumping and countervailing measures and safeguards). Some agreements include only the compensatory measures. Several agreements contain clauses on mutual assistance and support, although they are not only related to the case of competition.

Free trade agreements involving free competition clauses have the possibility of ensuring harmonization, not only legislative, but also procedural harmonization, as in the cases of concentrations and anti-competitive behaviours. Sixty-five percent of the South-South trade agreements signed since 1995 contain provisions related to competition.

A condition for free trade agreements to flourish was the inclusion of clauses on protection against unfair competition, such as anti-dumping, safeguards and countervailing measures. However, at present there exists a greater concern about cross-border mergers and anti-competitive practices of companies.

In terms of inter-institutional cooperation, agreements often include provisions on issues related to competition, such as reports, notifications, reciprocal consultations and treatment of confidential information.

Concerning trade defence, few agreements have provisions that exclude or eliminate the investigations and the application of anti-dumping measures between the parties. Only in some cases such as ANZCERTA (Australia and New Zealand) and EFTA (Iceland, Norway, Switzerland and Liechtenstein)-Singapore Agreement, it was noted that the removal of anti-dumping measures between the parties is related to the application of provisions on competition. In two cases (Canada-Chile and ANZCERTA) the possibility of resorting to anti-dumping and safeguard measures was eliminated.

Several agreements contain clauses on mutual technical assistance. Some of them have generic technical assistance clauses, but they do not refer specifically to competition-related technical assistance. The Agency to Agency Agreements (ATAs) are less formal and may be more effective than formal trade agreements. The important aspect is for them to provide for communication channels between trade and competition authorities within the same country and among countries.

Trade agreements generally refer to anti-competitive behaviours. On the one hand, there are those agreements which have a very broad and non-binding language, which does not define what types of practices are considered to be anti-competitive. On the other

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hand, there are others that order the parties to ban very specific types of practices within their jurisdictions or urge them to enact national laws prohibiting anti-competitive practices.

Remarks:

11. Altagracia Paulino, Executive Director of Dominican Republic's PRO-CONSUMIDOR, noted that market opening up has been fundamental to the development of our societies, because it has made available better prices and services for consumers. However, without effective regulations on competition, this may not always be so. Trade agreements must necessarily regulate and strengthen authorities' competition practices. At present, almost all the countries of the region count on competition laws. The agreements have strengthened cooperation in this area.

12. Marcia Banda, official of the Department of Trade Defence of Chile, underscored the importance of communication among authorities. Inter-Agency Agreements usually create channels of information among authorities, but no emphasis has been made on the importance for such communication among authorities to be either formal or informal.

13. María Inés Rodríguez, Counsellor of the Direction of Multilateral Economic Negotiations of Argentina, explained how the configuration of trade and competition should be defined. It has been found that dialogue through formal and informal channels, participation in events and seminars, such as this forum, and dissemination of competition policies can contribute to train those officials who are not well-prepared in this matter yet.

14. The Andean Community representative stressed that the subregion has made decisions as regards the application of anti-dumping measures and countervailing duties and measures on competition.

15. The CARICOM representative pointed out that the challenge for competition authorities lies in drawing the attention of policymakers towards the issue of clauses on competition in trade agreements.

16. Pierre Horna made a brief review of the meetings on trade and competition held thus far, highlighting that the creation of the Working Sub-Groups has allowed for making strides as regards various topics. Progress has been made in the establishment of regional mechanisms for dialogue in order to reduce asymmetries among countries. Within four years, other mechanisms are expected to be created. Advantage must be taken of such momentum and of the Presidency of Brazil to empower the WGTC. The world is undergoing a new situation of crisis, and according to some research, all countries have taken protectionist measures for their industries, which pose challenges to international trade and competition.

Legal instruments on competition and bilateral, regional and multilateral trade

17. The representative of the Permanent Secretariat of SELA, Juan Acuña, delivered a presentation on some WTO instruments that are commonly shared in competition policies in Latin America and the Caribbean, such as the GATT 1994, in Articles III and XVII; Articles VIII and XVII of the Agreement on Services; the Reference Document on Communications Protocol (only for those countries that signed it); and Articles III, VIII, 31k and Section 8 of the Agreement on Intellectual Property. Three subregional groupings that cover 22 countries have competition rules, and 25 countries have signed free trade agreements

which include provisions and frameworks for cooperation and consultation in the field of competition.

In spite of the fact that 19 countries have regulations and institutional structures in the area of competition policy, not all Latin American and Caribbean countries have adopted the necessary regulatory and institutional provisions to enforce international commitments.

The region is making strides with bilateral and subregional trade agreements, thanks to which tariffs are no longer the determining variable for trade flows. Thus, market protection – particularly as regards exports – is related to the existence of trade regulations that guarantee non-discriminatory access conditions. Hence, competition rules and their effective enforcement represent a necessary instrument to promote regional insertion of SMEs, to facilitate access to technology and to prevent ongoing corporate concentration from distorting competition.

Cooperation and permanent consultation could open up policy spaces that will need to be strengthened at the national and subregional levels. Therefore, it might be advisable for the region to consider the experiences gained with the peer reviews carried out in UNCTAD and OECD.

18. The delegation of Chile submitted the report on internal and external coherence between trade and competition policies, which was in charge of Working Sub-Group 2 of the WGTC. A comparison was made between trade policy and competition policy and their relationship with those of other countries. Latin American and Caribbean countries entrust the conduction of trade policy to a Ministry, which is responsible for negotiating trade agreements. In the Latin American and Caribbean region there are a total of 81 agreements, including free trade agreements and partnership agreements, among others. Out of these, 43 have chapters on competition. Chile has the largest number of agreements signed, with 22, followed by Brazil with 21, El Salvador 11, Colombia 10, Panama 9 and Costa Rica 8. Out of the 81 agreements, 48 are intra-regional. Out of the 43 free trade agreements with chapters on competition, 52% are among countries in the region. Most of the agreements exclude any commitments on competition policy from the dispute settlement mechanisms. Chile is the country with the largest number of exclusions in dispute settlement mechanisms, with 10. Colombia has four exclusions.

19. Elsa María Ardila Guzmán, Adviser to the Office of the Deputy Minister of Foreign Trade of Colombia, pointed out that efforts have been made so that free trade agreements deal with the issue of competition. In this connection, the agreement under negotiation with Panama contains the most solid chapter on competition. However, the agreements include principles such as trade defence and promotion of cooperation among the authorities, as well as bilateral safeguards.

20. Manuel De Almeida, official of ACODECO Panama, and Marlaine Tuñón, of the Ministry of Commerce and Industry of Panama, noted that the government agency responsible for trade policy issues, particularly signing free trade agreements, is the National Direction of International Trade Negotiations (DINECI) of the Ministry of Commerce and Industry (MICI) and that the department in charge of monitoring issues related to competition and trade policy is the National Direction of Administration of International Trade Agreements and Trade Defence (DINATRADEC) also attached to MICI. In Panama, competition policy is combined with consumer issues. The free trade agreements signed by Panama which contain a chapter or specific provisions on competition also include specific provisions which commit the parties to adopt and

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maintain national authorities and legislation to detect and punish anti-competitive behaviours.

21. Oscar Lanza Rosales, President of the Commission for Competition Defence and Promotion of Honduras, proposed the adoption of a model agreement that may cover best practices and trends as regards the subject of competition policy.

22. María Inés Rodríguez, Counsellor of the Direction of Multilateral Economic Negotiations of Argentina, explained that the institutions that can sign free trade agreements are the Ministry of Foreign Affairs and Worship and the Secretariat of Foreign Trade of the Ministry of Economy and Finance. There is no specific department or unit in charge of the issue of competition. However, the units responsible for free trade agreements work in coordination with the National Commission for Defence of Competition, an entity responsible for the enforcement of the law in Argentina. MERCOSUR approved Decision 43 of 2010, which envisages the new subregional agreement on competition defence. Within the framework of ALADI, there are provisions on competition in Economic Complementarity Agreements 35, 36, 58 and 59. However, such provisions are of a general nature and are intended to promote actions and outline disciplines to fight anti-competitive practices.

23. Huascar Ajata Guerrero, Vice-Minister of Internal Trade and Exports of Bolivia, noted that the Authority of Fiscalization and Prices is the institution responsible for competition. However, there is not a unit devoted to this topic within the Ministry of Foreign Affairs. Bolivia counts on a 2008 decree which regulates absolute and relative competitive practices, but does not have free trade agreements that promote such practices. Moreover, Bolivia hopes that this forum can serve to boost its participation in this process. In this regard, Argentina expressed its interest in starting talks on a cooperation agreement with Bolivia.

24. Rosauro León, representative of Venezuela's PROCOMPETENCIA, noted that Venezuela has a law in force since 1992 which does not contain exceptions regarding non-competitive practices and provides for the possibility of using it due to economic reasons for the sake of social well-being. At present, there is an ongoing reform to that legislation in order to focus the Competition Superintendence on an anti-trust policy rather than promoting free competition. In this way, authorities expect to transcend free competition towards the economic democratization of the productive apparatus of Venezuela, by fostering social production companies. Venezuela has had a policy against free trade agreements, but it does favour bilateral and multilateral agreements emphasizing the principle of complementarity.

25. María Teresa Lara, official of the Subsecretariat for Competition and Consumer Defence of Ecuador, underscored the importance of knowing the current situation as regards competition in our region. She also emphasized the need to create a database to share the different national resolutions and pointed out that, in the area of competition, international doctrine, resolutions and market studies strengthen competition authorities.

Research and sectoral studies

26. Juan Luis Crucelegui, Member of the Advisory Group of Experts of the COMPAL II Programme, made a presentation on the problems of trade and competition in the health sector. Crucelegui said that the health sector is of great importance, not only for the economy of a country, but also for social well-being. This sector is characterized by

the asymmetry between the service provider and the consumer. The health sector is based on business relationships that respond to interests which are not the same as those in other sectors of the economy and it is heavily regulated in terms of production, marketing and use of sanitary facilities, which can affect the competition capacity of smaller operators. It is important to apply the principle of mutual recognition, which means recognizing those products that have been legally audited and marketed in some countries. Unless there are risks to security or health, free competition is justified in this sector.

Moreover, other sectoral issues in Latin America and the Caribbean, such as government procurement, telecommunications, transport and business inter-relations, in situations where the suppliers of inputs is also a competitor of his client, could be analyzed too.

In Latin America and the Caribbean the number of cases of high business concentration is on the rise. Without detriment to foreign investment, it would be worthwhile dealing with the issue of the treatment of intra-regional business concentrations, since regulations and institutions have made just minor progress in this area.

27. Elsa María Ardila Guzmán, Adviser to the Office of the Vice-Minister of Foreign Trade of Colombia, recommended adopting a scheme to set the health insurance premium within a range that promotes competition among health care providers, depending on the quality of the service. In addition, a risk-sharing mechanism can be adopted; i.e. to change the high cost account for a risk sharing of high cost mechanism in which health care providers share the costs of 5% of their most expensive affiliates. In this way, all the health care providers would have to contribute with a premium to finance this group of affiliates. Also, indicators could be created in order to measure the relative efficiency in the provision of health insurance services. A mechanism of competition by comparison should be designed, in which the premium received by a health care provider per affiliate should also depend on the relative results reflecting a good management of resources.

The delegate of Colombia also noted that stakeholders participating in the various links in the health industry chain must compete, even though the sector regulates their participation in that market to a certain extent. In Colombia, the Superintendence of Industry and Commerce (SIC) is empowered to revise State regulation projects that may have an impact on free competition in the health industry, thus exerting a previous control. The ultimate control is exerted by the SIC through its powers of supervision, surveillance and monitoring. The Superintendence conducts investigations when it detects possible anti-competitive behaviours on the part of the stakeholders participating in the health industry in Colombia.

28. Kusha Haraksingh, President of the CARICOM Competition Commission, said that the health sector evidences some of the challenges faced by small countries in implementing competition disciplines. For instance, in CARICOM there are very well organized entities, specialized in the area of health, which can offset any form of intervention that may affect citizens' health. In addition, in CARICOM countries the presence of the State in the health sector is strong. There are many countries which have only one main hospital operated by the government. CARICOM has taken successful measures to reduce costs in carrying out health programmes. CARICOM expects to attain a broad range of health services without borders, as well as a consolidation of private insurance companies in the region. This represents a challenge since it has not been possible to join efforts and build disciplines in this area.

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29. Manuel Almeida, of Panama's ACODECO, explained that the Commission on Free Trade and Consumer Affairs conducted a study on the preliminary draft of the law to regulate some aspects related to the marketing of drugs in the domestic market. Subsequently, a regional study was carried out on the competition conditions in the wholesale and retail distribution chain of drugs in Central America and Panama, based on the conditions for competition in the medicine sector in Central America (Diego Petrecolla - GPR Economía S.A., January 2011).

Based on the findings of the study for Central America, Panama presented the terms of reference for a sectoral study on the trade and competition problems in the health sector in the Member States of SELA. This research is intended to gain knowledge about the conditions for trade and competition in Latin America and the Caribbean in order to assess and propose alternative measures and tools to strengthen and improve market conditions in the health sector in the Member States of SELA. This study will also allow for better understanding the operation of this market, in order to increase the knowledge about the functions and institutional capacities existing in the areas of competition, economic regulation, and trade regulation in the area of health at national and regional levels. Each progress report should count on the approval of SELA.

30. Deneb Eilín Torres Gómez, Cuban Trade Policy Specialist, noted that Cuba's participation in the sectoral study is complicated, since in that country this topic, along with that of education, does not conform to any of the elements discussed here. Therefore, if a decision is made to conduct this sectoral study, Cuba reserves its right not to participate in it.

31. Eduardo Xavier, Deputy Secretary of Brazil's SEAE, pointed out that the government is the largest purchaser in the health sector. Therefore, the issue of competition in this sector should entail outlining policies related to government procurement.

32. Guardia Mendonça, representative of Argentina, stressed that it is important to organize the issues that have to do with health security, markets and the public sector. Different approaches can be used to deal with them.

33. Jorge Rodríguez, representative of Costa Rica, underscored the need for the region to strengthen knowledge, especially as regards such sensitive topics and made a recommendation for SELA and UNCTAD to create a Knowledge Bank on the issue of competition for the exchange of best practices, knowledge of jurisprudence and knowledge of markets in the countries of the region.

Public Procurement, Competition and Trade

34. Patricia Cordovilla, of UNCTAD, delivered a presentation in which she noted that public procurement is a very important sector in the economies of countries, especially developing ones, as it can account for up to 25% of GDP. She explained that in order to outline *ex ante* procedures for a public procurement system favouring competition, it is a requirement for competition to be the guiding principle of the laws on public procurement. As to the scope of application, the ideal is that the norm be the broadest possible and clearly prohibits fraudulent manipulation of tender bids.

Another element involves the decision about which is the optimal system for a given country, either a centralized or a decentralized procurement system. The decentralized system is more flexible for markets. The circle of potential tenderers must be expanded in order to facilitate the participation of bidders from around the country, especially small

and medium-sized enterprises (SMEs) and liberalize procurement markets. Finally, the system must have a balance between competition and other government procurement objectives.

In the fight against fraudulent manipulation, it is necessary to train and educate procurement agencies and carry out advocacy work for the competition authorities and exchange of experiences. Cooperation between competition authorities and procurement bodies is also needed. Mrs. Cordovilla recommended to read the document "OECD guidelines to combat fraudulent manipulation of public tenders".

35. María Teresa Lara, of the Subsecretariat on Competition and Consumer Defence of Ecuador, introduced some laws on public procurement, highlighting that SMEs have certain advantages. The law establishes the transparency of public auctions. In addition, she cited some examples of reverse auctions. This circumstance leads to the predictability of the contractual conditions, since it is a factor that allows for communication between the tenderers and potentiates the distribution of the contract among the offerors.

In conclusion, according to the structural characteristics of the market, there are strong entry barriers that favour the generation of collusive agreements. Bids of equal economic operators among themselves increase chances of incurring in collusive practices. In other words, when there is symmetry among the identified operators in all the aspects of the business, the likelihood of collusive practices increases; and, the level of mutual knowledge among the competitors in this market increases the probability of collusive practices.

36. Heidi Sada, representative of the Federal Commission on Competition of Mexico, dealt with the topic: "Technical Assistance and Regional Cooperation: Regional Centre on Competition for Latin America". She mentioned that public procurement markets are prone to collusion and worsen the State's terms of purchase. Public supply in Mexico presents a high risk of collusion and overpricing, associated with rules and purchasing strategies that facilitate the emergence of cartels. Repeated bids and those with multiple assignments facilitate collusion.

The case of medicines is an example of the existence of collusion and illustrates the effect on prices when it comes down to redesigning procurement processes in Mexico. Generic drugs account for almost half of the purchases of the Mexican Institute of Social Security. The Federal Commission on Competition investigated the existence of monopolistic practices in these markets and found, for the most purchased medicine, evidence of collusive behaviour on the basis of the evolution of prices and communications among agents. Such communications increased prior to tenders. The design of tender bids and the incentives of buyers facilitate or inhibit such collusion.

The lessons learned with the case of generic drugs may apply to other public purchases. An agreement for the implementation of the OECD guidelines was signed in January 2010. As a result, 210 officials responsible for public purchases of the Mexican Institute of Social Security received training from officials of the OECD, the Federal Commission on Competition and experts on international and alternative best practices for identifying and preventing collusion in public purchases.

Working with the Mexican Institute of Social Security has aroused the interest of other government institutions to combat collusion in public purchases. The new competition law provides the Federal Commission on Competition with the best instruments for detecting and sanctioning collusive agreements in government procurement.

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Cross-border anti-competitive practices: Challenges for emerging and developing economies

37. Hassan Qaqaya, Director of Competition Policy and Consumer Protection of UNCTAD, stressed in his speech that the identification of international cartels is one of the challenges facing the countries of the region. It has been proved that developed countries use a lot of resources for research and analysis. The detection of cartels requires research and studies in key areas of the economy. The second challenge is to process the information about the cartels. An element that must be included in the national systems of competition laws is to have adequate power to cope with these practices.

Unfortunately, many legislations do not provide for an appropriate scope for research by competition authorities.

Another challenge for competition agencies is to receive a mandate for requesting police and judicial assistance, as well as having the ability to perform legal and economic analyses. The lack of a culture of competition explains why cartels are untouchable in many cases. In some cases, the activities of these cartels end up being considered as legitimate, as they are already part of an established business model. In addition, access to documents is difficult since many companies do not cooperate or simply because those documents are not relevant as evidence. Finally, it is important to take into account the cost required for further action by the competition authority, in comparison with the advantages that this means for society in general.

38. In his presentation, Mario Ybar, Chief of the Division of Mergers and Studies of the National Economic Prosecutor's Office of Chile, underscored the need to differentiate among types of anti-competitive practices since each one of them has different characteristics, challenges and complexities. Also, a more practical vision should be adopted, from the inside, of the experiences gained as regards mergers and transnational cartels, while identifying the problems and challenges that may arise. There are two types of cross-border actions relevant for competition agencies: collusive international agreements and concentration operations.

The experiences gained by the National Economic Prosecutor's Office of Chile as regards cross-border anti-competitive practices reveal the importance and benefits of international cooperation. Chile follows two different paths in the area of cooperation. The first one is the formal way, which consists of bilateral agreements at the country level, such as free trade agreements, and at the agency level with other competition agencies. These agreements include clauses on notifications, exchange of information and coordination. The second path, which thus far has been more efficient, is using informal channels. Events such as this forum are useful for sharing experiences and lessons. Moreover, they also serve to meet officials, create real links and establish a degree of confidence with the people behind the agencies. Such links greatly facilitate cooperation whenever necessary.

39. Juliana Chinchilla Guerrero, lawyer of the Group for Competition Protection of Colombia, made a presentation on "Programmes of International Cartels in Colombia." The implementation of a programme for detecting international cartels consists of increasing the deterrent effect of the rules for competition protection and incentives to qualify for the program of benefits for collaboration. The international cartel is defined as a contract, agreement, consultation, concerted or consciously parallel practice between two or more enterprises whose members are incorporated companies or whose main domicile is located in different countries, and therefore their effects hit several territories. Therefore, Colombian legislation establishes, as the scope of the competition law, those

behaviours that have or may have effects on the Colombian economy, regardless of the nationality of the agents who engage in such conduct.

In 2012, the Superintendence of Industry and Commerce has been following up six international cartels that have already been investigated by authorities in other countries.

40. Edgar Odio, member of the Advisory Group of Experts, in his presentation on “Cross-border anti-competitive practices: Challenges for emerging or developing economies”, identified only a few developing countries – Brazil, Chile, Mexico, the Republic of Korea and Turkey – that have any significant experience in the field of cross-border anti-competitive practices and challenges for developing countries and economies in transition. The majority of developing countries still have limitations to combat such practices locally.

Restrictions on competition and international cartels frustrate the results of international trade. The majority of international cartel investigations carried out by these countries imply a certain level of cooperation with developed countries, either through an informal information exchange or through coordinated surprise inspections.

Odio noted that the commitments on competition in free trade agreements can create a complementary agenda, which could promote greater synchronization and complementarity between competition and trade policies.

Finally Odio recommended to conclude the studies of the Working Sub-Groups, define best practices of coordination between local authorities, analyze markets with international components and evaluate the competition norms in Free Trade Agreements.

Needs for technical assistance and bilateral, subregional and multilateral cooperation

41. Pierre Horna, official in charge of UNCTAD’s COMPAL Programme, made a presentation entitled “Needs for technical assistance and bilateral, subregional and multilateral cooperation”. He stressed the need to analyse in greater depth the casuistry of competition with an impact on trade affairs, as for example the market of liquid oxygen in Latin America and the Caribbean. He also made emphasis on the need for the authorities in charge of trade defence to analyze anti-dumping cases that have an impact on competition issues, as well as cross-border practices; and the need to continue with the regional dialogue between trade and competition authorities, for instance at the WGTC and COMPAL.

The challenges are: to reduce the asymmetry between countries with greater casuistic development vis-à-vis the less developed ones; create incentives for trade defence agencies so that they take actions; increase dialogue among competition agencies as regards investigation of cases, particularly the impact of import or export cartels – an issue that could be included in regional networks; and finally, the capacity to absorb the technical assistance provided by international cooperation.

42. Kusha Haraksingh, President of the CARICOM Competition Commission, said that in view of the global crisis, cooperation donors are now more cautious with support programmes. CARICOM has an ambitious agenda on trade negotiations, in which Latin American countries – such as Dominican Republic, Panama and Costa Rica – play a very important role. As we develop trade integration links among our countries, it is urgent to

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coordinate efforts and ensure the necessary technical capacities and experience to work together in facing the challenges posed by the issue of competition.

CARICOM has negotiated trade and development agreements which include technical assistance. It has had access to IDB funds for training and education which, along with cooperation with Argentina, has allowed it, for instance, to train judges in the Caribbean. The Latin America and Caribbean region has the potential to develop its competition institutions. CARICOM has also requested greater exchange of methodologies, internships, more meetings and seminars and the conduction of studies on the characteristics of small economies.

43. Oscar Lanza, of Honduras, noted that in order to build capacities in Central America, it is necessary to coordinate the capacities of competition agencies and promote legislation in the Central American subregion. Thus, as stated above, the exchange of experiences is important, and it is also advisable to engage the academic sector, and to train judges and officials involved in this area. Referring to the culture of competition, Lanza recommended to start through the mass media.

44. Heidi Sada, representative of the Federal Commission on Competition of Mexico, dealt with the initiative of the Regional Competence Centre for Latin America, which was created in September 2011 and signed by 13 competition agencies: Argentina, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Dominican Republic and Mexico.

The objectives of this Centre are, firstly, to carry out activities to strengthen the analysis of competition policy and, secondly, to create synergies between the activities of the Centre with SELA, UNCTAD, the international competition network, the OECD and multilateral initiatives. This Centre has an Advisory Council and a Board of donors and advisers in each subregion. The centre counts with resources from the IDB to develop manuals, studies, seminars, databases, among others, and also includes activities such as training of judges. At present, it is preparing a number of manuals and studies on quantitative techniques, telecommunications, and cooperation among competition authorities.

45. Jorge Rodríguez, representative of Costa Rica, noted that support must be provided to the activities of the Centre. Rodríguez suggested to create a Bank of projects to be submitted to different donors according to priorities.

46. Pierre Horna, official in charge of UNCTAD's COMPAL Programme, underscored the need to promote the dialogue within this working group, create synergies and conduct analyses between individual agencies.

III. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

1. The adoption of clauses on protection of competition in trade agreements favours international trade among Member Countries of SELA and with the countries of the rest of the world.
2. Relevant provisions of free trade agreements could include components of relative convergence in the area of trade and competition policies among SELA member countries.
3. It is necessary to establish mechanisms for cooperation among foreign trade and competition authorities of SELA Member States. These cooperation mechanisms should start to strengthen mutual knowledge and communication among authorities, thus increasing the exchange of best practices. In addition, they should focus on specific projects, such as the training of judges and prosecutors, competition law practice, techniques for investigation of cartels and merger control, and the conduction of joint studies.
4. In addition, emphasis was made on the importance of assessing, individually and continuously, priorities and needs in the field of technical support and institutional capacity building.
5. The WGTC agreed to finish the two reports submitted by the Working Sub-Groups 2 and 4, with members committing to send their responses to the questionnaires distributed during 2011 and 2012. The completed reports will be submitted at the next annual meeting of the WGTC.
6. Based on the needs identified in the report of Sub-Group 4, a study on the health sector in the region will be prepared.
7. As regards Sub-Group 2, participants decided to deepen the analysis of the status of inter-agency cooperation agreements on trade and competition and to establish the lessons learned based on the heterogeneous effectiveness of agreements.

RECOMMENDATIONS

1. All the countries participating in the WGTC should fill in, as soon as possible, the questionnaires distributed during 2011 and 2012 within the framework of the activities of Sub-Groups 2 and 4. Once the responses are analyzed, the Sub-Groups will complete their respective reports submitted at the II Annual Meeting of the WGTC (2012), and will present them at the III Annual Meeting of the WGTC (2013). These reports will be the first two regional documents of the WGTC.
2. Sub-Groups 1 and 3 of the WGTC, coordinated by Jamaica and Mexico, respectively, should start activities during the period 2012-2013.
3. The Sub-Group on Capacity Building, coordinated by Mexico, should submit to the WGTC a report on the structure and capacity of authorities in charge of Trade and Competition in the Member States of SELA, as well as their training needs for institutional capacity building. Particularly, the report should focus on institutional memory and knowledge management.

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4. The WGTC recommends to establish Sub-Group 5 to discuss the interface between competition policy and other public policies, The following countries expressed their willingness to actively participate in it: Venezuela, Argentina, Nicaragua, Bolivia, Ecuador, Mexico, Panama, Nicaragua and Uruguay, and the invitation was extended to Cuba and CARICOM.

5. All Sub-Groups will submit reports during the III Annual Meeting of the WGTC, and they will be discussed during the plenary session.

6. All the members of the WGTC should respond, in a timely and appropriate manner, to the requests for information might be made within the framework of the activities of the WGTC and its Working Sub-Groups.

7. Latin America and the Caribbean should promote permanent channels of dialogue and communication among national and subregional trade and competition authorities, as well as between these and their counterparts in other countries, in order to exchange experiences and best practices in this area.

8. Specifically, the WGTC should develop new mechanisms for consultation and cooperation by using the potentials of information and communication technologies (ICTs). To begin with, it is very important for Trade and Competition authorities of the Member States of SELA to clearly define their common points as regards matters relating to the WGTC, and for the WGTC Secretariat to organize them in order to ensure that all members receive all the information and communications in due time.

9. The Web site of the WGTC will be strengthened and systematized on SELA's Web portal. On that site, users can find all the information related to the WGTC, including contact data of trade and competition authorities of all Member States, the agendas, conclusions, recommendations, presentations and papers from the annual meetings, announcements of the activities of the Sub-Groups (e.g. teleconferences), documents and reports of the WGTC and its Sub-Groups, and any other relevant information.

10. In order to improve mutual knowledge among trade and competition authorities of the Member States of SELA and promote cooperation among them, a mechanism will be outlined so that they can share relevant information with the least possible effort.

11. Authorities should analyze the possibility of conducting joint studies on issues of interest to the members of SELA. The first of these studies would be on the health sector. It would be based on the terms of reference submitted by Panama in the II Annual Meeting of the WGTC and the findings of the questionnaires circulated by Sub-Group 4. Therefore, the study would start once Sub-Group 4 has drafted the final report on the responses to the questionnaire on trade and competition problems in the health sector. The Permanent Secretariat of SELA, UNCTAD and other agencies will provide support in conducting the study.

12. The possibility of conducting peer reviews between national trade and competition authorities of the Member States of SELA should also be considered, while taking advantage of the experiences gained by UNCTAD and some competition authorities in conducting peer reviews in the area of competition.

13. The III Annual Meeting of the WGTC will be held no later than September 2013. The representative of Argentina proposed to hold the meeting in Buenos Aires in May (taking into account benign weather), highlighting the readiness and commitment of Argentinean competition authorities.

14. In addition to dealing with the reports of the Working Sub-Groups, the III Annual Meeting will include sessions to discuss the following issues:

- a. The benefits of competition policy for the provision of goods and services and the promotion of small and medium-sized enterprises (SMEs).
- b. Cases in the areas of trade and competition involving more than one Member State of SELA.

A N N E X I

Agenda

**II Meeting of the Working Group
on Trade and Competition of SELA**

Lima, 18 and 19 June 2012

18 June 2012

| | |
|-------------|--|
| 9:00-10:30 | <p align="center">Opening ceremony</p> <p>In charge of personalities from Peru (President of the Republic, Indecopi, Ministry of Trade and Tourism), Spain (Embassy and CNC), SELA (Permanent Secretary), UNCTAD (Secretary General) and the Chair of the WGTC, Brazil</p> |
| 10:30-11:15 | <p align="center">Coffee break-Networking</p> |
| 11:15-13:00 | <p>HIGH-LEVEL SEGMENT</p> <p><i>How do competition clauses of regional trade integration agreements contribute to reinforce the effectiveness of national competition authorities?</i></p> <p>Moderator: Peru (host country)</p> <ul style="list-style-type: none"> • Presentations by ministers and high-level officials from the Authorities of Foreign Trade and Competition of the Member States of SELA • Debate |
| 13:00-14:30 | <p align="center">Free time for lunch</p> |
| 14:30-16:00 | <p>Report by the Working Sub-Group 2 on <i>legal instruments related with competition and bilateral, regional and multilateral trade</i></p> <p>Moderator: Dominican Republic (Vice-Chair of the WGTC)</p> <ul style="list-style-type: none"> • Introduction. UNCTAD and SELA • Panelist: Chile (leader of the Sub-Group), which will submit a report on the results of the Questionnaire sent to the Member States of SELA on <i>Internal and External Coherence between Trade and Competition Policies</i> • Debate |
| 16:00-16:30 | <p align="center">Coffee break-Networking</p> |
| 16:30-18:00 | <p>Report by the Working Sub-Group 4 on <i>Research and Sectoral Studies</i></p> <p>Moderator: Costa Rica (Vice-Chair of the WGTC)</p> <ul style="list-style-type: none"> • Introduction. UNCTAD and SELA • Panelist: Panama (leader of the Sub-Group), which will submit a report on the results of the Questionnaire sent to the Member States of SELA on Trade and Competition Problems as regards the Health Sector in the Member States of SELA, as well as a proposal on the terms of reference to conduct a sectoral study on a regional scale • Debate |

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19 June 2012

| | |
|-------------|--|
| 9:00-9:30 | Coffee break-Networking |
| 9:30-11:00 | <p>Public Procurement, Competition and Trade</p> <p>Moderator: (to be determined)</p> <ul style="list-style-type: none"> • Introduction: UNCTAD and SELA • Panelists: (to be confirmed) • Debate |
| 11:00-12:30 | <p>Cross-border anti-competitive practices: Challenges for emerging and developing economies</p> <p>Moderator: Brazil (Chair of the WGTC)</p> <ul style="list-style-type: none"> • Introduction: UNCTAD and SELA • Panelists: (to be confirmed) • Debate |
| 12:30-14:00 | Free time for lunch |
| 14:00-15:30 | <p>Needs for technical assistance and bilateral, subregional and multilateral cooperation</p> <p>Moderator: (to be determined)</p> <ul style="list-style-type: none"> • Introduction: UNCTAD and SELA • Panelists: (to be confirmed) • Debate |
| 15:30-16:30 | <p>Discussion on the Conclusions and Recommendations of the Meeting and the future work of the WGTC</p> <p>Moderator: UNCTAD</p> <ul style="list-style-type: none"> • Presentations: Chair and Vice-Chairs of the WGTC • Debate |
| 16:30-17:00 | Coffee break-Networking |
| 17:00-18:00 | <p>Closing Session</p> <p>In charge of personalities from Peru, Spain, SELA and UNCTAD</p> |

A N N E X I I

Closing speeches

Closing speech by Mr. Juan Acuña, Coordinator of Relations with Member States - SELA

On behalf of SELA, we would like to express our recognition to the Government of Peru for organizing this important regional meeting, to UNCTAD for its technical and administrative support and to the Kingdom of Spain, which has supported us in all the meetings that the Working Group has held. We also want to acknowledge the quality of the participations and presentations.

One of the things that we are going to report to the Latin American Council is the high level of participation of this working group and the important role that it is currently playing in the region.

Thus, we are very happy with the results. There are many commitments but we are also very optimistic about the future of this Working Group and the important role that it will play in the future of Latin American integration. Thanks a lot.

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

It was really for us a pleasure and satisfaction working with INDECOPI, with the Chairman of the Working Group on Trade and Competition and with you, with SELA's team, and particularly with all participants and experts who have contributed to the great success of this meeting. Five years ago we started this process with the confidence that we could keep this level of close and substantial cooperation. I am proud to participate in this work and UNCTAD is fully committed to support the whole group and each member individually. Once again, thank you all and let us keep working on this topic.

Closing speech by Luis Martínez, Commercial Counsellor of the Embassy of the Kingdom of Spain

For our part we simply wish to say that it is a pleasure to see that the contributions made by our country translate into useful work such as the one carried in these two days. We also thank all the organizations involved: UNCTAD, SELA, the Peruvian Government represented by MINCETUR and by the President of INDECOPI. You are all part of an effort being made by Spain for some time now, within its possibilities, to promote this type of works and public goods that contribute to Latin American citizenship, ultimately benefitting everyone. We make special emphasis on the Latin American region for reasons that are well known. As we already discussed it in the past two days, these issues are also of great importance. Actually, in the current economic environment, trade and competition show interactions and in some cases important contradictions, the analysis of which is very relevant since it definitely contributes to improve public policy making.

Suffice it to say, for example, that one way to boost competition in small-sized countries whose sectors may present monopolistic business is through collaboration among competition authorities to deal with mergers and acquisitions of a transnational nature. At the end, this goes slightly beyond traditional national jurisdictions of competition authorities and, in this context, the topics discussed here gain special relevance. I really thank everyone and wish you all the best in the next meeting, which I understand will take place in Argentina.

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Closing speech by Mr. Victoria Elmore, on behalf of MINCETUR PERU

Dear members of the Working Group on Trade and Competition of Latin America and the Caribbean, on behalf of MINCETUR, I would like to address a few words to tell you that it has been a real pleasure for us, and a great responsibility, to host the second annual meeting of this Working Group. We hope that you have taken advantage of the debates during this meeting and also that you have enjoyed a bit of your stay in Lima during these two days.

As you know, the initiative to officially create this Working Group as a regional forum of authorities seeking to ensure coherence between trade and competition policies in Latin America and the Caribbean emerged after two preparatory meetings in Venezuela and Brazil, which led to the first meeting of the Group in Bogota last year. Importantly enough, this Second Meeting of the Group not only reflects the continuous joint effort on the part of UNCTAD and SELA Member States to continue and strengthen the activities agreed upon during the first meeting of the Working Group, but it also serves as a space for planning working strategies among all members so that the countries in the region can exchange experiences and knowledge as regards trade and competition issues, with the purpose of identifying best practices at the regional level in both areas, promoting their dissemination as well as improving synergies between policies and trade and competition institutions in the region.

We must not forget that there is a complementary relationship between trade and competition policies. The latter contributes to growth of international trade and economic development, as it regulates practices which may distort markets and harm consumers or industries even when the trade barriers imposed by a Government are eliminated. Our countries must strengthen competition policies, taking into consideration that we are still vulnerable to anti-competitive practices, due to deficiencies in our business structure, distribution channels, the asymmetries of information about markets, products and credits, and smaller markets.

We hope that this Working Group continues through time because we are confident that in the future it will make significant contributions to the development of coherent trade and competition policies in our region.

A N N E X I I I

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