

**Working Group on the Interaction
between Trade and Competition Policy**

REPORT ON THE MEETING OF 2-3 OCTOBER 2000

Note by the Secretariat

1. The twelfth meeting of the Working Group on the Interaction between Trade and Competition Policy took place on 2-3 October 2000, under the Chairmanship of Professor Frédéric Jenny.

2. At the outset of the meeting, the Chairman noted that, as had been agreed at the informal meeting of the Working Group on 27 March 2000, the purpose of the meeting was to carry forward the work of the Working Group as provided for by the General Council in its decision in December 1998 (WT/GC/M/32, page 52). That decision read as follows:

"The General Council decides that the Working Group on the Interaction between Trade and Competition Policy shall continue the educative work that it has been undertaking pursuant to paragraph 20 of the Singapore Ministerial Declaration. In the light of the limited number of meetings that the Group will be able to hold in 1999, the Working Group, while continuing at each meeting to base its work on the study of issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, would benefit from a focused discussion on: (i) the relevance of fundamental WTO principles of national treatment, transparency, and most-favoured-nation treatment to competition policy and vice versa; (ii) approaches to promoting cooperation and communication among Members, including in the field of technical cooperation; and (iii) the contribution of competition policy to achieving the objectives of the WTO, including the promotion of international trade. The Working Group will continue to ensure that the development dimension and the relationship with investment are fully taken into account. It is understood that this decision is without prejudice to any future decision that might be taken by the General Council, including in the context of its existing work programme."

3. Following the approach used by the Group in its previous meeting and in its meetings in 1999, the Chairman suggested that the Group organize its work at the current meeting as follows:

- first, to take up the relevance of the fundamental WTO principles of national treatment, transparency, and most-favoured-nation treatment to competition policy and vice versa;
- then, to examine approaches to promoting cooperation and communication among Members, including in the field of technical cooperation;
- next, to consider the contribution of competition policy to achieving the objectives of the WTO, including the promotion of international trade;
- and finally, to look at other issues that Members wish to raise that are relevant to the Group's mandate to study the interaction between trade and competition policy.

He noted, as well, the guideline provided in the above-noted decision of the General Council that the Working Group should ensure that the development dimension and the relationship with investment were fully taken into account. It seemed that this was something which should be done in relation to each of the above four work elements.

I. THE RELEVANCE OF FUNDAMENTAL WTO PRINCIPLES OF NATIONAL TREATMENT, TRANSPARENCY AND MOST-FAVoured-NATION TREATMENT TO COMPETITION POLICY AND VICE VERSA

4. No contributions were received or statements made on this item.

II. APPROACHES TO PROMOTING COOPERATION AND COMMUNICATION AMONG MEMBERS, INCLUDING IN THE FIELD OF TECHNICAL COOPERATION

5. The representatives of Japan (two contributions), Switzerland, the European Community and its member States, Korea, Canada and Thailand introduced written contributions on this agenda item (documents WT/WGTCP/W/156 and 157; WT/WGTCP/W/151; WT/WGTCP/W/152; WT/WGTCP/W/154; WT/WGTCP/W/155 and WT/WGTCP/W/150, respectively). In addition, the representative of Croatia introduced a non-paper (to be issued as WT/WGTCP/W/158) and the representatives of UNCTAD and the OECD provided updates on relevant activities of their organizations. The representatives of Australia; Canada; the European Community and its member States; Hong Kong, China; Hungary; India; Indonesia; Japan; Kenya; Korea; Malaysia; Norway; Pakistan; the Philippines; Switzerland; Trinidad and Tobago; and Tunisia made oral statements or posed/responded to questions.

6. The representative of Japan, introducing document WT/WGTCP/W/156, said that, as trade barriers were lowered and economies continued to globalize, it was necessary to address not only anti-competitive practices taking place within the territories of individual countries, but also anti-competitive practices with an international dimension. Cooperation among national competition agencies was vital to meeting the challenge. While there was already a substantial amount of international cooperation on competition policy by means of bilateral and regional agreements, a multilateral framework on competition policy would support the efforts of WTO Members to develop their competition regimes and accelerate cooperation to better enforce competition law. In respect of some areas, there might be added value that could only be obtained through a multilateral framework. His delegation felt that, through the discussions of the Group, a consensus had started to emerge in respect of some basic elements of a multilateral framework on competition policy, comprising at least three such elements: (i) the sharing of information and experiences with respect to national competition laws and enforcement policies and practices; (ii) the provision of technical assistance; and (iii) actions to facilitate the coordination of enforcement policies and initiatives, including voluntary notifications. The first element would create valuable opportunities for improving national competition regimes, through the dissemination of best practices. Regarding the second element, the benefits from the provision of technical assistance were not limited to helping developing countries set up adequate competition regimes; in fact, technical assistance could pave the way for closer international cooperation on competition matters with the participating countries. With respect to actions to facilitate coordination, this could involve the exchange of general information concerning enforcement policies and procedures and specific information pertaining to individual cases under investigation and would allow the Members involved to engage in consultations and possibly coordinate remedies on the basis of mutual agreement.

7. In the view of the Japanese delegation, the principles of transparency and non-discrimination were a *sine qua non* of both trade and competition policies and for this reason such principles should also be embedded in a multilateral competition framework. In addition, a prohibition of practices considered to be anti-competitive *per se*, particularly hard-core cartels, could be part of a framework

which could also incorporate rules for investigative procedures built upon the principles of transparency and non-discrimination. Concrete obligations in this regard could include the observance of "due process", protection of the opportunities to be heard, protection of confidential information, and sufficient relief measures. A multilateral framework should be sufficiently flexible to take account of differences in the level of development of national competition regimes, the weight given to specific development policies, and relevant economic and social conditions.

8. Continuing, he suggested that a multilateral framework could be particularly useful in assisting Members to address a number of specific issues that currently were the subject of discussion or otherwise merited attention. Two such issues were: (i) the problem of overlapping jurisdiction and the lack of harmonized procedures for the review of mergers with international implications, which imposed significant administrative costs and sometimes led to the abandonment of potentially beneficial mergers; and (ii) export cartels. Since the latter constituted a clear distortion of international trade, they would seem to fall clearly within the mandate of the WTO. Other topics that merited consideration included the handling of confidential information; how to address violations of the proposed agreement; and the potential role in a multilateral framework of incremental commitments, as in the GATS.

9. The representative of Switzerland, introducing document WT/WGTCP/W/151, said that a variety of arguments had been put forward in support of enhanced cooperation in the fight against anti-competitive practices, including at the multilateral level. To begin with, an asymmetry existed between the activities and market power exercised by firms and the reach of domestic competition laws; this was a concern especially for smaller countries with limited bargaining power. If national authorities acted in a coordinated manner, they would be in a far stronger position to address anti-competitive behaviour of an international nature. In addition, reflecting the calls that had been made for more concrete discussion in the Working Group, it was important to consider the consequences of pursuing specific alternatives for cooperation. In the interest of this, the paper by his delegation examined specific elements of a possible multilateral agreement on competition matters, including: (i) a prohibition of hardcore cartels (this would not imply, however, that national competition regimes should be limited to controlling hardcore cartels; whether other types of anti-competitive behaviour should be addressed would be a matter for each Member to decide); (ii) modalities for cooperation between Members, including the designation of a "national contact point"; and (iii) the application of the WTO principles of transparency and non-discrimination to national competition regimes. He suggested that the Group would benefit from a paper prepared by the Secretariat elaborating on the possible implications of the application of WTO principles in the context of competition policy.

10. The presentative of the European Community and its member States, introducing document WT/WGTCP/W/152, said that the paper was intended to facilitate more specific consideration of the possible elements of a multilateral agreement on competition. It was not, however, intended to prejudge the question of whether and when to launch negotiations on this matter; this was a political matter to be decided outside the Working Group. The first part of the paper reviewed the main arguments in support of a multilateral agreement on competition. The starting-point of these arguments was the recognition that, in a globalized economy, anti-competitive practices were increasingly international in nature. Such practices, which included international cartels, export cartels, import cartels, and abuses of dominance by foreign multinationals, could clearly have an adverse impact on international trade including, but not limited to, market access effects. Such practices could only be tackled effectively by coupling the application of domestic competition laws with effective international cooperation. Arguably, the need for such cooperation was much greater in the case of small or developing economies. His delegation was of the view that, while cooperation of a bilateral or regional nature could indeed be useful, a multilateral dimension to cooperation was needed since the practices at issue often went beyond the territories covered by bilateral and regional agreements and, in any case, a multilateral agreement could add momentum and emphasis to the fight against the practices noted, which had a clear detrimental impact on both trade and the development prospects of Members. With reference to the overall role of competition policy in economic

development, and the need for cooperation to assist developing countries in dealing with the impact of anti-competitive practices, he referred to a Roundtable on Competition Law and Policy which had been organized by the Secretary of State for International Development of the United Kingdom in July 2000 (copies of a summary report on the Roundtable were made available to the Group).

11. Continuing, he said that the second part of the paper by his delegation discussed three specific possible elements of a multilateral agreement on competition policy, namely: (i) core principles of competition law and policy, (ii) modalities of cooperation, and (iii) specific measures to support competition regimes in developing countries. With respect to the first element, from the perspective of his delegation, the objective of a multilateral agreement on competition was not to harmonize national competition regimes, but rather to promote international cooperation in bringing international anti-competitive practices under control, and to do so on the basis of common views regarding such practices. In recognition of this, his delegation foresaw the use of core principles that would embody a significant degree of progressivity and flexibility, rather than rigid rules, as the building blocks of a multilateral framework. It was evident, however, that, although there was significant diversity in national competition regimes, there was also a broad consensus that hard core cartels posed a key challenge to competition policy. Accordingly, a prohibition of such cartels as well as elements relating to transparency and the non-discriminatory application of competition law should be regarded as core principles to be incorporated in a multilateral framework. Nonetheless, a requirement to apply competition law in a non-discriminatory way would not rule out considering the exclusion of sensitive sectors from the scope of such law. With regard to the second element, under a multilateral competition agreement, cooperation could have at least four dimensions: (i) case-specific cooperation; (ii) exchange of experiences through a multilateral forum; (iii) coordination in the provision of general technical assistance; and (iv) enforcement assistance to developing countries. These aspects of cooperation would yield a variety of benefits. Case-specific cooperation would basically involve a commitment by countries to exchange non-confidential information pertaining to the case at hand, as well as a readiness to engage in consultations when the interests of other WTO Members were affected. It could also go beyond this scenario; for instance, a developing country investigating a foreign multinational could seek assistance from the competition authorities of the home country to obtain relevant information. Competition authorities from developing countries would also benefit greatly from participating in a multilateral forum where experiences in the application of competition law would be discussed. An enhanced and more coordinated approach to technical cooperation would also be of direct benefit to the recipient countries. Finally, as had been suggested by the representative of Trinidad and Tobago, while technical assistance of a general nature was important, developing countries could also benefit from more focused assistance with respect to individual competition investigations at a later stage.

12. The representative of Korea, introducing document WT/WGTCP/W/154, said that the paper built upon the approach embodied in the "three-step" road map which had been put forward in the paper presented by Hong Kong, China in the previous meeting of the Group (document WT/WGTCP/W/141). His delegation concurred with Hong Kong, China that the kinds of anti-competitive practices upon which the Group should focus should (i) have a significant and demonstrable negative impact on international trade and investment, and (ii) be prevalent in the sense of affecting a cross-section of WTO Members. The Group should concentrate its deliberations on following through with the analysis called for by that framework; for instance, on designing guidelines for identifying competition issues of direct relevance to international trade, and on exploring feasible multilateral options, taking due account of diversities among Members in their levels of economic development and in their national competition regimes. Thus, the Group should strive to reconcile the established practices of advanced countries, resulting from a long history of competition law enforcement, with newer approaches necessary to accommodate the specific needs of developing countries. His delegation felt that the WTO was the best available forum to address competition problems of great relevance to international trade and the achievement of WTO goals. With regard to the kinds of multilateral options that should be pursued, although progress could be achieved in solving international competition problems through technical assistance, capacity building

and the institution of a competition policy review mechanism, a multilateral framework on competition policy was more powerful and should be put in place to supplement such initiatives. In the opinion of his delegation, it was also necessary to consider the reform of existing WTO rules, such as those embodied in the Antidumping Agreement, with a view to making them more compatible with the promotion of competition.

13. The representative of Canada, introducing document WT/WGTCP/W/155, said that the paper focused on one of the major questions before the Group relating to a possible multilateral framework on competition policy, namely the nature of the provisions that such a framework would incorporate on international cooperation, in the light of Canada's concrete experiences in this field. In the opinion of his delegation, a distinction had to be made between cooperation and technical assistance. While the latter involved the provision of advice to countries regarding the drafting or implementation of competition laws, or the enhancement of related institutional capacities, the former dealt with specific issues of common interest arising from the enforcement of competition law. Nonetheless, it was clear that the two overlapped, to a degree. Cooperation was the ideal tool for dealing with the problems arising from overlapping jurisdiction of two or more competition authorities over the same activity or transaction. Cooperation was also an essential tool to deal effectively with international cartels and alliances between firms. Cooperation could take place at different levels and in different forms. It could be as simple as the exchange and dissemination of basic non-confidential information such as legislation and enforcement guidelines. Even at this basic level, cooperation facilitated the development of useful channels of communication between national competition authorities that could engender a dynamic of common interest. Cooperation could also extend to mutual assistance in the investigation of specific cases of anti-competitive practices such as hardcore cartels. Cooperation could take place in a variety of contexts. For example, the relevant agreements could be either state-to-state or agency-to-agency. Cooperation could also take place at the multilateral level. For example, Canada observed two OECD Recommendations in the area of competition policy: the 1995 Recommendation on Cooperation and the 1998 Recommendation on Hard-Core Cartels. An advantage of this kind of cooperation was that it promoted the adoption of "best practices" which, in turn, increased the possibilities for convergence in approaches, or "soft harmonization", in the long-run.

14. Continuing, he suggested that the growing network of bilateral agreements on competition policy constituted demonstrable evidence of the value of cooperation in a global marketplace. His delegation saw a need for a more ambitious scheme for cooperation to achieve true efficiency in competition law enforcement. Cooperation commitments in the context of a WTO framework agreement on competition policy would provide the cohesion and stability necessary for a deepening of international anti-trust relationships. It was important to note that a multilateral agreement would not interfere with ongoing case-specific cooperation taking place through bilateral agreements but rather would supplement this kind of cooperation. Another important consideration was that diversity in legal and economic structures and approaches to competition policy did not preclude or impact negatively on the ability of countries to cooperate. A central theme in Canada's efforts to engage in cooperation in this field had been to promote a minimum level of international compatibility in the application of competition law, without compromising the country's fundamental jurisdiction over conduct affecting its own territory. A similar theme would be at the core of cooperation in a WTO setting. His delegation viewed this kind of cooperation as incremental in nature, to be achieved in a step-by-step manner. The first phase in this exercise would be largely educational, concentrating on the development of enforcement capacity. The second phase would have as its primary feature the development and implementation of notification procedures. A Member undertaking an investigation that might affect important interests of another Member should notify the latter at an appropriate stage in the investigation. More meaningful steps towards enhancing international cooperation would be the coordination of enforcement actions against international cartels and the development of a common approach with respect to procedural issues in merger review. The latter step would aim at minimizing the transaction costs involved in getting a merger plan reviewed through different jurisdictions. Finally, his delegation was of the view that cooperation would produce the best possible

results if it was voluntary. Thus, a cooperation mechanism as part of a multilateral agreement on competition policy should not undermine the very essence of meaningful cooperation and should preserve the discretion of Members to act. In any event, in the light of the independent and discretionary nature of competition authorities, it would be difficult if not impossible to make cooperation mandatory.

15. The representative of Japan, introducing document WT/WGTCP/W/157, recalled that, at the last meeting of the Working Group, a view had been expressed by some Members that, historically, the rapid growth of the Japanese economy had been facilitated by the subordination of competition policy to industrial policy. The second paper prepared by his delegation demonstrated that this had not been the case; rather, industrial policy and competition policy had played a synergetic role in the economic development of Japan. The post-war period had seen the development of many new industries, ranging from sewing machines to machine tools, but these industries had flourished principally as a result of private initiatives and without the assistance of any special preferential measures. The paper discussed two examples of particular sectors, namely petrochemicals and automobiles, in which intense competition had been a key factor underpinning economic growth, notwithstanding the role of industrial development policies. Concerning the petrochemicals sector, since efficient production in this sector required significant economies of scale, Japan's Ministry of Trade and Industry (MITI) had promoted the consolidation of producers of ethylene into sufficiently large units by requiring minimum production levels. In MITI's view, consolidation had been helpful not only to achieve efficiency, but also to mitigate the impact of market downturns. No limits had been placed, however, on the number of firms meeting the minimum production levels that could enter the industry. Hence, the number of ethylene producers had almost doubled over a few years, pushing domestic prices into a steep decline. This decline had raised domestic demand for ethylene and the market boomed, which in turn had attracted more entrants. The obvious conclusion was that the ethylene industry had grown by virtue of competition amongst a large number of market players. In the case of the automobile industry, the Honda Motor Company had refused to go along with a government recommendation not to enter the car industry, becoming a leading producer in a short time. Other companies followed Honda's example, and in the end nine companies ended up vying against one another in the automobile market. In fact, Japan's industrial policy had sought to facilitate competition by strengthening the competitiveness of firms, for instance, by developing assistance schemes in the area of R&D. While technological advances had played an enormous role in the post-war growth of the Japanese economy, even with respect to R&D efforts the private sector had taken the lead and the government a complementary role. Japan's competition policy had also not resulted in the restriction of competition. Temporary anti-recession cartels had been authorized at times, to counteract heavy demand slumps in specific markets that could have triggered off a chain of corporate collapse, but such authorizations had been clearly written into Japan's anti-monopoly laws and were subject to strict conditions. The same applied to other exemptions from the anti-monopoly laws covering, for example, specific concerted actions by small businesses to adjust to short-term economic downswings. Except for these well-defined situations, Japan's anti-monopoly laws had always been applied in full force. For instance, in 1969 the two leading Japanese steel companies had merged. Prior to merging, their merger plan had been reviewed by Japan's Fair Trade Commission. From an industrial policy perspective, an argument could have been made that that merger should have gone unchallenged for the sound development of the Japanese steel industry. Nevertheless, the Fair Trade Commission had come to the conclusion that this merger could restrict effective competition and on this basis it had conditioned approval of the merger on a number of divestitures. For instance, the manufacturing of railroad rails, which would otherwise have become a monopoly, had been split off and sold to competing companies. In sum, a salient feature of Japan's post-war economic growth had been the sheer intensity of competition in the markets concerned. The Japanese government had contributed to strengthening the rivalry among companies by creating market mechanisms with positive effects in this regard. According to the experience of Japan, it was important to introduce competition policy at an early stage of development, though appropriate industrial policy measures could simultaneously be employed to promote economic growth. In today's liberalized world economy, the introduction of competition policy by developing countries seemed even more urgent.

The increasing number of mergers among multinational companies and instances of cartels and other anti-competitive practices with an international dimension could have a heavy adverse impact on developing economies. Thus, the establishment of a competition regime was nowadays a critical task for developing countries seeking to achieve a dynamic market economy.

16. The representative of Thailand, introducing document WT/WGTCP/W/150, said that the paper presented an overview of Thailand's competition law, its historical development and the difficulties that had been encountered in implementing it. The development of Thailand's competition regime went back to the Anti-Profiteering Act of 1947 and the Price Fixing and Anti-Monopoly Act of 1979, respectively. As these Acts had not provided proper protection to consumers and small businesses from monopoly and restrictive business practices, they had ultimately been replaced by the Price of Goods and Services Act of 1999 and the Business Competition Act of 1999. The latter focused on curbing anti-competitive behaviour and therefore served one of the main objectives of Thailand's amended constitution, which was to support the operation of a free market economy. It also complemented other liberal legal instruments recently adopted by Thailand, such as the Foreign Business Act and the Civil and Commercial Codes. The Competition Act divided anti-competitive behaviour into three main categories: (i) abuse of dominance; (ii) mergers resulting in monopolies or unfair competition; and (iii) other anti-competitive practices, such as price fixing or the geographical allocation of markets. A Competition Commission had been set up as enforcement body. Since the Competition Act came into effect, the Competition Commission received and issued findings with respect to two complaints. The first complaint had been a case of tied sales, where a dominant producer of liquor bundled the sale of this product with the sale of beer. As regulations defining abuse of dominance had not been issued at the time the investigation was conducted, the Commission had been unable to determine that such behaviour was illegal under Thailand's competition law. However, it had requested the producer in question to stop its practices. The second complaint had involved alleged collusion by two cable TV operators. As those two firms had recently merged, the Commission had ruled that the two firms had subsequently become a single undertaking which ruled out the possibility of collusion. Nevertheless, the Commission had requested the sectoral regulator to monitor the future pricing behaviour of the company concerned.

17. Continuing, she said that her delegation hoped that international organizations such as the WTO would step up their efforts to equip developing countries with substantive knowledge and appropriate tools to establish and implement effective competition regimes. Many questions regarding the possible interplay between competition policy and existing national and international development plans and policies required further discussion in the Working Group. For example, how could developing countries take part in reviewing the mergers of major transnational corporations that took place outside their own territories but could adversely affect their economies? How could international cartels be detected and dealt with effectively in developing countries? Could this issue be adequately addressed through increased international cooperation and coordination? Lastly, she drew the attention of the Working Group to a Regional Workshop on Competition Policy which had been organized by the WTO Secretariat in cooperation with the Governments of Thailand and Japan and which had taken place in Phuket, Thailand, in July 2000. The Workshop had been attended by 22 WTO Members and observers from South, Southeast and East Asia and had dealt with a broad range of matters that were under consideration by the Working Group, including: (i) the relationship between competition policy and economic development; (ii) the special challenges facing competition agencies in developing countries, and how they might be assisted by the international community in meeting these challenges; (iii) pros and cons of possible new modalities of cooperation in competition policy at the multilateral level; and (iv) the nature of a possible multilateral framework on competition policy. The Workshop had not sought to arrive at any conclusions, but rather to have a full airing of the issues from all sides of the debate. The proceedings of the Workshop might well be of interest to the Group (in response to this suggestion, a summary report on the Workshop was made available by the Secretariat).

18. The representative of Kenya informed the Working Group about recent developments in the East African region in the area of competition policy. He said that, on 30 November 1999, Kenya, Tanzania and Uganda had signed the East African Community Treaty (EAC Treaty). Following ratification by all three partner states, the EAC Treaty had come into force on 7 August 2000. Article 75(i) of the Treaty referred to competition law and policy. The Sectoral Committee on Trade, Industry and Investment had recommended the establishment of a common competition regime in tandem with a customs union, within a period of four years from the coming into force of the Treaty. A Competition Law and Policy Workshop which had been held on 11-12 May 2000 had recommended that the common competition regime be established separately from the customs union. This recommendation had been adopted by the Sectoral Committee on 15 September 2000 and had been subsequently presented to the EAC Council of Ministers, where it was currently awaiting ratification. Member states were expected to set up their own national competition regimes to assist in the establishment of a common regime. The provision of technical assistance was essential in this regard.

19. The representative of Croatia, introducing a non-paper by her delegation (to be issued as WT/WGTCP/W/158, with the assent of the Working Group), said that it addressed issues relating to the role of competition policy in economic development in addition to Croatia's national competition legislation. Perhaps, the most important issues that a competition authority faced were: first, to ensure free market access by regulating the conditions operating within the market post-entry; and, second, to eliminate and/or to decrease any private barriers to the market. These conditions were a *sine qua non* for economic development and to ensure the inflow of foreign investment. However, there were other preconditions that were needed for successful market access, illustrating the contribution that competition policy could make to development. For instance, from the point of view of Croatia, competition advocacy activities and the promotion of a competition culture were essential. Recent amendments to the Croatian competition law in 1998 had established strong protection of market access and dealt with various kinds of abuses of a dominant position or monopolistic practices in the market. The enforcement of competition legislation and policy to eliminate barriers to market access made an important contribution to ensuring favourable market entry conditions for both domestic and foreign suppliers. Market conditions post-access were also important to market entry – underscoring the importance of traditional national treatment commitments. The paper discussed various questions relating to trade and competition in goods and services, including with reference to the principles of the General Agreement on Trade in Services. She also drew attention to some specific issues in connection with new obstacles to market entry. For example, contractual arrangements, including franchising arrangements, in the services sector and in business in general could and often did effectively create private barriers to market access for domestic as well as foreign companies. The liberalization of the service sector would have a strong impact on the free trade of goods and national policies of consumer protection and business community. Distribution services were an indispensable part of the networks through which services and goods were distributed on a large scale to ensure a higher level of satisfaction of consumers' needs at moderate prices. With regard to the matter of technical assistance, she informed the Group that for the purposes of improvement of international cooperation in the implementation and enforcement of competition law and policy, the agency for the protection of market competition of the Republic of Croatia had started a project involving the exchange of information with neighbouring countries. This project needed additional financing, which was currently being discussed. Perhaps the most important issue that influenced the improvement of competition policy was the extent of international cooperation in the field.

20. The observer from UNCTAD informed the Working Group that the Fourth Review Conference on the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices had been held the previous week in Geneva. In preparing for this conference, five regional seminars had been organized by the UNCTAD Secretariat: one in India, for Asia and the Pacific region; another in the Ukraine, for Central/Eastern European and CIS countries; another in Morocco for African and middle-eastern countries; another in Zambia, for

southern African countries; and another in Costa Rica, for Latin American and Caribbean countries. Each seminar had resulted in a declaration, which had served as input to the deliberations leading to the overall Resolution which had been agreed upon at the Conference. In the Resolution, the Conference had reaffirmed the fundamental role of competition law and policy for sound economic development in addition to the continuing validity of the Set.¹ The Set had been redesignated as the "UN Set of Principles and Rules on Competition", for ease of reference. Additionally, the Conference had recommended to the UN General Assembly to convene a fifth review conference in the year 2005. The Resolution directed the Intergovernmental Group of Experts on Competition law and Policy to study at its next session the topics of cooperation regarding merger control and the interface between competition policy and intellectual property rights. The UNCTAD Secretariat was instructed to prepare for next year a new chapter of the Model Law addressing the relationship between a competition authority and regulatory bodies, including sectoral regulators. The Resolution also laid out the broad lines that UNCTAD should pursue in its future work in this area, including focusing on the following themes: (i) capacity building; (ii) competition advocacy; (iii) specialized studies on the interplay between competition, competitiveness and development; and (iv) providing inputs to possible international agreements on competition, including by clarifying the ways in which such agreements might apply to developing countries, with reference to preferential or differential treatment; and studying the role of dispute mediation mechanisms.

21. The observer from the OECD informed the Group of a report that had been published recently by her Organization on the subject of Hard-Core Cartels, in conjunction with a meeting of the OECD Council at the Ministerial level.² The report detailed a number of actions that had been taken by OECD member governments to implement the OECD Recommendation on Hard Core Cartels which had been adopted in 1998. It called for an expanded three-year phase of the Organization's anti-cartel programme, on the basis of evidence that the extent of harm caused by cartels in member economies was substantially higher than had previously been understood. A number of useful enforcement tools for dealing with cartels, including leniency programmes for informants, were also discussed in the report. She reminded delegates that non-OECD member countries were invited to associate themselves with the Recommendation. The Group was also briefed on a number of other activities of the OECD in the area of competition policy and its interface with trade policy. Reference was made to the valuable cooperation that existed between the Secretariats of the OECD, the WTO and UNCTAD.

22. With regard to the impact of anti-competitive practices on international trade and economic development, the representative of Hong Kong, China, commenting on the paper by the European Community and its member States (WT/WGTCP/W/152), said that three types of anti-competitive practices had been identified in the paper as potentially undermining the benefits of trade and investment liberalization for development and economic welfare: (a) practices that had detrimental effects across the markets of several countries such as international cartels, anti-competitive mergers and abuses of dominant position; (b) practices that affected market access for imports; and (c) practices that had a differential impact on the domestic markets of countries such as where a merger had benign effects in one market but had detrimental knock-on effects in another market. However, it was unclear to his delegation to what extent these practices were having a significant and demonstrable impact on world trade and investment, affecting a broad cross-section of WTO Members. In the view of Hong Kong, China, it was only when this question had been answered satisfactorily that it could be determined whether and how the WTO should take action in respect of those practices.

¹ Review of All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices: Agreed Resolution (TD/RBP/CONF.5/L.2, 29 September 2000).

² Hard Core Cartels: Meeting of the OECD Council at the Ministerial Level, 2000 (Paris: OECD, 2000).

23. The representatives of Korea, Japan, Canada, Hungary, the European Community and its member States and India said that practices of the types that had been described in the papers prepared by the European Community and its member States for the current and the previous meetings (WT/WGTCP/W/140 and WT/WGTCP/W/152) as well as in the papers by Japan (WT/WGTCP/W/156) and Korea (WT/WGTCP/W/154) could indeed have significant and detrimental effects on the trade and/or development of WTO Members. The representatives of Korea, Japan, Canada, Hungary, Norway and the European Community and its member States said that a multilateral framework on competition policy would assist developing countries to deal with the detrimental impact of these practices. The representative of Korea noted, further, that many developing and transition economies had introduced or strengthened their national competition policies as a way to lock in domestic reforms and achieve better integration into the world economy. A multilateral framework would help such countries to structure their economies in a more competition-oriented manner while dealing more effectively with conflicting domestic vested interests. For example, it would provide better protection against the dominance of protectionist stakeholders such as monopolies. The representative of India said that these were no doubt valid concerns but that this was not an exhaustive list of the problems that developing countries faced in the area of anti-competitive practices. Therefore, this was an area which deserved further attention by the Group in its future work - that is, to identify specific issues or aspects where developing countries faced problems. Some of these had been identified in previous submissions made by India, but those had to be built upon. Nonetheless, in recognizing the adverse impact that anti-competitive practices could have on developing countries, his delegation was not accepting that these problems would best be addressed through a multilateral framework on competition policy – this was something on which India would draw a conclusion once the study process had been completed, and which should not be prejudged at this stage.

24. With regard to conflicts that could arise in the application of national competition laws, the representative of Korea said that past cases had illustrated how the extraterritorial application of competition law could lead to serious jurisdictional conflicts. Jurisdictional "out-reaching" had been severely criticized by targeted countries and several of them had even resorted to "clawback laws" and blocking statutes to shield themselves from extraterritoriality. Ways to avoid jurisdictional conflicts, including new instruments of cooperation, should be explored. A multilateral framework on competition policy would be helpful in this regard.

25. The representative of Trinidad and Tobago noted that the current practice of competition authorities in many countries was to focus on anti-competitive behaviour that had an impact on their domestic markets. This was a key reason why export cartels were not generally subject to effective competition law disciplines. Regarding the relevance of the concept of positive comity in this context, the representative of Japan said that, even where the law of the requested country did not exempt such cartels, there was a problem of whether the competition authority of the requested country could address cases where there was only a minimal effect from the cartel on its own market. That was why Japan considered that by addressing export cartels, the multilateral framework could bring about a unique value-added to the world economy, which could not be realized by national or bilateral efforts alone.

26. The representative of the European Community and its member States said that, while the rules of the European Community did not expressly exempt, tolerate or encourage cartels whose effects were felt purely in export markets, the Commission would not have jurisdiction to deal with them for lack of effects in the EC market. However, in reality, that situation was not one that occurred frequently. More often, domestic cartels were encountered that, in parallel with internal price-fixing and market-sharing mechanisms, aimed at cartelising export markets. Frequently, during investigations, members of the cartel were forced to abandon such external activities since they were viewed by the Commission as supporting and complementing illegal domestic practices. Enhanced international cooperation could contribute to more effective control of cartel members in respect of the external aspects of their activities, even if that needed to be carried out by a third country with

primary jurisdiction on those external aspects. Also, the definition of the relevant geographic market was relevant to international or global cartel cases. With the progressive globalization of markets, it was no longer obvious that one could make a clear distinction between effects on domestic markets and effects on export markets. In all those situations, it was considered that there was scope for cooperation with authorities in other countries where the cartel operated. Establishing more effective means of addressing such cases would be an important benefit of new arrangements to promote enhanced cooperation at the multilateral level.

27. The representatives of Malaysia, India, Pakistan and Trinidad and Tobago expressed concerns and/or sought clarification as to the potential impact of a multilateral framework on competition policy on the ability of developing countries to implement pro-development industrial policies. It was suggested, further, that the core elements proposed in the first paper by Japan (WT/WGTCP/W/156) as well as that by the European Community and its member States (WT/WGTCP/W/152), particularly non-discrimination, might limit Members' flexibility to resort to developmental policy options, for example the use of financial incentives for R&D. The representative of Malaysia added that the paper by Japan (WT/WGTCP/W/157) had further reinforced his delegation's view that, at least in the earlier stages of economic development, countries like Malaysia needed a great deal of flexibility. The Uruguay Round Agreements had already limited some of Malaysia's options. This was in contrast to the situation that had been faced by Japan at least in the early days of its economic development. Developing countries needed flexibility to be able to administer certain policies in favour for their nationals and their constituencies. Even if a sectoral approach as in the GATS was eventually adopted, Malaysia would find that difficult to accept. Clarification was sought in relation to what kind of flexibility developing countries could have in this respect. Clarification was also sought from Japan as to whether the Fair Trade Commission strictly implemented the Japanese Anti-Monopoly Act. The representative of Pakistan added that it would be important to have a discussion on certain related issues such as exclusions, the question of incremental implementation, and retaining space for industrial policy measures on which sensitivities were acute.

28. In response, the representatives of Japan and the European Community and its member States said that the issue of subsidies was not in any way connected with the elements of a multilateral agreement on competition. There were separate disciplines on the issue in the WTO. Whatever a multilateral competition agreement looked like, it would not have any impact on the ability of countries to apply subsidies. This would be dealt with, if at all, in separate discussions in the WTO.

29. The representative of India, reflecting on the paper submitted by Trinidad and Tobago to the previous meeting of the Working Group (WT/WGTCP/W/143), said that India shared the fears and apprehensions which had been expressed by Trinidad and Tobago, in particular that the welfare-creating effects of competition might leak out of the economy if competition led to local firms being displaced by foreign firms. The representative of the Philippines said that in a regime of perfect competition, there were always those who had intrinsic advantages and, consequently, would reap a disproportionate share of the benefits. Thus, a policy based on the ideal of perfect competition meant the faster marginalization of others. It was clear that it would not be the developed countries who would be marginalized.

30. The representative of the European Community and its member States said that the proposals that were under discussion were not intended to achieve perfect competition. Rather, they were intended to assist all countries, including developing countries, to deal more effectively with anti-competitive abuses that harmed their development, trade and economic welfare. In particular, the proposed multilateral framework would empower competition authorities in developing countries to eradicate those types of practices. Accordingly, rather than being seen as an element to contribute to marginalization, it was in fact offering developing countries a tool to address practices which, the discussions in the Working Group as well as in UNCTAD had shown, had a heavy negative impact on their welfare.

31. With regard to general considerations regarding the value that might be added by a multilateral framework on competition policy, the representative of Pakistan stated that each element in the so-called core principles that were referred to in the papers by Japan (WT/WGTCP/W/156) and the European Community and its member States (WT/WGTCP/W/152) needed to be further clarified and examined in turn. He observed, for example, that most Members already had in place mechanisms which ensured transparency of whatever competition laws and regulations were in place and that, generally, there was no discrimination between national firms and foreign firms. Consequently, the Group needed to go beyond this in understanding the need for the proposed principles. The representative of Malaysia said that the issue in question was whether there should be global rules on competition. Malaysia had always stated that it should be up to domestic authorities as to whether there should be a domestic competition law. If it helped in economic development, so be it. It was completely up to the national authorities to decide and to include the elements thereof. Of course, if there was such a law there would be some core elements associated with addressing restrictive business practices.

32. The representative of Hong Kong, China noted that out of the then 138 WTO Members, only about 80 had enacted national competition laws. If "multilateral" meant all Members, then it was necessary to take account of the diversity between those who had the law and those who did not and also to consider the diversity as amongst those who had competition laws. Moreover, the terms "competition law", "competition policy" and "competition regime" had been used loosely and, in some cases, interchangeably in many of the submissions. As an example of the confusion that this created, under Hong Kong, China's domestic regime, there were competition elements in various pieces of legislation but whether these could be called "competition law" or "competition policy" was unclear. The representative of Indonesia agreed that the matter of definitions was important, particularly for non-English speaking countries such as Indonesia, given that such countries might have different understanding of what was meant by competition policy, competition law etc.

33. The representative of Australia said that her delegation welcomed the opportunity the various contributions had provided to focus on particular issues such as cartels, cooperation enforcement, technical assistance, anti-competitive behaviour and other issues that had been raised. The elements of a multilateral framework that were set out in the paper by the European Community and its member States (WT/WGTCP/W/152) provided a realistic basis for discussion of the pros and cons of such a framework, now and in the future. The papers by Korea (WT/WGTCP/W/154), Japan (WT/WGTCP/W/156), Switzerland (WT/WGTCP/W/151) and Canada (WT/WGTCP/W/155) confirmed the priority of those elements in the Group's discussions and the need to evaluate them and the other issues incrementally to get to the point where the Group could examine the feasibility of a multilateral framework, from the basis of a common understanding of the issues and of each other's diverse needs and capabilities.

34. The representative of Hungary said that, in relation to the possible elements or possible content of a multilateral framework agreement on competition policy, Hungary's view on what was desirable and at the same time feasible largely corresponded to what had been outlined in the annex to the proposal by the European Community and its member States (WT/WGTCP/W/152) regarding the core principles of competition law and policy, the modalities for cooperation and support for competition institutions in developing countries. At the same time, Hungary agreed with those delegations that had emphasized that there were several issues that required clarification, elaboration and discussion. One of the key issues was that type and degree of flexibility the envisaged multilateral framework would offer for Members, in particular, but not limited to, developing countries.

35. The representative of the European Community and its member States said that the various elements that had been put forward in the paper by his delegation (WT/WGTCP/W/152) were compatible with a large degree of flexibility by developing countries and by different WTO Members who would be parties to such an agreement. It was obvious that any international agreement implied

some limit on flexibility of countries. By definition, that was what an international agreement was. However, at the same time, countries entered into such agreements because they felt that their gains and benefits were greater than any such limits that may exist.

36. The representative of the Philippines said that the idea of the proponents of a multilateral framework seemed to be to transplant the whole system of laws which had evolved in developed countries over the years to developing countries, many of which did not have the institutional memory nor the cultural consciousness to implement such laws and might find them difficult to comply with. At this stage, the question for the Philippines would be what would the possible benefits be to developing countries by assuming more obligations in exchange for gaining the assistance of developed countries in enforcing their laws. If competition law was indeed good for developing countries, there would be no need to have a multilateral agreement since the countries would do it themselves. Currently, if developing countries made a mistake, they could always amend their laws to suit their particular national needs. However, if they had to adhere to minimum standards in a multilateral framework, they would lose the flexibility to adapt their laws to suit their particular needs.

37. The representative of Norway stated that when a developing country faced the option of whether or not to take on a competition regime, there would be several elements that needed to be judged, the level of economic development and economic policy formulation being the most important ones. The WTO Agreements implemented in other areas were among the most dynamic elements that formed the framework under which a developing country would have to make its decision. As had been mentioned by the Canadian delegate, there were cracks in the existing network of cooperation arrangements to deal with anti-competitive practices that would be exploited by firms who would target countries that were not equipped with adequate competition regimes and cooperation agreements. Norway viewed a multilateral framework as the remedy for developing countries to aid them to prevent international companies from harming their development prospects by engaging in anti-competitive practices as their markets were progressively being liberalized as result of the implementation of WTO Agreements. It would be the best remedy for developing countries to counter any negative effects of the globalization process. As the United States had pointed out, setting up a culture of competition was a difficult task and took time. Therefore, the proposed framework agreement was being put forward as a tool that could contribute to the effective implementation of competition policy by Members.

38. With regard to specific elements of a multilateral framework on competition policy, the representative of the European Community and its member States said that, in addition to the fundamental WTO principles of non-discrimination and transparency, there was value in defining a core principle in a multilateral competition agreement relating to hard-core cartels. The need for effective measures against such pernicious economic activities was one area of substantive competition policy in which there was a substantial degree of convergence of views among countries at different levels of development.

39. The representative of Malaysia said that the proposals contained in the papers by the European Community and its member States (WT/WGTCP/W/152) and Japan (WT/WGTCP/W/156) included reference to core principles such as national treatment which Malaysia could not afford at this stage of its economic development. Developing countries needed flexibility to be able to administer certain policies in favour for their nationals and their constituencies. Even if a sectoral approach was being proposed as in the GATS, Malaysia would find that difficult to accept. The representative of Hong Kong, China said that it was within the rights of Members to agree that the two principles of non-discrimination and transparency were fundamental to competition law and/or competition policy, as they certainly were to the WTO. The question was whether there were indeed any problems with regard to the observance of these principles by some Members in their competition law or policy regimes? Were there any examples that some Members did not follow those core principles and, if not, was there truly a need for a higher level of surveillance at the multilateral level? Beyond this, when it came to the questions of the substantive measures to which the principles should

apply and the relevant procedures, more exploratory dialogues would be needed before Members could grasp the practical implications for domestic policy implementation.

40. The representative of Tunisia said that, without prejudice to any position which might eventually be taken, certain points required greater consideration in the exploratory process. As regards the appropriateness of WTO principles with competition policy and vice versa, a certain specificity in applying them to competition policy had to be respected. If one took competition policy in its widest meaning, it covered matters which were already embedded in trade policy and in obligations which Members had assumed. If one took competition policy as being limited to legal protection of competition, questions would arise as to the applicability of these principles to private operators - because they were principally intended to apply in respect of government measures. Should they be applied to the manner in which a state implements its competition policy or is it a question of replacing these principles by an obligation which to an extent would guarantee a right of appeal. Looked at from this angle, why should it be limited to the law in respect of competition, and why not to other legal aspects? The obligation to non-discrimination was already embedded in Members' commitments regarding trade in goods. Why was a new instrument needed? If one took the principle of non-discrimination, looked at on the supply side, it was plausible, but looked at from the demand side, it was not obvious. Legally, it would mean doing away with tolerance for external effects and practically, it might lead to applying domestic law extraterritorially. With regard to the principle of non-discrimination, as related to the size and scope of a market at a given time, would this open the door to equitable treatment of the organized and non-organized sectors? This was already difficult to do domestically. In a similar way, it was important to clarify the application of transparency under the current proposals. Would it apply to the states' obligations, to the obligations of institutions or in relation to business practices?

41. The representative of the European Community and its member States said that the type of non-discrimination that would be addressed in a multilateral framework as it envisioned it concerned whether a competition law as such embodied any form of discrimination on grounds of nationality. His delegation was not, in its proposals, attempting to address the much larger issue of whether a country might or might not maintain domestic regulations of a discriminatory nature outside the scope of a competition law. His delegation had also tried to clarify that in its view, the binding elements of a multilateral framework on competition policy would relate only to legislation and not to the way in which the law was being enforced. Therefore, *de jure* discrimination should be included as a binding commitment in a multilateral agreement on competition policy. However, if one spoke about *de facto* discrimination, it would be very difficult to avoid a situation where the application of the law in individual cases could be affected. In his delegation's view, this was not a desirable outcome. Therefore, his delegation foresaw that issues of *de facto* discrimination should not be dealt with as binding elements of a multilateral framework. The representative of Switzerland said that the mere fact that the Group did not have before it evidence of systematic violations of non-discrimination and transparency in the field of competition law and policy was not a reason not to affirm the importance of these principles. This was particularly clear in the case of transparency. Recommendations and procedures laid down within the OECD had ensured some degree of transparency among OECD members with regard to their national competition laws and policies. However, he doubted that non-OECD members had sufficient insight into the laws and policies of OECD members, or of each other. Obviously, the greater the number of countries that adopted and applied competition laws, the more pressing would be the need to have new mechanisms to ensure transparency and non-discrimination on a multilateral level.

42. On the subject of exclusions, including with respect to the fundamental principles of the WTO, the representative of Korea, commenting on the paper by the European Community and its member States, said that exclusions were necessary if momentum for open negotiation of an agreement on competition policy was to be created. However, it was important for the working of the agreement over time that most exclusions be phased out as a lack of competition in one sector more often than not affected other sectors. Thus, as was the case with a number of WTO Agreements such

as the Agreement on Textiles and Clothing, an agreement on competition policy should provide for transition periods that allowed initial exclusions but gradually eliminated most of those exclusions. The representative of the European Community and its member States said that, in the view of his delegation, the issue of non-discrimination was a different issue from that of sectoral exclusions. His delegation recognized that, for various reasons, most or all countries had considered it necessary from time to time to implement exemptions from the application of their domestic competition laws. Therefore, the Community and its member States had adopted the view that enforceable provisions relating to sectoral exclusions in a multilateral framework should be limited to measures to ensure the transparency of such exclusions, although there was still a hope that, over time, Members would reduce the number of such exclusions, as well.

43. With respect to the role of provisions relating to cooperation in a multilateral framework on competition policy, the representatives of Canada, the European Community and its member States, Switzerland, Hungary, Norway, Japan and Korea said that these were important to enable countries to deal effectively with anti-competitive practices in a globalizing economy and should, therefore, be integral elements of a multilateral framework on competition policy. The representatives of Pakistan and India, without accepting the need for a multilateral framework on competition policy, noted that greater international cooperation was something which their countries found, in principle, to be attractive given the whole question of international enterprises operating across borders, and the benefits that cooperation, including technical cooperation, could yield in addressing anti-competitive practices in these circumstances.

44. The representative of the European Community and its member States said that, although his delegation had not proposed the adoption of core principles on substantive competition law other than in the area of hard-core cartels, the scope and coverage of domestic competition legislation was otherwise left to the determination of each country. Insofar as the extent the domestic rules prohibited other anti-competitive practices such as abuses of dominance or merger control, which was desirable in principle, cooperation could also take place regarding those other practices. In other words, the scope of the proposed measures on cooperation was certainly not limited to hard-core cartels.

45. The representative of Malaysia said that the paper by Canada (WT/WGTCP/W/155) had pointed out that cooperation could take many forms and that it could exist without global rules on competition policy. The representatives of India; Hong Kong, China; Indonesia; Trinidad and Tobago and the United States noted that the same paper had emphasized that, to achieve the optimum results, cooperation between competition authorities should be voluntary. In fact, by definition, the term "cooperation" meant to cooperate on a voluntary basis. To force someone to cooperate was not cooperation *per se*. Consequently, the meaning and implications of cooperation in the context of a binding multilateral framework had to be clarified. For example, would dispute settlement apply if certain kinds of information were not exchanged? It was also suggested that, of the six useful and relevant "pointers" toward the end of Canada's paper, four concerned the pre-requisites for cooperation and two dealt with institution-building and support. It was suggested that all six issues could be tackled in their own right and that a multilateral framework of rules was not needed to ensure progress in these areas. The representative of Hong Kong, China suggested, further, that Hong Kong, China's experience with the APEC Competition Policy and Deregulation Group was that general information exchange between competition institutions, transparency enhancement of competition regimes and implementation of various technical assistance initiatives could all be satisfactorily conducted in a voluntary and non-binding setting. Was Canada prepared to consider taking forward some or all of the proposed elements of cooperation outside the context of multilateral negotiations?

46. The representative of Pakistan said that his country was among the countries who were convinced that there was a case for greater international cooperation between competition authorities. Clearly, there could be various modalities for achieving this objective. The Group should not be hide-bound in pursuing a particular modality, provided it was making progress towards the ultimate objective. The crux of the matter was that Members together identify certain areas which required

international cooperation. Perhaps the Group could start with mergers, although it was not suggested that the practices of concern be restricted to mergers alone.

47. The representative of Tunisia said that, while recognizing the interests of developing countries in cooperation on competition policy, it was necessary to go into greater detail regarding certain elements related to it. What was the effectiveness of agreements in the light of current practices and the imbalance in the strength of competition policy institutions in developed and developing countries. Did cooperation agreements represent the only option to solve the problems which arose? Does this cooperation have to be formalized and at what level? How could an agreement be cited in relation to existing agreements, even if these are optional – whether they be multilateral or plurilateral? And this question led to another: what was the scope of the practices to be tackled? What market did they affect? Within which legal framework did they run? What about countries which applied directives such as those on hard-core cartels? Was this sufficient in itself, or did this practice need to be inculcated in the developing countries? What market was being affected – was it the worldwide market – or the domestic market – from a legal standpoint? What priorities would be given to anti-competitive practices and discrimination? If the focus was on international practices, how could these be addressed effectively through the application of national legislation? What would be the implications of different analytical methods in relation to cooperation? Would the authorities of participating countries need to be convinced of the validity of other countries' analyses and, if so, would this not amount to a new review procedure? What was the relationship between cooperation treaties and legal assistance treaties? How would the proposed cooperation instruments be integrated into the WTO provisions relating to government actions, and would the concept of independence for competition authorities be affected by a multilateral framework? This had to be cleared up, because this was not a concept which is embedded in different legal systems.

48. Responding to these questions, the representatives of Canada and the European Community and its member States affirmed that the cooperation that was envisioned under the proposals for a multilateral framework on competition policy was essentially voluntary in nature. The representative of Canada said, further, that in Canada's vision of such an agreement, which shared much with the proposals set out in the paper by the European Community and its member States (WT/WGTCP/W/152), the agreement would be a relatively modest one in which binding rules only made sense in certain areas. Certainly, binding rules did not make sense in the area of cooperation. It would be a contradiction in terms to have anything else. It was also not obvious to Canada that there was much room for binding rules in the area of technical assistance. Responding to a further, specific question which had been posed by Hong Kong, China, he also made it clear that what Canada was talking about was not simply an agreement about cooperation on competition law enforcement. Cooperation was a fundamental piece but certainly not the only piece. The components of an agreement were fundamentally interdependent. Technical assistance and core principles were necessary parts of an agreements and fundamental to facilitate cooperation. He also suggested that cooperation depended on familiarity which was required in order to create mutual trust. It was not a one-way street in terms of who benefits. It was to countries' mutual advantage and the benefits could easily flow in both directions given where the information happened to be located in a particular case, for example. Thus, it would be a natural part of an agreement and fundamental to facilitate other parts of a multilateral agreement. Canada continued to believe that such a framework would go a long way to assist developing and other countries to address the detrimental effects of anti-competitive practices on trade and development. The representative of the European Community and its member States said that the fact that cooperation would remain, ultimately, voluntary in nature should not at all be understood as meaning that the proposed framework would not significantly enhance the environment for and incentives to engage in cooperation among participating countries. Integral to the framework would be a commitment by countries to consult and to seek mutually acceptable solutions on a range of areas relating to anti-competitive practices with an international dimension. If one looked into the fact that there would be convergence on core principles, that there would be not only bilateral consultations but also a multilateral forum for exchange of views and experiences and that there would be a specific recognition of the needs of developing countries in the cooperation field, it should

be clear that the structure of incentives should be strong enough to significantly enhance cooperation between countries at different levels of development. In a way, a multilateral agreement would not only promote a culture of competition, it would also promote a culture of cooperation that went far beyond what was currently the reality. The representative of the United States agreed that voluntariness was crucial to meaningful cooperation. Without it, one could imagine results which were contrary to what most Members, including the United States, were interested in, namely enhancing the culture of competition policy and competition law enforcement around the world.

49. The representative of Korea noted that the paper by the European Community and its member States (WT/WGTCP/W/152) referred to "negative comity" but not to "positive comity", the latter having benefits that Korea had promoted in many submissions to the Group. Positive comity was a concept that implied that if a country believed that one or more of its firms were adversely affected by foreign anti-competitive practices, it could appeal to the country in which those practices occurred and request that country to enforce its own competition law with a view to remedying what the complaining country saw as harmful measures. As had been shown in an OECD report adopted in a meeting of the OECD Committee on Competition law and Policy in May 1998, positive comity was, at present, incorporated in a number of bilateral agreements which had been adopted since the United States and the European Community had introduced it in their 1991 bilateral agreement. Although WTO Members lacked experience in this area and had only a few cases in which positive comity had actually been used, it appeared that the benefits of positive comity could be real when harmful extraterritoriality could be avoided.

50. In response, the representative of the European Community and its member States acknowledged that the paper by his delegation (WT/WGTCP/W/152) did not use the term "positive comity". What was aimed at was to enable a developing country that became the target of anti-competitive practices organized abroad to put forward a request to the country or countries where those practices originated or where the firms suspected of anti-competitive activity had their main headquarters that action was taken to remedy the situation or to respond in other ways to respond to the requesting country's concerns. The requested country was expected to enter into consultations and to give sympathetic consideration to such requests. Hence, the proposal did not refer to a fully-fledged positive comity instrument, as had been proposed by Korea and Japan. At the current point in time, it was premature to expect more far-reaching commitments in a multilateral framework, at least during an initial phase.

51. The representatives of Trinidad and Tobago, India and Pakistan posed the question of whether voluntary tools of cooperation, including positive comity if this was ultimately adopted as an element of the contemplated framework, would suffice to address the problems and concerns of developing countries in the area of anti-competitive practices, particularly in the light of existing disparities and inequalities of bargaining power? It was suggested that this question needed to be addressed in the light of the facts that ultimately, enforcement responsibility lay with the country with primary jurisdiction over the anti-competitive practices in question; and that enforcement assistance would remain voluntary in nature, that is, compatible with the enforcement priorities, important interests and available resources of the requested country. The answer to this question was important to assess the utility of a framework agreement that would bring together countries at different stages of economic development. The representative of Trinidad and Tobago said, further, that given that the fundamental argument being advanced was that the globalization process had caused an increase in cross-border effects of anti-competitive behaviour, and that this made it necessary to globalize some aspects of competition law, it was questioned whether this was consistent with the position that competition authorities limited their action to behaviour that affected their domestic market. The representative of Pakistan suggested that there were two dangers. First, there was the danger that provisions on cooperation might deteriorate into hortatory provisions; and secondly, there was a danger that there could be such a long list of criteria for participating in such exchanges that certain countries might deny cooperation on the grounds that the requesting authorities did not meet certain standards. In the light of this, it was important to understand precisely how cooperation provisions in

a multilateral framework would operate. Could the effects of particular cases of mergers, export cartels, price-fixing on an international scale, etc. actually be discussed? The representative of India suggested that the ability of developing countries to discipline large multinational corporations even in the presence of multilateral rules was doubtful.

52. In response, the representative of the European Community and its member States said that there seemed to be more or less a consensus among Members of the Working Group that it was not reasonable to expect to force an authority to cooperate where certain caveats and conditions were not met. His delegation had been clear as to what those conditions should be in its written contribution to the meeting (WT/WGTCP/W/152). These conditions were not arbitrary and originated from the Community's experience with cooperation in a bilateral context. Cooperation between competition authorities was a learning process where confidence-building was important. This was an area where relations were developed over time and were initially based on mutual interest, as had been pointed out by Canada. Nonetheless, the inherent voluntariness of the cooperation called for in the proposed framework had to be understood in the context of the commitment implied by acceptance of the framework. In this context, if the request for cooperation was reasonable and properly motivated, he stated that he was confident that participating competition authorities would not refuse to consider it in a favourable manner under the pretext that it was not a priority or that the authority did not have the necessary resources.

53. The representatives of India; Hong Kong, China; Indonesia; Pakistan and the Philippines posed the question as to whether cooperation in a bilateral or regional context might be sufficient to address the perceived detrimental impact of anti-competitive practices on international trade and/or development. An objective evaluation of such cooperation arrangements was called for. The representative of Hong Kong, China suggested, further, that the benefits of bilateral and regional approaches, relative to a multilateral approach, had been grossly understated in the submission of the European Community and its member States (WT/WGTCP/W/152). For example, little mention had been made of the shorter negotiation time and the higher level of cooperation standards applicable in a bilateral or regional setting. At the same time, it was suggested by the representative of India that existing bilateral and regional arrangements were largely confined to countries at similar stages of development. In this context, if a new arrangement on international cooperation was reached, how could it be ensured that such cooperation extended to countries at different stages of development?

54. In response, the representative of Canada, while affirming the important benefits that could be provided through bilateral cooperation arrangements, nonetheless suggested that there were important practical and substantive reasons calling for a multilateral agreement. Focusing on the practical aspects first of all, hard-core cartels and international cartels were unlikely to respect the neatly defined territories covered by bilateral agreements. In fact, it stood to reason that they would tend to act strategically and to seek out the cracks that existed between relevant regional and bilateral agreements. Only by having a proper network that covered all potential areas, that is, a multilateral framework, could Members prevent that kind of strategic behaviour. In the area of mergers, it was possible to imagine that key pieces of information could lie in jurisdictions that were outside a country's set of regional or bilateral agreements. Currently, there were no provisions for cooperation between regions. For example, Mercosur did not have provisions for cooperation with APEC, although there was some overlap in the membership. Therefore, it was quite easy to imagine that certain key pieces of information that would make for a stronger or more speedy review of a merger were likely to be found in jurisdictions that were not within a country's set of agreements. A multilateral agreement would ensure that this was not the case. Also, on the practical side, for a country like Canada there were significant operational limitations on the extent to which cooperation could be undertaken based on the limited number of people and resources available. As various regional and bilateral agreements and free trade initiatives were being negotiated, Canada was conscious of the fact that it was rapidly approaching the limit of what could be done. In Canada's mind, many of these efforts could be rationalised and thereby made more efficient if they could be done multilaterally. More intense cooperation could and undoubtedly would still be pursued with

individual partners, as appropriate. In Canada's view, a multilateral agreement would also be an efficient vehicle to enhance the level of compatibility as well as the familiarity and mutual trust between national competition authorities that were vital to meaningful cooperation. There was, therefore, a real need for a multilateral agreement to promote cooperation, to the mutual advantage of participating countries, notwithstanding the acknowledged benefits that bilateral cooperation agreements could provide in appropriate circumstances. The representative of the European Community and its member States, while stating his agreement with the views that had been expressed by Canada, added that bilateral agreements were limited in number and were essentially based on mutual interests and reciprocity. If one was seeking to encourage cooperation at very different levels of development of the competition regimes, inevitably, one would have to go beyond a pure bilateral approach and one would have consider a multilateral approach in relation to the issue of cooperation.

55. With regard to the proposed requirement of a national competition authority with sufficient enforcement powers, the representative of the European Community and its member States said that his delegation recognized that such a requirement had to be defined in a manner that was sufficiently flexible and that was well-adapted to different institutional realities. For example, in a previous intervention, Trinidad and Tobago had indicated some of the particular problems that, for instance, small developing countries may face in setting up of a fully fledged competition authority. For his delegation, the key element was that, ultimately, if effective cooperation was desired, there had to be an authority capable of engaging in such cooperation. There should be sufficient enforcement powers to detect anti-competitive practices and to sanction those practices.

56. The representatives of Trinidad and Tobago and Pakistan sought clarification of the role envisioned by the proponents of a multilateral framework on competition policy for application of the WTO Dispute Settlement Understanding. The representative of Trinidad and Tobago said, further, that Trinidad and Tobago had doubts that the WTO Dispute Settlement Understanding was suitable for dealing with competition issues and felt that cooperation mechanisms would be more appropriate. She appreciated the fact that that the paper defined non-discrimination as solely applying in the areas of access to competition authorities, access to the judicial system and in the application of national competition law.

57. In response, the representative of the European Community and its member States affirmed that his delegation was of the view that, if it was desired to step-up cooperation in the competition filed, it was necessary to move towards an agreement that included a core of binding commitments. This having been said, as had been pointed out by Canada, the scope of those binding commitments would need to be very carefully defined so as to avoid unduly limiting countries' flexibility. That was the reason why his delegation, in its paper, had suggested only a limited number of binding commitments in relation to the national legal framework. For instance, he was not suggesting that the question of how the law was being enforced in practice was something that should be considered or looked at on the basis of binding commitment. As a logical consequence, it followed that any application of the dispute settlement mechanism would have to be adjusted to correspond to the scope of the binding commitment under the multilateral agreement. The role of dispute settlement had not been discussed in the paper by his delegation (WT/WGTCP/W/152) since it was felt that at the current point in time, it was more productive to focus on the substantive elements that would be included in a multilateral agreement. However, as had been stated by his delegation on other occasions, it was certainly of the view that it would not be appropriate to have dispute settlement review of the decisions of national competition authorities in individual cases.

58. The representative of Korea said that his delegation had a different view regarding the coverage of *de jure* and *de facto* discrimination. In Korea's view, it would be an exceptional case if a Member's competition law were to contain provisions explicitly discriminating against foreign enterprises. However, there might be many cases where less favourable treatment was applied *de facto* to cases involving foreign enterprises compared with similar cases only involving only domestic

firms. Therefore, the non-discrimination principle should be applied not only to *de jure* discrimination but also to *de facto* discrimination.

59. With regard to the role of a peer review mechanism in the proposed multilateral framework, the representative of Trinidad and Tobago noted that in the paper by the European Community and its member States (WT/WGTCP/W/152) it was foreseen that this would be voluntary in nature. She assumed that the results of the review process would be non-binding. Clarification was sought as to the objectives of the proposed reviews. Would it be to critically evaluate the enforcement policies and practices of Members and/or to assist in developing enforcement capacity? In response, the representative of the European Community and its member States said that his delegation believed that this would be a useful component of the proposed multilateral framework. Peer review, which would indeed be voluntary in nature, would be an instrument through which issues that related to enforcement could be discussed in an open and constructive manner. For example, in the case of developing countries, it could be used in some cases to identify possible capacity constraints. It could also be used to examine enforcement policies being followed in individual countries. However, it clearly was not a commitment that implied dispute settlement.

60. The representatives of Kenya, India and Trinidad and Tobago said that the subject of technical cooperation was an important one and that little progress could be expected on the issues unless questions of capacity-building were meaningfully discussed. These questions were important not only for purposes of institution-building but also to hone the skills of negotiators to ensure that they could effectively represent the interests of developing countries in any decisions to be taken. The representative of Kenya said that, when competition policy was applied domestically, it enhanced the efficiency of the application of the limited resources for further development. However, when markets were opened up internationally, countries such as his with limited resources and institutional capability were exposed to the anti-competitive activities of multinationals and national corporations. Particularly where countries did not yet have domestic competition laws, but even otherwise, multinational corporations appeared to have considerable ability to evade detection of their activities; this was an important factor underlying the need for capacity building in this area. Kenya's experience in the last ten years was that very little or no assistance at all had been provided in the area of in the area of competition policy, except by UNCTAD. Decision-drafting and capacity building were two areas in which assistance was particularly important. Without the required assistance on these and other matters, it would be more suitable to focus first on competition policy advocacy so that more and more countries could start appreciating the benefits and the role of competition policy in the development process.

61. In response, the representative of the European Community and its member States said that his delegation agreed with the representative of Kenya that developing countries would not wish to become engaged in a negotiation on competition policy without having a good understanding of the issues that were at stake. This was the reason why his delegation was taking a transparent and educational approach in setting out its ideas regarding the possible elements of a multilateral agreement, to enable countries to look more closely into the issue and come to an informed decision on that basis. The Community had also been supportive of a number of processes of regional seminars and other capacity-building activities to help countries to be in a position to take an informed decision on this matter when the time for such a decision actually came.

62. The representative of Korea said that his delegation shared the view expressed in the paper by the European Community and its member States (WT/WGTCP/W/152) that the WTO could make a significant contribution to a better approach to the provision of technical assistance on competition law and policy by the international community, particularly if this was done in conjunction with the adoption of a multilateral framework. The detailed description on page 13 of the paper was particularly relevant. As Korea had emphasized in its previous submission on competition policy, the importance of enhanced coordination between the different competent international organizations in the provision of technical assistance could not be over-stressed, especially when it came to specific

tasks such as the drafting of a law or training of agency personnel. The representative of Switzerland also affirmed the importance of such assistance, noting that, perhaps, this had not been made sufficiently clear in the paper by his delegation (WT/WGTCP/W/151).

63. The representative of Pakistan said that his delegation was wary about promises of technical assistance given the deliberations that had taken place at the last meeting of the Budget and Finance Committee. Little had been clear except that there was little or no possibility of additional funding. Members should not harp too much on technical assistance as an inducement, or delude themselves about its availability. In any case, the WTO was not a technical assistance agency. The WTO could have an input but that was as far as it could go. As an inducement to enter into an agreement, technical assistance was not enough.

64. The representative of Hong Kong, China said that a number of the proposed elements of a multilateral framework dealing with international cooperation and technical assistance could, perhaps, be more expeditiously pursued outside the context of negotiations or, indeed, outside the context of the WTO. For example, there did not seem to be any reason why interested donors should not start working now on initiatives to provide enhanced technical and enforcement assistance for developing countries. On the contrary, linking these initiatives with multilateral negotiations would unduly delay the much-needed assistance for developing countries. Likewise, it was hard to understand the suggestion that modalities on general exchange of information and experiences, as mentioned in the last 4 bullets under item 2 of the Annex, be brought within a binding multilateral framework. There already existed plenty of standing ad-hoc mechanisms in the WTO and other international fora for Members to share general information and experience on competition policy issues. The challenge was how to ensure more cost-effective and coherent use of those mechanisms rather than to impose new binding obligations on Members.

65. The representative of the European Community and its member States said that he wished to dispel any misunderstanding that his delegation was in any way conditioning or delaying technical assistance until the launch of a negotiation on the multilateral agreement. On the contrary, in addition to other donors, the Community and several of its member States were actively engaged in the provision of such assistance, in a number of countries and regions. It was clear that there was a great deal to be done in this area, although his delegation remained convinced that, precisely because of the capacity-building requirements that had been mentioned by Kenya, much more significant results could be achieved within the context of negotiations on a multilateral framework. Another representative of the European Community and its member States provided details of some current activities of the Community in the field of competition law and policy.

66. The representatives of Hong Kong, China, the Philippines, India and Pakistan posed the question of why, even assuming that some action was needed on competition policy at the multilateral level, was it appropriate to pursue this in the WTO? The representative of the Philippines stated, further, that the WTO dealt with reciprocal tariff concessions and dealt with the regulation of non-tariff barriers. That defined the conceptual framework of the WTO. These considerations were why a dispute settlement system and non-violation complaints existed. Currently, new issues were being raised in areas such as competition policy that went beyond the balance of negotiated concessions. If the WTO dealt with those areas, Members could unwittingly extend its jurisdiction beyond what was originally intended. His delegation was sceptical of the desirability of this and wanted to be educated as to why, unwittingly and without the conscious political will of the international community, should the WTO should be converted into something that was even more powerful in the context of global governance. This would involve a rethinking of the classic nature of the WTO and its basic rules and practices. The representative of India said that the WTO was, very much, the appropriate body to consider issues concerning the interaction between trade and competition policy but that, as yet, it was premature to consider whether there was a necessity for, or once a necessity had been established, what the WTO's role in the formulation of a multilateral framework would be.

67. In response, the representative of the European Community and its member States said that ultimately, this was a question that might have to be resolved at the political level. However, from the point of view of his delegation, the WTO was certainly more than just an instrument for the balanced negotiation of concessions. It had a mandate to establish rules to govern international trade relations and ensure that developing country and other Members were not unfairly deprived of the benefits of liberalization. It was difficult to conceive of any area of economic policy which was more clearly trade-related than competition policy. The types of anti-competitive practices that had been discussed in the Working Group, including international cartels, export cartels and exclusionary practices with an international dimension, had a clear distortionary effect on international trade as well as a harmful impact on development; accordingly, it was a bit strange to suggest that the WTO as an international organization should not concern itself with these practices.

68. The representative of Japan said the question that had been posed by Pakistan and other delegations should be reversed – i.e., the relevant question was why *not* the WTO? Elsewhere in Geneva, technical cooperation, horizontal cooperation, exchange of experiences and construction of databases were the most important activities of international organizations. Although the WTO's strength as an institution resided in its contractual nature and its status as a rule-making body, this certainly did not imply that it was unable to absorb enhanced technical cooperation activities as part of its agenda. On the contrary, the Organization's rule-making and technical cooperation activities were mutually supportive and complementary. The most important consideration was that an urgent need for enhanced technical cooperation and support for the implementation of effective national laws had been expressed by a number of developing countries. Through Working Group meetings and regional workshops of the type that been presented in Phuket, and formal or informal contacts with officials in capitals, Japan was convinced that already, a substantial number of countries were supportive of approaching more positively, in a more imaginative way, the needs of those countries.

69. With regard to ensuring the necessary degree of flexibility in any multilateral framework, the representatives of Hong Kong, China, India and Pakistan said that discussions at the Working Group's previous meeting had underlined the need for whatever multilateral work programme on competition was considered necessary to pay heed to the diversity of, and asymmetries in, Members' economic situations, competition regimes, legal traditions and cultural contexts. It was unclear whether the proposal by Switzerland (WT/WGTCP/W/151) had adequately taken account of such diversity and asymmetries. In the view of Hong Kong, China, the lack of sensitivity to the salient differences among Members in these areas would materially undermine the usefulness and broad acceptability of any proposal. The representative of Indonesia said that, if it was decided to even consider multilateral rules on competition policy, it would be imperative for those rules to be flexible enough for developing countries to achieve their development objectives. Additional burdens should not be placed on developing countries. Even the question of notification might be an easy task for some delegations, but was difficult for others, as was clearly reflected in experience in respect of various obligations emanating from the Uruguay Round.

70. The representative of Korea, commenting on the paper by the European Community and its member States (WT/WGTCP/W/152), said that while flexibility in the implementation of an eventual multilateral agreement on competition policy was vital, deference to the particular circumstances of Members should not be interpreted as meaning that countries could justify the presence of, for example, certain monopolies in sectors covered by the agreement because such monopolies fit into their policy of economic development.

71. The representative of Japan said that, in view of the diversity of developing countries and their need for economic development, Japan wanted the proposed multilateral framework to be as flexible as possible. As had been mentioned in the opening paragraph of its submission on cooperation in a multilateral framework (WT/WGTCP/W/156), such flexibility should be applied in relation even to the core principles incorporated in Japan's proposal. Progressivity and an incremental approach were the pre-requisites. Developing countries seemed to feel a real need for cooperation on

the one hand and some concern on the other hand associated with the establishment of a multilateral framework. However, those concerns should not be overblown. Such concerns could be addressed through a more focused discussion, in concrete terms, on the special and differential treatment for developing countries and the scope of the dispute settlement system of the WTO. Japan was ready to pursue, in future meetings, a flexible approach in those areas as well, if there was such a desire on the part of some of the Member countries. For example, perhaps, more reliance should be placed on the proposal developed in the paper by Canada (WT/WGTCP/W/155) for a phased approach to cooperation at the multilateral level, which had also been mentioned by Malaysia. As he had understood it, the basic idea was that, in phase one, dissemination of sound and effective competition law would be promoted through technical cooperation. In phase two, where Member countries had already introduced a competition law, technical assistance could occur for capacity building. In phase three, if qualified countries were so willing, OECD-type voluntary cooperation including the exchange of non-confidential information, etc. could occur. Beyond those phases, anything could be optional. Throughout the whole process, the exchange of experience and learning of practices ought to be conducted. There seemed to be nothing that was dangerous in that process.

72. The representative of Switzerland said that, in the proposal by his delegation (WT/WGTCP/W/151), the need for flexibility had, in fact, been recognized in that important questions as to what national competition laws should contain had been left to the discretion of individual Members. However, further discussion of how the specific needs of developing countries in this area would best be addressed was welcome. He encouraged delegations such as Hong Kong, China to take up the model and analyze where and to what extent they, for example, considered special and differential treatment necessary, taking into consideration the relatively limited range of prescriptive elements in the Swiss model.

73. The representative of Pakistan said that a cost-benefit analysis was needed individually and collectively to determine whether what Members were being asked to give up in the realm of flexibility was, perhaps, outweighed by what would be gained from the development of a multilateral framework. Currently, Pakistan was not convinced on this point. What his delegation required was the ability to take necessary measures to nurture industries and sectors wherever desired. That would not be accomplished simply by specifying a list of sectors which would be exempt with the understanding that the rest would be included under the ambit of competition rules.

74. The representative of the European Communities and its member States agreed with the suggestion by the representative of Pakistan that the Group should undertake a cost-benefit analysis. At the end of the day, there were basically two questions that needed to be addressed in future discussions. The first was the whole issue of the relationship between any possible common principles and the necessary degree of flexibility. Secondly, there was the issue about the type of cooperation modalities that would be useful at the multilateral level. Those two issues could be discussed in a concrete and specific manner without prejudging the political decisions of countries about the issue of negotiation on a multilateral framework.

75. The representative of Canada reminded the Group that his country was involved in cooperation with a number of countries that had quite significantly different regimes. Canada's competition regime was rather different in certain areas from that of the United States or that of the European Community. This made it clear that a commitment to cooperation and to certain fundamental principles would still allow for substantial diversity in competition regimes.

76. The representative of Hong Kong, China said that his delegation was grateful for the reassurance that had been provided by several delegations that there would be no harmonization of national competition laws and the need for progressivity and flexibility would be respected. His delegation would be happier still if it were made clear that there would be no need for mandatory introduction of competition law. Reading between the lines, he felt that this was what some delegations had in mind.

77. The representatives of Pakistan and Tunisia raised the question of how the sovereignty and independence of national competition authorities would be reconciled with a multilateral agreement? In response, the representative of the European Community and its member States said that the commitments in a multilateral framework would relate to legislation and not to the way in which the legislation was enforced by competition authorities. Accordingly, there would be nothing in these commitments that would limit the independence of competition authorities or the prosecutorial discretion of such authorities. The representative of Canada affirmed that, in the experience of his country, a commitment to cooperation did not affect the independence of competition authorities in the exercise of their enforcement responsibilities.

78. The representative of Hong Kong, China queried the basis for the suggestion in the paper by Japan (WT/WGTCP/W/156) that a fair degree of consensus had already been reached on some key elements relating to a multilateral framework on competition policy. In response, the representative of Japan said that was not suggesting that there were no divergent views or that such views were unimportant. On the contrary, a multilateral framework needed to be inclusive and his delegation encouraged other delegations to be as forthcoming as possible about their specific concerns about the current proposals.

79. The representative of Malaysia reiterated his delegation's position that there was no need for any global rules on competition policy. The proposals that had been made did not answer several of the questions, doubts and concerns which Malaysia and other developing countries had expressed at the previous meeting of the Working Group, and which had been summarized in the Note by the Chairman circulated prior to the current meeting (Job 5696, circulated 21 September 2000). The representative of Kenya said that Kenya appreciated the benefits which could flow from competition policy. However, the call for a multilateral agreement might be too ambitious at the moment. The representative of Indonesia stated that he shared the concerns that had been expressed by delegations such as Malaysia, Pakistan and India. It was difficult to consider multilateral rules in this area since, in the case of many developing countries, such rules could require revisiting and possibly re-designing laws which had only recently been adopted by legislatures. He noted, as well, that a number of concerns had been raised by these and other countries in the ongoing discussions in the General Council on implementation questions. Perhaps, if those issues could be satisfactorily resolved, Indonesia would be able to have an open mind on competition policy.

80. The representative of Japan suggested that his delegation's position had significant elements in common with views that had been expressed by the departing United States Assistant Attorney-General for Antitrust, Mr. Joel Klein, at a conference in Brussels two weeks previously. In response, the representative of the United States said that some of the press reports on Mr. Klein's speech had been wrong, at least in some respects. What Mr. Klein had said and what the United States position continued to be was that, on the one hand, there were a number of important practical issues in the field of international competition policy that needed to be addressed. While some of those issues could best be addressed at the bilateral level, others could best be addressed at the regional level or, in some cases, at the multilateral level. However, the time was not now ripe for negotiations on binding rules in the field of competition law enforcement. In that context, Mr. Klein had suggested that it was necessary to come up with an appropriate forum to resolve some of the more pressing practical issues, particularly in the area of mergers. As to what, precisely, the forum should be, from the point view of the United States, this was something that had not yet been determined. However, the United States considered that the format should be inclusive, including representatives of the WTO, OECD, UNCTAD and the World Bank.

81. The representative of the European Community and its member States said that, although he recognized the continuing divergence of views in the Group on certain key points, it would be surprising if there was not a large degree of consensus within the Group on a number of underlying analytical issues such as, for example, the contribution that competition policy could make to sound economic development or the harmful effects of the various anti-competitive practices that had been

mentioned in the papers by his and other delegations. There also seemed to be a widely-held view about the need for international cooperation to address anti-competitive practices with an international dimension, although he recognized that not all questions were resolved as to which elements could most usefully be addressed at the bilateral, regional and multilateral levels. Still, a large and growing number of Members seemed to have come to the view that, while bilateral and regional approaches were useful, they did not provide all of the answers and that a multilateral dimension to cooperation would also be necessary. This was reflected, for example, in the resolution that had been adopted at the Fourth Review Conference on the UN Set as well as in various interventions in the Working Group. Notwithstanding these indications of a growing convergence of views, he recognized that it was important to address the concerns that continued to be raised by some delegations.

82. Another representative of the United States said that he agreed with the comment by the representative of the European Community and its member States that the purpose of the Working Group was to examine analytical aspects of the issues, leaving political questions such as whether to initiate negotiations to be resolved in other fora. In any case, the position of the United States continued to be that the relationship between trade and competition policy was an area of increasing importance for the WTO, for the multilateral trading system and for the future of international trade. However, it remained an open question as to whether the WTO was the appropriate institution in which to initiate the development of rules on competition in a multilateral context. Furthermore, currently it was premature to attempt to answer this question. Submissions made by the United States during the year, pursuant to the educational mandate embodied in the Singapore Ministerial Declaration, indicated that his delegation had tried to maintain the emphasis not on the political debate but, rather, on how the Group could, in an incremental, constructive and pragmatic way, look at the various issues in the area and help to nurture and disseminate the culture of competition. This was of obvious importance to developing and transition economies that were either considering whether to enact a competition law or policy or, if that choice had already been made, addressing the practical challenges involved in implementing such law or policy. Nonetheless, it was apparent that much of the debate in the Group had been on the question of what benefits might be obtained through having a framework or an agreement on competition policy in the WTO and whether one needed a framework or an agreement in order to achieve them. A great deal had been said about the value of transparency, international cooperation and technical assistance, much of which was valid. It was perhaps true that, at a certain point in the development of the issue, an agreement or framework of some kind would be the appropriate housing for the issue. However, it was unclear to his delegation that this was currently the case or that the Group had yet reached a point where it could make a suitably informed judgement on the matter. The United States had legitimate questions that needed to be sorted through as to how one could give effect to international cooperation at the level of the WTO in the particular legal context that competition law presented. As a bottom line, what was important was not to rush towards an agreement but whether steps could be taken such that the sharing of experience and convergence of thinking that would underlie a possible agreement developed in a way that would make possible an informed choice about whether an agreement was appropriate and, if so, the nature and institutional locus of the agreement.

83. The representative of Japan said that competition should not be a divisive issue in the WTO. All Members of the WTO embraced market economies and cherished competition. It was not only close to the heart of the WTO community but at the very heart of it. It had never been esoteric to the WTO. Accordingly, Members should dispel the mindset of a North/South divide, if there was one, so far as competition issue was concerned. The issue of competition was distinctly different from certain other areas that were being discussed elsewhere in the WTO, in that it was potentially a win-win field that would offer benefits for all participating countries. The representative of Hong Kong, China said that it was not his delegation's intention to play up any so-called North/South divide. It was an objective fact that a substantial number of Members had not yet agreed to the negotiation of a multilateral framework on competition policy in the WTO.

84. With regard to governmental measures that impacted on trade and competition, the representatives of India; Pakistan; Hong Kong, China; Korea; Malaysia; Indonesia and the Philippines said that addressing these was an important part of the mandate of the Group. In the first instance, this would include addressing anti-competitive practices that, in the view of these delegations, were embodied in existing Uruguay Round Agreements such as the Antidumping Agreement, the Agreement on Trade-related Intellectual Property Rights, and the Subsidies Agreement. Every agreement in the WTO should be examined to see how it promoted competition, subject to the principle of no a priori exclusion. The representative of Japan said that Japan shared a common interest in these issues, to an extent, but also felt that consideration of these issues should not detract from the issues concerning anti-competitive practices of firms and the need for a multilateral framework on competition policy. The representative of Switzerland said that his country did not apply trade remedy measures such as antidumping or countervailing duties. Nevertheless, Switzerland considered that the application of trade remedies was something which could be discussed by the Group in the future.

85. With regard to the future work of the Working Group, the representative of Trinidad and Tobago suggested that Members needed more time to think through the whole question of the relationship between competition policy and development. The discussion had been constructive but many questions remained to be answered. The representative of India, referring to the paper submitted by Hong Kong, China to the previous meeting of the Group (WT/WGTCP/W/141), recalled that it had suggested a three-step roadmap for the Group's future work. As far as the first stage was concerned (i.e., agreement on the scope of competition policy), this required a great deal of further deliberation. Regarding the second step suggested by Hong Kong, China, that is identification of specific problems that were relevant to a globalizing market, there was no doubt that problems existed, although the discussion had certainly not been exhaustive. With regard to the third step, that is exploration of both the feasibility and content of multilateral options, India differed slightly with the approach taken by Pakistan on this. That is to say, it would be difficult for India as a delegation to participate actively in a discussion of the content of a multilateral framework until the Group had actually come to the third step. Thus, the three steps identified by Hong Kong, China should be analysed in a step-by-step fashion. He said, further, that the paper submitted by Korea (WT/WGTCP/W/154) had posed three questions which would add substance and focus to the debate: first, whether the WTO was an appropriate body to address the problems that had been identified; second, whether existing WTO rules could provide "pointers" regarding necessary reforms; and third, a systematic review of the feasibility of relevant options at the multilateral level. This would include consideration of options other than rule-making. In fact, the paper by Korea provided useful examples of activities that might be undertaken in relation to capacity-building, the establishment of a competition policy review mechanism and closer cooperation between WTO and other international fora. Moreover, even if there was still a divergence of opinion on rule-making or the time was not perhaps yet right to consider this issue, this did not constrain Members from initiating action as per the various suggestions. This would, perhaps, be a very important intermediate step in facilitating a convergence of viewpoints when the possibility of multilateral rules was considered. Finally, India tended to agree with the suggestion that had been made previously by Australia that analytical work in the form of a scoping study to determine similarities and disparities amongst Members' approaches to competition policy and practice would be in order. This could be done by the Group itself or by the Secretariat.

86. The representative of Hong Kong, China, commenting on the paper by Korea (WT/WGTCP/W/154), expressed gratitude for the recognition that had been given to Hong Kong, China's 3-step roadmap for the future work of the Group. Hong Kong, China agreed with Korea that the question of what constituted appropriate standards and guidelines for identifying competition issues with direct relevance to international trade and fulfilment of the WTO objectives merited further deliberation by the Working Group. Having regard to the remit of the WTO and the terms of reference of the Working Group, Hong Kong, China saw merit in the idea of Members collectively drawing up criteria to provide a basis for identification of problems at hand. Hong Kong, China had proposed two such criteria: first, the existence of significant and demonstrable anti-competitive

impact on international trade and investment; and second, prevalence of an anti-competitive practice among WTO Members. The issues raised under steps 2 and 3 of the proposed roadmap were at the heart of the paper by Korea and a few other submissions as well. While step 1 had not attracted much discussion thus far, its importance should not be overlooked. Given the wide-ranging meanings, expectations and priorities which Members attached to the term "competition policy" or its variations in an international context, Hong Kong, China was convinced that more research and deliberation on step 1 would help lay a solid foundation for Members to build consensus step-by-step. In this regard, it had given further thought as to how best to organize the Working Group's work around step 1 and suggested that priority consideration should be given to the following issues: to what extent was there an internationally accepted terminology for the scope of the term "competition policy"? What were the common threads of the different streams of definitions for the term? Did the various streams of definitions suggest that there were dimensions marked by a dichotomy of views, and, if so, what were the conceptual elements necessary to grapple with such a dichotomy? More intensive discussions on individual elements of the 3-step roadmap would also be welcome. The representative of Indonesia agreed that further discussion of the definition of competition policy was desirable.

87. The representatives of Japan, Korea, Malaysia and Pakistan suggested that it might be useful for the Group to focus on the points raised by the Chairman in the list of questions which he had circulated in advance of the current meeting (Job 5696, circulated 21 September 2000). This would ensure that the discussions would be focused on more substantial, exploratory and pragmatic issues. The representative of Korea suggested that these questions could be considered together with other issues and matters raised for consideration in the paper by Japan (WT/WGTCP/W/156) such as the harmonization of procedures regarding international mergers, prohibition of export cartels and the handling of confidential information. Questions posed in the paper by Switzerland (WT/WGTCP/W/151) on the potential for conflicts with industrial policy, conflict with investment policy and the additional need for special and differential treatment of developing countries also merited consideration in the Group. The representative of Hong Kong, China, commenting on the paper by Switzerland (WT/WGTCP/W/151), said that the questions raised on development policy in the concluding paragraphs of the paper merited detailed study and deliberations. To draw up a multilateral action plan before thorough consideration of those questions was, in the view of Hong Kong, China, putting the cart before the horse.

88. The representative of Tunisia said that priorities for further work might concern the identification of the most harmful anti-competitive practices and the establishment of a common data base. The question of exceptions and possible linkages to any arbitration which might occur between competition law and policy and other areas of law and policy also needed to be considered. Also, what would be the costs of compliance for firms and the impact on investment?

89. The representative of Pakistan said that, in suggesting that a more focused discussion was needed on some of the issues and questions which had been raised, he did not mean that the Group should devise a whole list of new issues and get into a procedural wrangle on what should be discussed. The relevant questions could clearly be addressed under the existing broad agenda. In particular, it could be done by carrying on with the tradition of raising questions which Members would wish to address and then the discussions could be structured accordingly so that each of those questions perhaps could have more focused attention. The representative of the United States agreed that the mandate under which the Group was currently operating was sufficiently flexible to allow it to explore all issues of relevance to delegations. Certainly, the questions that the Chair had synthesised from the last meeting of the Group had helped to inform all delegations and provided a certain degree of focus. However, it was up to delegations to pursue the areas that were of interest to them.

90. The representative of Hong Kong, China suggested that the revised list of questions which the Chairman had been encouraged to prepare could be structured in a way that enabled Members to tell the difference between the more fundamental questions and those questions that depended on the

fundamental questions. This kind of structure would help Members to have a better reflection of the actual state of the discussion and to contribute more meaningfully to it. The Chairman said that he would consider this suggestion but that he was concerned about imposing his own subjectivity regarding what was fundamental and what was not fundamental.

91. The representative of the United States, commenting on the contribution of Switzerland, said that the paper had suggested that there was an enhanced mutual interest of all countries in promoting stability in markets around the world. In the view of his delegation, competition should not be equated with stability; in fact, it was the antithesis of stability. Cartels, which sought to promote stability, were clearly a bad thing from the standpoint of competition policy. In response, the representative of Switzerland stated that the comment by the representative of the United States was perfectly right. He had not been referring to the stability of particular markets but to the long run stability of the market economy. If one took this perspective, it was clear that competition policy, by promoting efficiency and the continual restructuring of the economy in response to market forces, would enhance the overall stability of the economy in the long term.

92. The representative of Kenya said that the priority for developing countries might not, at the present time, be to address multilateral competition policy issues. Currently, issues like unemployment and access to health care posed more pressing problems. The representative of Malaysia suggested that consideration be given to transferring the Working Group's work on the subject of anti-competitive practices to UNCTAD, which had an expert body on this subject. The representatives of India and Pakistan suggested that there could be merit in considering this suggestion.

93. A representative of the Secretariat stated that a Regional Workshop for African Members and observers, similar to the one which had been held in Phuket, Thailand, for Asian Members and observers, would be held in Capetown, South Africa, probably in February 2000. The Secretariat would consider organizing another workshop for Latin America and the Caribbean, if this was of interest to Members. The representatives of Trinidad and Tobago welcomed the possibility which had been mentioned of eventually holding a regional workshop or seminar for the Caribbean region. The representative of Guatemala said that, although her country did not have a competition regime as of yet, significant preparatory work had been undertaken in this regard. Her delegation agreed with the view that competition regimes would benefit from adopting fundamental WTO principles such as transparency, national treatment and non-discrimination. She also concurred with the Canadian delegation in that cooperation and technical assistance were different processes. Guatemala was relying on international assistance to set up its competition regime and would be interested in hosting a regional workshop on competition policy like the one that had recently been organized by the WTO in Thailand.

94. The Chairman provided his personal reflections on the discussion that had taken place on Agenda item II. He drew attention, *inter alia*, to the following points, which he emphasized were simply personal impressions and had no official standing:

- The discussion had commenced with the presentation of several contributions exploring in detail possible features of a multilateral framework on competition policy. While these proposals had embodied certain common elements, including core principles, modalities for cooperation and measures to promote technical cooperation and institution-building, there had also been a number of differences in emphasis. Responding to concerns that had been raised in previous meetings of the Group, in several of the proposals it had been emphasized that harmonization of domestic competition laws would not be required as a prerequisite to participation in a multilateral framework. It had also been mentioned that exemptions could exist provided that they were transparent.

- Some delegates had suggested that one of the important benefits of a multilateral agreement would be to step up cooperation between competition authorities and to get at the practices that would otherwise "fall between the cracks" of national competition regimes and bilateral or regional agreements.
- A question had been raised by one delegate as to whether there had been an underestimation of the benefits of bilateral and regional agreements and, perhaps, an overestimation of the benefits of a multilateral agreement. While the answers given to this question had had various dimensions, one delegate had suggested that a key limitation of bilateral and regional agreements was their limited coverage both in terms of membership and geographic territories. It had also been suggested that the value of a multilateral framework might not be so much in the specific provisions that it embodied on cooperation but, perhaps, in the sheer fact that one would define common core principles and would have a general agreement that would give an incentive to competition authorities to cooperate more than they do.
- Another point that had been stressed by some delegates who were proponents of a multilateral framework had been that cooperation on specific cases should remain essentially voluntary in nature. In other words, it had seemed that, under the multilateral framework that had been proposed by some Members, there would be a commitment to cooperation similar to that which is contained in the cooperation arrangements that some countries already have at the bilateral level but that, as in those agreements, countries ultimately would not be required to cooperate if this was against their important interests. This had seemed to be an important clarification from the standpoint of at least one Member that hitherto had been sceptical of the desirability of a multilateral framework for cooperation in this area.
- Some delegates had also suggested that the interests of developing countries were likely to be neglected if cooperation was pursued only at a bilateral level and that, from that point of view, a multilateral agreement on cooperation could be a useful way to make sure that developing countries would reap the benefits of cooperation. Additionally, there had been some mention of the fact that a multilateral framework could reduce the cost of transactions for businesses and that this was not a negligible consideration.
- A question had also been posed, which seemed to be of interest to a large number of delegates, as to whether a multilateral framework would attempt to circumvent the ability of countries to provide subsidies as a tool of industrial policy. In reply, it had been stated by a key proponent of such a framework that this would definitely not be the case.
- A number of delegates had asked whether there were other ways to achieve the benefits that the proposed multilateral framework was envisioned to achieve. For example, it was suggested that it might be possible to achieve the desired benefits through mechanisms such as peer reviews, technical assistance and institution-building and other measures outside the scope of a multilateral agreement. At least, these delegates felt it was important to examine this possibility.
- Notwithstanding the apparently useful clarification that had been provided on the above and other points, several delegates had nonetheless emphasized that further clarification of the specific implications of, for example, the proposals that had been put forward on core principles as well as on cooperation remained necessary before the merits of the proposed multilateral framework could be properly evaluated.

- There had also been several contributions on the second aspect of this agenda item which dealt with the relationship between competition and economic development. On the issue of competition and economic development, the Group had heard from a country which had recently adopted a competition law and which had explained why it thought that competition law was necessary to protect opportunities for firms to gain access to markets and also to protect firms once they had gained access to markets.
- The Group had heard an interesting report about the work which was done at the Fourth Revision Conference of the UNCTAD. It had been noted that the agreed resolution from that Conference had affirmed the fundamental role of competition law and policy for sound economic development. In addition, among many other very interesting elements, it had called on UNCTAD to provide input to the development of international agreements on competition policy, including at the multilateral level. The information that had been provided by the representative of the OECD regarding that Organization's work on hard core cartels had also appeared to be relevant to the Group's deliberations.
- A number of proposals for structuring the future work of the Group had been discussed. It had been suggested that the Chairman consider revising and updating the set of questions that had been circulated in advance of the meeting. The point had also been made that, ultimately, it was up to Members to raise the points of concern to them, and that the Group's mandate was broad enough to encompass the various concerns that had been raised.
- Other delegates had suggested that it was important to give more attention in the Working Group to government measures that had an impact on trade and competition.
- Finally, several delegates had suggested that it was not productive at this point for the Group to engage in political negotiation. Rather, it was preferable that the Group continue to focus its work on the educative and analytical process. It was acknowledged, however, that as part of this process, it was relevant to continue studying the pros and cons and possible modalities of a multilateral framework as well as other potential options for addressing the various problems that had been identified.

In closing, the Chairman undertook to circulate, at an appropriate stage, an updated checklist of questions that had been put forward by Members.

III. THE CONTRIBUTION OF COMPETITION POLICY TO ACHIEVING THE OBJECTIVES OF THE WTO, INCLUDING THE PROMOTION OF INTERNATIONAL TRADE

95. The representative of the United States, introducing document WT/WGTCP/W/153, said that the paper discussed the role of competition advocacy. The importance of this topic reflected the fact that, in addition to private restraints such as cartels, restraints to competition could arise from unwarranted restrictions embodied in laws, regulations and policies. Such restraints would often be outside the purview of anti-trust laws, but would be open to advocacy efforts by competition agencies to remove or temper their anti-competitive effects. In the United States, competition advocacy was part of the mission of both the Department of Justice (Antitrust Division) and the Federal Trade Commission. The goals of the agencies' advocacy programmes were to represent the interests of consumers in preventing the adoption of restraints that could reduce competition and consumer welfare. For example, in general, the agencies urged that any regulations entail as little restriction as possible on competition. The paper provided a number of examples of advocacy activities at the

federal, state and local levels of government and with reference to a variety of forms of government intervention in markets for diverse services and goods. Unlike in some countries, in the United States, the relevant statutes did not provide specific authority for competition advocacy, but such authority was considered to be implicit in the legislation. In addition, certain other laws provided explicitly for participation by antitrust agencies in relevant proceedings.

96. Continuing, he said that competition advocacy could be done in formal and informal ways. Formal advocacy work involved the submission of written comments including expert studies and the presentation of oral testimony. Informal methods included discussions with legislators and their staffs or between staffs of the competition agencies and the regulators. He noted, as well, that the role of competition advocacy could be particularly important in economies undergoing a transition to a market-based economy, in which there would typically be a lot of privatisation activity. In such a context, advocacy was vital to ensure that public monopolies were not simply transformed into private ones and necessary regulations promoted public welfare by incorporating competition principles. With regard to suggestions for maximizing the effectiveness of advocacy work, a pre-condition was that proceedings be transparent and that the relevant agencies be receive sufficient advance notice of pending decisions to make the necessary preparations. It was helpful, as well, if the relevant hearings were open to the public so that the position advocated by the competition agency could be widely disseminated. Certainly, it could be helpful if the agency's advocacy role was specified in the law although, as noted, this was not the case in the United States. It had been found to be useful for the competition agency to have access to technical expertise, to be careful with the selection of priorities, to set realistic goals and to participate, to the extent possible, in a non-confrontational way taking the approach of informing decision-makers of the potential costs of misguided regulations and the benefits to consumers of pro-competitive policies. Finally, advocacy had to be backed up by effective competition law enforcement as part of an overall competition regime.

97. The representative of the European Community and its member States, commenting on the submission by the United States, said that it provided many valuable insights into the important role that competition advocacy could play in ensuring the efficient and competitive operation of markets. Competition advocacy was also an important element of competition policy in the European Community. As one example of such activity, Community proposals originating from the Commission and addressed to the Council were reviewed and, where appropriate, input was provided to ensure that they were compatible with competition policy objectives as they were enshrined in the EC Treaty. He noted as well, that a monitoring system was in place to deal with state aids to industry that were harmful to competition.

98. The representative of Canada, also commenting on the submission by the United States, said that, from the Canadian point of view, the paper had been useful in highlighting the manner of which competition authorities could relate to sector regulators in a useful way. The views expressed were strongly complementary with those that had been put forward in Canada's submission to the previous meeting of the Group (WT/WGTCP/W/146). He noted, as well, that the challenges posed by the relationship between competition authorities and sectoral regulators had been highlighted by a number of delegations from developing countries in the Fourth Review Conference which had taken place at UNCTAD during the previous week. This would appear to underscore the relevance of the points made in the United States' submission for developing countries. The representative of the United States had also mentioned that only a small part of the US competition agencies' budget was allocated to advocacy activities, which was certainly true in Canada, as well. On this basis, one might think that such activities were a luxury for nascent competition agencies. However, Canada's experience was that such activities were far from being a luxury and, indeed, were a very useful tool for promoting an efficient and competitive environment.

99. The representative of Switzerland, commenting on the same submission, said that it provided a large number of useful suggestions and insights. Competition advocacy activities by the

competition authority had also proven to be very useful in Switzerland, for example in addressing anti-competitive arrangements in the health care sector.

IV. OTHER ISSUES RAISED BY MEMBERS RELATING TO THE GROUP'S MANDATE TO STUDY THE INTERACTION BETWEEN TRADE AND COMPETITION POLICY

100. The Chairman noted that, at the Group's meeting in June, the Secretariat had undertaken to revise the Overview of Members' National Competition Legislation (WT/WGTCP/W/128/Rev.1) to incorporate input that had been received from Paraguay. However, it seemed that consultations were continuing with the mission of Paraguay regarding the appropriate coverage of Paraguay's legislation in the table. In any case, the Secretariat now intended to prepare a new version of the document to reflect the submissions that had been received from Thailand and Croatia and any other additions that were appropriate.

V. REQUESTS FOR OBSERVER STATUS FROM INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

101. The Working Group agreed to revert to requests made by SELA, the Organization of the Islamic Conference and the South Centre at its next meeting, having regard to the ongoing consultations on related matters in the framework of the General Council.

VI. OTHER BUSINESS

102. Regarding the nature and process for preparation of the Group's report to the General Council on its activities in 2000, the Chairman proposed and the Working Group agreed that the Secretariat be asked to prepare a draft report of the type that had been done at the end of 1998 (WT/WGTCP/2) and 1999 (WT/WGTCP/3). It was further agreed that a short meeting of the Group would be held on 21 November, for the purpose of reviewing and approving the draft Report. At the meeting, the Group would also consider the scheduling of its meetings in the year 2001.
