

## COMMUNICATION FROM COLOMBIA

The following is the final text of a paper received from the Permanent Mission of Colombia which was circulated as an advance copy for the Working Group's meeting of 22-23 March 2001.

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### Discussion Document

Colombia would like to contribute to the proceedings of the Working Group on Competition from the point of view of a developing country.

#### **1. The new environment**

The liberalization of market access has led to a considerable increase in the trade in goods and services. At the same time, enterprises have adopted global strategies for production which include such practices as relocalization, the opening of branches and the acquisition of or merger with enterprises already established in the new markets.

The considerable increase in multinational trade provides an environment conducive to anti-competitive practices<sup>1</sup>, which by definition lead to an inefficient use of economic factors and have a harmful impact on employment and on consumers in the countries, thereby hindering the objectives pursued through trade liberalization. Of particular significance in this context are the anti-competitive practices of enterprises whose export activities have a harmful impact on the competitiveness of the products of developing countries.

Anti-competitive practices affect the balance of opportunities for market access already agreed in the WTO and in many cases put pressure on the local authorities to protect their countries from unfair competition by restricting access.

The developed countries have responded to these increased risks of anti-competitive practices arising from the globalization of the economy by strengthening their competition policy and their supervisory and monitoring bodies. Regional agreements have in many cases established machinery for cooperation in the application of the policy to strengthen the existing competition laws so as to provide mutual assistance and exchange information.

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<sup>1</sup> Agreements to exclude competitors, cartels, mergers with anti-competitive effects, abuses of a dominant position, etc.

In addition, globalization has given rise to problems of competition in national markets on account of the fact that domestic producers have to meet competition from products provided by external suppliers which are of substandard quality. The consumer has no recourse to an appropriate body that will be responsible for the quality of the product.

Competition in such circumstances leaves the national competitors at a disadvantage since consumers are able to bring a complaint against the local producers as the costs are of a different order of magnitude as compared with those that would be incurred in pursuing the complaint in the country of origin.

## **2. Particular problems faced by Colombia in the competition field**

In response to the process of internationalizing the Colombian economy and adopting an open, free-market economic model, in 1992 Colombia amended its regulations on competition and strengthened its supervision over the application of such rules.

Although Colombia has comparatively well developed competition laws that are sufficient to combat anti-competitive practices, and there is a body responsible for supervising the observance of such laws and penalizing failures to comply, in practice these instruments have proved ineffective against the anti-competitive practices of multinational companies.

Accordingly, Colombia is, surely like the other developing countries, at a disadvantage as compared with the developed countries. Although in theory the developed countries may also be the victims of monopoly practices, they are less vulnerable since the companies are careful not to carry out such practices in those countries with a greater capacity for imposing penalties and where the risk increases with the size and importance of the market for the multinational.

In a situation such as that existing in Colombia, with high legislative and supervisory standards with regard to competition, the local application of such controls protects the multinational company as compared with its national competitors, which may possibly have a more dominant position in that market.

## **3. Reflections in response to this problem**

Following a process of examination and discussion the Colombian authorities have identified the following factors that would create an ideal environment to confront unfair competition.

- A set of principles including, in particular, national treatment, transparency and due process.
- Support for the application of the origin-effect principle of the practice in determining the competence of the local authorities.
- Agreement on a group of actions (rules and common principles) that would necessarily be included in domestic legislation, without sectoral exclusions or symmetrical exclusions.
- A clear link with consumer protection.
- Instruments of cooperation.

#### **4. The WTO and competition**

From Colombia's point of view, although it would be desirable to have available prior to the negotiation all the responses to the concerns that have arisen with regard to competition, we do not believe that any extension of the proceedings of the working group would be likely to provide us with responses.

Similarly, although we should like to see solutions to all the problems facing Colombia in this field, such a result would be by no means easy to achieve in view of the diversity of Members' policies and their different points of view.

Bearing in mind such considerations, we take a positive view in response to the question of whether the WTO should be the forum for tackling the issues involving competition. We base our response on the fact that the broad participation of the developing countries within the Organization should ensure the inclusion of the dimension of development and preserve a balance between the interests and concerns of the various Members.

Consequently, even if the outcome is a multilateral framework that falls somewhat short of meeting the expectations of a developing country such as Colombia, it would be useful insofar as it would initiate the process of designing instruments that would make it possible to combat anti-competitive practices at the global level, in particular those that affect the competitiveness of the exports of the developing countries, as well as furthering the aim of strengthening the institutions for promoting competition.

In such a context cooperation between national agencies is essential when a State attempts to investigate an anti-competitive practice by any economic actor whose area of operation lies outside the limits of its jurisdiction.

We believe that the Member countries need to recognize the importance of cooperation and coordination between authorities for the effective application of competition law. Such cooperation should include such aspects as notification, consultation and the exchange of information on the application of the laws and competition policies of each country.

In our view, cooperation should promote collaboration and coordination between the appropriate bodies through regular and constant exchanges of information, assistance in the observance of laws, technical assistance and the creation of capacity for other countries.

Furthermore, formal channels need to be established so that the various institutions responsible for ensuring observance of the laws to defend competition may interact by means of consultations on cases, databases and exchanges of information.

A multilateral framework on competition policy in the WTO could help towards the effective application of national competition policies and towards various forms of cooperation between the relevant authorities, as a means of assisting the developing Member countries and those Members whose economies are in transition to solve practical cross-border problems relating to the application of a policy and a law on competition.

Another aspect that needs to be taken into account under the heading of technical assistance would be the establishment of mechanisms to ensure cooperation between those countries that already have national laws, those that are in the process of introducing legislative measures and those that have no legislation in this field.

Technical assistance should involve programmes that range from general familiarization activities to increase awareness on free trade and trade negotiations to specialized training programmes that assist the implementation of WTO Agreements and the implementation and harmonization of clear rules on competition.

We also believe that the developed countries should provide financial assistance to the developing countries so as to ensure progress in the policies and application of laws on competition.

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