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Working Group on the Interaction between Trade and Competition Policy

REPORT ON THE MEETING OF 16 AND 17 SEPTEMBER 1997

Note by the Secretariat

1. The Working Group on the Interaction between Trade and Competition Policy held its second meeting on 16 and 17 September 1997 under the chairmanship of Professor Frédéric Jenny.
2. The agenda for this meeting involved a discussion of Items I and II in the Checklist of Issues Suggested for Study prepared by the Chairman. Specifically, Item I in the Checklist concerns the relationship between the objectives, principles, concepts, scope and instruments of trade and competition policy, and their relationship to development and economic growth, whereas Item II refers to the stocktaking and analysis of existing instruments, standards and activities regarding trade and competition policy, including of experience with their application. The Group also considered a request for observer status received from SELA.
- I. RELATIONSHIP BETWEEN THE OBJECTIVES, PRINCIPLES, CONCEPTS, SCOPE AND INSTRUMENTS OF TRADE AND COMPETITION POLICY
3. The representatives of Hong Kong-China, Singapore, New Zealand, Japan, the Philippines on behalf of ASEAN WTO Members, the United States, Peru, Romania, Turkey, Pakistan, Canada and Morocco introduced written contributions (documents WT/WGTCP/W/26, 28, 30, 32, 33, 35, 36, 38, and 40 through 43, respectively) relating to this part of the agenda. In addition, representatives of Argentina, Australia, Egypt, the European Community, India, Korea and Norway made oral remarks regarding this topic.
4. A delegation stressed that, since competition policy was a new area for the WTO, a vital first step in the work of the Group was to develop a common vocabulary of key concepts in the area of competition law and policy. In this delegation's view, differing uses of such concepts in the presentations were giving rise to a degree of confusion. Terms such as market definition, including its product and geographic dimensions, entry barriers, market structure, market power, competitive injury, horizontal and vertical restraints and mergers were cited as concepts in competition policy that merited special consideration by the Group.
5. A number of other delegations, while not necessarily denying the utility of such work, said that the Group should not lose sight of the fact that its mandate was not to study competition policy as such, but the interaction between trade and competition policy. In their view, all factors affecting the contestability of markets should be addressed, whether they were private or governmental in nature.
6. With regard to the scope of competition policy for the purpose of the Group's work, some Members stated that competition policy was broader than competition law and could be implemented whether or not competition laws were enacted. A confluence of factors might allow an economy to achieve the objectives of competition policy even in the absence of a competition law. It was also said that competition policy included not only competition (or antitrust) law proper, but also regulatory

functions, generally exercised with respect to natural monopolies or market-failure situations, in addition to an advocacy role intended to influence public policy in a wide spectrum of fields in a pro-competitive way. Other aspects identified by some Members as falling within competition policy, taken broadly, included deregulation, privatization, and trade policy. Another view was that the Group should focus on competition law proper.

7. A number of Members commented on whether trade and competition policies were consistent with one another with respect to their objectives. It was said that trade and competition policies could be seen as consistent, in that they both could be used to achieve the objective of rendering domestic markets more competitive: trade policy opened up markets to foreign supplies and suppliers while competition policy provided an environment conducive to more open markets. It was observed, however, that increased competition was not an objective in itself. Rather, it was important in that it tended to direct resources to more productive uses and, by so doing, increase domestic economic welfare. Thus, the kinds of trade and competition policies that increased market competition were seen as sharing the ultimate objective of enabling an efficient, welfare-maximizing allocation of resources. The importance of looking at the objectives of trade and competition policies in this broader perspective was underlined.

8. It was also said that, even when pursuing increased competition, trade and competition policies had important differences, since trade policy was concerned with government actions, whereas competition policy focused on the behaviour of private firms. Nonetheless, pro-competitive trade policy and competition policy could be seen as mutually reinforcing, since the latter increased competition by removing government-imposed barriers to trade, whereas the former did this by restricting anti-competitive behaviour on the part of private firms. The view was also expressed that, since, in some cases, anti-competitive behaviour by private firms derived from the existence of government barriers to trade and would not survive in the absence of such measures, trade liberalization was supportive of competition policy goals.

9. The argument that competition policy could serve as a complement to trade policy was also made. It was stated, in this regard, that the area of application of trade policy was significantly different from that of competition policy, since trade policy traditionally focused on border measures whereas competition policy regulated the behaviour of private firms within the country concerned in its entirety. Given that trade policy did not address directly anti-competitive behaviour within the country concerned, it could not prevent private firms from behaving anti-competitively even if border barriers were largely done away with. One delegation illustrated the latter point by describing a number of examples where domestic firms apparently still engaged in anti-competitive behaviour, despite the fact that the economy concerned had been exposed for a number of years to extensive trade liberalization, and made the point that competition law was necessary if such behaviour was to be restrained.

10. Some Members said that, although there were important complementarities between trade and competition policies, there remained important differences or inconsistencies between them. In particular, it was said that trade and competition policies sought to protect different economic interests: while consumer interests were predominant in competition policy, trade measures - as opposed to trade liberalization policy - were oriented towards producer interests. Moreover, while competition policy was more concerned with protecting competition, trade measures protected competitors. Some delegations said that, in addition to protecting infant industries, trade policy was often concerned with such matters as raising revenue, ensuring self-sufficiency and promoting exports - all of which purposes could lead to divergences from competition policy goals. Another point made was that whereas nationality was central to trade policy, it was generally not a consideration in competition policy.

11. However, it was also said that the objectives of competition policy differed from country to country, depending upon domestic circumstances and historical experiences, and that competition policy

sometimes encompassed producer-oriented goals such as the protection of small businesses or the pursuit of national industrial policy. The point was also made that competition policy, even when focusing upon the interests of consumers, only took into account national consumers and neglected consumers in foreign countries. It was stated in this regard that export cartels were typically allowed under competition law on the basis of the argument that such arrangements were not detrimental to national welfare because their effects were only felt abroad. It was argued, therefore, that this type of competition policy promoted local welfare at the expense of global welfare.

12. The possible inconsistencies between trade and competition policies were further discussed by reference to trade policies having an adverse effect on competition and competition policies having an adverse effect on trade. Some Members considered that trade defence instruments were often applied in a way having a negative impact upon competition. For example, anti-dumping measures were often anti-competitive because they curtailed market access for foreign suppliers, or facilitated anti-competitive behaviour by domestic firms. Exclusions and exemptions from competition law (including in respect of export cartels) as well as lack of effective enforcement thereof were cited by some Members as illustrations of competition policies, or failures of competition policies, having a negative impact upon trade or at least limiting the positive, complementary role that competition policy may play. Market access for exporters could be made more difficult, or, in the case of export cartels, consumers in foreign countries hurt.

13. Some Members proposed that the future work of the Working Group should concentrate on studying further the complementarities and inconsistencies between trade policy and competition policy, and more generally the mutual coherence of the two policy areas, perhaps by making references to specific case studies. In respect of competition law, a range of aspects was identified in this connection, including exemptions and exceptions, the implications of different national standards, issues in connection with enforcement, multiple reviews of mergers, extraterritoriality and the settlement of disputes between states about competition policy matters. The further study of trade measures that impacted on competition was also suggested.

14. Some Members expressed their views on the need for greater international cooperation in regard to the interaction between trade and competition policy and the role of the WTO in this regard. Some delegations said that it would be premature to develop competition provisions in the WTO; the WTO dispute settlement mechanism might prove sufficient to deal with trade problems arising in this connection. Another delegation foresaw the need for the development of common rules. Some Members were of the view that the increasing integration of the world economy and the liberalization of trade enhanced the need for international cooperation on the interaction between trade and competition policy, as had been shown by the recent telecom negotiations.

15. Some Members stressed the need for in-depth analysis of the relationship of trade and competition policy to development and economic growth. A delegation said that well-functioning markets, and thus competition policy which contributed to ensuring that markets worked properly, were beneficial to all economies regardless of their stage of development, while acknowledging that the specifics of competition policy may have to be adapted or refined on a case-by-case basis in order to deal with specific national circumstances. Another delegation argued that failure to implement competition policy at an early stage might result in very concentrated market structures which, given their high welfare costs upon the economy, might necessitate costly industrial restructuring later. In this connection, it was said that developing countries might have to balance the risks arising from concentrated market structures against the need to allow domestic firms to grow sufficiently large to have the capacity to compete successfully in international markets. Some representatives of developing countries said that, as they liberalized their national trade regimes and made their economies more open, it was increasingly important that competition law in their trading partners should take account of their export interests and that their own competition laws should protect them against abusive practices in their import markets.

The point was also made that, in those developing country economies that were characterized by a high level of state ownership and intervention, for example through price controls, the environment for competition law was not comparable with that in more market-oriented and advanced economies. Another aspect of the development dimension to which reference was made was the importance of technical cooperation with developing countries in the field of competition policy. In response to a proposal that a paper be prepared on the relationship between competition policy and economic development, a Member offered to do so.

16. The question of whether the Secretariat should be asked to prepare a compilation of the issues raised and points made on them was discussed. This was envisaged as being a "rolling" document which would be updated after each meeting of the Working Group. In concluding the discussion on this point, the Chairman noted that, while there was no disagreement on the principle of the preparation of such a compilation, there remained questions of timing, especially since discussions on the subject had only begun. The Working Group agreed to revert to this matter at its next meeting.

17. In regard to a proposal that a paper be prepared on exclusions from competition law, the Chairman drew attention to a recent OECD book (Antitrust and Market Access: The Scope and Coverage of Competition Laws and Implications for Trade) identifying exclusions from competition law in a number of member countries of that organization. In regard to a suggestion that an overview of the objectives of competition policy be prepared, the Chairman noted that more information on national policies in this regard would be presented under the next agenda item and urged delegations to make written and/or oral contributions on this matter to the Group's next meeting. He also invited such contributions on specific cases illustrating complementarities and inconsistencies between trade and competition policy.

18. In concluding the discussion of this item of the agenda, the Chairman drew attention to some of the points that had struck him as emerging from the written contributions and oral statements. He stressed that these points represented his personal reflections only, and had no official status:

- there seemed to be a sense that, at a general level, trade liberalization and competition policy broadly shared the same goal of contributing to efficiency and were mutually reinforcing, because they addressed related issues in somewhat complementary ways;
- but when the Working Group took a closer look at the relationship between trade and competition policy, a question of definitions, particularly with regard to "competition policy" arose. What exactly was included in this term? It was common ground that antitrust law was part of competition policy. But many delegates had suggested that other elements such as privatization, deregulation, etc. should be considered to be part of competition policy as well. In addition, some delegates had suggested that competition law was not necessarily the most important means for ensuring competition in the economy and therefore not necessarily the central element of competition policy. Others had suggested that it was the central element of competition policy;
- as far as competition law was concerned, the point was made that national competition laws were not necessarily the same across countries; they might have somewhat different immediate goals, leading to different appraisals of the same situation. So some delegates considered that, before examining the relationship between trade and competition policy, it would be useful to spend some time gaining an understanding of the basic concepts underlying competition policy;
- in regard to the more detailed examination of the relationship between trade and competition policy, a number of delegates had expressed the view that the relationship

was complex, including areas of complementarity but also of divergences. Some of this complexity derived, in the opinion of some delegates, from the fact that the instruments of competition policy and the instruments of trade policy were not always consistent (or not used in a consistent way) with regard to the ultimate goals of both policies. There had been some discussion of the fact that some trade instruments might not, in fact, contribute to market opening. But there had also been discussion of the competition policy instruments. Some had ventured the idea that competition policy instruments were sometimes pursuing larger goals than efficiency and that this could contribute to a certain amount of confusion. Exceptions to competition laws, exemptions, and more generally the fact that competition policy did not necessarily apply to all sectors of economic activity were seen by some as a sign that competition policies did not always ensure efficiency. This was particularly relevant to the debate on the interaction between trade and competition policy, since typically competition laws did not cover all of the practices that had cross-border effects. Even where competition law did apply to practices having cross-border effects, it might not permit a balancing of the global welfare of consumers in all affected countries. It had also been suggested that another source of inconsistency between trade and competition policy might come from the fact that, whereas competition policy (at least in some countries) favoured a consumer welfare approach, some trade policy instruments were based on a producer surplus approach;

- questions had also been raised about the enforcement of competition law, and it was remarked that lax enforcement might work against the assumed goals of both competition policy and trade liberalization. It had also been pointed out that trade policy and competition policy were generally administered by different institutions and also that different aspects of competition policy might be administered by different bodies, possibly leading to inconsistencies in policy application. Others had suggested that advocacy was an important aspect of competition policy, and that the advocacy role of competition authorities can be instrumental in widening the scope of competition policy and making competition policy instruments more consistent with the goal of efficiency;
- this had led some delegates to raise the question of whether so-called "private" anti-competitive practices were indeed merely that or whether in a number of cases they were implicitly or tacitly encouraged by governments. An added question depending on the answer given to the previous one, was the relevance of existing WTO provisions and enforcement mechanisms. Beyond this, some delegates had raised the question of how important, empirically, were anti-competitive practices that distorted trade;
- finally, there had also been some discussion of the relationship between competition policy and economic development. For some delegates, it seemed that competition policy generally helped economic development and was always an appropriate tool, although in the mind of some of these delegates a case could be made for some adjustment for capacity building and the particular circumstances of new economies in the initial stages of development. Some examples had been discussed of countries in which competition policy came a bit late and the lack of an effective competition policy led to difficulties at later stages. Some other delegates had suggested that a closer look should be given at this issue, since it was not obvious that the prerequisites (both structural and institutional) for the effective application of competition policy were present in developing countries at all phases of their development.

II. STOCKTAKING AND ANALYSIS OF EXISTING INSTRUMENTS, STANDARDS AND ACTIVITIES REGARDING TRADE AND COMPETITION POLICY, INCLUDING OF EXPERIENCE WITH THEIR APPLICATION

19. Discussion of this item was organized under the three tirets of this item in the Chairman's Checklist of Issues, in the following order:

- (a) national competition regimes;
- (b) bilateral, regional and plurilateral agreements relating to cooperation in competition law enforcement;
- (c) competition-related provisions in existing WTO agreements.

(a) National competition regimes

20. Representatives of Switzerland, Australia, Japan, Hungary, the European Community, Norway, Romania and Korea introduced written submissions by them in relation to this item of the agenda (documents WT/WGTCP/29, 39, 32, 27, 34 (to be issued), 31, 38 and 37, respectively).

21. In addition to matters covered in the written submission of the European Community and its member States, the representative of the European Community described the historical origins and current application of the competition legislation of the EC and its member States. From its inception, competition law in the European Community had placed special emphasis on the goal of market integration, which had led it to take a more severe approach to the treatment of non-price vertical market restraints than might be the case under a pure efficiency-based standard. The approach to non-price vertical restraints was currently under review. He described the application of EC competition law to arrangements or transactions entered into outside the territory of the EC, under the so-called "implementation doctrine", and commented on cooperative arrangements relating to competition law both within the EC and externally.

22. Following up on the suggestions in the discussion under the previous agenda item regarding the need for clarification in the Working Group of the basic concepts and terminology of competition policy, the representative of the European Community described the treatment of market definition in competition law cases in the EC and suggested that it might be useful for Members to compare their experiences in defining markets, within the Group. He said that market definition was an essential step in analysing most, if not all, competition law cases. The concept of a "relevant market" for competition law purposes had both a product and a geographic dimension. In regard to the product dimension of the market, the basic question to be answered was with what other products and services did a particular product compete? Answering this question would involve consideration of past evidence of consumer substitution patterns, the relationship between price movements and the demand for other (potentially) substitutable products, econometric evidence and subjective evidence of consumers' views regarding which products they considered to be substitutes. Enforcement officials would also consider evidence of supply side substitution possibilities, particularly the ease with which producers could switch between alternative product lines. With regard to the geographic dimension of the market, the focus was on identifying the geographic area within which competition took place. Relevant geographic markets could be local, national, international or occasionally even global, depending on the facts in each case. Some of the indicia that would be considered in evaluating the extent of the market included past evidence of consumption and shipment patterns, transportation costs, perishability and the existence of barriers to the shipment of products between adjoining geographic areas. In the experience of the EC, there was evidence of an ongoing process of integration so that markets which in the past had been local or national in scope were increasingly found to be international or in some cases even global. Even where relevant geographic markets extended beyond the territory of the EC, the principal focus of the Commission in enforcing EC competition rules was on the impact of business arrangements

on consumers within the European Community. Nonetheless, the fact that consumers in the European Community increasingly were being affected by arrangements originating wholly or partly outside its territory called for the expansion of cooperative approaches to competition law enforcement.

23. Representatives of Brazil, Mexico, Kenya, Argentina, Canada and Poland took the floor to make oral contributions to this item of the agenda. The first five of these said that they planned to present their contributions in written form.

24. The representative of Poland provided a brief overview of his country's competition legislation which had been adopted in 1990. The law dealt with monopolistic practices, abuse of a dominant position and merger control. It was administered by the Office for Competition and Consumer Protection together with an Antimonopoly Court in Warsaw and other bodies. All business entities, foreign and domestic, were subject to the law, provided that the results of their activities took place under the authority of Poland. Domestic and foreign entities were treated equally.

25. Consistent with a suggestion by the Chairman, Members attempted, in their oral presentations, to relate aspects of their national competition regimes to the conceptual points that had been raised in the previous discussion of the general relationship between trade and competition policy. While several Members indicated that their national competition legislation focused principally on the goals of protecting consumers and promoting economic efficiency, a number of other goals were mentioned. These included promoting international competitiveness and preserving opportunities for small and medium-sized businesses to participate in the national economy. In addition, one Member said that the application of his country's competition legislation was subject to a general public interest over-ride provision. Several representatives indicated that national competition laws had been adopted as one element of an interrelated set of reforms intended to establish a well-functioning market economy. Competition laws were considered to be particularly important, for example, in reinforcing the benefits of privatization and regulatory reform. The important role of cooperative approaches to competition law enforcement in supporting regional economic integration (e.g., within the EC, between the EC and Central and Eastern European countries, and in MERCOSUR) was mentioned by several Members. The applicability of domestic competition law to arrangements entered into outside a country's borders, so long as such conduct had significant effects in, or was "implemented" in, the country, was considered by several Members to be important to the control of anti-competitive practices. However, the point was made that such "extraterritorial" application of national laws entailed some potential for conflicts between jurisdictions. International cooperation, and in particular agreements incorporating principles of "traditional" and "positive" comity, could be useful in minimizing the actual extent of such conflicts between countries participating in such arrangements. It was noted that the ability of national competition laws to deal with anti-competitive practices that potentially affected international trade was limited by exceptions and exemptions from competition law in some countries. It was suggested that earlier introduction and more vigorous enforcement of competition law in some Members' economies would have helped to prevent structural economic problems that must now be addressed.

26. In response to a question relating to problems that had apparently arisen in markets for industrial inputs, the representative of Argentina indicated that conditions in a number of markets for such inputs had recently been investigated or were under investigation. While the conclusions reached varied across the particular sectors, there was evidence of anti-competitive or discriminatory practices causing continuing price distortions in the markets for sheet glass and chlorine. Concerning a second question on the relationship between the pending protocol relating to competition policy in MERCOSUR and the application of anti-dumping measures, he said that, at some point in the future, when there would be a fully integrated market across the MERCOSUR countries, the use of anti-dumping would disappear. In the meantime, anti-dumping measures would continue to apply, subject to a consultation mechanism.

27. In response to questions regarding the jurisdiction of, and types of cases investigated by, EC member States, the representative of the European Community emphasized the important role that member States continued to play in competition law enforcement, notwithstanding the extent of steps taken to ensure an integrated market across the Community. Many competition law cases concerned goods or services for which the relevant markets were local or national rather than Community-wide in scope. Two examples cited were retail banking and transportation services. Moreover, even in cases having effects that cut across member States, provision existed for individual states to exercise jurisdiction, where this was the most efficient way to handle the case. The extent of the relevant geographic market was not dispositive with respect to whether the Commission would assert jurisdiction over a particular matter. Rather, the question to be addressed was whether the arrangement in question was being actively implemented within the Community. Regarding the resolution of possible conflicts between Community and EC member State jurisdiction in competition law matters, he said that ultimately, in matters affecting Community-wide interests, its powers were paramount vis-à-vis those of the member States. Regarding areas of exemption or exclusion from EC competition rules, he referred to the existence of special rules relating to the agriculture and defence sectors as well as to various kinds of public services. Finally, in response to questions regarding the comparability of the EC and United States approaches to the exercise of jurisdiction in competition law matters affecting more than one country, he said that the law of the Community was applicable to conduct taking place abroad to the extent that particular arrangements were "implemented" within the Community. This approach yielded results which were broadly similar to those of the United States "effects" test, at least in respect of conduct that adversely affected consumers. According to his understanding, one respect in which the EC implementation doctrine did not go as far as the United States effects test was that the EC did not, in general, assert competition law jurisdiction over foreign arrangements that adversely affected its exporters (as opposed to its consumers), whereas the United States did. The EC implementation doctrine was not, strictly speaking, one of extraterritoriality; rather, it was "territorial" in that it gave the Community jurisdiction over matters implemented in its territory, regardless of where they were conceived or originated. The Community's approach to these matters should also be understood in the context of existing instruments for international cooperation; he hoped that the work undertaken in the Group would help to clarify understanding and extend the use of cooperative approaches. Responding to a question on the ways in which consumers' interests were considered in applying competition law, he said that, first and foremost, competition policy embodied a presumption that consumers were best protected by ensuring the existence of vigorous rivalry in markets for goods and services. In addition, when granting certain exemptions under the EC competition rules, the interests of consumers were considered explicitly.

28. In addition to the questions summarized above, for which detailed answers were provided during the course of the meeting, Members posed a number of broader conceptual questions to Members with experience in the application of competition law. While in some cases, preliminary answers to the questions were provided in the course of the meeting, time did not permit all delegations wishing to comment on these questions to do so. Moreover, it was felt that these questions would provide a useful focus for written contributions to be made by Members to the meeting of the Working Group in November. The Working Group agreed that a list of these questions would be circulated to Members (done in informal document 5428, dated 30 September 1997). The Chairman encouraged Members to consider providing answers to these questions in their written submissions for the November meeting.

(b) Bilateral, regional and plurilateral agreements relating to competition law enforcement

29. Representatives of the United States gave a detailed presentation on their jurisdiction's experience with bilateral and plurilateral cooperation agreements relating to cooperation in competition law enforcement. At the request of the Chairman, they agreed to set out the United States experience with such agreements in a subsequent written submission. The Chairman also requested that, in their

submissions for the November meeting, other Members who were party to such agreements provide a description of their experience with them.

(c) Competition-related provisions in existing WTO agreements

30. Referring to the informal note on Competition-Related Provisions in Existing WTO Agreements which had been prepared by the Secretariat for the initial meeting of the Group in July (Job 3347), a delegation said that it disagreed with the approach adopted in selecting provisions to be discussed in the Secretariat note. In particular, it disagreed with the emphasis in the note on provisions relating to enterprise practices, and stated that inclusion of WTO provisions should be based primarily on nominations by Members of the Working Group, with the principle of no a priori exclusion applying. The Secretariat's note had been compiled in mid-June 1997, before Members' contributions had been received, but now a revision was in order. Given the concern that too broad a coverage would render the stocktaking of WTO provisions meaningless, priorities should be set for listing and study. Priority should be accorded to WTO provisions governing the more trade-restrictive or trade-distortive measures. Not only were such provisions points where trade and competition interfaced, but this approach would be consistent with the manner in which the GATT/WTO had conducted its work over the past 50 years. He said further that, to his knowledge, there was little quantitative indication, in terms of research or statistics, as to the magnitude of restraints by enterprises on international trade. Despite 50 years of efforts in the GATT/WTO toward liberalization, the restrictive or distortive effects of government measures still appeared to be much more harmful to trade and competition than those resulting from enterprise practices. His delegation was not opposed to addressing the restrictive or distortive practices of enterprises, but believed that these should be addressed alongside government practices impeding trade and competition. There was also a question of what would be learned from the WTO provisions if the focus was not on the severity of the restrictions and distortions at the interface of trade and competition. For example, in connection with anti-dumping, if the Group focused on the practices of enterprises, it would address the act of dumping, which in any case was already condemned if it caused or threatened material injury to the domestic industry. But, if the Group focused on the severity of restrictions and distortions at the interface between trade and competition policy, it might address whether material injury should be related in a protectionist sense to "domestic industry", or in a liberal sense to "competition" itself. Moreover, the narrow approach of addressing enterprise practices only might preclude study of the WTO provisions on subsidies and countervail, rules of origin, and textiles and clothing. These were all highly pertinent in terms of restrictions and distortions, and the trade and competition interface. For example, one of the most direct references to competition in the WTO Agreements was found in Article 1.5 of the Agreement on Textiles and Clothing, which prescribed "competition" as a cure to probably the biggest-ever derogation from the GATT, namely the textile regime under the Multi-Fibre Arrangement. The language in Article 1.5 carried broader implications for all quantitative restrictions maintained under the multilateral trading system which were of a discriminatory nature. In his delegation's view, the broader approach it had outlined to issues relating to the interaction between trade and competition was essential to fulfilling the mandate given to the Group by Ministers at Singapore.

31. A representative said that a wide range of WTO agreements was potentially relevant to the interaction between trade and competition policy. These would include the reference paper prepared for the negotiations on Basic Telecommunications Services, the TRIPS Agreement, which reflected a delicate balancing of competition policy concerns and incentives for innovation, Article XVII of the GATT dealing with state trading, the General Agreement on Trade in Services generally, and the Agreement on Trade-Related Investment Measures. Reflecting the clear relevance of these Agreements and provisions to the mandate given at Singapore, he disagreed with any suggestion that the focus of the Group should be narrowed to deal particularly with matters relating to trade remedies.

32. A delegation said that the Group should not only examine the complementary aspects of trade and competition policy but also the detrimental effects that trade measures could have on competition, and that this analysis should cover both theoretical and empirical considerations. Articles IV, XVI and XIX of the GATT 1994 would be relevant in this regard. However, there was no suggestion that other articles relevant to the interface between trade and competition policy, including those covered in the Secretariat's note, should not also be considered.

33. A delegation supported a broad approach to the analysis of WTO provisions, including, in particular, consideration of the Agreements on Subsidies and Textiles.

34. The Secretariat said that it was not, in the note circulated as Job 3347, suggesting any particular scope for the work of the Working Group. That was clearly a matter for the Group, and not for the Secretariat, to decide. Paragraph 2 of the note stated that most WTO provisions may be regarded as related to competition and then explained why, for purely practical reasons, the note focused on certain provisions.

35. The Working Group took note of the Secretariat note, while also noting that it in no way restricted the scope of issues to be examined by the Group and did not preclude any WTO provision from being raised.

III. REQUEST FOR OBSERVER STATUS

36. In response to its request, the Group agreed to invite SELA to attend its next meeting, as an observer, on an ad hoc basis.

IV. ORGANIZATION OF FURTHER WORK

37. Noting that its work programme provided for further discussion of Items I and II of the Checklist of Issues at its next meeting, scheduled for 27-28 November, the Group agreed that consideration of Item I would be divided into two parts: first, the relationship between the objectives, principles, concepts, scope and instruments of trade and competition policy; and second, their relationship to development and economic growth. Under Item II, the Group agreed to set aside time for dialogue, including questions and answers. Members having questions to put were urged to give advance notice of such questions to the Member to which they were addressed and to the Secretariat.

38. The Group noted that some Members had undertaken to provide further written contributions to its work. The Chairman urged all Members, including those that had already made contributions, to make contributions, both written and oral, including contributions focusing on specific issues, concrete cases and particular competition law concepts.

39. The Chairman announced that he would make available an expanded version of the Bibliography on Trade and International Competition (document WT/WGTCP/W/11). He also informed the Group that the Secretariat was in the process of organizing, in cooperation with UNCTAD and the World Bank, a Symposium to be held in Geneva immediately following the next meeting of the Working Group, on the subject of Competition Policy, Economic Development and International Trade. The Symposium would provide a further opportunity for reflection, in an informal setting, on the issues being considered by the Working Group.