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The following is the final text of a paper received from the Permanent Mission of Australia which was circulated as an advance copy for the Working Group's meeting of 23-24 April 2002.

INTERNATIONAL ACTIVITIES AND TECHNICAL ASSISTANCE ON COMPETITION LAW AND POLICY: AUSTRALIA'S EXPERIENCE

Australia has an active programme of technical cooperation and policy dialogue with developing countries aimed at strengthening their capacity to participate in global and regional trading arrangements and to encourage the exploitation of trade opportunities to their best advantage.

The Australian aid programme places high priority on effective partnerships with the countries it seeks to assist. Much of Australia's aid is designed, delivered and assessed jointly with the governments of partner countries. Australia's programmes are tailored to meet their most pressing development needs. Country strategies focus on helping to reduce poverty, promoting economic growth, investing in human resources and protecting the most vulnerable groups in society.

Australia recognises that the provision of technical assistance is important for developing countries, who may face difficulties in securing anticipated gains from international trade liberalisation. Through these various programmes, assistance is provided to help developing countries identify and manage the potential economic and social impacts of trade and investment liberalisation, identify new sources of revenue and market opportunities, and cope with the institutional and regulatory requirements of the global trading system.

Australia also notes the importance of sound economic governance in developing countries and in 1997 governance was made a specific focus for Australia's aid programme. Effective governance ensures that sound fiscal, monetary and trade policies are instituted to create an environment for private sector development. A dynamic private sector creates jobs and incomes, generates wealth and ensures resources are used efficiently.

Australia's experience with developing countries, particularly within the APEC region, reinforces the importance of technical assistance and capacity building as an integral part of the development of multilateral competition rules, as was highlighted in the Doha Ministerial declaration. In this context, progressive reinforcement of competition institutions through an incremental approach to capacity building is most effective. Commonwealth entities such as the Department of Foreign Affairs and Trade (DFAT), the Department of Treasury, the Australian Agency for International Development (AusAID) and Australia's competition regulator, the Australian Competition and

Consumer Commission (ACCC) have been involved in numerous technical assistance programmes. Technical assistance normally involves the ACCC making available its resources and expertise in competition policy and law enforcement, consumer protection law and policy and utility regulation. Funding for substantive technical assistance derives from the Australian Government's overseas aid programme, managed by AusAID.

Australia believes that with the advent of globalisation, brought about by the reduction in barriers to international trade in goods and services and capital, competition has spread across national barriers. As a result, there is a need for countries to address cross-border competition problems and ways of addressing them. As a developed country, with experience in applying a long tradition of promoting competition policy and law amongst producers, Australia has endeavoured to engage in capacity building and information sharing on competition policy, law and enforcement at a bilateral, regional and multilateral level.

An overview of Australia's recent international and technical assistance activities follows, updating previous submissions on this subject (WT/WGTCP/W/125 and WT/WGTCP/W/148).

I. TECHNICAL ASSISTANCE

A. IN COUNTRY ASSISTANCE

Indonesia

The ACCC has participated in an ongoing consultancy project, with funding assistance from AusAID, to provide technical assistance to the Directorate of Consumer Protection of the Indonesian Ministry of Industry and Trade in the implementation of the Prohibition of Monopoly Practices & Unhealthy Competition Law. The assistance has involved "in country" consultancies to develop and define short-term and long-term objectives for the work of the Directorate.

Papua New Guinea (PNG)

The ACCC has been working with the PNG Consumer Affairs Council to assess possible future assistance with developing existing staff and organisational structures and resources to cope with the implementation and administration of new competition and consumer legislation.

B. STUDY VISITS

One major aspect of the Australian Government's liaison and technical assistance work involves receiving visits to Australia. During 2000-2001 the ACCC hosted short-term study visits to Australia by officials from the following economies: Argentina, Canada, the People's Republic of China, Chinese Taipei, Egypt, Fiji, Germany, Hong Kong, India, Japan, Korea, Lebanon, Macao, Malaysia, New Zealand, Papua New Guinea, Peru, the Philippines, Singapore, Sri Lanka, South Africa, Sweden, The United Kingdom, The United States of America and Viet Nam. These visits involve a range of government and non-government officials active in the fields of competition, consumer protection and regulation.

Under the provisions of the PNG-Australian Treasury Twinning Scheme (PATTS), the Australian Department of the Treasury provides capacity building support for PNG's Departments of Treasury and Finance. Preparations are under way for Treasury to host a senior official of PNG Treasury on a short-term visit to Canberra to study competition and consumer protection policy development and implementation.

During 2000-2001 officials from South Africa attended a five day basic Investigation Course that the ACCC runs on a regular basis and where possible endeavours to accommodate participation by international officials, on a cost recovery basis. It is proposed that officials from Egypt and Hong Kong attend future courses. The course exposes participants to aspects of the ACCC's enforcement work and attendees participate in exercises designed to develop skills in areas such as interviewing potential defendants and obtaining witness statements.

C. INTERNSHIP PROGRAMME

The ACCC's International Internship Programme began in 2000. This programme enables officers from developing economies to work as interns at the ACCC for a period of approximately one year. Participants are expected to develop a sound knowledge and understanding of Australia's competition law and other related legislation, and gain an awareness of the political, commercial and social environments and the management framework in which the ACCC and its counterparts operate. To date officials from Samoa, Zambia and Papua New Guinea have participated in the programme. The 2002 programme involves interns from Zambia and Zimbabwe.

D. STAFF EXCHANGE PROGRAMMES

Over the past twelve months, Australia has participated in bilateral staff exchanges with the New Zealand Commerce Commission, the Canadian Competition Bureau and the Chinese Taipei Fair Trade Commission.

In 2002 the ACCC will commence two new staff exchange programmes with the Office of the Telecommunications Authority (OFTA) in Hong Kong and the UK Office of Gas and Electricity Markets (OFGEM).

The ACCC currently has staff seconded to the Hong Kong Consumer Council and the Hong Kong Office of the Telecommunications Authority.

E. EFFECTIVENESS OF TYPES OF ASSISTANCE

Australia's experience suggests that the effectiveness of cooperation activities strongly correlate with the stage of development of the country's competition regime. For instance, in-country training appears most effective where competition legislation exists. Where it does not, it is seen as more effective to train persons in Australia where they can examine legislative and regulatory structures and ACCC operations first-hand.

In relation to training in Australia, experience suggests that smaller delegations are most effective in facilitating interactive learning. In addition, where the composition of inbound delegations is mixed, there is more effective exchange of information and experiences.

In-country consultancies and staff exchanges have been found to be most appropriate for countries that have established competition laws and require specific technical assistance that focuses on implementation issues. These arrangements are effective in providing practical skills based training.

Technical assistance in the competition policy field should not be restricted to just competition agency officials. It is also highly useful to involve members of the judiciary, academia, business and consumer organisations, as examples, in order to develop an entire "culture of competition" that is understood and accepted across the entire community.

II. COOPERATION

Australia actively cooperates with other countries on competition matters, including on economic and governance issues and in developing appropriate frameworks for promoting competition. Australia sees considerable value in encouraging such cooperation. Coordination and cooperation with other countries can help to minimise the distorting effects from anticompetitive practices, particularly as trade is increasingly globalised, with commercial markets spanning more than one national jurisdiction. Such work also assists Australia to better understand competition issues and potential best practice, both for the Australian economy and for other societies. International cooperation on competition also supports Australia's aims in other policy areas, such as trade policy and domestic economy reform.

A. COOPERATION AGREEMENTS

The most significant cooperation agreement in existence is the treaty between the Government of Australia and the Government of the United States of America signed on 27 April 1999 on mutual antitrust enforcement assistance. Under the Treaty, Australia and the United States can exchange evidence on a reciprocal basis for use in competition law enforcement and assist each other in obtaining evidence located in the other's country while ensuring that confidential information is protected.

In relation to consumer protection matters, the ACCC signed an agency-based cooperation arrangement with the US Federal Trade Commission on 17 July 2000 to address consumer protection issues such as cross border Internet fraud.

On 26 October 2000 the ACCC entered into a tripartite cooperation arrangement with the New Zealand Commerce Commission and the Canadian Competition Bureau to promote cooperation and coordination in the application of each agency's respective competition and consumer laws. Bilateral agency based arrangements covering both competition and consumer protection regulation were made with the Taiwan Fair Trade Commission on 13 September 1996 and the Consumer Affairs Council of Papua New Guinea on 26 November 1999.

III. INTERNATIONAL FORA

Australia actively participates in competition, consumer protection and public utility committees within APEC, OECD, WTO and the International Marketing Supervision Network (IMSN), through attendance and/or submissions to these organisations' regular meetings.

A. APEC

Work within this group continues to focus on regulatory reform in APEC economies, technical assistance and development programmes, and capacity building and institutional development in the region. In 2001 Australia participated in a new joint initiative, the *APEC-OECD Co-operative Initiative on Regulatory Reform*, which draws together regulatory reform work being done in the APEC and OECD forums. This work, in the form of a series of workshops and seminars where more than forty countries from Europe, America and Asia exchange experiences and information on issues of regulatory management and institutions, competition policy, market openness and economic sectoral frameworks, will continue in 2002 with two workshops in Mexico and Korea.

Australia, jointly with Japan and Peru led the work of the coordinating group on Strengthening Economic Legal Infrastructure and completed Menus of Options for "Strengthening

Economic Legal Infrastructure" which called for early implementation and development of cooperative projects in capacity and institutional building, corporate law and competition policy.

Australia also actively participated in the five APEC Partners For Progress (PFP) training programmes held once a year from 1997 to 2001. In May 2001 Australia also participated in the 9th meeting of the *APEC Energy Regulator's Forum (ERF)*, a component of the Energy Working Group of APEC. The Forum provides an opportunity for APEC member economies to discuss detailed issues surrounding reforms to the energy sector, as well as emerging regulatory and market development matters.

Australia continues to contribute to the ongoing development of an APEC competition policy and law Internet database.

B. OECD

Australia continues to actively participate in, and provide submissions to, the meetings of the OECD Competition Committee and its workgroups. The Chairman of the ACCC is also long term Co-chair of the OECD Joint Group on Trade and Competition.

C. WTO

Australia continues to take a keen interest in developments in the WTO Working Group on the Interaction between Trade and Competition Policy. Australia's priorities are to work constructively towards the development of a balanced framework of multilateral rules on competition matters.

D. IMSN

Australia has Presidency of the International Marketing Supervision Network for the period of 2002-2003, during which time the ACCC will host two conferences in Australia.

E. ICN

Australia is a member of the Interim Steering Group for the International Competition Network (ICN). The ICN is a project-oriented, consensus-based, informal network of antitrust agencies from developed and developing countries that will address antitrust enforcement and policy issues of common interest and formulate proposals for procedural and substantive convergence through a results-oriented agenda and structure. The focus will be on improving world-wide cooperation and on enhancing convergence through focussed dialogue.

F. ASEAN

In March 2000, the ACCC hosted an ASEAN Workshop titled *Making Markets Work* in Bangkok, Thailand. The Workshop aimed to build a network of key agents of reform in the region; promote skill development in the establishment and enforcement of competition, consumer protection and economic regulatory regimes; identify opportunities and priorities for promoting competition, consumer protection and economic regulation in the region; and raise awareness of the importance of the broader economic and welfare goals of competition, consumer protection and economic regulation policies.

The Workshop was attended by some sixty participants including both high level decision makers and operational level staff from a range of countries in the ASEAN and wider Asian and Oceanic region.

G. ISCCO

The International Society of Consumer and Competition Officials (ISCCO), the Secretariat of which was managed by the ACCC, conducted its first international conference in Taipei in June 2000. The goal of the workshop was to provide a forum for practical, non-policy and outcome oriented discussion and action by competition and consumer officials.

A second ISCCO Workshop for the year titled *Governments Delivering Consumer Welfare* was conducted in Durban, South Africa in November 2000. The ISCCO workshop was held in conjunction with the Consumers International 16th World Congress on Consumers, Social Justice and the World Market, also conducted in Durban in November 2000.

ISCCO is no longer in existence, its operations were wound down in 2001.

IV. INTERNATIONAL CONFERENCES

Conferences or workshops for officials from a range of countries at various stages of economic development serve as valuable fora for the exchange of ideas and experiences in the implementation and enforcement of competition policy and law. They present a good opportunity for participants to identify opportunities and priorities for advocating competition frameworks and to form valuable cooperation networks.

Australia has actively participated in numerous international conferences and workshops including:

- September 2000 – a conference hosted by the Swedish Competition Authority focussing on reasons regulators should be concerned with cartels and collusive behaviour.
- October 2000 – a conference in Italy on competition trade and development to discuss the relationship between competition, trade and development and in particular, to examine the impact of competition and trade policies on development.
- July 2001 – an APEC workshop in Hanoi to further consider the development of a competition regime in Viet Nam. Australia gave a presentation titled *Comments and observations on the Australian experience and on the draft competition legislation for Viet Nam*.
- August 2001 – Conference on Network Industries in Finland covering media, banking, airlines, intellectual property and telecommunications.
- August 2001 – Seminar in Brazil on *Anticompetitive practices in times of globalisation*. Australia gave a presentation on *The Australian Experience in International Cooperation*.
- January 2002 – American Bar Association conference on cartels held in New York. Australian officials participated as panel members.
- February 2002 – DePaul University Predatory Pricing Symposium in Chicago. Australia gave a presentation on the state of airline regulation in Australia.

The ACCC also hosted an international regulation and investment conference in Sydney in 2001 that was attended by 200 delegates from the utility industries, regulatory bodies, consulting firms, government agencies and universities. A similar event is being planned for May 2002.

V. FURTHER BUILDING OF COMMON UNDERSTANDING IN THE WTO CONTEXT

The activities described above enhance countries' participation in WTO trade and competition related work.

Australia welcomes and supports the proposed activities to be undertaken jointly by the WTO and UNCTAD and will participate wherever possible.

Australia also recognises the importance of inter agency co-operation in regard to technical assistance and capacity building in the field of competition policy, particularly to exchange experience in regard to the needs of developing countries, the best way of meeting them and identifying specific opportunities that maximise cooperation and coordination. Furthermore, we endorse the steps being taken to ensure that the exchange of information and other cooperation mechanisms are part of an ongoing process that complements, rather than duplicates work undertaken, thus ensuring a cumulative and mutually supportive impact.
