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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Trade and Competition

Communication from Japan

The following communication, dated 20 August 1999, has been received from the Permanent Mission of Japan.

Proposal

1. Successive reductions in trade barriers, such as tariffs, have highlighted the need to address the issue of anti-competitive business practices that affect international trade. The globalization of business activities has also put more emphasis on cooperation among Members against such anti-competitive practices. In this respect, Members should agree to put the item of competition law and policy on the agenda of the next WTO negotiations with a view to: establishing a competition regime for each Member; ensuring effective enforcement in order to properly address anti-competitive practices; and promoting international cooperation in this area. The establishment of a multilateral agreement on competition law and policy could be a possible option to be pursued in the negotiations. We must also be mindful of the valuable discussions carried out in the Working Group on the Interaction between Trade and Competition Policy.

Background

2. Border trade barriers, such as tariffs, have been substantially diminished through the successive efforts made throughout the GATT and WTO negotiations. As a result, various kinds of non-tariff barriers within the border areas, *inter alia* anti-competitive business practices in domestic markets, have been highlighted as being the remaining obstacles to affect international trade. Thus, there is an increasing need for each government to deal properly with anti-competitive business practices that affect international trade.

3. Moreover, with the globalization of business activities, anti-competitive business practices may occur across the borders of more than one country, or may even affect the conditions of competition in a foreign country, thereby increasing their international dimension. Under such circumstances, it would be difficult for a single government to correctly assess the distortive effects on trade and to effectively preclude or deter such anti-competitive practices having an international dimension. To simply eliminate them by making use of the national competition law and trade measures may not only raise conflicts with other countries, but may also create practical difficulties to ensure the effectiveness of enforcement.

4. On the other hand, the global overview of the situation concerning competition law and policy suggests that there are a number of WTO Members who have yet to adopt competition laws, or whose own competition law does not function effectively enough. It appears, therefore, that anti-competitive business practices are yet to be sufficiently addressed. For those practices having had significant

international effects, the cooperation arrangements have been put forward, either bilaterally or multilaterally, outside the WTO and have gained a certain success. However, such cooperation arrangements tend to be established only among developed countries having plenty of experience in competition law, since the parties concerned expect the arrangement to be mutually beneficial.

5. The above analysis indicates that it would be desirable to establish a multilateral framework covering these issues with a view to promoting competition law and policy, as well as its enforcement mechanism, and to strengthening cooperation in this area among the Members. Thus, the issue of competition law and policy, including the establishment of such a multilateral framework, should be put on the agenda of the next WTO negotiations. At the same time, it is important to adopt a progressive approach to reflect the current situation of competition law and policy, and its enforcement mechanism, in each Member country.

6. When actually contemplating a WTO agreement on competition law and policy, we should first consider incorporation of the fundamental WTO principles of transparency and non-discrimination, as well as of the provisions concerning the establishment and development of a competition law and policy. At the same time, the agreement should be aimed at anti-competitive business practices that affect international trade, since the expansion of trade in goods and services is one of the important objectives of the WTO.

7. Furthermore, appropriate consideration should be made in making rules on competition law and policy in light of the possible effects that such rules may have upon developmental aspects of the developing country Members. There is much diversity in the development stage and in competition policy among WTO Members: many have no competition law, while others have a long experience on the issue of competition law enforcement. Many developing countries lack human resources and expertise in administration, and thus need a preparatory period to create competition cultures and to establish competition law and its enforcement mechanism. Such differences among Members should be taken into account in an appropriate manner. For example, in the case where some Members have difficulties in adopting their competition law, it would be useful to discuss whether alternative ways to effectively implement competition policy exist, without undermining the principles of transparency and non-discrimination. Moreover, when establishing competition law and policy, Members should be given a certain flexibility as to its contents.

8. In order to cope with the anti-competitive business practices having an international dimension, and to avoid conflicts caused by the application of trade measures and competition law across borders, Members should examine the various cooperation arrangements, including an information exchange exercise on the enforcement of competition law. Technical cooperation by developed countries also plays an important role in strengthening the enforcement mechanism of competition law in developing countries.

9. Although it is important to ensure the effective application of WTO rules on competition law and policy for each Member, it would not be appropriate to apply the WTO dispute settlement procedures to the specific applications of law in individual cases, since such work would entail great difficulties in collecting evidence or in fact-finding. Rather, alternative measures should be examined to maintain the effectiveness of such rules, e.g., by gathering information and exchanging views on the enforcement activities of a Member's competition law and policies in a general manner.

10. The interaction between the trade and competition policy has been extensively discussed within the Working Group. In this respect, it would be useful to review the existing rules on trade remedies from a perspective of competition policy. Japan, in this regard, is considering taking up such issues in appropriate fora, e.g. those for reviewing the Agreement on Anti-Dumping.
