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**Trade and Competition Policy:
Perspectives for Developing Countries**

by

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1. Introduction

Over the recent years, and in particular since the 1996 World Trade Organization (WTO) Ministerial Conference in Singapore, increasing attention has been granted to the linkages between trade and competition. In a globalised world, the question arises as to whether, parallel to trade liberalisation initiatives, a global and coherent approach to competition policies is needed.

On the one hand, trade liberalization triggers competitive pressures which can act as a substitute to competition policies. On the other hand, anti-competitive practices may reduce the benefits from trade liberalization, hence calling for a reinforcement (or the introduction) of basic competition principles and rules. Hence, the first question is whether trade liberalisation and the implementation of an effective competition policy are substitutes or complements. In the latter case, the issue then arises as to the appropriate type of competition policies required, and the level (global, regional, or national) at which it should be tackled. Finally, in the case where in principle competition rules would appear desirable, questions related to the opportunity of a pro-competitive policy for development purposes, as well as the feasibility (in terms of implementation and enforcement capacity) would have to be addressed.

The purpose of this paper is to briefly review the current state of the debate on these issues in order to assess the relevance of a global competition policy framework for developing countries.

2. The arguments for and against a pro-competitive policy

Trade liberalisation generally fosters competition by exposing domestic producers to increased import supplies while providing greater access to technology and investment. The ‘imports-as-competitive-discipline’ is not only a theoretical argument, but is also supported by strong empirical evidence (see Cadot *et al.*, 2000). The more exposed to international trade is an economy, the more likely and the larger is the pro-competitive impact of trade. In that sense, trade liberalisation could act as a substitute to anti-trust regimes.

Yet, benefits from trade liberalisation may be dampened, or even reversed, in the presence of anti-competitive forces. For instance, higher markups have been observed following trade liberalisation in sectors with high market concentration (oligopolies), low elasticity of demand (lack of substitutes), anti-competitive organisation of markets (cartels and collusive agreements), and companies enjoying (and abusing their) dominant position, hence foreclosing entry to the domestic market (see WTO 1998a, 2000a).

Several reasons can explain why trade liberalisation may not be sufficient to generate competitive discipline. A main explanation is that imports have no direct competitive effects on non-tradable sectors. The larger the relative size of these non-tradable sectors in the economy, the lower the ‘import-discipline’ effect on competition in the country, which then depends more on competition regulation. Hence, trade liberalisation should be completed by competition policies to promote across the board competition in the economy. This presumption is confirmed by Hoekman *et al.* (2001) which show, both from a theoretical and empirical perspective (covering a sample of 41 developed and developing countries), that complex entry regulations are more likely to have larger negative effects on competition in large countries (as they have larger non-tradable sectors), whereas imports restrictions harm more competition in small countries.

Some very small economies like Singapore have consequently argued that competition discipline was better enforced by trade liberalisation and that competition policy was of far lesser importance to them. This view, however, ignores other aspects of competition. For instance, domestic producers may try to avoid international competition pressures by adopting strategies based on product differentiation and other types of non-price discrimination. They may also enter illicit collusive agreements and adopt other anti-competitive practice, sometimes with the support of domestic authorities, in an attempt to artificially foreclose the domestic market, as a substitute to barriers to imports. This is the case for example with vertical agreements between domestic producers and distributors, which can very effectively restrict market access to foreigners.

Finally, even small economies, and perhaps in particular small economies, can be the ‘victims’ of foreign anti-competitive practices which originate outside their jurisdiction but which harm competition in their market, such as in the case of international cartels or some mergers (e.g. WTO, 2000b).

It appears therefore that while trade liberalisation generally fosters competition, there is a great complementarity between trade and competition policy (OECD, 1999). As a consequence, there are strong incentives to include specific provisions on competition policy in the WTO framework. The current ongoing debate among WTO members centres on whether such considerations require an explicit WTO agreement on competition, and if so, what such an agreement could or should entail. Most developing countries have distanced themselves from the discussion or have adopted a rather ‘wait-and-see’ attitude. While this could reflect either the low priority many developing countries attach to international cooperation on competition policy or their lack of capacity and possibilities to contribute to this complex debate, an international

agreement on competition could have a significant effects on their economies. They should therefore be encouraged to take a more active role.

3. Basic principles of a WTO competition agreement

To be meaningful, an WTO agreement on competition focusing on the cross-border effects of various forms of restrictive practices should encompass the following elements: (a) clear identification of the main objectives of the agreement; (b) some core principles related to transparency and non-discrimination; (c) an agreement on a general common approach to competition; and (d) a setting for international cooperation.

(a) Core objectives

A WTO agreement on competition should obviously entail the identification of some core objectives of competition policy, if only to provide a common general framework for the underlying principles of a competition regime (WTO, 1999d). While there can be no single “ideal” definition of competition law, “the fundamental purpose of competition law is to ensure that markets are effectively contestable”, that is that entry and exist by firms to the market is not artificially blocked (Maskus and Lahouel, 2000, p.597). Underlying this approach is the basic trust that, in most circumstances, the operation of free markets, with effective competition undistorted by government intervention, will lead to economically and socially efficient outcomes.¹ Hence, by promoting and preserving inter-firm rivalry whenever possible, markets will become and remain contestable (World Bank and OECD, 1999).

Arguably, the ultimate objectives pursued are the promotion of economic efficiency and/or the consumer welfare. Economic efficiency entails considerations such as the optimal allocation of an economy’ scarce resources, the most cost-effective combination of productive resources and the optimal rate of technological innovation, development and diffusion. Some competition authorities (in the US for instance) also effectively pursue the promotion of consumer welfare. Under this approach, the

¹ It has been suggested that, apart from perfect market conditions often assumed in basic economic theory, some of the concrete characteristics of a workable competitive environment are: (1) a market-economy framework and structures, with a minimum level of economic development and a culture of quality and competition (i.e. mature capitalism); (2) dynamic regulatory mechanisms dedicated to improve and maintain the basic conditions for market structures in the light of widespread usage and practice; (3) a competitive mechanism of supply and demand (i.e. freedom of prices and price formation through the free play of competition), which usually implies the presence of multiple economic actors; (4) the surveillance of market structures and of the anti-competitive behaviour of economic agents (on either the supply or the demand side); (5) transparency and fairness of transactions to ensure a certain degree of fluidity; (6) freedom to enter and leave markets; and (7) neutrality of the State in its dealings with economic agents. (see WTO 1997b)

fundamental question is not whether a business practice generates distortions in the market which would lead to a reduction of social welfare (the criteria of economic efficiency), but whether it would have a detrimental impact on consumer prices or on the choice or quality of goods and services available to consumers.

(b) Core principles

Core principles related to transparency, non-discrimination and fairness should be an essential feature of any international agreement on competition (e.g. WTO, 1999a). Crucial for the effectiveness of a competition regime is that the rules of the game be known by all the actors. Companies, traders and consumers, as well as public officials, must be aware of the competition policy pursued. This implies that business practices that are deemed to distort competition should be clearly identified. Hence, transparency, not only in terms of information provided, but also in terms of the openness of system, including to public scrutiny, constitute a central element to ensure efficiency and credibility of the system.

Competition is about keeping the market contestable and open. It is therefore necessary that all companies be submitted to identical treatment, with no favouritism. Non-discrimination, including on ground of nationality, should be strictly enforced. Possible exceptions (for specific sectors for instance) should be clearly identified (for the sake of transparency) and kept to a minimum.

Finally, a competition regime intended prevent 'unfair' (i.e. restrictive) business practices should itself be 'fair'. Fairness entails principles such as the rule of law and the adherence to due process in the application of competition law and policy.

(c) Common approach

A common approach, already entailed in the trade and competition policy debate, consist in focusing on anti-competitive practices that have cross-border effects and affect international trade. An international agreement on competition, in particular if it takes place within the WTO framework, should target anti-competitive practices that impact international trade. This is in particular the case for anti-competitive arrangements intended to operate as substitute for government-imposed barriers following trade liberalisation. These practices that affect market access for imports include domestic import cartels, international cartels that allocate national markets among participating firms, exclusionary abuses of a dominant position, the undue obstruction of parallel imports, control over importation facilities, vertical market restraints that foreclose markets to foreign competitors, certain private standard-setting activities and other anti-competitive practices of industry associations.

Although probably more prominent, these are not the only situations where anti-competitive behaviour affects trade. Cooperation among countries could be called upon when anti-competitive practices affect several countries in a similar way. This is the case for instance for some international cartels and for some instances of mergers and abuses of dominant position affecting international markets. Finally, international cooperation could be envisaged when business practices have a different impact on competition in different countries, such as in the case of export cartels, market discrimination, or mergers that have a small impact in one market but large detrimental effects in another market.²

(d) Cooperation on competition issues among countries

Cooperation between countries on competition issues can take place at various levels (see OECD, 2000a; and UNCTAD, 2001). First, exchange of ideas and experiences on competition can be encouraged in informal fora and through international institutions. This is the case for instance of the WTO Working Group on the Interaction between Trade and Competition Policy, set up in 1996 (at the WTO Ministerial Conference in Singapore) to consider the interface between trade and competition policies, including anti-competitive practices, and to identify whether, and if so how, it could be included into the WTO framework.³ It also provides a useful platform to help identifying first what could constitute good practices in competition policies and second areas where international cooperation can be beneficial. Similar objectives are pursued at the OECD by the Competition Law and Policy Committee and the Joint Group on Trade and Competition.⁴ Valuable studies and technical support on competition are also provided by UNCTAD and the World Bank.⁵

Such broad cooperation contributes not only to raise awareness about and to encourage convergence on desirable competition regimes and enforcement practices. As indicated by the OECD (2000a, p.3), “Peer review may achieve a surprising degree of practical, informal consensus, and even where this is not the case, the process serves a useful purpose by identifying precise areas of disagreement, and, potentially, better understanding of those areas where convergence is not feasible or desirable.”

² See for instance WTO (1998b). See also section 3 below.

³ See http://www.wto.org/english/tratop_e/comp_e/comp_e.htm . For the latest review of the activities of the working group, see WTO (2000d), and Wear and Sundberg (1999) for a critical discussion.

⁴ See <http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-about-2-nodirectorate-no-no-no-2,00.html>.

⁵ See respectively <http://www.unctad.org/en/subsites/cpolicy/index.htm> and <http://www.worldbank.org>.

Cooperation can also be initiated directly between competition authorities, either on an *ad hoc* basis or in a more systemic way, usually codified in bilateral or plurilateral agreements.⁶ The advantages of such cooperation is that it can entail deeper forms of cooperation, while remaining sufficiently flexible to satisfy the parties involved, as the cooperation is usually '*à la carte*'.

Regional integration agreements also often contain competition provisions.⁷ The level of convergence in addressing anti-competitive practices tends to depend on the type and degree of regional integration as well as the respective degree of development and the type of market structures of the member countries. Deeper forms of integration, as in the case of the European Economic Area, the Europe Agreements, the European Free Trade Area (EFTA), or the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) can accommodate more coherent, harmonized or common approaches towards competition policies, with possible mandatory consultation, common competition bodies or cross-jurisdictional powers to complement national actions. The ultimate form of integration is the European Union (EU) where common competition rules have precedence over national rules in a complementary manner (i.e. respecting the principle of subsidiarity in the enforcement of competition rules). Less intense degree of cooperation are also included in the North American Free Trade Agreement (NAFTA) for instance.

Regional groupings among developing countries may also contain usually weak provisions related to competition matters. This is the case in Africa with Economic and Monetary Community of Central Africa (CEMAC), the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC), and in Latin America and the Caribbean region with MERCOSUR and the Caribbean Community (CARICOM).⁸ Unfortunately, most of these provisions have only consisted in declarations of intent to enhance cooperation or have not yet been fully implemented.

Finally, cooperation on competition matters can take place at the multilateral level. Apart from the multilateral fora already mentioned (OECD, UNCTAD), the main setting for a multilateral approach on anti-competitive practices is the WTO framework. The WTO set of rules already contains several provisions related to anti-competitive behaviour.⁹ Provisions that address implicitly or explicitly anti-competitive practices include the Decision on Arrangements for Consultations on

⁶ For a list of bilateral agreements on competition law enforcement, see UNCTAD (2001, Annex 1).

⁷ See Bilal and Olarreaga (1998a), and the references therein, for a discussion on the potential merits of a regional approach to tackle anti-competitive practices.

⁸ For a selected list of regional agreements containing competition provisions, see UNCTAD (2001, Annex 2).

⁹ For a detailed presentation of the existing WTO provisions related to competition, see Petersmann (1996) and WTO (1997a).

Restrictive Business Practices¹⁰, GATT-Article VI on Antidumping,¹¹ GATT-Article XVII on state trading enterprises, the agreement on safeguards, the agreement on technical barriers to trade, the agreement on preshipment inspection, the agreement on the application of sanitary and phytosanitary measures, the agreement on trade in civil aircraft, and of course the General Agreement on Trade in Services (GATS),¹² the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS),¹³ and the Agreement on Trade-Related Investment Measures (TRIMS). Discussion on the merits and feasibility of multilateral negotiations for a WTO competition agreement is currently taking place between WTO members at the working group level (see Hoekman, 1997; Holmes, 1999; and Meiklejohn, 1999).

Cooperation between countries, either at a bilateral, plurilateral, regional or multilateral level, may take various forms. The simplest form of cooperation is the sharing of information with other countries on enforcement activities of a competition authority when they are likely to affect the interests of these other countries. Such notifications contribute to raise the awareness of the notified country of potential competition problems affecting their jurisdiction. It may also trigger further cooperation or exchange of information between the concerned competition authorities.

A higher level of cooperation may involve consultation among competition authorities with respect to enforcement issues, in particular when common interests are at stake. Such consultations are often a valuable source of information in the case of mergers affecting several countries. Cooperation in investigation procedures may also be envisaged.

A further degree of cooperation among competition authorities involves ‘comity’, which rests principally on the explicit taking into consideration by one competition authority of the interests of foreign countries. In the economic jargon, this implies that the cross-border effects of the anti-competitive activities targeted are to some extent internalised by the domestic competition authorities. By extension, ‘positive comity’ refers to the situation where a country affected by the cross-border spillover effects of anti-competitive practices requests the competition authorities of the country of origin of the practices to intervene and enforce its competition rules.

¹⁰ Adopted in 1960, it has been invoked only in 1996 in regards to the US complaints against Japan in the famous Kodak-Fuji case.

¹¹ See Tharakan *et al.* (1998) for an analysis on the links between anti-dumping and competition policies.

¹² See Mattoo (2000) for a perspective on GATS reforms necessary for developing countries.

¹³ For a discussion on the relevant interface between competition policy and intellectual property rights, see Maskus and Lahouel (2000).

Finally, cooperation among countries in the field of competition may take the form of technical assistance and cooperation measures, including exchange of information, the sharing of experiences, support in institution and policy designs, guidance, consulting, training courses, exchange of experts, administrative or judicial assistance for investigation, and other enforcement support measures (see WTO, 1999b, 1999c; and Section 5).

4. Competition policy for developing countries

What would be, in this context, the implications for developing countries of an international competition agreement?

One of the main advantages for developing of a WTO agreement on competition would be to promote a ‘culture of competition’. Following decades of heavy direct state interventions in developing economies, a WTO agreement would bring competition principles to the forefront of the policy attention of developing countries alongside trade and market liberalisation. While no global agreement will be reached (nor probably should be desirable) on common competition rules and on an international authority responsible for an harmonized enforcement of competition law, the adoption of common international principles and better cooperation in the field of competition policy, even though unevenly implemented, would provide strong incentives for governments in developing countries to put greater emphasis on competition concerns. It would also force them to justify more thoroughly any deviation from pro-competitive policies.

Although an increasing number of developing countries have already taken unilateral actions to adopt or strengthen their competition laws,¹⁴ the absence of clear perspectives on a possible WTO agreement on competition makes it more difficult for countries to develop a coherent competition framework. Besides the uncertainty concerning possible international rules on competition, developing countries are also faced with only limited guidance and have to rely on *ad hoc* technical assistance, outside of any international framework.¹⁵

There is still a vivid debate on the merits of imposing strong disciplines on anti-competitive practices in developing countries. It has sometimes been argued that the

¹⁴ Maskus and Lahouel (2000) report that “over 40 developing countries unilaterally strengthened their IPRs [intellectual property rights] regimes in the 1990s and that, as of 1997, 58 developing countries or economies in transition had adopted or were in the process of adopting competition legislation” (see also the references therein).

¹⁵ For instance, the government from Mauritius noted that it “finds it hard to go ahead with [its] plan [to introduce competition legislation] without greater certainty about what, if any, guidance could be forthcoming from WTO and other international organizations” (WTO, 1999d).

allegedly complacent attitude of the Japanese competition authorities (and MITI) has allowed the development of strong industries in Japan, allowing companies to invest part of their monopoly rents into research and development, hence increasing their international market power and their ‘government-led’ competitiveness. Similarly, some Indian observers have been quick to highlight the potential conflicts between pro-competitive policies and the objectives of pursuing an active ‘industrial policy’, calling for the subordination of competition principles to industrial and sectoral development considerations.¹⁶

Yet, advocates of competition have emphasized the links between a competitive environment and economic development (UNCTAD, 1998). For instance, Dutz and Hayri (2000), using data from over 100 countries over a ten-year period, find that there is a strong positive correlation between the intensity of domestic competition, beyond trade liberalisation, and economic growth. In particular, their empirical study suggests that effective implementation and enforcement of antitrust or antimonopoly policy is positively associated with long-run growth.¹⁷ In the same vein, but focusing on financial services, Francois and Schuknecht (2000) identify a strong positive relationship between growth and financial sector competition, as well as between financial sector competition and openness, hence suggesting, both from a theoretical and empirical perspective, a link between trade, effective financial market integration and long-run growth effects related to increased competition.

Arguably, that delays in the adoption and implementation of an effective competition policy has negative consequences in the development process and may require costly industrial adjustments at a later stage.¹⁸

¹⁶ This led the Indian government to express strong reserve towards the desirability of a Competition agreement at the WTO: “The absence of competition law in half the WTO Member countries, the difficulties in harmonization of competition policy principles, the enforceability of the principle of “positive comity” in an effective manner especially from the point of view of developing countries and the general lack of confidence in the ability of the system to build in the development dimension in an effective and operational way into any competition policy agreement on a multilateral level results in a situation wherein my delegation does not, at least at the current stage of the educational process, see any great advantage in having a WTO Agreement on Competition Policy.” (WTO 2000c, p.3).

¹⁷ Dutz and Hayri (2000) also survey a number of studies that have addressed this issue using industry or firm level data; the main conclusions are that (i) increases in concentration are associated with reductions in technical efficiency; (ii) fewer competitors and higher average rents are associated with lower productivity growth; (iii) trade liberalisation and industrial deregulation can have positive effects on firm-level productivity; and (iv) increases in concentration and other measures of monopoly power dampen innovative activity.

¹⁸ In a formal communication to the WTO, the Korean government noted that: “In hindsight, it seems that if competition policy had been introduced earlier, Korea’s economic development would have been achieved in a more balanced and sound manner. At the early stage of development, the negative structural effects of market concentration and the distortions of the market structure were largely overlooked. As a consequence, Korea is now confronting the very difficult task of industrial restructuring. If competition policy had been introduced before the market structure was distorted, such tasks could have been avoided.” (WTO, 1997c, p.3).

The lack on institutional framework, legislation or enforcement capacity to address anti-competitive behaviour makes developing countries particularly vulnerable to such practices. While developing countries may have other priorities than the establishment and effective implementation of a competition regime, the negative effects of anti-competitive behaviour on development should not be underestimated.

A majority of anti-competitive practices in developing countries affect the supply of intermediary products used as industrial inputs, thus impeding the development and the competitiveness of local production in developing countries. This has not only a negative impact on consumers welfare. Business (i.e. production capacities) and hence industrial development of processed goods are also penalised. This suggests that developing countries whose resources and capacity are limited may be well advised to focus their enforcement efforts on collusion and anti-competitive practices that restrict the supply or raise the price of intermediary products and industrial inputs.

Other types of anti-competitive practices, with cross-border effects, also affect the economy of developing economies. This is the case for instance of international cartels or mergers. As the economic size of most developing countries is relatively small, anti-competitive practices in other part of the world but that generate negative cross-border effects in developing countries may be disregarded or neglected by the concerned foreign businesses and competition authorities. This relates to two issues.

The first one is the domestic focus of national competition regimes. Competition authorities tend to target anti-competitive practices that reduce the level of competition, consumers welfare or economic efficiency in their own jurisdiction. This is even more the case in the absence of bilateral or plurilateral (formal or informal) agreements. It is therefore also one of the main arguments in favour of international cooperation (possibly in the form of a multilateral agreement) on competition, as well as a major source of conflicts and inconsistencies (see Bacchetta *et al.* 1997; Bilal and Olarreaga, 1998b; and Lloyd, 1998).

One of the problems for many developing countries rests in their relative small economic size. Their interests may not weight much, or even be acknowledged, by foreign competition authorities in developed countries in charge of investigating anti-competitive practices with cross-border effects. The fact is that international cooperation on competition issues mostly takes place among developed countries. Moreover, international cartels or mergers are typically among companies whose headquarters are located in industrialised countries, which by foreclosing markets also reduce the potential entry of new competitors, including from developing countries. A WTO agreement on competition could formalise the need for broader international cooperation in such matters, at least in principle.

A second difficulty faced by most developing countries is their limited ability to address anti-competitive practices that have an international dimension. For the sake of illustration, consider the merger between two companies based in a developed country which would not have any significant impact on competition in their domestic market, but which would grant a dominant position to their subsidiary firms located in a developing country which would harm competition. Such a merger will be authorised by the competition authority in the developed country. In the absence of a proper legislative framework or effective enforcement of competition law in the developing country and cooperation with the competition authorities in the developed country, the merger will have a detrimental effect on the market in the developing country. Besides, even if the merger of the subsidiaries were not allowed, the competition authorities in the developing country should have the means to ensure that there is no collusion or other implicit arrangements among them. It is obvious that for many developing countries, insufficient capacity render competition authorities, if present at all, rather weak if not powerless.¹⁹ As discussed in the next section, main steps to address these problems should include enhanced international cooperation and sustained technical assistance.

5. Implementation and enforcement capacity

Apart from possible development, which some claim would require lax or no competition rules, one of the main obstacles to the pursuit of strict enforcement of a competition regime rests on the scarcity of resources and the extremely limited capacity available in most developing countries. This situation should force developing countries to consider very carefully their strategy with respect to the adoption (when still required) and the enforcement of competition principles.

The initial steps consist in identifying the needs for a competition regime and the appropriate measures required. The following elements should be taken into consideration. First, a clear legislative framework should be put in place. The purpose must be to define the types of restrictive business practices that are deemed undesirable and thus should be subject to scrutiny. Proper determination of the scope of the competition regime is essential to be able to effectively implement a competition policy. It should provide clear guidelines to the business community which must be informed of the types of business practices that are considered acceptable and those that could be construed as having anti-competitive effects and thus would be outright forbidden or fall under the scrutiny of competition authorities. The general scope of the competition must be defined in national legislation, but it

¹⁹ See Falvey (1998) and Sleuwaegen (1998) for a more formal discussion.

should also be specified and explained in guidelines, recommendation, etc. and as part of the mandate granted to competition enforcement bodies.

It has been suggested that developing countries should focus their competition regime on anti-competitive practices that have an international dimension and restrict market access.²⁰ The reason is that such practices are generally considered as entailing greater distortions to the economy. Moreover, they come as natural complement to trade liberalisation measures. One may wonder however whether the emphasis (at the WTO for instance) on the international dimension of competition policy is not also the result of strategic political considerations from developed countries that are more interested in improving market access for their companies (under the claim of restoring a ‘level playing field’) rather than in promoting sustainable development by limiting market distortions resulting from anti-competitive practices in general. These considerations could also contribute to explain why competition is addressed mainly in relation to trade, and thus in the context of the WTO, rather than in other fora.

This is not to say that developing countries should not take advantage of the potential opportunities of reaching a WTO agreement on competition. On the contrary, they should see the multilateral approach to competition as an incentive and possibility to obtain greater support to adopt a competition regime or improve it, as appropriate. In defining the scope of their competition regime, however, they should include, but not restrict their actions to anti-competitive business practices which generate cross-border effects.

Second, the implementation of a competition regime requires an adequate institutional setting. Tasks and responsibilities must be clearly assigned. It is important to recognise that, like trade policy (and in fact like any re-distributive policy), competition policy will be subject to pressure by specific interest (business) groups (see Damro, 2001; and Delorme Jr. *et al.*, 1997). An ill-defined competitive regime is more likely to be captured by specific business interests. In this respect, pressures and danger of capture will also be greater for sector-specific measures, which is one of the reasons why sector-exemptions from competition principles or sector-specific competition rules should be avoided whenever possible and in any case be kept to a minimum. Besides, it is easier for few dominant companies or industries to influence (or corrupt) public officials and ‘buy’ the favours of politicians than for companies operating in a competitive environment where there are no (or only few) monopoly rents to be sought (see Stiglitz, 2000).

²⁰ Note that, as mentioned in Section 4, this recommendation, while widely supported, has also been challenged, in particular based on the Japanese experience which has developed its economy while allowing some restrictive business practices (see Nogaoka, 1998, for a dissent view).

So, complementary to transparent and well-designed competition legislation, appropriate institutional arrangements should be put in place. While political impetus appears to be vital to stimulate the adoption and the effective enforcement of a competition regime, there is widespread recognition that independence of the entities in charge of the day-to-day implementation of competition policy is a most valuable asset. To this end, the creation of truly independent competition authorities (an agency, a specific branch of the administration or some other forms) constitutes a desirable feature to ensure a non-political enforcement of competition rules.

In view of the severe resources constraints prevalent in developing countries, it is of crucial importance that competition authorities also set and reset their priorities for action within the scope of the competition regime. This adjustment process is common in competition enforcement agencies in developed countries (see WTO, 2001a). Prioritisation has two main components: the type of anti-competitive practices targeted, and the roles assigned to the competition authorities (i.e. the type of activities that they will conduct in priority).

On the latter aspect, competition authorities should of course focus their attention on anti-competitive practices. Yet, they should not limit their role to establishing a competition framework and investigating business behaviour potentially harmful for competition. Public education, awareness raising activities, information and advocacy are all important roles for competition authorities in developing countries, as both the business community and politicians may not dedicate sufficient attention to competition concerns.

As for their enforcement priorities, developing countries may wish to focus their interventions on horizontal arrangements which tend to be relatively easier to target. Their general anti-competitive effects are well acknowledged and can be considered *a priori* undesirable. The difficulty however rests on the identification of both formal and informal such arrangements, a process which requires sufficient investigative powers and means.

Mergers may prove more difficult to assess, as they do not *a priori* entail anti-competitive effects and can on the contrary generate efficiency gains. Hence, more legal and economic expertise are necessary to examine their impact, a costly process that can be beyond the reach, or simply may not be worth the effort, of some competition authorities, at least at an initial stage. Similarly, vertical agreements may have both pro-competitive and anti-competitive effects which may prove complex to assess, thus requiring a well-equipped competition apparatus, including sound institutions, proper legislation and sufficient skilled personnel.

This consideration clearly illustrates that the adoption and enforcement of an effective competition regime is a gradual process, where simpler tasks are tackled first, before more complex missions can be pursued. It is a learning exercise where constant adjustment and adaptation must take place so as to match the immediate competition objectives with the existing means and capacity, while setting clearly identifiable long-run targets for the promotion of a competitive environment.

A pragmatic useful factor to identify priority areas of intervention for competition authorities in developing countries is the opportunity to create 'capacity synergies'. Indeed, effective enforcement requires sufficient capacity, which is critically lacking in most developing countries. Yet, capacity support can be sought from international cooperation on anti-competitive practices having cross-border effects. Since those also constitute an area where developing countries are particularly vulnerable (as previously argued), they would seem logical priorities for competition authorities in developing countries. This strategy could also reinforce the position of developing countries in the WTO discussion on a multilateral agreement.

Hence, developing countries could commit to a WTO agreement on core competition principles, on the condition that it is accompanied by a framework for and a commitment by developed nations to support their efforts to develop an effective competition regime and to cooperate on its enforcement. Emphasis should obviously be put on various forms of direct technical assistance: general training on competition procedures, specific training for economist, lawyers and judges involved in competition matters, internships in experienced competition authorities, visit and placement of skilled experts from experienced agencies to help staff in developing competition authorities, support to develop guidelines, brochures, information data-base system and other information tools on competition, assistance to advocacy role.

But cooperation should also include: (i) initiatives to favour informal contacts between competition authorities from developed and developing countries; (ii) sharing of public information on enforcement policies, analytical frameworks and emerging enforcement issues; (iii) notification and exchange of non-confidential information, in particular on anti-competitive practices that are under investigation in one country but could affect other jurisdictions; (iv) assistance in the drafting of new competition legislation or amendments to existing laws; (v) support and advice on case handling and investigation, both on general methods and procedures and on specific cases.

Concrete support, in the form of technical assistance or enhanced cooperation, has therefore the potential of being a major advance that developing countries could actively pursue with the negotiation of a WTO competition agreement. In particular, a commitment to provisions on 'positive comity' could help developing countries to

prevent anti-competitive practices originating from abroad or resulting from the activities of transnational companies, while sharing the burden of competition policy enforcement with better equipped competition authorities in developed countries.

6. Conclusion

The interface between trade and competition is a complex one. While trade liberalisation, by fostering competition, can sometimes act as a substitute to a pro-competitive regime, in most cases a high degree of complementarity between trade and competition policies can be identified. It is therefore natural that competition be discussed within the WTO framework. The possibility of a WTO competition agreement is a likely option that should be seriously considered by developing countries.

While it is unlikely that any potential international agreement on competition would contain more than general principles and prescriptions conducive to the adoption and enforcement of an effective policy regime on anti-competitive practices, it is crucial that developing countries seize this opportunity to promote basic competition principles and practices so as to stimulate the development of their economies. In this respect, the WTO system could prove an extremely useful forum to pursue active cooperation and support from developed countries to compensate for the lack of resources and capacity which hinders efforts to foster greater competition in many developing economies.

In this process, it is important to keep in mind though that development with regard to competition policies cannot be viewed in isolation. This is a gradual process that can only be part of a more general institutional, regulatory and policy reform strategies to benefit from economic competition²¹ while ensuring sustainable development.

²¹ Such reforms could include privatisation and liberalisation policies, business incorporation laws, bankruptcy laws, consumer protection regimes, utilities (de-)regulation, etc.

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