


The Multilateral Trading System in the 21st Century: Interaction between Trade and Competition Policy

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Abstract

Interactions between trade and competition could not be more intimate as they are today when countries world over are getting severely affected by the volatility of trade in primary commodities. The major commodity spike of 2007-08 sent alarm bells ringing when the prices of many primary goods doubled from what they had been not so long ago. Much of this is attributable to trade related competition distortions (e.g. export restrictions) and competition related trade distortions (e.g. export cartels) that continue to operate in these markets.

A recent study by economist Frederic Jenny has highlighted the overcharge paid by India due to anticompetitive practices in the global potash market. Under a competitive scenario, the price of potash would decline from \$574 per tonne in 2011 to \$217 by 2015, and subsequently increase to \$488 by 2020. However, in the continuing presence of fertiliser cartels, the price of potash would steadily increase from \$574 per tonne in 2011 to \$734 in 2020. The resulting overcharge for India and China, two of the largest buyers of potash amounts to more than a billion US\$ per year per country.

Export cartels have a significant influence on prices in general and on the swing of prices of primary products in particular. Competition authorities in the countries of origin of the export cartels do not act against them because export cartels do not affect the domestic markets of the cartelists. Competition authorities in the victimised countries either do not have powers to act against the export cartels which they suffer from for a variety of reasons. They may lack extra-territorial jurisdiction (as the litigation in India against the US-based soda ash cartel under the now repealed Monopolies and Restrictive Trade Practices Act, 1969 showed); the sovereign compulsion doctrine may prevent them from prosecuting state sponsored export cartels; they may not have the means to gather the evidence they would need to convict the perpetrators even if they have jurisdiction. Fear of retaliations may also sometimes affect these decisions.

In January, 1997 the WTO established a working group on the interaction between trade and competition policy (WGTC) to explore the linkages and see whether a multilateral agreement on competition can be incorporated in the WTO acquis. The idea was carried forward in the Doha Development Agenda. But the same was taken off the negotiating agenda in 2004 due to opposition by developing countries to negotiations on several issues, which included competition policy. Nonetheless, the WGTC succeeded in building awareness on competition issues and initiating a new wave of analytical thinking about competition issues and the interface between trade and competition. A good example is the case of India which started preparing a new competition law and also incorporating competition clauses in its bilateral trade agreements. Many other countries also started designing and adopting competition laws after this period.

While agreements exist at the bilateral and regional levels, their potential is rather limited for developing countries. Only a binding multilateral agreement with a designed focus to promote competition throughout the world would be able to achieve this. Given the reforms in competition regimes brought about across the world in the last decade or so (120 + countries have adopted a competition law today as opposed to 35 in 1995) the need and potential for such an agreement as it stands today is even greater.

Global problems call for global solutions and hence a multilateral framework on competition needs to be revisited. Such a body would also provide a set of rules and intervene when markets fail and the players are caught in a "prisoners' dilemma" which is usually the case in the issue of export cartels. The appropriate forum for this could be a joint initiative between the WTO and UNCTAD in order to have both the developed and the developing countries on board.

The success of the agreement would depend to a significant extent on whether it would be able to achieve the desired level of international cooperation between the developed and the developing countries so as to be able to serve the primary and most critical objective of addressing the developmental consequences of cross-border anti-competitive activities.

Some of the questions (though not limited to) the panel would address are as below:

- How do trade and competition policies interact with one another?
- What are some of the costs of the cross-border anticompetitive practices?
- In today's globalised era where the practices of one country have externalities beyond its own borders, how effective would a multilateralisation of rules be in addressing the negative externalities caused by anticompetitive practices of a country beyond its borders?
- What kind of challenges would countries face in implementing such rules?
- Given the growing number of national competition regimes in the world, would such rules be better received by countries?
- What is the appropriate forum for negotiating and holding such an agreement?