



Country Update

Competition Policy and the Multilateral Trading System

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Introduction

Competition concerns have long been a staple question within the international trading system. In the World Trade Organization (WTO), a formal and more structured effort to address these concerns began when members agreed to launch the Working Group on the Interaction between Trade and Competition Policy (WGTCP) at the Ministerial Conference in Singapore in 1996. In fact, it was not until the Conference in Singapore that member countries identified businesses as a source of distortion in international free trade. Accordingly, the WGTCP was established to formally examine the relationship between trade and competition policies.

At the 2001 WTO Ministerial Conference in Doha, Qatar, members put the competition question on the agenda, and defined a focus of future work for the WGTCP in paragraph 25 of the Doha Ministerial Declaration. Unfortunately, the breadth of the agenda contributed to disarray in the ensuing negotiations. In hopes

of speeding up talks, the General Council of the WTO subsequently dropped several controversial issues; among them was competition policy which was dropped during the July package of 2004. Consequently, the Working Group was put inactive although the WTO Secretariat continues to respond to national requests for technical assistance in this area for the benefit of interested WTO Members and countries seeking accession to the WTO.

However, the 10th WTO Ministerial meeting that was held in Nairobi in December, 2015 indicated in its Declaration that other issues (apart from the Doha Development Agenda - DDA) may be introduced as part of the negotiating agenda in the WTO if agreed by all Members. A number of issues are being mentioned in this context amongst which is competition policy. In its operative Para 34, the Nairobi Ministerial Declaration said without ambiguity: "While we concur that officials should prioritize work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do

not. Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members”.

According to the Third World Network info service on WTO and Trade Issues report of February 2016, as an aftermath of the Nairobi Ministerial Declaration, the United States, China, the European Union, Australia, Canada, and other major developed countries on started their campaign at for pursuing "new issues" at the WTO . The new issues proposed include digital trade, competition, investment, small and medium enterprises, and domestic farm subsidies.

Given global trade developments and delayed conclusions of the DDA, stakeholders' views especially from developing countries have recognized a significant divergence among members on the continuation of the DDA and new issues. In addition, new issues are not yet ripe for negotiations which entail a minimum degree of attaining concurrence decisions, similar to the ongoing agenda issues.

Objective

This note sought to obtain the views of various stakeholders on their take for “competition policy” being introduced in the Multilateral Trading System. The views were obtained through consultations with relevant national stakeholders on trade, competition, consumer and related issues.

Summary of Stakeholder Views

Inclusion of Competition Policy in the Multilateral Trading System

A majority of stakeholders were reluctant to propose addition of more issues to the WTO agenda before existing ones can be resolved. With competition policy in question, most of the identified respondents/stakeholders feared that

large, multinational corporations, which tend to be headquartered in developed nations, will expand into their domestic markets and threaten the young and growing domestic firms.

“Tanzania is now aspiring to be a middle income country with growth prospects of its small industries such as SIDO; a threat from foreign experienced industries will diminish their morale”

Moreover, many stakeholders also disagree with multilateral competition measures because they view them as too disturbing, asserting that competition policy is something that a government should create at its own discretion because such policy depends on a country's unique market conditions.

Competition Policy: Benefit or Loss?

US and EU proponents of international competition rules have a predominantly "market access" driven agenda. Most of the identified stakeholders from the Academia have highlighted that non-existent or poorly enforced competition laws are more likely to contribute to stagnating growth of domestic firms as it leave wider room for big multinational companies to set foot and control domestic market. Tanzania being a young economy as it may, has been concerned of possible anticompetitive behaviour by large (dominant) multinationals. Both the EU and the US are large economic entities, with domestic competition authorities that are well-equipped to address anticompetitive behaviour that has detrimental consequences for consumers located in their jurisdiction. However, it seems that Tanzania on the other hand has less capacity to discipline possible anticompetitive abuses by foreign multinational firms on her markets.

A sales person of a local clothing line stated that,

“I think the main interest of the EU and US is to advance and promote the competition policy disciplines to developing countries and in turn

use these disciplines as an export-promoting medium of their own goods. Mwl. Nyerere once said that, although different companies and even foreign banks come and open branches in our country, it is highly unlikely for a country like ours to do so in their countries”.

Issues to be confronted in light the Competition Policy is discussed at the WTO

One of the issues that are expected to be confronted in the event of competition policy discussed in the WTO is transparency. Tanzania as a developing country expects WTO to strengthen her transparency mandate to include information on the competition policy stance applied by governments. More data on the economic effects of government policies will be useful to affect domestic groups; and it will also provide incentives for the establishment of domestic counterpart institutions.

Other issues will arise from a multilateral surveillance perspective. Competition enforcement is an ex post endeavour, and the "state of competition" is inherently difficult if not impossible to "quantify". Therefore, because there will be no tariff equivalents to be calculated, confrontations will touch issues related to import penetration, the share of FDI in total assets by industry, etc.

Required technical assistance – If Competition Policy is introduced in the WTO

Stakeholders have indicated that even if competition policy is introduced in the WTO, Tanzania is yet to have fully implemented her domestic competition policy. However, there

are a number of potential rationales for international cooperation in the area of competition law such as where multi-jurisdictional mergers take place, and even where welfare-reducing export cartels cannot be disciplined because the jurisdictions most able to collect evidence have no incentive to do so. This does not imply an international agreement that could improve global welfare can easily be negotiated. Given the trading basis of multilateral trade negotiations, the WTO is less likely to be a powerful instrument to encourage adoption of welfare-enhancing competition rules than it is as a forum for the abolition of border measures. It is still emphasized that priority should be given to pursuit of the traditional market access.

General Recommendations: Issues to focus on within the WTO Negotiations in 2016

On substance, Tanzania should focus on the DDA issues with the development dimension at the centre. Regarding Para 34 of the Nairobi Declaration pertaining to the ongoing Doha issues, Ambassadors should be concerned about any issues that might distract them from those issues being introduced on the agenda. Before we take up new issues, we need to see that the DDA is concluded. In addition, it is very important that Ambassadors build on paragraphs 5 and 24 of the Nairobi Ministerial Declaration which calls for the strengthening of the multilateral trading system.



CUTS International, Geneva

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