

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

EC Approach to Trade and Competition

*Communication from the European Communities*

The following communication, dated 28 May 1999, has been received from the Permanent Delegation of the European Commission.

---

**Aim of this paper**

1. The WTO has developed strict disciplines on different types of government obstacles to trade; further progress as regards the liberalization of such restrictions can be expected as part of a comprehensive new round. At present, however, there is no multilateral framework relating to the application of competition law to anti-competitive practices by business, which can also have a significant impact on access to a market. Competition-related disciplines have been included in a number of WTO agreements, notably on services, but there is a need to consider a more horizontal approach. The EC and their member States are of the view that the time has come for the WTO to begin negotiations on a basic framework of binding principles and rules on competition law and policy.

**The WTO as a forum for negotiations on competition**

2. The application of competition law supports the trade liberalization objectives of the WTO and is essential to ensure equality of competitive opportunities. There is therefore a close connection between competition law and policy and the WTO market-opening objectives. WTO principles, such as transparency and non-discrimination, also provide important foundations for the effective application of competition law in a manner which complements and reinforces the process of trade liberalization. International cooperation to better address anti-competitive practices of an international dimension needs to involve countries at all levels of development. The WTO therefore provides a multilateral negotiating forum in which the interests of all countries can be reflected in a common framework of rules, and where modalities of cooperation can be established for the benefit of all countries.

3. Negotiations on competition should aim at establishing a basic framework of rules, relating to the adoption and enforcement of a domestic competition law, and provisions on cooperation among WTO Members. This would provide an important foundation for better addressing the interaction between trade and competition policy, while being an objective which can be realistically achieved within the framework of a three-year negotiation.

4. Dispute settlement modalities will need to be further considered so that they are well adapted to the specifics of competition law. In any event, there should be no dispute settlement review of individual decisions.

### **The development dimension**

5. There is a general recognition that competition policy should be considered as a tool for development. Many developing countries have introduced or reinforced a competition law framework as a key component of domestic reforms aimed at fostering effective competition and hence integration in a globalized world economy. Developing countries have traditionally favoured international cooperation on anti-competitive practices, notably in order to support their capacity to effectively apply domestic competition law. WTO negotiations provide an opportunity to ensure that the interests of developing countries in enhanced international cooperation can be effectively addressed. In addition, transitional periods, together with flexibility in the rules, should be envisaged. The EC and their member States therefore consider that the development dimension must also be at the centre of the considerations of a multilateral framework of competition rules within WTO.

### **Core principles and rules on competition law and policy**

6. An important element of a WTO framework on competition could be the development of core principles and rules on domestic competition law and its enforcement. In this connection, attention should particularly focus on those aspects of competition law and policy which are more relevant for the multilateral trading system, while fully recognizing the development dimension and differences in domestic legal and institutional frameworks. The WTO principles of transparency and non-discrimination would provide key foundations for the development of such core principles and rules. The EC and their member States have presented an outline of elements that could be considered as such core principles in their submission to the WTO Working Group (WT/WGTCP/W/115).

### **A WTO focus on anti-competitive practices with a significant impact on international trade and investment**

7. WTO disciplines should be clearly geared towards the objective of better addressing those anti-competitive practices which have a significant impact on international trade and investment and therefore affect the WTO market-opening objectives. We should, for instance, give priority to the issue of hard-core cartels, which are of particular concern from both a trade and competition perspective. At the same time, we could explore the possibility of flexible common approaches in relation to other anti-competitive practices which foreclose access to a market or severely limit market entry. International cooperation should also be promoted in relation to export cartels and multijurisdictional mergers.

### **International cooperation**

8. A growing number of competition cases now have an international dimension. International cooperation is essential to enhance the application of competition law and to limit the risk of conflict arising from extraterritorial enforcement and fact-finding. A framework of common rules and principles would also contribute towards stimulating trade and investment by reducing unnecessary costs for business. Competition policy is an issue of common concern and cooperation should not be limited to OECD countries or bilateral agreements. Developing countries should also benefit from a framework of cooperation, which contributes towards the objective of ensuring that all potential entrants can fully exploit competitive opportunities.

9. There is a need therefore to consider, within the WTO, modalities for international cooperation. This should foster exchange of experiences among WTO Members, cooperation in relation to competition cases affecting the interests of several WTO Members, as well as exchanges of non-confidential information. Positive comity could also be addressed in a multilateral agreement, but there should be no binding obligation to investigate on behalf of a third country. The effective application of competition law is a particular challenge for developing country administration. Together with transitional periods and flexibility in the rules, it would be essential to ensure that developing countries can derive maximum benefits from modalities of international cooperation. Consideration should also be given to how to reinforce domestic capacity relating to the administration and enforcement of competition law through enhanced and better coordinated technical assistance.

---