

WORLD TRADE ORGANIZATION

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Trade and Competition

Communication from Korea

The following communication, dated 29 July 1999, has been received from the Permanent Mission of Korea.

Background

1. As was discussed at the Working Group on the Interaction between Trade and Competition Policy, anti-competitive practices by private firms can create a barrier to the market access of foreign firms. With the globalization of the world economy, cases where anti-competitive behaviour of a company in one country harms the interests of other countries are multiplying. By effectively regulating cross-border anti-competitive activities, competition policy can contribute to achieving the objectives of the WTO, including the promotion of international trade. Bilateral or regional cooperation helps to some degree, but both have limitations in terms of overall effectiveness. Issues arising out of the interaction between trade and competition policy can be more effectively addressed by enhancing multilateral cooperation in addition to bilateral and regional efforts. Given the impact of anti-competitive government measures on international trade, competition-oriented reforms of some provisions of the existing WTO Agreements may also be helpful to the better working of the international trade system.

2. Korea is of the view that it is time to begin negotiations on a multilateral framework on competition policy. A multilateral framework may provide a level playing field securing legal stability, predictability and transparency in the world trade and foreign investment, thereby helping enterprises to reduce transaction costs. Lower transaction costs, in turn, contribute to enhancing global economic welfare by expanding international trade and investment.

Proposal

Objectives

3. Negotiations should aim at establishing a basic framework of binding principles and rules on competition policy and promoting cooperation among WTO Members in relation to competition cases. The WTO framework on competition policy ("the Framework") should address concerns of WTO Members to achieve a balance between competition policy and other economic and social policy objectives and contribute to their economic development by enhancing competition in their domestic markets.

Key elements

Core principles and rules

4. The Framework should develop core principles and rules on competition policy. WTO principles of non-discrimination and transparency could function as a cornerstone for other principles and rules of the Framework. The application of the principles and rules should be confined to areas where international trade and/or foreign investment are affected; they should not be applied to business practices that have domestic effects only.

5. Korea's general views about the core principles and rules to be incorporated into the Framework are described in its submission to the Working Group (WT/WGTCP/W/133).

International cooperation

6. As shown in the areas of international cartels or mergers and acquisitions that involve more than one country, there is a growing need to enhance international cooperation for better enforcement of competition law and policy. International cooperation is particularly important to effectively regulate anti-competitive practices by multinational firms as well as to reduce possible conflicts between countries over extraterritorial enforcement and fact-finding.

7. The Framework should therefore include modalities for international cooperation. Prior notification of competition law enforcement that may incur costs for other WTO Members, coordination among the concerned WTO Members in cases where more than two jurisdictions are engaged in anti-trust investigation, and exchanges of non-confidential information are candidates to be considered as such cooperation modalities. Positive comity could also be incorporated into the Framework to impose greater discipline on cross-border anti-competitive practices.

Development dimension

8. Competition policy is generally recognized as a useful policy tool for development. Indeed, many developing countries have introduced or reinforced their competition laws as a key component of domestic reforms designed for their better integration into the world economy. Therefore, the development dimension should be an integral part of the Framework.

9. A number of incentives could help WTO Members engage in negotiations on a multilateral framework on competition policy. They include grace periods differentiated according to the level of each Member's economic development, exemptions of certain obligations, waivers, reservations and technical assistance. Given the limited capacity of many developing countries, special emphasis should be placed on technical assistance with a focus on their domestic capacity-building.

Dispute settlement procedures

10. The Framework should include a dispute settlement mechanism that reflects the specificities of competition law.
