



The importance of competition law and policy for development : some key points

Competition law and policy comprises a set of rules (statutory and common law) used by governments, individuals and firms to evaluate and redress both public and private conduct causing distortions to the “free flow” of competitive market interaction. Broadly speaking, the aims of competition policy include: (1) the encouragement of free and open markets; (2) the provision of fair and equal competitive conditions to all market participants; (3) the promotion of efficiency; (4) the maximization of consumer welfare; and (5) the establishment of transparency and fairness in regulatory processes.

Competition policy is an important complement to trade liberalization agreements. Developing and least-developed countries tend to be particularly vulnerable to anticompetitive behaviour given the small size of their markets and low levels of economic heterogeneity. As liberal trade agreements further open up these markets, the influence of foreign economic activity in shaping consumer transactions and affecting the competitiveness of local industry will be increasingly significant. Accordingly, there are strong reasons to encourage the adoption of comprehensive competition policies in these regions. Issues of anti-competitive behaviour related to cross-border economic activity include international cartels, mergers and acquisitions that risk monopolizing or creating dominant market positions, and a range of restrictive business practices. Countries/regions with no competition policy may be targeted by cartels particularly because of their weak (or non-existent) competition laws. Competition provisions, particularly at regional levels, offer important support to global efforts to develop a stable, fair and non-discriminatory trade environment with potential to enhance and fully appropriate the welfare benefits of global trade to developing countries.

Negotiating competition provisions within the context of EPAs can be beneficial if the terms and options are clearly understood and leveraged. ACP countries should take advantage of the EPA negotiations to chart their own course in the area of competition regulation. Already, certain aspects of competition regulation indirectly affect all countries through the WTO Agreements. Further, most RTAs, including South-South RTAs, contain provisions regulating competition. It is better for ACP countries to be pro-active and engaged in dialogues concerning competition with trade partners in order to preserve their interests and maintain the priority of development objectives in these various fora. Developing countries may select from several possible approaches to cooperation over competition rules when negotiating trade agreements: 1) non-binding agreements to use “best endeavours” to ensure that anticompetitive behaviour is addressed; 2) legally binding reciprocal agreements in which each country simply agrees to apply its laws to anticompetitive behaviour occurring domestically; and 3) legally binding cooperation agreements to apply non-discrimination and due process/transparency in the application of competition laws and regulations. All these agreements may also include obligations for national competition authorities to cooperate and coordinate in administrative, advocacy, training and enforcement activities.

There exists an intricate relationship between competition policy, investment and intellectual property rights. While the first two subjects are not currently subject to the multilateral discipline of the WTO, intellectual property rights are governed by the TRIPS Agreement. In the context of negotiating bilateral and regional trade agreements, developing and least-developed countries would be well-served to coordinate these three subjects in a manner that is consistent with overarching development interests. For example, an appropriate competition policy can be undermined in serving development purposes if a country's investment policy limits (directly or indirectly) action by regulatory bodies charged with oversight for from correcting particular forms of restrictive licensing arrangements or other actions that have adverse effects on local market conditions. Similarly, acts that might constitute an abuse of intellectual property rights may be protected under the provisions of an investment agreement despite the legal right of least-developed/developing countries to correct the situation and restore a competitive equilibrium in the affected market as permitted under TRIPS. The coordination of intellectual property, foreign investment policy and competition policy is a highly delicate and important task. Negotiations over these three areas should yield outcomes that mutually reinforce, not detract from, the welfare benefits each area has to offer developing and least-developed countries.

Finally, competition policy requires investment in institutions necessary for effective implementation at the national level. This includes the existence of a national authority with capacity to gather pertinent data, undertake complex analyses, coordinate with regional offices, conduct investigations and secure enforcement. Other important institutions include an effective judiciary as well as dispute settlement processes available to parties wishing to adjudicate the decision of national competition authorities. In the context of regional trade negotiations, an optimal competition agreement should consist of legally binding cooperation between developed countries and developing/least-developed countries, reciprocal commitments to apply each others' domestic laws on a non-discriminatory basis, subject to special and differential treatment for the developing country, and elements of positive comity. Special and differential treatment generally consists of: 1) provisions that safeguard the interests of the developing and least-developed country partner; 2) exceptions and exemptions from some obligations; 3) transitional periods; and 4) commitments to technical assistance. Ideally, such an agreement also should include limitations on the developed country's use of trade sanctions to redress anticompetitive behaviour.



Putting Fairtrade in the Caribbean Sugar Industry

Following the EU Common Agriculture Policy reforms and a WTO challenge to the Commission's Sugar Protocol with ACP Countries, the European Commission presented a blueprint for reform of the EU Sugar regime which proposed the removal of the existing EU Sugar quota system. The reforms have led to an open European Sugar market with more competitive players from elsewhere such as Australia and Thailand. With the fear of a loss of traditional markets in the EU there is concern at the expected loss of revenue leading to increased poverty among sugar-cane producers and workers in the Caribbean sugar industry. Some countries in the region have already begun to pursue the fair-trade option for some of their supplies and others are thinking of following suit. Fairtrade Sugar needs, however, to be produced from sugar-cane farms which uphold International social and environmental standards to secure the requisite certification and labeling as "Fairtrade".

In a dramatic shift of Policy and Business strategy, Tate & Lyle Ltd which is one of the major importers of Caribbean Sugar in Europe decided to convert 100% of its retail branded sugar to Fairtrade. The first beneficiary of the policy includes over 6,000 small-scale sugar-cane growers from the Belize Sugar Cane Farmers Association. Around 70,000 tons of Fairtrade certified sugar from Belize is expected to be exported in the first phase of the programme.

Following the initiatives in Belize, the Trinidad & Tobago based Inter-American Institute for Cooperation on Agriculture (IICA) has approached TradeCom for support to replicate the success of the Belize Programme in other Sugar producing Caribbean countries. The request supports ongoing work within the WTO Trade and Environment Committee to enhance mutual support of trade and environmental policies. The EU-CARIFORM EPA Agreement also calls for the development of a Framework for the protection of Labor and Environmental Standards in agro and other economic sectors. The potential collaboration with IICA aims to raise awareness amongst Sugar-Producers in the Region on the potential of Fair-Trade Sugar in repositioning the Caribbean Sugar Industry. Activities planned include a number of Studies to identify EU and international market trends for Fair-Trade Sugar, and dialogue amongst EU and Caribbean Sugar-producing and importing stakeholders to discuss strategies for enhancing the overall competitiveness of the Caribbean Sugar Industry.

TradeCom mission to Malawi and Zambia

Experts from the TradeCom PMU carried out a needs assessment mission to Malawi and Zambia in October. The objectives of the mission were threefold: (i) to sensitize the governments and other stakeholders about the TradeCom Facility; (ii) to assist potential beneficiaries, in translating their needs into project proposals; (iii) to consult other donors to ensure proper coordination of activities and avoid overlap. The mission also had discussions with the COMESA Secretariat in Lusaka.

The PMU is currently trying to outreach countries which have not yet benefitted directly from its assistance in an attempt to ensure a fair regional distribution of its activities. Zambia and Malawi are two such countries which have been identified in the eastern region of Africa for capacity-building. In both countries, the Ministry responsible for trade showed a keen interest in TradeCom activities and expressed an interest in seeking assistance in a number of areas. A number of areas have been identified for potential TradeCom intervention. The team also met with private sector representatives such as the Zambian Chamber of Commerce and Industry (ZACCI), and joint public/private sector bodies among which was the National Working Group on Trade Policy in Malawi. TradeCom is in contact with these potential beneficiaries to fine tune their requests. The TradeCom team also had useful discussions with the EC Delegations in both Malawi and Zambia to ensure that support requested did not overlap or duplicate with EU or other donor support. Discussions with the COMESA Secretariat focused on a region-wide project for assistance in the services sector. The PMU would like to thank the officials met during the mission and especially the Ministry of Industry and Trade of Malawi and the Chamber of Commerce and Industry of Zambia for their kind cooperation.

The Republic of Malawi	The Republic of Zambia
Capital : Lilongwe	Capital : Lusaka
Size : 118,480 km ²	Size : 752,614 km ²
Population : 13.9 million (UN, 2007).	Population : 11.9 million (UN, 2007)
GNI per capita : US \$160 (World Bank, 2006)	GNI per capita : US \$490 (World Bank, 2006)
Main exports : Tobacco, tea, sugar, cotton	Main exports : Copper, minerals, tobacco
Major languages : English, Chichewa (both official)	Major language : English (official), Bemba, Lozi, Nyanja, Tonga
Life expectancy : 48 years (men), 48 years (women) (UN)	Life expectancy : 42 years (men), 42 years (women) (UN)

NEWS

TradeCom Steering Committee

The Steering Committee of the TradeCom Facility met in Brussels on the 29th of October to assess the activities of the three components of the Facility, namely the TradeCom PMU, the Organisation Internationale de la Francophonie and the Commonwealth Secretariat. The Steering Committee was chaired by Ambassador Ferdinand Nyabenda, Assistant Secretary General of the ACP Secretariat. Representatives from the Commission services, AidCo, DG Development and DF Trade were present as were representatives of the Secretariats of ECOWAS, UEMOA, CEMAC, CEEAC, SADC, ESA, CARICOM and the OECS. A draft report of a mid-term evaluation of the Facility was presented and discussed.

Events

9th October 2008

TradeCom Facility New Website online

29th October 2008

Meeting of TradeCom Facility Steering Committee

17-21th November 2008

Seminar on legal aspects of trade policy, regional and multilateral trade negotiations



The Commonwealth Secretariat and the "Organisation Internationale de la Francophonie" are TradeCom Partners. These two organizations manage the Hubs & Spokes component of the Programme.
<http://www.thecomwealth.org> and <http://www.espace-economique.francophonie.org>

TradeCom Facility PMU / UGP

Avenue des Gaulois 20 • B-1040 Brussels • Belgium • Tel.: +32-2-743.00.20 • Fax: +32-2-743.00.29 • info@tradecom-acpeu.org



www.tradecom-acpeu.org



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