



# **The Interface between Trade and Competition Policy**

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## **Issues to be addressed**

- ❑ Why competition policy is on the WTO agenda**
- ❑ Implications of existing WTO provisions relating to competition policy**
- ❑ The Doha mandate on competition policy**
- ❑ Regional cooperation**
- ❑ Preparation of the Cancun Conference**



# Why is Competition Policy on the WTO Agenda?

- ❑ Historical recognition of the importance of competition policy as a complement to trade liberalization
- ❑ Havana Charter, Chapter V



# Why is Competition Policy on the WTO Agenda (cont'd)?

## □ Economic and Policy Developments

□ Globalization of business and growing incidence of anti-competitive practices with transnational dimensions, e.g. international cartels

□ Importance of competition policy for market access in particular sectors (e.g. basic telecom services)



## **Why is Competition Policy on the WTO Agenda (cont'd)?**

- Growing incidence of actual/potential conflicts of jurisdiction in antitrust cases**
  
- Potential for rules on competition policy to ensure overall “systemic balance” in the multilateral trading system**



## Competition - Related Provisions in Existing WTO Agreements

- ❑ **GATS, Article VIII: Members to ensure that state monopolies do not act in a manner inconsistent with their obligations/specific commitments**
  
- ❑ **TRIPS, Articles 8 and 40: Authority to take measures against abuses of intellectual property rights/ anti-competitive licensing practices**
  
- ❑ **Basic Telecom Negotiations, Reference Paper on Regulatory Principles: Commitment to adopt appropriate measures to prevent anti-competitive practices by major suppliers**



## Implications?

- Competition is NOT a new issue at the WTO**
- However, it has not, as yet, been systematically developed**



## The Doha Ministerial Conference: Background

23. Recognizing the case for a multilateral framework to enhance the contribution of competition policy to international trade and development, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 24, **we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.**

## **The Doha Ministerial Conference: Background (Cont'd)**

24. We recognize the needs of developing and least-developed countries for **enhanced support for technical assistance and capacity building** in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs

## The Doha Ministerial Conference: Background (Cont'd)

25. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of: **core principles**, including transparency, non-discrimination and procedural fairness, and **provisions on hardcore cartels**; modalities for voluntary **cooperation**; and support for progressive reinforcement of competition institutions in developing countries through **capacity building**. Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them.

## **Regional/multilateral cooperation**

- ❑ Regional and multilateral co-operation are complementary**
- ❑ GATT agreements are not an obstacle to a regional agreement on competition**
- ❑ What about Art. XXIV**

## **GATT, Art. XXIV-5**

5. “The provisions of this agreement **shall not prevent (...) the formation of a customs union or of a free-trade area (...)**”

provided that:

(a) and (b): the duties and other regulations of commerce imposed at the institution of any such union or free-trade area shall not be higher or more restrictive than prior to the formation of such union or free-trade area.

## GATT, Art. XXIV-5

8a. “For the purpose of this Agreement, a customs union shall be understood to mean the substitution of a single territory for two or more custom territories, so that duties and other restrictive regulations of commerce are eliminated **with respect to substantially all the trade between the constituent territories of the union (...)**”

8b.: similar provision about free trade areas

## Chairman's consultations

**Option 1** : agreement containing rules on the issues identified in the Doha declaration (EC, etc.)

**Option 2** : “soft” agreement involving negotiating a framework for cooperation

**Option 3** : no opening of negotiations (African countries and LDCs, etc.)

## **3rd option : issues for further clarification**

<http://www.wto.org>

**Non-discrimination : ex.: implication of NT and MFN**

**Transparency : ex.: notification of individual decisions ?**

**Hardcore cartels : ex.: export cartels ?**

**International cooperation : ex.: likely burden on DC**

**Compliance mechanism : ex.: scope of application of DSU**

# Draft Cancun ministerial declaration

<http://www.wto.org>

annex E

## **Main elements of negotiation :**

- core principles,
- provisions on hardcore cartels,
- cooperation and technical assistance and capacity building

## **Assurances :**

- voluntary cooperation,
- intergovernmental agreements,
- flexibility,
- DSU

## Cancun conference and perspective

- ❑ Cancun statement: “Notwithstanding this setback, **we reaffirm all our Doha Declarations** and Decisions and recommit ourselves to working to implement them fully and faithfully “.
- ❑ Continuation of technical assistance