

WTO Regional Workshop on Competition Policy
Economic Development and the Multilateral Trading System:
Overview of the Issues and Options for the Future

Is A Multilateral Framework Necessary?

Randolph W. Tritell*

**Assistant Director for International Antitrust
United States Federal Trade Commission**

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* The views expressed herein are those of the author and not necessarily those of the Federal Trade Commission or any of its Commissioners.

I. Background

A. Globalization of business

- Business is increasingly conducted across national borders. Thus, conduct in one country may have effects, including potentially anticompetitive effects, on consumers and markets in other countries.

B. Proliferation of antitrust laws

- Once the province of only a few countries, approximately 90 countries now have antitrust laws, with many others in the process of drafting such laws.
- A very high percentage of these laws have been enacted within the last 10-12 years.

II. Some Issues Presented by the Globalization of Antitrust

A. Preventing anticompetitive practices from defeating the benefits of trade liberalization.

B. Promoting sound antitrust enforcement and policy.

C. Minimizing conflict among antitrust laws and policies.

D. Encouraging cooperation and coordination among antitrust enforcement agencies.

III. Current National, Bilateral, and Multilateral Approaches

A. National Approaches

- Many countries have tools to address anticompetitive practices that take place outside their borders.

B. Bilateral Approaches

- Antitrust cooperation agreements have been very successful in facilitating cooperation and coordination between antitrust enforcers.
- They have also encouraged convergence in the substantive and procedural approaches to enforcement.
- Much technical assistance has been provided pursuant to bilateral arrangements.

C. Multilateral Approaches

- Antitrust issues are being addressed in numerous multilateral fora.
- The WTO Working Group has been a valuable educative forum for sharing experiences and helping to build a culture of competition among a wide range of countries.
- The OECD's Competition Law and Policy Committee has done important work in promoting sound competition policy, including through sharing best practices, conducting peer review of members' competition and regulatory policies, and issuing recommendations on cooperation among enforcement authorities and hard-core cartels.
- UNCTAD has provided a wide forum for discussing competition issues, especially as they affect developing countries and those with economies in transition, and providing technical assistance.
- Regional groups that have addressed competition issues include NAFTA and APEC, and they under discussion in the FTAA negotiations.

- IV. Adequacy of Current Approaches to Deal With the Challenges Ahead
- A. National enforcement efforts often face legal and practical limitations.
 - B. Bilateral arrangements have proven highly successful and are likely to continue and be expanded in breadth and depth. However, there are limits on their ability to deal with an increasingly global economy.
 - C. Current multilateral fora have been and continue to be very valuable. However, each has limitations. The work of the WTO Working Group and UNCTAD is limited to competition issues with a trade dimension. The OECD has limited membership. Other groups have limited geographical scope.
- V. Options for Moving the International Antitrust Agenda Forward
- A. Proposals for Binding Competition Rules in the WTO
 - The European Union and others support negotiations aimed at establishing WTO rules. These rules could require members to enact an antitrust law, to establish an agency with enforcement powers, to prohibit certain practices such as hard-core cartels, and to adhere to principles of transparency, due process, and non-discrimination. The envisioned regime could include mechanisms to facilitate cooperation on cases and on sharing information and experiences, and the coordination or provision of technical assistance.
 - These proposals show a commitment to commendable policy values, but follow a road that will not achieve the desired objectives.

- There is a lack of a demonstrated need for requiring every country, regardless of its size and circumstances, to have an antitrust law.
- There are enormous discrepancies in experience with competition law and policy among WTO members.
- There is no consensus on the proper role and elements of competition law and policy, particularly as applied to countries in vastly different circumstances and levels of development.
- A WTO competition regime could reflect only a lowest common denominator approach that could be detrimental to the development of sound competition policy.
- Once negotiated, rules are difficult to change, risking obsolescence.
- The WTO is a trade forum ill-adapted to handling competition issues, which would risk becoming politicized.
- The possibility of the application of WTO dispute resolution mechanisms to competition rules poses risks to the independence and sovereignty of antitrust law enforcement.
- There is no need for a WTO agreement to increase cooperation and technical assistance.

- B. Continuing Progress in Bilateral Cooperation and in Multilateral Fora
- Networks of bilateral cooperation agreements will continue to grow.
 - Building on experience in cooperating on actual competition issues and cases is the most valuable way to foster sound enforcement and convergence.
 - The WTO Working Group should continue its educative work. Members have expressed their desire to explore many topics. The work could also be expanded to conduct competition policy peer review.
 - The OECD will hold a series of Global Forums on international competition issues that will include many non-members.
 - Competition issues will continue to be explored in regional organizations and in international conferences and symposia.
 - There has been support for recent proposals for a new approach referred to as a Global Competition Initiative. The thinking on how the GCI might develop is in its preliminary stages, but it would likely be a loosely organized group of representatives of governments, international organizations, and other interested parties that would share ideas and seek to address competition issues on a non-binding basis. The GCI may prove to be a valuable forum for continued incremental progress on the challenges facing international antitrust policy.