Towards a New Trade Agenda: Including New Issues?

Competition Law Provisions in Regional Trade Agreements

Negotiating EPAs for Development
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Competition: a newer issue

- Competition policy: relatively new feature in international trade agreement, not part to the multilateral trade framework

- After almost 8 years of the existence of the WTO Working Group on Competition - and the inclusion of the Singapore Issues in the Doha Round – Competition was dropped from the Round

- Issue remained to be (eventually) addressed in Regional Trade Agreements

Why CLP provisions in RTAs?

- Rationale for CLP Provisions:
  - International trade can provide rationale and opportunity for firms to engage in anticompetitive conducts in the absence of sound competition law and/or policy: risk of local cartels closing the market, exports cartels affecting foreign markets, state aids to improve domestic firms that can distort competition
  - CLP provisions allegedly aim at guaranteeing that liberalization will not be undermined by anti-competitive business practices within member countries
  - Avoid that private parties cut off benefits of tariff reduction by means of anticompetitive practices

What CLP provisions to be included, if at all?

- The EC has historically been the most interested actor to push competition within the WTO context
- With no competition provisions in the multilateral level, all recent RTAs entered by the EC have included provisions on competition **=> thus issue particularly important in the context of EPA negotiations**
- Including competition provisions has costs, both from an institutional and economic perspective (not to say, political), thus the question:

<u>What CLP provisions to be included, if at all?</u>

No “one-size fits all” model

- Deepness of the CLP provisions varies
  - No “one size fits all”. Provisions are particularly different if a country already has or has not law and authority.
- But task for countries is the same: even though the whole set of benefits and burdens of RTA`s are to be analyzed in a wider sense (not limited to competition issues), there is a need to evaluate to which extent a country can commit to CLP provisions encompassed in international agreements, and also what are the benefits and burdens for implementing it
- The **level of implementation** of competition provisions in international agreements is very **low**, and this should be caused either because costs for implementation are too high, or because benefits of competition are not perceived.

Competition Provisions in RTA's

- Competition provisions within RTA's tend to be broader than provisions of purely cooperation competition agreements
  - Usually do not encompass operational procedures for coordinated enforcement, and are not directly concerned with the day-to-day enforcement activities, unless if establishing a supranational law and authority
- **Possibilities:**

  [a] require the existence of local law and authority to nationally apply the law (ex.: NAFTA, US-Chile, model proposed for FTAA and WTO); or

  [b] establishes a supranational-type of law to be applied by a supranational authority in trade related cases (ex.: EC, Andean Community, Caricom);

  [c] adopt competition principles in regulated sectors (ex.: CAFTA)

Competition Provisions in RTA's

- In evaluating interest/possibilty in adopting CLP provisions, evaluate rules that would be compatible with needs and that can be effectively implemented
  - CARICOM: "supranational" model
  - MERCOSUR: model proposes national authorities deciding together cases with effects on the region
- To which extent local law and authority are needed?
  - Usually local authorities contribute for "competition advocacy", indicating benefits of competition policy
  - But are not a requirement according to the model adopted
- To which extent can parts to the Agreement profit from such framework?
  - Cooperation in actual enforcement // Capacity building
  - Introduction of competition provisions in other laws

Benefits and Burdens

- For purposing of evaluating costs and burdens of CLP provisions, two subsets of RTA's:
  - Countries with similar stages of institutional development
  - **Countries with uneven levels of institutional development**

RTAs among countries with uneven levels of institutional development

- Agreements normally less ambitious, concentrate on exchange of limited type of information and non-mandatory notification
- **Benefits:** may achieve capacity building results (less mature agency profits from the maturity of the other country's agency by better understanding its enforcement policies and activities).
- **Costs and burdens:** associated with **human resources**, communication, paper exchange, travel etc. Costs are differently perceived by each country, depending on its institutional framework and on the resources available.
- **Balance**: if parties effectively exchange information in a specific case, avoiding duplication of efforts and conflicting decisions - and, therefore, an investigation is successfully concluded - the costs are fully justified.
- Technical assistance projects frequently produce satisfactory results, especially if customized to the needs of the recipient
- Exs.: US-Mexico, US-Israel, US-Brazil, Canada-Costa Rica

Balancing costs and benefits:
Can CLP provisions help fostering development?

- As there is no “one size fits all”, challenge is to find models that are adequate to each reality
  - Evaluate nature and possible impacts of (cross-border) anticompetitive conducts on trade
  - Evaluate institutional capacity and (actual) national interests
- If costs ***seem/are*** too high, model is not appropriate and possibly no efforts would be put on its implementation
- If model is adequate, RTA’s should have the ability to bring net positive effects (costs not outweighing benefits), thus allowing implementation and benefiting consumers and development

Thank you

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