
**Working Group on the Interaction between
Trade and Competition Policy**

Original: Spanish

COMMUNICATION FROM URUGUAY

The following is the final text of a paper received from the Permanent Mission of Uruguay which was circulated as an advance copy for the Working Group's meeting of 22-23 March 2001.

Uruguay wishes, by way of this written communication, to present to the Working Group its views on (1) its experience and legislation in the field of competition policy and (2) the development dimension in a possible multilateral setting.

1. Uruguayan legislation and experience relating to competition

Uruguay's domestic market has recently had to confront the phenomenon of business concentration and the establishment of large store structures which not only brought the issue of competition protection to the public eye but also gave rise to the need to tackle this new situation with appropriate regulations.

First, it should be pointed out that, to date, Uruguay has no single competition act. The development of business concentration in the country has, however, led to the enactment of two laws on the issue.

These are Law No. 17,188 of 20 September 1999 on commercial undertakings in large store structures for the sale of foodstuffs and household articles and Law No. 17,243 of 21 June 2000 on Anti-Trust Measures.

Law No. 17,188 governs commercial undertakings, excluding service companies, in large store structures (with a total area of at least 300 square metres and intended for sales to the general public). This law provides for the creation of Departmental Commissions for the Protection of Micro, Small-and Medium-Sized Commercial Craft and Light Industrial Enterprises, made up of a representative of the Executive branch of government, a representative of the intendant of the respective departmental government, a representative of the private sector designated by the National Chamber of Food and Uruguayan Business Confederation and a consumer representative, designated by the consumer protection associations of each department.

These commissions have technical autonomy and provide mandatory advice to the intendant of the corresponding departmental government, who will rule on projects to set up new commercial undertakings or extend existing ones, provided that they have a total area of over 300 square metres. The commission has up to 20 working days to give an opinion and must substantiate its decision on the basis of a review of total supply and demand for each sector of activity in the area in which there are plans to set up or extend a large retail space and on the foreseeable long-term impact of the project on traders selling similar articles and products.

Law No. 17,243 includes a specific chapter on "Anti-trust measures" which stipulates that businesses involved in economic activities, whatever their legal nature, are subject to competition rules, without prejudice to the restrictions established by law, in the general interest or when the activity in question is a public service.

This law also bans agreements and concerted practices between economic operators, decisions by associations of undertakings and abuse of a dominant market position by one or more economic operators which have the effect of preventing, restricting or distorting competition or free market access as regards the production, manufacture, distribution and marketing of goods and services.

This law prohibits acts such as those directly or indirectly fixing purchase or sales prices or any other transaction conditions in such a way as to be detrimental to consumers; unjustifiably limiting production, distribution or technological development to the detriment of businesses or consumers; unjustifiably applying dissimilar conditions to equivalent transactions with other trading parties, thereby putting them at a competitive disadvantage, and making the conclusion of contracts subject to acceptance by other parties of complementary or supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts and are to the detriment of consumers.

In addition, Article 157 of Law No. 17,296 of 21 February 2001, approving the national budget for the current government term, states that "the regulations issued by the Executive branch of government shall establish which government department is to be assigned competence for controlling the acts or conduct prohibited under Article 14 of Law No. 17,243, which shall be punishable by (a) a caution, (b) a caution with publication at the infringer's expense, (c) an order for the definitive cessation of the prohibited acts or conduct and removal of effects, or (d) the imposition of a fine (the amount of which shall vary according to whether the violation is classified as minor, serious or very serious).

Furthermore, at subregional level, Uruguay endorsed MERCOSUR's Protocol for the Defence of Competition Policy (Common Market Council Decision No. 18/96 of 17 December 1996), Article 4 of which establishes that "regardless of the issue of blame, concerted individual acts of any kind which have as their object or effect the prevention, restriction or distortion of competition or market access, or which constitute abuse of a dominant position in the relevant goods or services market within MERCOSUR and which affect trade between States parties" constitute violations of the Protocol. Uruguay has yet to ratify this Protocol.

Common Market Council Decision No. 15/96 also set up an Ad Hoc Group on the Treatment of Public Policies that Distort Competitiveness, the aim of which is to guarantee a level playing-field for production in all States, so that trade liberalization does indeed constitute an enlarged economic space in which regional resources can be more efficiently allocated and better use made of scale economies.

Within the Americas, in the framework of the Free-Trade Area of the Americas (FTAA), Uruguay is also actively involved in the Negotiating Group on Competition Policy, the aim of which is to ensure that the benefits of the FTAA liberalization process are not impaired by anti-competitive business practices and to make progress towards establishing legal and institutional arrangements prohibiting such anti-competitive business practices at national, subregional and regional level.

2. Competition policy and the development dimension

The development dimension has been analysed at the various Working Group meetings. The synthesis paper drawn up by the WTO Secretariat¹ includes a series of concerns and suggestions from a number of delegations concerning the need for Working Group discussions to take Members' different economic and legislative realities, national experience, exceptions to domestic competition law, etc., into account.

A series of suggestions² furnished to the Group also forms part of its work programme. One of particular importance relates to the need to hold a **more concrete discussion on the development dimension** of the issue, including consideration of the benefits, challenges and downsides of implementing competition policy in developing countries and the problems involved in establishing competition agencies.

As a starting point, it should be emphasized that it has been recognized that liberalization of trade and investment in and outside the WTO has accelerated globalization and, together with technological progress, enabled transnational corporations to pursue worldwide strategies. Major transnational corporations now focus on the entire world market and seek to achieve leading world market positions in their core business through mergers, acquisitions, strategic alliances, investment and trade. In this situation, some developing countries find it difficult to establish and enforce national competition rules to safeguard market forces and free market entry.³

Current trends and characteristics of cross-border mergers and acquisitions merely confirm the above. The value of worldwide mergers and acquisitions - be they concluded between domestic firms or between domestic and foreign firms - has grown dramatically during the past two decades (1980-1999), at the rate of 42 per cent per year. In 1999, their completed value was about US\$2.3 trillion.⁴

Developed countries are the most important sellers and buyers in cross-border merger and acquisition deals, accounting for between 90 and 95 per cent of such deals in the period 1980-1999, whilst only 5 to 10 per cent involved developing countries. However, of merger and acquisition deals involving developing countries, the bulk (70 per cent) originates in Latin America and the Caribbean.⁵

The sectors which have recorded the greatest number of mergers and acquisitions over the last few years include the automotive sector, pharmaceuticals, chemicals, foodstuffs, beverages, tobacco, telecommunications, power, financial services and banking. As the paper points out, all of these sectors have, for some time, been receptive to large-scale mergers and acquisitions, partly owing to the fact that they are being liberalized and deregulated.

The above-mentioned sectors are currently experiencing a situation bordering on monopoly, in which there are very few companies, whose strategies are aimed at the international market.

Given an international setting that has these features, and bearing in mind the diversity and scope of national competition laws, Uruguay therefore feels the need for a more focused discussion on the relationship between the development dimension and restrictive business practices.

Special and differential treatment in the GATT/WTO system. This is a core principle of the multilateral trading system and one which lies at the heart of the entire Organization. It is not the

¹ WT/WGTCP/W/80.

² WT/WGTCP/M/11, paragraph 2.

³ UNCTAD Plan of Action (paragraphs 69 and 70).

⁴ Expert Meeting on Cross-Border Mergers and Acquisitions, June 2000. Paper TD/B/COM.2/EM.7/2.

⁵ Idem.

intention of this written submission to discuss the scope of this principle since it has already been enshrined in the various WTO Agreements and is a mainstay of the multilateral trading system.

Within the Organization, all of the special and differential treatment provisions established in the WTO Agreements and provisions are analysed in great detail by the Committee on Trade and Development.⁶

As can be gathered from the work of the Committee on Trade and Development, special and differential treatment relates to trading opportunities for developing countries, protection of these countries' interests, flexibility of commitments, transitional time-periods, grounds for technical assistance and the structural problems of least-developed countries.

Special and differential treatment and multilateral competition rules. In the 1970s, UNCTAD approved the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (the "UN Set"), which is the sole fully multilateral instrument in this field.⁷

In spite of its **voluntary nature**, it should be stressed that this is also a multilateral instrument with a specific provision providing for "preferential or differential treatment for developing countries". It provides that "in order to ensure the equitable application of the Set of Principles and Rules, States, particularly developed countries, should take into account in their control of restrictive business practices the development, financial and trade needs of developing countries, in particular of the least-developed countries, for the purposes especially of promoting the establishment of domestic industries and the development of other sectors of the economy, and encouraging their economic development through regional or global arrangements among developing countries".

UNCTAD is of the opinion that all multilateral competition agreements should take special and differential treatment for developing countries, as recognized in the UN Set, into full consideration. Such treatment could include the right to exempt sectors from domestic competition laws on development grounds - exceptions and exemptions which still exist in almost all developed countries.⁸

What does comparative law teach us? How, then, should the development dimension be defined in a possible WTO multilateral agreement on the issue? What can be gleaned from the different domestic competition protection laws and regulations? How has sectoral exemption from competition provisions been provided for at national level?

A study of the domestic competition legislation of a number of developed and developing countries reveals that exceptions to such laws vary considerably from one country to another and encompass a wide range of different economic activities, sectors and grounds.

⁶ WTO Paper WT/COMTD/W/77 of 25 October 2000. In this paper, the WTO Secretariat indicates that there are 145 provisions spread across the different Multilateral Agreements on Trade in Goods, the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Understanding on Rules and Procedures Governing the Settlement of Disputes and various Ministerial Decisions. Of the 145 provisions, 107 were adopted at the conclusion of the Uruguay Round and 22 apply to least-developed country Members only.

Special and differential treatments provisions are classified in this paper according to the following six-fold typology: (a) provisions aimed at increasing the trade opportunities of developing country Members, (b) provisions under which WTO Members should safeguard the interests of developing country Members, (c) flexibility of commitments, action and use of policy instruments, (d) transitional time periods, (e) technical assistance and (f) provisions relating to least-developed country Members.

⁷ WT/WGTCP/W/17. Communication from UNCTAD to the WTO Working Group on the Interaction between Trade and Competition Policy.

⁸ UNCTAD, Trade and Development Report for 1999.

Economic activities exempted from domestic competition laws include telecommunications, electricity, hydrocarbons, transport, water and fishing, the reasons cited being protection of the stability of a sector crucial to the production of goods or services of particular benefit to the economy as a whole and cooperation in research and development for new technology.

As a general rule, exemptions from competition law in developed countries are accorded to sectors which are subject to special State regulation⁹, such as agriculture, forestry, fisheries, power, transport and postal services. Defence, communications, financial markets, (including insurance), the media and the publishing and manufacturing industries are also granted partial or total exemption.

3. Conclusion

The Delegation of Uruguay wishes to study the development dimension with regard to competition protection in greater depth and considers that, in accordance with the evidence provided by comparative law and the variety of experience of WTO Members, this matter should continue to be considered a high priority on the future Working Group agenda.

In the opinion of this delegation, the WTO Secretariat, together with other international organizations which participate in this Working Group as observers, could supplement the work already made available to the Group on how to tackle the development dimension in a possible multilateral setting, primarily on the basis of what can be learnt from comparative law and WTO Members' experience in this area.

⁹ WTO, 1997 Annual Report. Special Study on Trade and Competition Policy.