

WORLD TRADE ORGANIZATION

WT/WGTCP/W/235
26 June 2003

(03-3413)

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

Original: English

COMMUNICATION FROM KOREA

The following is the final text of a communication received from the Permanent Mission of Korea, which was circulated as an advance copy for the Working Group's meeting of 26-27 May 2003.

Peer Review in the Multilateral Framework on Competition Policy

I. INTRODUCTION

The recent international cartels have brought to light the extent of the harm done by cartels, and how these cartels can have broad, international implications. In many cases, developing countries have been affected in particular. In addition, extraterritorial application of competition policy to curb these cartels has sometimes led to jurisdictional conflicts, and legal restrictions have made evidence gathering across borders difficult. It is clear that some sort of international coordination and cooperation is necessary in the competition policy arena. Korea believes that, in order to effectively address the above problems, the multilateral framework on competition policy should be introduced and that, to reinforce its enforcement, an effective and practical compliance mechanism is required.

Korea also believes that to effectively facilitate international cooperation, it would be most effective for each country to adopt at least an anti-cartel law, if not a comprehensive competition law and competition specific agency. However, the following proposal does not presume the adoption of a competition law as such, but only that there should be some institutional mechanisms to deal with competition policy issues, befitting the socio-economic needs and traditions of a particular member.

Korea is of the view that peer review may be a realistic option to promote compliance (i.e. compliance of core principles, hard-core cartels, voluntary cooperation and technical assistance stipulated in the Doha Development Agenda) by member countries. Peer review can also contribute to improving the effectiveness of technical assistance to developing countries by enabling information-sharing regarding competition law and policy.

In its previous submission to the Working Group (WT/WGTCP/W/225), Korea suggested the implementation of peer review as a compliance mechanism in the WTO Competition Committee. In this proposal as a follow-up, specific implementation guidelines of peer review under a multilateral framework on competition policy in the WTO is suggested, without prejudging Korea's future position.

II. PEER REVIEW IN THE MULTILATERAL FRAMEWORK ON COMPETITION POLICY

Given that the WTO is an international organization based on binding rules, it would be more meaningful for peer review in the WTO to be of binding nature than purely voluntary based as in other international organizations, such as the OECD. In the multilateral framework on competition policy in the WTO, peer review should aim at helping to facilitate sharing of information and experience between member countries, to enhance transparency in enforcement of competition law and policy, thereby enhancing international cooperation. Such a peer review process will have the following features.

- Targeting all member countries

In principle, all member countries should be subject to peer review, thereby bolstering the role of peer review as a compliance mechanism. However, developing countries, which have not yet developed institutions or measures to deal with competition policy related issues in some way, or are in beginning stages, should be given a grace period.

- Periodical review of implementation of the policy recommendations suggested in peer review

It could help promote compliance to review periodically the level and degree of implementation by the member countries under review of the policy recommendations suggested by peer review

- Increasing the level of peer pressure

By publicizing final reports and information through publication and the Internet, compliance by peer pressure could be strengthened

Korea has no objection to applying WTO dispute settlement mechanism to obligations in a WTO competition agreement to complement the peer review process. However, given wide differences in competition policy related institutions and in the levels of experience with competition policy, Korea is of the view that it may be more practical to begin with competition policy-specific peer review.

III. GOAL AND STRUCTURE OF PEER REVIEW

A. GOAL

1. Promoting Compliance

Facilitating and promoting the compliance by the member countries of the multilateral framework on competition could be placed as the priority.

2. Information and Experience Sharing

By sharing and exchanging experience and related information of competition policy enforcement, member countries could enhance the effectiveness of competition policy enforcement.

3. Technical Assistance

The process of peer review itself can help enhance the enforcement capability of developing countries and the least developed countries, which have no or less experience in competition policy implementation.

B. BASIC FRAMEWORK

1. Investigation stage

At the investigation stage, a member country under review is required to draw up a report including a brief overview of its competition law and policy enforcement, in accordance with a standard preliminary review list, and to present it to the Secretariat. The Secretariat draws up the Secretariat Report mainly based on the Government Report.

2. Examination stage

At this stage, all member countries in the Competition Committee discuss competition law and policy enforcement of the given member country on the basis of the Government Report and the Secretariat Report. Collecting and reflecting the opinions and recommendations from member countries, the Secretariat produces the final report by revising the Secretariat Report.

3. Dissemination stage

Reflecting the discussion at the examination stage, the final report is drawn up and publicized. By disclosing the government report, the final Secretariat report and minutes, transparency and confidence in peer review could be enhanced

IV. RELATED ISSUES OF PEER REVIEW

A. SETTING THE PRIORITY OF THE COUNTRIES UNDER REVIEW

Considering peer review mechanism's positive effects upon technical assistance to developing countries, it is desirable to select countries with sufficient experience in competition policy enforcement to be reviewed first. In this way, more experienced countries can provide developing countries with useful information on their experience in enforcing competition law and policy, which could contribute to easing developing countries' uncertainty and anxiety about introduction and enforcement of a domestic competition law and policy.

B. EXAMINATION LISTS

Factors to be examined in the Peer Review should include at least core principles, hard-core cartels, voluntary cooperation and technical assistance stipulated in the Doha Development Agenda.

C. RELATIONSHIP WITH TPRM

TPRM is a peer review mechanism that covers a wide range of trade policy of a given WTO member. Therefore, its goal and scope are different from those of peer review on the competition law and policy. TPRM aims to enhance transparency in overall trade policies and practices of member countries. A separate peer review in competition sector enables an effective competition-specific peer review in a detailed manner. It will also enhance transparency in competition law and policy enforcement and promote compliance of a multilateral framework on competition policy.

V. CONCLUSION

Due to a wide gap in the experience in competition policy enforcement among member countries, Korea believes that peer review is may be a realistic and applicable mechanism that will promote compliance of a multilateral framework on competition policy by member countries. In

order to maximize the merits of peer review, such as compliance promotion, technical assistance and information sharing, member countries' active participation in competition-specific peer review is required. Korea is of the view that the peer review mechanism can complement the non-binding aspects of the voluntary cooperation system and reinforce the implementation of obligations set by the multilateral framework.
