

**TRADE AND COMPETITION:
A WTO MULTILATERAL COMPETITION AGREEMENT**

UNICE POSITION

PREPARING A MULTILATERAL COMPETITION AGREEMENT AT WTO LEVEL

UNICE has noted developments on the issue of trade and competition since the Fourth WTO Ministerial Conference in Doha recognised the case for a multilateral framework to enhance the contribution of competition policy to international trade and development. In view of these developments, which are reflected in the communications from and submissions to the WTO working group on the interaction between trade and competition, and the upcoming Fifth Ministerial Conference in Mexico, UNICE wishes to supplement its position of 14 May 1999 on the issue.

For UNICE the fundamental objective is that companies should be able to compete with each other in individual foreign markets on a level playing-field, taking full advantage of the expansion of international trade. UNICE notes that both government and private sector practices can impede this objective.

UNICE believes that the “core principles” identified in the Doha declaration (*i.e.* transparency, non-discrimination and procedural fairness) are fundamental and should be reflected in any competition regime of every jurisdiction. UNICE also condemns “naked hard core cartels”, which harm business and ultimately consumers alike, while noting the importance of addressing important definitional issues in this connection.

UNICE therefore supports the launch of negotiations for setting up a multilateral competition agreement at WTO level subject to the agreement incorporating the following key elements:

- A commitment to the core principles of transparency, non-discrimination and procedural fairness for the application of competition law and policy as adopted by a WTO Member State.
- A commitment to take measures against “naked hard core cartels” between competitors involving practices relating to price fixing, market sharing and bid-rigging; no commitment to introduce rules related to other areas of competition law.
- The development of modalities for voluntary cooperation between WTO Members on competition policy issues whilst assuring effective and adequate protection for the exchange of confidential information (in that regard see Part 6 of the ICC paper entitled ‘Competition policy in the WTO: Doha Declaration Issues).

- A commitment to ongoing support for the introduction and strengthening of competition institutions in developing countries whilst allowing for appropriate transition periods for these countries.
 - The setting-up of a Committee to administer the agreement and act as a forum for exchange of national experience and the use of a voluntary “peer review” mechanism that would allow competition policy experts to subject jurisdictions’ competition regimes to peer scrutiny and comment.
 - An express reference that there cannot be any binding substantive review, within the framework of the WTO, of decisions, or a pattern of decisions (including non-enforcement decisions), of national jurisdictions with regard to specific actual competition cases; review by the WTO disputes panel should be limited to questions of whether the text of a national competition legislation complies with the core principles.
 - The choice of form and methods shall be left to Member Governments when introducing measures over time which are necessary to fulfil the above commitments.
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