

Why Antidumping Rules should include Competition Principles in RTAs

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The issue

- ✦ Interaction between antidumping (AD) and competition policy (CP) is a polemic issue.
 - Legal perspective: AD rules allow practices such as price undertakings and quantitative trade restrictions that may be forbidden by CP, and punish certain types of price differentiation that are justified by CP.
 - Economic perspective: they pursue different objectives. AD is a trade remedy while CP promotes consumer welfare and productive efficiency, which depend on market contestability, where import competition plays a key role.

The issue

- ✦ Antidumping laws are fundamentally anticompetitive.
- ✦ AD is a common practice in developed countries, but its use is rising in developing countries.
- ✦ In order to avoid restriction on competition it may be important to place AD under the jurisdiction of competition authorities.
- ✦ But reaching an agreement would be difficult.
 - Political interests
 - AD used as a protectionist measure

Agreements

✦ Some integration initiatives, have solved the disputes arising from antidumping by abolishing the use of this instrument among member countries.

- European Union
- Australia and New Zealand trade agreement

✦ Others have replaced it with safeguards.

- Second best solution
- Canada and Chile Agreement (1996)

European Union

- ✦ Primacy of competition law over antidumping and other trade policy instruments.
- ✦ 3 overlapping provisions:
 - The EU treaty establishes clear limits on the implementation of any policy whose results are inconsistent with Articles 81 (restrictive practices) and 82 (market dominance).
 - Community interest: all various interests taken as a whole (antidumping legislation).
 - Price undertakings: should not be accepted if they provoke anticompetitive results.
- ✦ Each provision reinforces the others.

FTAA

- ✚ One challenge faced by the FTAA results from uneven degree of law enforcement in the region.
 - L.A. and Caribbean countries: CP at infant stages or do not exist. Just 12 of 34 countries have CP.
 - Main users of AD are US, Canada, Mexico, Argentina and Brazil.
 - Only Peru has an agency that deals with both AD and competition.
- ✚ Also, the negotiation agenda does not include abolishment of AD in the region.

Proposals

- ✦ Antitrust agencies should have jurisdiction over antidumping cases.
 - They have the same objective: overseeing, deterrence and punishment of anti-competitive practices.
- ✦ Efforts should continue to harmonize the legislation across countries.
- ✦ CP would help to make AD practices less harmful by enlisting cooperation between competition authorities of the exporting and importing countries.

Core Principles

✦ PECC principles for competition policy framework:

- *Comprehensiveness*: competition dimension for all policy-making that impacts on markets and this framework should apply to all goods and services.
- *Transparency*: principles should be clear for all stakeholders.
- *Accountability*: the ones that apply the principles should be responsible for any deviation from them.
- *Non-discrimination*: ensure competitive neutrality in respect of the different modes of domestic and international supply.

Limitations

- ✦ But there is a number of preconditions in order to replace antidumping laws with competition laws.
 - Existence of minimal trade barriers, comparable or armonized competition law, recognition of jurisdiction based on effects, and adequate private rights of action.
- ✦ Enforcing competition policy is a necessary, but not sufficient step toward elimination of antidumping.
 - While the former is concerned with market power, the latter is used as a trade remedy.
 - To abolish AD law in an RTA, the member countries need not only CP, but also common disciplines promoting international competitiveness of domestic industries.