

The Relationship between Competition Policies and International Trade

Mr. Deevanshu Shrivastava
Jagran Lake University, Bhopal
jagraneip@gmail.com.

Article Info

Volume 83

Page Number: 9015 - 9019

Publication Issue:

March - April 2020

Article History

Article Received: 24 July 2019

Revised: 12 September 2019

Accepted: 15 February 2020

Publication: 09 April 2020

Abstract

In the era of developing free markets all over the globe, international trade agreements between sovereigns have worked out to minimize the tariff and non-tariff barriers for free and fair trade amongst nations, but the market players have not responded in the same direction. The old school government sanctioned tariff and non-tariff barriers are getting replaced by the anticompetitive agreements between the market players which are out of the regulatory scope of World Trade Organization (“WTO”). In this research paper the researcher is analyzing the impact of competition policies on international trade and in addition to this he is also trying put forth the idea of International Competition Policy Regulatory Framework to regulate the policies..

Keywords; *Competition Policies, International Trade*

I. INTRODUCTION

Trade makes it possible for countries and consumers to reap the benefits of products and services not available in the domestic market. Though trade is beneficial for both of the parties who are either exporting or importing, it is alleged that, for an economy to grow, exports are more beneficial. It is also believed that industries in developing nations need to be protected from the industries in the developed nations as they are better off with technology and other mechanisms which give them an upper cut above the developing industries in business. The products and services offered by the developed industries from developing nations are more competitive than the products and services offered by the in-house developing domestic industries. Hence developing countries create barriers against trade and obstruct the free and fair flow of trade. Such kind of behavior is called as protectionism. In order to protect domestic industries countries apply tariff and non-tariff barriers to restrict trade from industries in developed countries. In addition to such government sanctioned

against the free flow of trade, private parties have also contributed to the obstruction of free and fair trade by employing anti-competitive practices. There are substantive provision for dealing with the private parties employing such anti-competitive measures to hinder the free flow of trade, and hence, there is a need for International Competition Policy Regulatory Framework.

II. IMPORTANCE OF EXCHANGE OF GOODS OR SERVICE

The exchange of goods or services across international borders is called as International Trade. Trade makes it possible for countries and consumers to reap the benefits of products and services not available in the domestic market. The importance of trade has been long back explained by Ricardo in his theory of comparative advantage. According to the theory of comparative advantage trade can be beneficial to both the countries trading if they trade products which they produce best. According to this theory a country must trade those products or services in which it has comparative advantage in

trading. It must apply its resources to the production of such products which shall have a comparative advantage in the market. Accordingly if a country is best in producing a particular product but it does not reap benefits in its trade, then the country must produce such products in which it has a comparative advantage.

Though trade is beneficial for the both the parties who are either exporting or importing, but it is alleged that, for an economy to grow, exports are more beneficial. It is also believed that industries in developing nations need to be protected from the industries in the developed nations as they are better off with technology and other factors which give them a cut above the developing industries in business. The products and services offered by the developed industries in the developing nations are more competitive than the products and services offered by the in-house developing domestic industries. Hence developing countries create barriers against trade and obstruct the free and fair flow of trade. Such kind of behavior is called as protectionism. In order to protect domestic industries countries apply tariff and non-tariff barriers to restrict trade from industries in developed countries

III. REGULATING INTERNATIONAL TRADE

Conventionally, trade was governed through bilateral treaties between two nations. It was after world war two that the need for free trade was realized by the international community and hence there came the multilateral treatise like General Agreement on Tariffs and Trade (“GATT”) and the WTO became the principal regulator of world trade. It is the duty of the WTO to examine domestic trade policies in order to ensure consistency and transparency through monitoring the global economic policy making. The WTO has created a regime against non-tariff barriers and hence any country being a member of the WTO is prohibited from applying non-tariff barriers. The prima facie

aim of WTO is to make trade free from non-tariff barriers and then later minimize the tariffs on a later stage once all countries have become successfully compliant in prohibiting non-tariff barriers. Globalization is now a reality, as shown by ever-larger flows of investment and transnational trade. On the other hand, the new available figures demonstrate a downward corrections of trade growth forecasts”.

The Problem of Anti-competitive practices

In the era of developing free markets all over the globe, international trade agreements between sovereigns have worked out to minimise the tariff and non-tariff barriers for free and fair trade amongst nations, but the market players have not responded in the same direction.¹ The old government sanctioned tariff and non-tariff barriers are getting replaced by the anti-competitive agreements between the market players which are out of the scope of World Trade Organization (“WTO”).

The investments and international trade governmental barriers are reduced and eliminated, The international attention is turning more to these anti-competitive practices that are occurring amongst international corporations and also within nations that affect investment flows and trade from nations.

Anti-competitive practices and market structures undermine the exporters in developing countries by restricting access to the international market and weakening their productive capacities by various means, these include international cartels, infrastructure monopolies, distribution restraints, etc. In many developing countries, exporters have to struggle with

inadequate infrastructure to facilitate transport or with the exorbitant prices charged in lieu of access to them. These hurdles may be the caused because

of lower investments in such facilitative measures or they may even be contributed to the industry of regulatory structures intending to deter new entrants, but this may not be the only case, rather it may also indicate the very existence of inefficient and unnecessary monopolies, or even cartels. The role of international distribution chain can also not be overlooked as they also have great potential to leverage their network to manipulate the prices and distort opportunities for the exporters in the developing countries. This is also known as the exercise of “monopsony power,” meaning the equivalent of the monopoly power but on the buyers’ side of the market.

Whether competition policies can be drafted to work in consonance with the International Trade Laws?

Competition policy is traditionally a domestic economic policy that aims to enhance economic efficiency and consumer welfare by restraining anti-competitive practices in the domestic market. However, in today’s globalised world of trade and investment, the scope of application has grown to become more international, as companies have become more global and their business activities take place across borders. The purpose of competition law is to regulate the conduct of private parties which have an adverse effect of the competition in market being detrimental to the consumers. Competition law tries to maintain perfect competition in the market to protect the interest of the consumers. Competition policy, comprising both competition law enforcement and competition advocacy work, is a central element to the necessary framework for inclusive liberalisation. Competition policy and competition analysis are also essential to ensure that international trade operate in ways that are inclusive and open with respect to participation by all competitive suppliers. The understanding that International Trade and Competition policies have nothing to do with each other is a fool’s errand. There are ample of evidence

to prove that private agreements and hybrid government-private agreements are taking place in order to create barriers to free and fair international marketplace. In the “Hawk Report” by the OECD, it has been observed that private agreements have restricted market access in ten member countries in the domain of agriculture, energy, communications, defence, media, and other industries. It is also believed by the market players that the private agreements have hindered market access to them and competition law was infructuous in protecting their interests. In addition to the anti-competitive agreements being in place the competition polices in India also are ineffective and lax at enforcement due to the overwhelmed court system.² Further such actions do not specifically fall into the scope of international trade law nor the domestic competition law, hence raising a question, whether to widen the scope of international trade laws or the domestic competition laws.

In an ideal world where there are no impediments to trade and investment, where inputs for production of goods and services are fully mobilised, international trade would be the main source of market competition and efficiency. However, in the real world where there is less than full mobility of inputs and products, market imperfections, and regulatory distortions, international trade cannot work effectively. Competition policy and enforcement, which concentrate on the elimination of private incentives to restrain competition, can complement international trade.

Competition policy and international trade share the same objective of enhancing economic efficiency and consumer welfare based on trade liberalisation and open markets. While they share the same goal, they have different means of achieving it. While competition policy and law enforcement focus on the elimination of private incentives to restrain competition such as unilateral conduct, cartels and

mergers, international trade policy concentrates mostly on the elimination of regulatory barriers to international trade flows.

It is difficult to find consensus amongst different nations on the principles of competition law as there are vast cultural and practices difference in nations. A strong resistance is also seen from the protectionist developing nations against the International Competition Policy Regime. It is argued that the nascent industries in the developing countries are not sufficiently prepared for the imposition of such regulatory regimes which are based on the traditions of the developed markets like U.S. and Europe.

While organisations like International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD), and United Nations Conference on Trade and Development (UNCTAD) has done so much work in order to promote the “international cooperation” and “the voluntary adoption of sound enforcement practices at the national level”, even after a lot of work that is done in these field it lacks, the nondiscriminatory application of competition law as well as the binding mechanisms to ensure transparent by all countries. In the absence of such mechanisms, there rest the risk that competition law enforcement can itself be employed as a tool of discrimination or market exclusion, contrary to the values it is intended to promote

IV. CONCLUSIONS

Hence it is concluded that there are strong evidence to show that private barriers to free trade are existing and neither the WTO nor the member’s states alone are capable of addressing the problem. There is a need of member countries coming forward and adopting an international code of fair competition that will serve to address the problem of anticompetitive agreements creating barriers for free trade in the international market place.

REFERENCES

- [1]. “Reem Heakal, WHAT IS INTERNATIONAL TRADE? – INVESTOPEDIA”, <https://www.investopedia.com/insights/what-is-international-trade/> ibid.
- [2]. “Pérez Motta, Eduardo. 2016. Competition Policy and Trade in the Global Economy: Towards an Integrated Approach. E15 Expert Group on Competition Policy and the Trade System – Policy Options Paper. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum”.
- [3]. Sadoa Nagaoka, “INTERNATIONAL TRADE ASPECTS OF COMPETITION POLICY - NATIONAL BUREAU OF ECONOMIC RESEARCH”, <https://www.nber.org/papers/w6720.pdf> (last visited at 28 May, 2019)
- [4]. Epstein, Julian. “The Other Side of Harmony: Can Trade and Competition Laws Work Together in the International Marketplace?” *American University International Law Review* 17, no. 2 (2002): 343-368.
- [5]. ROBERT ANDERSON ET AL, COMBATING ANTI-COMPETITIVE PRACTICES - A GUIDE FOR DEVELOPING ECONOMY EXPORTERS, 2012 (International Trade Centre), <http://www.intracen.org/combating-anticompetitivepractice/>
- [6]. Lee, Hyo-young, Applying Competition Policy to Optimize International Trade Rules (February 27, 2017).KIEP Research Paper, Staff Papers 17-01. Available at SSRN: <https://ssrn.com/abstract=2929110> or <http://dx.doi.org/10.2139/ssrn.2929110>
- [7]. http://www3.weforum.org/docs/E15EF_Competition_Policy_Trade_Global_Economy_Towards_Integrated_Approach_report_2015_1401.pdf
- [8]. See organization for economic cooperation and development. Antitrust and market access: the

scope and coverage of competition laws and implications for Trade, 23, 29, 30 (OECD ed., 1996) (noting that the governmental electricity and gas monopolies in Japan are exempted from their countries' prohibitions of monopolies, that professional baseball is exempt from competition laws in the United States, and that France maintains a separate legal regime for audiovisual communications industry mergers).

- [9]. See business and industry advisory committee report on the survey of business Competition law concerns, to tile oecd conf. On trade and competition, (oecd ed..1999).
- [10]. Perez Motta, Eduardo. 2016. "Competition Policy and the Trade System: Challenges and Opportunities", E15Expert Group on Competition Policy and the Trade System – Overview Paper, International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, at 1.
- [11]. See WTO General Council, Report of "the Working Group on the Interaction Between Trade and Competition Policy to the General Council", WT/WGTCP/4, para. 31 (Nov. 30, 2000) [hereinafter WGTCP 2000 Report] ("expressing concern that local firms in developing countries may be displaced by foreign firms as result of emphasis on competition"); id. para. 30 ("noting the importance of developing countries' ability to retain use of a broad range of development-related policies and not be hindered by imposition of international competition regime").