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

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## **COMMUNICATION FROM JAPAN**

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Introduction of Competition Laws and Policies and the Relationship  
of these to National Development Policies

### **1. Introduction**

1. A number of issues have been discussed by the Working Group to date, of which "questions regarding the pros and cons of competition policy for developing countries, including the relationship of such policy to national development policies" is a particularly serious theme demanding further consideration. This issue should be treated as a top priority agenda item for this Working Group. In this regard, this paper explores several relevant points.

2. In addition to this submission, the Government of Japan has also prepared another paper on the issue of sectoral exclusions from the application of competition law.

### **2. Domestic economic development benefits deriving from the introduction and reinforcement of competition laws and policies**

3. The domestic economic development benefits deriving from the introduction and reinforcement of competition laws and policies include constraining the abuse of market dominance by domestic and foreign companies, improving economic efficiency and productivity, securing opportunities for new entry, fostering small and medium enterprises and enhancing consumer welfare. Sound competition policies facilitate the optimal allocation of domestic economic resources. Competitive markets are a good basis for the medium- and long-term economic development. Competition laws and policies underpin the establishment and maintenance of a sound market mechanism.

4. The Minister of Trade and Industry, South Africa<sup>1</sup> notes that, "In the absence of effective national laws, price structures would be driven upwards and domestic competitiveness would diminish. Competition policy has an important role to play, at both the domestic and international levels, in ensuring that markets operate to the benefit of all citizens, and not merely of major corporations".

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<sup>1</sup> Keynote address at the WTO Regional Workshop on Competition Policy, Economic Development and the Multilateral Trading System, Cape Town, 22-24 February 2001.

5. Following World War II, Japan reformed its economic system, reforming agriculture, establishing labour laws, dissolving the various *zaibatsu*, and abolishing economic control legislation. These economic democratization policies were aimed at ensuring wide-ranging and equitable income distribution, and included the 1947 formulation of an Anti-Monopoly Law based on US antitrust legislation, with the Fair Trade Commission established to enforce the law.

6. While it has been commented that Japan's post-war economic development was achieved by subordinating competition policy to industrial policy, as we pointed out in a previous paper<sup>2</sup>, much of Japan's economic dynamism has in fact been rooted in the robust market mechanisms created through competition among firms. Industrial policy and competition policy coordinated mutually and developed an environment that allowed companies to engage in free and fair competition. The introduction of competition policy early in Japan's economic reconstruction, as well as the subsequent evolution of this in response to economic development, was a great factor in Japan's rapid economic growth in the past. Even today, it is those sectors where competition has been intensive - the automobile industry, for example - which tend to have the greatest international competitiveness.

7. The existence of competition policies heightens a country's credibility and also bolsters investment. A variety of factors influence investors in deciding investment - the market scale of the host country, for example, as well as market growth possibilities, a stable macroeconomic environment, and political stability - among which the existence of the relevant legislation is also very important.

8. Anti-competitive practices could undermine the benefits of trade liberalization. Domestic competition laws and policies need to be developed to prevent them. Especially, developing countries are vulnerable to international cartels and their import regimes are subject to anti-competitive practices. The development of domestic laws and policies complements the trade liberalization process for the country concerned.

9. Anti-competitive practices with an international dimension are a major problem for developing countries from the perspective of their development policies. Anti-competitive practices by companies from industrialized countries can seriously injure markets and industries in multiple countries, developing countries included, and also constrains the economic development potential of developing countries. The most striking example of this is hard core cartels<sup>3</sup>.

10. As explained in the OECD Recommendation<sup>4</sup>, a "hard core cartel" is an anti-competitive agreement, anti-competitive concerted practice, or anti-competitive arrangement by competitors to fix prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by allocating customers, suppliers, territories, or lines of commerce.

11. International hard core cartels cause enormous market damage. According to the OECD<sup>5</sup>, "In the United States alone, ten recently condemned international cartels cost individuals and businesses many hundreds of millions of dollars annually; affected over \$10 billion in US commerce, with overcharges of over \$1 billion; caused even more harmful economic waste estimated at over \$1 billion".

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<sup>2</sup> WT/WGTCP/W/157.

<sup>3</sup> See Communication from Japan (WT/WGTCP/W/168).

<sup>4</sup> "Recommendation of the Council concerning effective action against hard core cartels" OECD (C(98)35/Final).

<sup>5</sup> "Hard Core Cartels" OECD, 2000.

12. In a World Bank paper entitled "Private International Cartels and Their Effect on Developing Countries",<sup>6</sup> they examine the possible effects of recent private international cartels on developing countries by looking in detail at five case studies. The producers in these cartels come almost exclusively from industrialized, OECD countries. They discuss the direct effects of cartels on developing country consumers, via the increase in price. They also discuss the ambiguous indirect effects on developing country producers such as the harmful effects of increased barriers to entry.

13. The introduction and reinforcement of domestic laws and policies as well as the enhancement of international cooperation in their enforcement could be a valuable measure in combating international anti-competitive practices. Even where such practices impact negatively on a country's markets and industries, nothing can be done if the injured country does not have domestic competition laws in place. Further, where a country does have competition law but does not have a cooperative framework operating with the competition authorities in the country of the company inflicting the damage, it becomes extremely difficult to take effective action against the practice in question.

### **3. Consistency with development policy**

14. There is strong concern over a potential collision between development policies and the introduction and reinforcement of competition laws and policies. However, while developing competition policies may impose a short-term burden—in the form of administrative costs, for example—in the medium- to long-term, these policies should actively support and complement development policies. There is no need to perceive *a priori* a contradiction between the introduction of competition policy and industrial or other social policy.

15. South Africa's experience is illuminating in this regard. According to the Minister of Trade and Industry, South Africa<sup>7</sup>, "developing countries need an industrial *strategy* which, in the case of South Africa, is developed mainly through dialogue with the private sector, particularly in key industries and is aimed at increasing international competitiveness. Competition policy is a form of industrial strategy since it opens up markets and puts pressure on producers, making them more efficient. It also prevented the abuse of market power, by domestic or multinational firms, and reinforced incentives for efficiency, productivity and the speedier adoption of new technology".

16. "In developing an industrial strategy, a balance was needed to ensure that, on the one hand, enterprises could attain the size needed to be internationally competitive and, on the other hand, that they were subjected to appropriate competitive disciplines to ensure that they were not in a position to abuse their market power and, indeed, faced appropriate incentives for continual improvement of their productivity and performance."

### **4. Gradual introduction in line with economic development stage**

17. In terms of the time when competition law should be introduced, obviously there will be many issues which governments need to decide with reference to key policy areas such as domestic development. In theory, however, placing tools for the regulation of overall concentration and the abuse of market dominance in the hands of government should boost a country's industrial and economic development.

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<sup>6</sup> Background Paper for the World Bank's *World Development Report 2001*.

<sup>7</sup> Keynote address at the WTO Regional Workshop on Competition Policy, Economic Development and the Multilateral Trading System, Cape Town, 22-24 February 2001.

18. According to a Republic of Korea (ROK) paper<sup>8</sup>, it took many years to attract the necessary domestic support for the establishment of competition laws and policies, with the Monopoly Regulation and Fair Trade Act not formulated until 1981.

19. The paper explains as follows: "Korea's experience demonstrates that it is better to introduce a competition regime at the initial stage of economic growth, when monopolies have not yet gained political and economic power. Despite their merits of achieving economy of scale, large monopolies, if left unchecked, are very likely to engage in excessive facility investments, cause price hikes resulting from their inefficient operations, and hinder opportunities for new entrants." (Par.11) "Market competition ultimately eliminates wastes and enhances efficiency, and complements the industrial policy pursued by the government." (Par.12) "Korea's experience is an illustration that, on the long term, relying more on market and competition is more efficient than depending on government intervention for economic growth. It is certain that the later its adoption, the harder it gets to correct market distortion and boost competition." (Par.13)

20. Similarly, Japan's competition laws and policies have evolved over the years, and it would not be realistic, for example, to expect a developing country with no competition laws to suddenly introduce competition laws and policies on a par with the United States. A more appropriate approach would be the gradual introduction and reinforcement of competition laws and policies in line with a country's stage of development.

21. In terms of the progressive development of competition laws, an effective approach in the case of Japan and a number of other developed countries has been to introduce a broad competition law and then allow exemptions for certain areas. Details of Japan's exemption system are explained in another paper.

## **5. Need to introduce overall and comprehensive competition law for competition policy implementation**

22. Usually, competition policy is realized through enforcement of the applicable law, namely competition law. Hoekman and Holmes<sup>9</sup> point out that, "National competition *law* can be defined as the set of rules and disciplines maintained by governments relating either to agreements between firms that restrict competition or to the abuse of a dominant position (including attempts to create a dominant position through merger)".

23. "Competition *policy* has a much broader domain. It comprises the set of measures and instruments used by governments that determine the 'conditions of competition' that reign on their markets. Antitrust or competition law is a component of competition policy. Other components can include actions to privatize state-owned enterprises, deregulate activities, cut firm-specific subsidy programs, and reduce the extent of policies that discriminate against foreign products or producers."

24. On this point, Japan agrees with the EC<sup>10</sup> that, "while the concept of competition policies is certainly broader than that of competition law, it is difficult to see how an effective competition policy can be applied in the absence of legally enforceable mechanisms to deal with anti-competitive business practices".

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<sup>8</sup> WT/WGTCP/W/166.

<sup>9</sup> "Competition Policy, Developing Countries, and the World Trade Organization" Bernard Hoekman, World Bank and CERR, and, Peter Holmes, University of Sussex and College of Europe, Bruges.

<sup>10</sup> WT/WGTCP/W/152.

25. However, among those competition policies actually realized by WTO Members, there are cases where Members have adopted an approach without an overall and comprehensive competition law. One concrete example is Hong Kong, China.

26. According to the Hong Kong, China paper<sup>11</sup>, "the ultimate objective of their competition policy is to enhance economic efficiency and the free flow of trade, thereby also benefiting consumer welfare. They adopt a free market and minimum interventionist approach. A high-level inter-departmental advisory group, the Competition Policy Advisory Group (COMPAG) has developed and promulgated a policy statement, *the Statement on Competition Policy*<sup>12</sup>, which sets out the objectives of HKC's competition policy and provides common pointers to facilitate compliance with the competition policy by both the public and private sectors. All government bureaux/departments are regularly requested to critically review their areas of work to identify and propose remedies to anti-competitive practices, as well as to come up with new pro-competition initiatives. As for restrictive business practices, COMPAG has worked closely with all government bureaux/departments and the Consumer Council in monitoring the state of competition in different sectors and in handling competition-related issues. Their experience indicates that the needs, requirements and characteristics of individual sectors vary extensively. Accordingly, the Government adopts a sector-specific approach to safeguard competition, whilst maintaining a broad policy overview to ensure overall consistency".

27. "They are results-oriented and consider a sectoral approach more pragmatic and appropriate for promoting competition in Hong Kong, China. Such an approach allows flexible, target-oriented and cost-effective means to be adopted to prevent or eliminate anti-competitive practices, without the risk of over-regulating or incurring excessive legal and administrative costs."

28. If, as Hong Kong says, it is possible to effect competition policy without an overall and comprehensive competition law, the Hong Kong case will provide a very interesting reference in considering the relation between competition law and competition policy.

## **6. Conclusion**

29. Because competition policies have positive effects on economic development, we have an opinion that it would be important to introduce competition policies, while paying due attention to the balance with specific developmental policies in each Member countries. This paper shows it is possible to have a progressive approach in introduction of domestic competition law. When we study the progressive development with regard to competition laws and policies, the approach adopted by the Hong Kong could be an interesting example.

30. This submission is not intended to prejudge the official stance of Japan or to predict a future negotiation on this area, but to study, from the neutral perspective, the effects of competition policies or its relationship with development policies.

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<sup>11</sup> WT/WGTCP/W/141.

<sup>12</sup> <http://www.info.gov.hk/tib/roles/psoc.htm>.