



INTER-AMERICAN DEVELOPMENT BANK



**LATIN AMERICAN COMPETITION FORUM
10-11 September 2008, Panama City**

-- Session I: Competition Provisions in Regional Trade Agreements --

Note by Panama

1. What types of competition provisions were included in the RTAs that your country has signed?

Among the bilateral treaties signed by Panama that have included the topic of competition policy we may mention:

- Panama-Central America;
- Panama-Singapore;
- Panama-Taiwan

The provisions in those agreements are intended to ensure that the benefits of trade liberalisation are not undermined by anticompetitive behaviour, and have been designed to promote cooperation and coordination among competition authorities.

2. Which negotiating party or parties have sought the inclusion of these provisions, and why?

The Government of Panama considers competition policy to be vitally important for safeguarding adequate and effective market access, and negotiations for the new generation of trade agreements have therefore included this topic. Generally speaking, our trading partners have shared our interest in including a chapter on competition policy.

3. What position, if any, did your country's competition authority take as to the merits of different types of competition provisions? What process, if any, was used to determine this position? Has this position changed over time?

The Authority has been fully supportive of including provisions relating to the topic of competition, and has generally proposed elements that seek to promote cooperation and coordination among competition policy authorities.

4. What process, if any, was used by your government to consider the merits of including competition principles in the RTAs? Did that process change over time? Such a process could, but need not, have involved consultation with a national competition authority.

The objectives contained in the competition chapters signed bilaterally by Panama have focused on ensuring that the benefits of trade liberalisation are not impaired by anticompetitive behaviour, and have been designed to promote cooperation and coordination between the authorities of the signatory parties. In this framework, the Consumer Protection and Competition Authority (ACODECO) has been consulted and has participated actively in considering the advantages of including competition principles.

5. Did officials from the competition authority negotiate directly the text on competition-related matters in RTAs? If not, to what extent was the competition authority kept informed of these particular negotiations? Did the level of consultation and cooperation between the competition authority and national trade negotiators deepen over time? If so, to what effect?

Panama's legislation provides that the negotiation of trade agreements must be conducted by the Ministry of Trade and Industry, for which reason ACODECO does not negotiate directly the texts on competition-related issues. However, there is constant consultation and cooperation with the authority, and its officials are generally invited to be present as advisers at the negotiating table.

6. Once the RTAs with competition provisions that your country is a party to have come into force, in what ways (if at all) were those provisions used subsequently by competition authorities or by national governments? What costs and benefits were associated with the use of such provisions? If these provisions were not used, what factors accounted for their non-use?

The new-generation bilateral agreements are of recent date in Panama. To date, there has been no call to activate the provisions in the competition chapters.

7. Given the experience of your country, what advantages, if any, do competition provisions in RTAs have over other international instruments to promote cooperation on competition law and its enforcement? What are the disadvantages of the former compared to the latter?

While it is true that cooperation on competition law and its enforcement can be promoted through other instruments, the inclusion of such provisions in trade agreements brings with it effective enforcement of their provisions, through the dispute settlement mechanisms.

8. On the basis of your country's and others' experience what, if any, types of competition provision in RTAs should be sought in future RTA negotiations?

One element that would seem important is to establish principles that foster a competitive climate and ensure trade without distortions, instead of including very general provisions on competition

regulations. Those principles or provisions should cover anticompetitive behaviour, concentrations, and mergers.

In the case of regional agreements, it is frequently the case that the competition legislation of one party will function concurrently with national laws. Unfortunately, in issues where the parties are not bound [*no haya afectación*] or in a case that falls below a certain threshold, the agreement has no jurisdiction to review the case. Small regions' exports may have no impact in large regions, and so the chapters have no effective enforceability. This is an issue that must be addressed in future work.

II. For those participants whose governments have not signed RTAs that include competition provisions, the following questions seek to understand the factors behind the decision not to include these provisions in RTAs.

Reformulate

As mentioned under question 1 in the preceding section, Panama has signed certain agreements that contain provisions relating to competition policy, and consequently the questions in this section are not applicable to our situation.