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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS COMPETITION COMMITTEE

LATIN AMERICAN COMPETITION FORUM

Session II: Regional Competition Agreements

Call for Country Contributions

3-4 September 2013, Lima, Peru

The attached document is circulated in preparation for the discussion under Session II of the Latin American Competition Forum at its forthcoming meeting to be held on 3-4 September 2013 in Peru. Delegates are requested to send written contributions for that session to the Secretariat by 31 July 2013 at the latest. Advance notice of contributions by 19 July 2013 would be useful.

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LATIN AMERICAN COMPETITION FORUM

-- 3-4 September 2013, Lima (Peru) --

Session II: Regional Competition Agreements

CALL FOR COUNTRY CONTRIBUTIONS

- 1. This request for contributions is circulated in preparation for the discussion to be held in Session II of the 2013 Latin American Competition Forum. Session II is entitled "**Regional Competition Agreements**". You are invited to make a written contribution to the discussion.
- In this call for contributions, we identify some issues that you may wish to address in your written contributions and during the oral discussion. This list of issues is not prescriptive or exhaustive, though; you are free to bring up other relevant issues that reflect your experiences. Speakers will be selected on the basis of the written contributions submitted to the OECD Secretariat in response to this call. To assist the OECD Secretariat in planning the session, please provide notice by 19 July 2013 if you intend to submit a contribution. The contributions should be sent by email (as a Word document in English) form. 5 pages maximum in Spanish or to Erica [Erica.agostinho@oecd.org] and Marianne Aalto [Marianne.Aalto@oecd.org] and copied to: António Gomes [Antonio.Gomes@oecd.org] by 31 July 2013 at the latest. Country contributions will be circulated to participants through the LACF website (www.oecd/org/competition/latinamerica) as well as that of Peru (URL to be circulated shortly).

1. Introduction:

3. Beginning in the 1990s, the globalisation of economies became an undeniable reality for the vast majority of countries around the world. These countries have in fact been inclined to integrate into the global market, and their respective governments have made efforts toward that goal, taking steps intended to dismantle tariff and non-tariff barriers. Globalisation also goes hand-in-hand with the resolute and unequivocal adoption of economic policies that favour the market as an instrument for promoting growth and development, and very few countries have resisted this trend. Therefore, the relationship between globalisation and the market turns out to be so overarching that it can be considered a reciprocally beneficial arrangement, and one that promotes a set of unilateral, bilateral and multilateral measures, the main effect of which has been to consolidate both processes.

- 4. Latin American and Caribbean countries are not immune to this trend, resulting in their adoption of unilateral measures to reduce tariffs, thus generating more competition in their internal markets. They have likewise signed various bilateral trade agreements of varying degrees of strength with each other and with countries outside the region, in order not only to ensure export markets but also to attract investment and create uniform standards that run the gamut from rules of origin to labour standards, as well as covering intellectual property, trade in services, phytosanitary and antidumping measures, and even provisions dealing with the environment.
- 5. In the end, almost every country is participating to a greater or lesser degree in one of the four integration processes¹ in which a higher degree of commitment is evident not only in the area of trade, but also in the adoption of socio-economic policies, since they include provisions that address the harmonisation of legislation, establishment of an independent administrative structure with resolution capacity, and even mechanisms for resolving supranational disputes.
- 6. Most of the last-generation international free trade agreements that have been signed have increasingly incorporated chapters on competition. It is difficult to imagine a bilateral or multilateral trade preference or free trade agreement without regulations on competition, but dispensing with these regulations is not acceptable, nor is failing to apply them in processes for customs unions and common markets.
- 7. Furthermore, it is of little use for the parties to an agreement to have decided to dismantle barriers to facilitate the entry of products or provision of services in their respective markets, if at the same time the companies located in those same countries or third countries choose to implement practices that entail price discrimination, setting of production quotas, refusal to buy or sell, market segmentation, tied sales, bid rigging, government subsidies, etc. These distort supposedly liberalised markets and more to the point, strip economic liberalisation agreements of their substance.
- 8. The founders of the European Union realised that competition is one of the most important tools in the process of integration begun in 1957 (through its predecessor a few years earlier, the European Coal and Steel Community). This was so much the case that the Treaty of Rome included specific provisions on actions considered harmful insofar as they affected the competitive process. Over the years, the European Union's competition policies have acquired such scope that they can currently be considered a fundamental global model, since in addition to having exerted a clear influence on the structure and implementation of national legislation in its Member States, the policies have acquired significantly greater reach particularly since the last decade of the previous century— and extended to the creation of regulations and legal precedent in many countries.
- 9. In the same way, economic integration agreements developed in Latin America have expanded their legislative horizons through the inclusion of provisions dealing with this issue. The most notable example is provided by the Andean Community, which developed regulations that were supranational in character and effects beginning in the 1990s. CARICOM approved substantive and procedural regulations, along with the creation of a regional competition authority. The MERCOSUR agreement includes a chapter on competition, but it considers substantive regulations that are applied regionally and are limited to co-ordination and co-operation. Lastly, CACM countries are in the process of designing supranational regulations and a regional institutional plan.

¹ MERCOSUR, CARICOM, CAN and CACM.

2. Purpose of the study

- 10. The IDB is preparing a study on the development of competition policies within the framework of economic integration agreements in Latin America. This study will be presented at the XI Latin American Competition Forum.
- 11. The purpose of this call for contributions is to obtain information on **the experiences of countries** that: i) have signed trade agreements containing provisions on competition; and/or ii) are party to processes of integration that include supranational provisions on free competition, government subsidies, and designated monopolies.
- 12. This is not solely a matter of obtaining a list of regulations, but rather an attempt to learn whether these regulations have been applied and, if not, to identify the reasons why not.

3. Consultation:

- 13. This call for contributions is circulated in preparation for the XI Latin American Competition Forum.
- 14. We invite the competition authorities of each one of the countries in the region to contribute by answering the following questions, or by expounding on any other aspect that, while not expressly mentioned herein, is relevant to the topic under discussion in the opinion of the contributors. Your help with the study is greatly appreciated.
 - 1. Do you think that competition regulations in regional blocs have been satisfactorily applied? If so, please note the most relevant cases and describe the role of the national authority. If not, please explain why the regulations have not been applied and provide alternatives that could help improve the system.
 - 2. If there are no supranational competition regulations, please discuss the possibility of approval of such regulations and the timeframe, as well as the circumstances that have affected or promoted the adoption process, such as the size of your markets; progress in your respective processes; the presence or absence of national regulations; or agreement or lack of agreement on liberalisation processes in your respective countries.
 - 3. Do the bilateral or multilateral free trade or tariff preference agreements signed by your country include provisions or regulations on competition, government subsidies, and designated monopolies²? If so, please provide information on the countries with which such agreements have been signed, as well as on the contents, specifying whether the agreements include regulation on behaviours and structures, government subsidies, and designated monopolies. Do these agreements include co-operation mechanisms such as *positive comity*, for example, for investigating practices that could affect any of the parties to the agreement? Please indicate whether these agreements include mechanisms for resolving disputes regarding free competition, government subsidies, and designated monopolies. Please explain the procedure and note whether it is possible to apply sanctions.

Not mentioned in the preceding question.