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Y DEL CARIBE



Conselho Administrativo de Defesa Econômica



Final Report

Economic and Technical Cooperation

*VIII Annual Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean
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I. RAPPORTEUR'S REPORT

1. [The VIII Annual Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean](#), organized by the Permanent Secretariat of the Latin American and Caribbean Economic System (SELA), the United Nations Conference on Trade and Development (UNCTAD), and the Administrative Council on Economic Defence (CADE) of Brazil, was held in Brasilia, Brazil, on 10 and 11 October 2018.
2. This regional event aimed to analyze the importance and impact of maritime transport, infrastructure and ports services on trade and competition in Latin America and the Caribbean.
3. Representatives of trade and competition agencies in Latin America and the Caribbean, regional and international organizations and institutions and special guests made their respective [presentations](#), in accordance with the approved [agenda](#).
4. Participants included representatives of the following Member States of SELA: Argentina, Belize, Bolivia, Brazil, Chile, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela; representatives of Costa Rica and the following regional institutions: National Port Administration of Uruguay, CAF-development bank of Latin America, Economic Commission for Latin America and the Caribbean (ECLAC), National University of San Martin, Institute for Transportation of Argentina and the Agência Nacional de Transportes Aquaviários of Brazil. The [list of participants](#) is available for consultation.
5. At the opening session, the following participants took the floor: Alexandre Barreto de Souza, President of the Administrative Council for Economic Defence (CADE), Brazil; Javier Paulinich, Permanent Secretary of SELA; Vital do Rego Filho, Minister of the Federal Court of Accounts of Brazil; Teresa Moreira, Head of the Department of Competition and Consumer Policies of UNCTAD; and Torquato Jardim, Minister of Justice of Brazil.
6. The official videos, uploaded in the language of submission, can be seen on the following link: <http://www.sela.org/en/events/2018/10/gtcc/audios/>
7. Photographs of the event are available in the [photo gallery](#).
8. Two base documents were presented during this meeting. The Administrative Council for Economic Defence (CADE) presented the base study "Competition in the sector of services and port infrastructure in Latin America and the Caribbean" (available in [English](#) - [Spanish-Portuguese](#)); and the United Nations Conference on Trade and Development (UNCTAD) presented the document "Challenges faced by the countries of Latin America and the Caribbean in competition and regulation of the maritime transport sector" (available [Spanish](#)).
9. Within the framework of the event, the Working Group on Trade and Competition agreed that the topic to be considered during the IX Meeting of the WGTC, to be held in 2019, will be: *The interaction between trade and competition policies to promote technological innovation and productive transformation in Latin America and the Caribbean.*

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II. CONCLUSIONS

1. During working sessions, representatives of trade and competition agencies and institutions and organizations specializing in the subject matter of this VIII Annual Meeting of the Working Group on Trade and Competition presented cases and experiences in the area. They are outlined below:
2. CADE's consultant presented the base study "Competition in the sector of services and port infrastructure in Latin America and the Caribbean" (available in [English](#) - [Spanish-Portuguese](#)), which aimed to analyze Latin American and Caribbean port competitiveness under the regulation of the port activity in the context of competition and economic integration processes.
3. The representative of SELA described the development of the Network of Digital and Collaborative Ports, an initiative being carried out since 2014 and promoted by SELA, with the technical and financial support of CAF-development bank of Latin America, which seeks to support the fluidity and integration of regional foreign trade.
4. The representative of the National University of San Martin and the Institute for Transportation of Argentina presented a study entitled "Identification and estimation of cost of a foreign trade operation in the port of Buenos Aires" ([Spanish](#)), which describes the identification and valuation of the main items involved in the container shipping cost in Argentina. He provided elements to incorporate, in one common approach, aspects of infrastructure, competition, regulation of port services and competitiveness of the cargo, which contribute to the identification of items for the design of public policy measures.
5. The representative of the National Ports Administration (ANP) spoke about the importance for Uruguay to boost regional transshipment and cabotage, after briefly describing the functions and duties of the ANP.
6. The consultant of the Ministry of Foreign Trade and Tourism of Peru presented the Peruvian experience in the estimation of maritime and port costs, providing an "[Analysis of maritime and port costs](#)".
7. The representative of the Agência Nacional de Transportes Aquaviários (ANTAQ) spoke about the role of the ANTAQ and its influence on the promotion of quality and competitiveness of the maritime navigation services in Brazil.
8. The representative of the Secretaria de Promoção da Produtividade e Advocacia da Concorrência of Brazil addressed the institutional division of competition in Brazil and specified the role of the institution in the port sector. He dealt with the growth of the economy in the country that led to increases in cargo mobility. He underlined the public and/or private relationship between ports and port terminals, highlighting the 50% increase in the latter. He proposed a paradigm shift in port regulations towards privatization, stating that changes in regulations usually imply foreign direct investment.
9. The Vice-President of Infrastructure of CAF-development bank of Latin America delved into the current challenges for the port management and provided forward-looking elements to be considered in the development of a regional strategic ports agenda.

10. The representative of the National Institute for Defence of Competition and Protection of Intellectual Property (INDECOPI) spoke about the sanctioning proceedings and reports where the competition conditions of port services are evaluated. He presented the research conducted in the marine pilotage service in the main port terminal in Panama and in the cargo stowage service at a port located in the north of the country. In addition, he presented two cases linked to basic services in a port terminal and a minerals concentrate terminal.
11. The Commission for Promotion and Defence of Competition of Uruguay presented a recommendation concerning the market of ports, specifically on practices in ports.
12. In turn, the Superintendency for the Control of Market Power (SCPM) of Ecuador stressed the importance of the port market of Ecuador and described the structure of the port system. Based on these points, participants identified areas for opportunity in this sector at the national level and described the actions considered by the SCPM to improve the efficiency in this market.
13. The Superintendency of Competition of El Salvador presented the status of the two main ports of El Salvador, their role, types of services offered and institutions related to the sector. Afterwards, it expounded on a case of anti-competitive practice in the port of Acajutla, how it was solved by the Superintendency of Competition, the sanctions imposed and the corresponding recommendations.
14. CADE delved into a study prepared by this institution in 2017 about the panorama of the port sector in the Brazilian economy, which addresses relevant aspects of the sectoral regulations and the analysis of decisions taken by the Council concerning the processes related to concentrations in this market.
15. For its part, the Fair Trading Commission of Jamaica presented an overview of the port services market in Jamaica: number of participants, services offered, barriers to access and transaction costs. It also explored the main channels for inter- and intra-port competition. It concluded with a debate on the obstacles to competition and recommended measures to address them.
16. The National Commission for the Defence of Competition (CNDC) of Argentina described cases it has addressed about economic concentrations involving the ports and maritime transport sector. Some have had a horizontal dimension (always between shipping companies, never between port terminals) and others have been vertical (between shipping companies and port terminals, and between port terminals and land services) or clusters (of product extension and of market extension). The main topics of interest have had to do with the definition of the market in terms of products and geographical location, with the potential existence of market barriers for competitors of the group that was concentrated and with specific problems on some routes.
17. The Federal Economic Competition Commission (COFECE) of Mexico presented the experience of Mexico in the field of concentrations in the port sector, with a brief description of procedures that are applied to analyze these cases, specifically related to bids for contracts to build and operate terminals and provide port services.

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18. In his presentation, the delegate of the United Nations Conference on Trade and Development (UNCTAD) focused on the challenges facing the countries of Latin America and the Caribbean in the areas of competition and the regulations on maritime transport, on the importance of connectivity and maritime transport in world trade, the characteristics and trends in this sector; as well as the promotion of cooperation among agencies in charge of liner shipping services and their regulations.
19. In turn, the UNCTAD expert in transport and logistics expounded on the study prepared by the organization entitled "Maritime transport and ports: Competition in the sector and challenges for regulation" ([Spanish](#)).
20. The Director of the ECLAC office in Brazil made a presentation on governance, institutions and competition, the risks associated with contracts, and vertical integration in maritime and port industries.
21. The delegate of the Authority in charge of Consumer Protection and Competition Defence of Panama made a presentation on the experience of his country as regards the State decision to ensure the participation of a new port operator in the area of container management in the Panamanian Pacific coast.
22. Finally, the General Superintendence of CADE dealt with the challenges faced by emerging economies, particularly Brazil, in the areas of competition and regulations in the maritime transport sector.
23. The WGTC worked on a [practical case](#) concerning the enforcement of the Competition Law to face alleged anti-competitive practices in the maritime transport sector.
24. The session comprised three working groups that addressed competition problems from different perspectives through the analysis of a hypothetical case study.
25. Group 1 adopted the position of the denouncing party, representing independent shipping companies affected by anti-competitive and abusive practices, as well as violations and collusive behaviours intended to expel them from the market, applied by a shipping company. Their arguments tended to request the prohibition of the denounced practices and to condemn the company responsible for such behaviour.
26. Group 2 represented the defendant, establishing defence arguments to the accusations of which it is subject, and concluding with the absence of dominant position abuse in the hypothetical case.
27. Group 3, which acted on behalf of the Competition Authority, issued its opinion with respect to the denounced practices, considering that both the market sharing by three maritime alliances as well as abusive excluding Behaviours tend to restrict competition, which is prohibited by the Competition Law.
28. The discussions were interesting and constructive. The participation of the delegates was active and the debates in the final part, during the plenary session, gave rise to an exchange of views on the aforementioned behaviours.

29. During the discussions at the VIII Annual Meeting of the WGTC, the following general conclusions were drawn:
- a) The increase in the investments aimed at strengthening the structures of Latin American and Caribbean ports is a policy priority for the governments of the region, as they allow for an adequate and favourable insertion into the international trade processes.
 - b) This fact has led Latin America and the Caribbean to maximize its operations in the international maritime markets network, thereby directly strengthening the economy of the countries and, to some extent, adding up to the consolidation of the regional integration goals.
 - c) Within the framework of the regional cooperation processes, it is advisable to implement mechanisms to ensure the sustainability, continuity and observance of public policies, agreements and treaties adopted in the sectors of port and maritime transport and infrastructure.
 - d) A recommendation was made to consider the adoption of regional work plans to standardize port services and associated processes based on the analysis and determination of tariffs, prices, innovation and infrastructure, as well as quality and productivity in port terminals, among other aspects.
 - e) In this connection, a regional agenda was presented as a viable challenge, with ample potentials to materialize in view of the scope and progresses of many ports in the region. To this end, a process of transformation in the port structural fabric will be necessary in order to optimize a modern interoperable network with prospects for operations in the future, which, among other factors, would consider the "port, as a key piece for the integration of the logistic chain as a promoter of a maritime traffic that is competitive and operationally efficient – a cornerstone for an institutionally, environmentally and economically sustainable integration of the logistic chain, with an efficient development of investments in port infrastructure".
 - f) It would be advisable to analyse the structure of the maritime transport market, undertake operational regimes that observe the management of mergers, incorporate market information management, and determine the impact of prices and quality of services.
 - g) Strengthen cooperation agreements on maritime transport, with the aim of harmonising the provision of services, making them more efficient and sustainable. These agreements would favour the interaction between trade and competition.
 - h) The authorities in charge of competition defence in the region should closely follow up and monitor the evolution of the transport sector, as well as the development of global partnerships and the process of vertical integration in order to ensure fair competition and prevent anti-competitive and monopolistic practices in this market.
 - i) Competition defence authorities and port authorities must work in a coordinated manner to address the competition problems that may arise, ensure fair competition at ports and improve competitiveness of this segment in the supply chain.
 - j) International cooperation is essential for addressing cross-border, anti-competitive practices, and even more so in maritime transport, given its global character, as well as its role in facilitating and promoting international trade.