

THE IMPACT THE COMPETITION POLICY HAS ON THE LIBERALISATION OF INTERANTIONAL TRADE. CASE STUDY: THE CARTEL

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Abstract: *The liberalization of international trade is the key when we talk about globalization from an economic aspect, because only when there will be a single global market can we talk about abundance as to what economic globalization is concerned. It is a known fact that market economies can work in free competition conditions. Taking into account the present tendencies of international trade, a decisive role is played by competition authorities. The policy in this field and the commercial policies play complementary roles, because in the absence of one of the two policies, we cannot see economic development and growth. In order to benefit from the full advantages of a free trade, companies must respect the laws of competition. In this context, in this paper, we proposed to study the way in which the existence of a cartel on a certain market can cancel the positive effects of international trade. The working hypothesis from which we started in this study was the following: identifying a cartel that functioned on the European market before and after the Uruguay Round, in order to study the negative effects that this anti-competition practice had. The Uruguay negotiation Round has been chosen, because the best results concerning the liberalization of international trade have been achieved in it. The cartel case was not chosen at random; we have searched to find one that was active in a field which got significant customs tax reductions in the Uruguay Round. We have decided to analyze the impact which a cartel had in the field of industrial products. Following our study, we have managed to empirically demonstrate the way in which a cartel can cancel the benefits of international trade liberalization. The analysis of the way in which the Industrial Tubes cartel acted on the EU market, as well as the analysis of the indicators that led to the undisputable conclusion that this cartel case canceled the positive effects which should have been felt on the European market after the Uruguay Round negotiations. We need to admit and to highlight the very important role that is played by competition policies, in the context of implementing liberalization policies for international trade.*

Keywords: competition policy; international trade liberalization; cartel; case study

JEL classification: L40; F13

1. Introduction

The policy in competition and commercial policy play complementary roles because in lack of one of them, we could not see economic growth or development and in order to fully take advantage of a free trade, companies need to respect the laws of competition.

At present, each state manages its own competition policy, but due to changes that take place globally, the need for a global competition law is necessary. This subject was the negotiation object of the Doha Round, which took place under the guidance of the World Trade Organization.

Because of the tight link between competition, market access and nondiscrimination, it has been agreed that setting common norms regarding global competition in the WTO would be most suitable.

A global competition law implies the harmonization of the competition legislation of all WTO member states.

It must not be forgotten that the members of the World Trade Organization do not have the same level of economic development. Because of this, developing countries could run into difficulties and in order to help them, they would need support. Taking into consideration the level of industries from developing countries, they would prefer a competition policy that would protect and also allow large national companies to benefit from large scale efficiency and economies, so that in the moment when they will act on the international stage, they will be ready. This means that a change in more permissive competition policy. Contradicting interests of developed and developing countries could pose a problem in adopting a global competition policy. To come to the aid of developing countries, the WTO would offer them certain exceptions from the antitrust legislation, as long as this would be transparent and for a well-defined period of time.

Unfortunately, at present, the introduction of certain global norms that deal with competition, under the aegis of the WTO has not yet happened.

During this paper, we propose to analyze the way in which the negative influence of a cartel on the liberalization of international trade is felt.

It is well-known that one of the positive effects of liberalizing international trade which can be felt immediately is price reductions. On the other hand, it is also well-known that the main negative effect felt when a cartel exists on a market is that prices are high.

In literature, the cartel is defined as an understanding made up of independent companies, which belong to the same economic area, having as their objective the control of competition between them, with the purpose of promoting common economic interests (Harding and Joshua, 2010).

As to what the liberalization of international trade is concerned, the factors that have influenced this process are numerous, but the starting point was the creation of GATT. From that moment on, more and more state welcome the idea of free trade and market economy. International trade registers fast growth rates, and developing countries are adopting the policies from developed countries, wanting to have the same level of performances.

The increase in the numbers of regional integration has contributed a lot in the liberalization of international trade. Thus, we cannot talk of international trade liberalization without taking into account the two concepts: economic regionalism and multilateralism (OECD, 2003).

2. Case study

During our analysis, we will start from selecting a cartel case that was present on the EU market. As to what the liberalization of international trade is concerned, we will take into account the Uruguay Round of GATT/WTO negotiations, because the best results recorded in time regarding international trade liberalization have been made in this round. The selection criteria for the cartel will have two base elements: firstly, the cartel has to be a long-lasting one – it should have been around before the Uruguay Round and after it, and secondly, the cartel has to be part of a field in which considerable results have been made during the Uruguay Round.

Through the present study we propose an analysis regarding the way in which noncompetition practices, in this case – the cartel, cancel the positive effects of international trade liberalization, in this case – price reduction.

2.1. Presenting the cartel – Industrial Tubes

The cartel that was named by the European Commission *Industrial Tubes* had come to the attention of competition authorities in January 2001, by receiving a request that asked for immunity against fines.

According to this request, six companies from Germany, Finland, France and Italy were violating art. 81 from the EC Treaty, at present art. 101 of the TFEU and art. 53 from the EEA Agreement. Following this information, the European Commission through the Directorate General for Competition has decided to open an investigation (Commission Decision of 16 December 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, 2003).

The products that were the object of the cartel investigation were copper tubes used in industry.

At the beginning of the 1980s, copper tubes for industry were a relatively new product on the European market. They are produced in special conditions and initially there were difficulties regarding quality. To avoid such situations at a European level, the Cuproclima Quality Association was created. In this association, a series of technical standards were settled, so that high quality copper tubes could be produced. This association was founded by the largest European producers in the field. All companies involved in this cartel were members of the Cuproclima Quality Association.

In the EEA area, the market for copper tubes used in industry was held in a 75-85% by companies involved in the cartel. The market value in the EEA in 2000 for these goods was totaling 290 million euros (Commission Decision of 16 December 2003, relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, 2003:74).

The procedure that was applied in this cartel case was according to the legislation. Regular unannounced inspections and hearings took place and finally, on 16 December 2003, the European Commission was able to issue the decision regarding this cartel. According to this decision, it was proven that the member companies of the Cuproclima Quality Association have violated article 81 of the EC Treaty and article 53 of the EES Agreement in this manner: they have fixed the prices for copper tubes; they have agreed on the incremental increase of prices; they have split between them the market shares; they have controlled the delivery and payment conditions; they have permanently watched over the activity of the companies in order to ensure the compliance of the agreement.

The commission settled that the period for violating the legislation was 3 May 1988 – when the first meeting of the Cuproclima Quality Association members took place, until 22 March 2001. We are talking about a large period of 12 years and 10 months (Commission Decision of 16 December 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, 2003:80).

The total value of the fines imposed for this cartel was 68.320.000 euros.

2.2. Price analysis on imports before and after the Uruguay Round

During the negotiations that took place under the aegis of GATT/WTO, the Uruguay Round stood out with the best results in regards to liberalizing international trade. This negotiation round took place during 1986-1994 and had 123 participants. We will resume strictly to the analysis of the results from the field of liberalizing trade for industrial products. They are of interest to us at present, because the products that were the object of the previously studied cartel were part of this category.

Before the Uruguay Round, customs taxes for industrial products were low in developed countries. Still, during the Uruguay Round, as stated in previously signed deals between participant countries, beginning with 1995 it was decided to cut customs taxes for industrial products by another 40%. This deduction was to be made progressively, in equal steps, on

a period of 5 years (International Trade Center, UNCTAD /WTO, The Commonwealth Secretariat, 1996:23).

Starting from this premise, we will analyze the evolution of the import prices for copper tubes, at the EU level, during 1988-2002, to see if the effects of the Uruguay Round were felt in this field too.

Firstly, in order to start our analysis, we needed to identify exactly what products were the objects of the *Industrial Tubes* cartel. According to the Combined Nomenclature, products that were the object of the cartel were identified at the following tariff positions: 74111011 – straight tubes and pipes from refined copper, with a wall thickness > 0.6mm; 74111019 – straight tubes and pipes from refined copper with a wall thickness ≤ 0.6 mm; 74111090 – tubes and pipes of refined copper, in coils or bended in a different way (Eurostat, 2015).

For each product the total volume of imports and the imported quantity for the 1988-2002 period were extracted from the *Eurostat* database of the European Commission, more exactly from the *Traditional international trade database access-ComExt*. In order to simplify the rationing, we have calculated the average of these indicators so that for the duration of our study we could work with only one category of products: tubes and pipes made of copper. Later, based on these indicators, we have calculated the weighted average of the import prices.

The results of this study are synthetized in Figure 1.

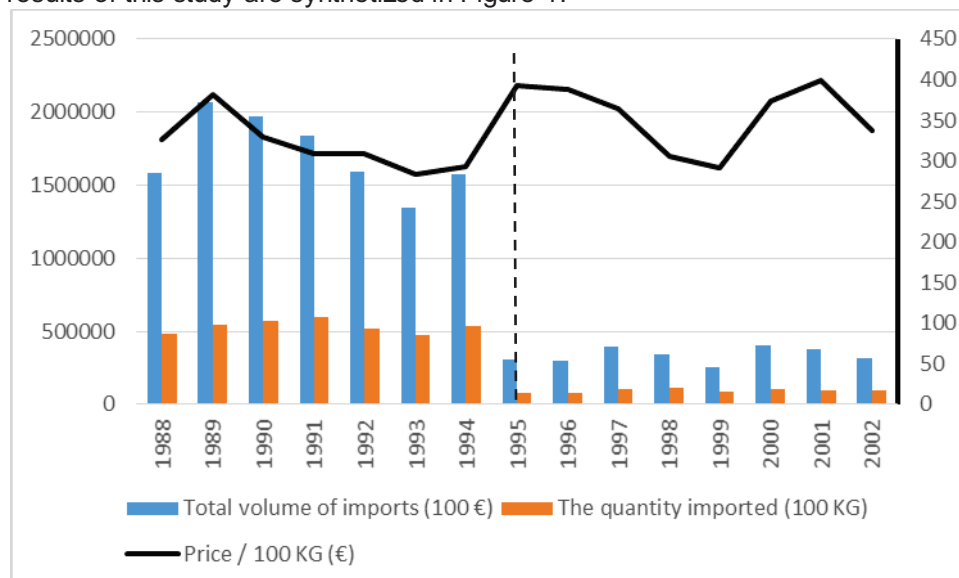


Figure 1: Evolution of the total volume of imports, of the imported quantities and of the price of copper tubes and pipes during 1988 – 2002

Source: made by the author on statistical data from Eurostat, available online at: <http://epp.eurostat.ec.europa.eu/newxtweb/setupdimselection.do>

According to Figure 1, starting from 1995, the imported quantity started to decrease a lot, compared to the 1988 – 1994 period. This tendency maintained until 2002.

A series of relevant elements can be seen in the case of these products. Immediately after the Uruguay Round, import prices rose, although they were supposed to decrease, following import tax reductions. This means that the cartel maintained the price at a high level, following their discussions. The volume of imports decreased dramatically, which means that companies that were part of this cartel divided the market for the product among them. Taking these aspects into account, we can say that the effects of the cartel were more than present.

It can be seen that during 1995 – 2002, the import price was higher than in 1994, except only in 1999, when the price was reduced by 1%. According to the hypothesis from which we started, after the provisions of the Uruguay Round went into force, in 1995, the import price for copper tubes used in industry should have decreased by 40% by 1999. Even if we would take the yearly inflation rate into consideration, we can see that this price reduction did not take place, but on the contrary import prices rose.

3. Conclusions

Starting from the work hypothesis described in the introduction of this study, we wanted to highlight the way in which a cartel can influence the effects of international trade liberalization.

The *Industrial Tubes* cartel was present on the EU market during 1988 – 2001. Companies that were part of this noncompetition agreement held in 2002 between 75% and 85% share of the market for European copper tubes used in industry. The European Commission considered, as it is made evident from the decisions, that this cartel had a great impact on the European market for copper tubes used in industry. Competition authorities have put this cartel in a category of great consequence actions.

In the cartel, companies have fixed the selling price of the product and have split market shares between them. The consequences of these actions were initially felt by industrial clients, and then the final consumers were hit too.

During our study, a very interesting aspect caught our eye. After 1994, the volume of copper tube imports in the EU fell dramatically. The most plausible explanation that we could for justifying this phenomenon derives from the negative effects the presence of the cartel had on the EU market. Things went out as such: until 1994, the volume of copper tube imports was high. This tendency was observed by companies that were part of the cartel. Businesses realized that if this tendency was going to continue, they would have gradually lost their market. Thus, during periodic meetings, the companies decided to share the market. Following this decision, by coordinating their actions, the companies finally managed to eliminate external competition from the European copper tube market. This is proven by maintaining the import levels for copper tubes at a very low level.

Normally, once the provisions of the Uruguay Round become valid, European consumers should benefit from smaller prices. As it could be seen in the second part of our study, the contrary happened to the European market for copper tubes used in industry. After 1995, prices increased a lot. In 1999, prices should have been 40% smaller than in 1994.

In reality, in the case of copper tubes used in industry in 1999, the price was reduced by 1%, as compared to the 1994 price. We cannot say that this is a consequence of liberalizing international trade, but that the price was being controlled by cartel members. This statement is backed up by the European Commission which states in the sanctioning decision of the cartel that, during 1993 – 1994 and 1998 – 1999, a decrease of the price of copper tubes used in industry on the European market could be seen, but this decrease was deliberately influenced by cartel members.

In Figure 1 it could be seen that in 2002, after the cartel stopped existing on the European market, the import prices of copper tubes used in industry started to decrease.

In conclusion, we consider that the results of the study could be resumed as such: the *Industrial Tubes* cartel, which acted on the European market during 1988 – 2001, had a decisive and negative influence on the evolution of the price for copper tubes used in industry, which manifested by maintaining a high level with tendencies to grow, as well as through controlling imports and dividing the market, thus managing to cancel the positive effects that the Uruguay Round of negotiations would have made for trade liberalization.

We want to draw attention on the fact that the policies of competition play a very important role in implementing international trade liberalization policies. The efforts made for liberalizing international trade are worthless if appropriate attention is not given to

competition aspects. Because of this it is necessary to introduce common norms at a multilateral level as to what the competition policies are concerned. Still, until this will be possible, it is advisable that at least at a regional level, the competition policy should be permanently monitored and improved.

Acknowledgment

“This paper has been financially supported within the project entitled „**SOCERT. Knowledge society, dynamism through research**”, contract number POSDRU/159/1.5/S/132406. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. **Investing in people!**”

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