THE CONTROVERSY OVER INTERNATIONAL CARTELS IN THE LEAGUE OF NATIONS (1925- 1927). LESSONS FOR THE CURRENT DEBATE ABOUT THE REGULATION OF INTERNATIONAL COMPETITION

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Abstract

The current controversy on international competition policy reproduces a different-though similar situation to which it was in the interwar period. Then, the League of Nations was the institution responsible for the reconstruction of the economic and political relations. In a particular context, the greatest minds of the time reflected on the regulatory keys that should return the world to the path of prosperity. The economic debate confronted protectionist positions where cartels were conceived as a manifestation of a new phase of capitalism, aimed at alleviating its instability through the rationalization of industrial production, compared to supporters of free trade and competition. The analysis of this episode may reveal some clues to shed some light on the current debate on the desirability of establishing a true international competition policy system.

Keywords: International competition policy, League of Nations, international cartels, International Competition Network. German Historical School of Economics.

JEL Classification: L41, K21.

1. Introduction.

At present, economic activity is more interrelated than at any other point in history. Despite protectionist temptations having resurfaced during the Great Recession, international trade has regained its positive trend once more. Multilateral organization like the GATT-WTO has played an important role in said development by limiting State's ability to act on these protectionist tendencies.

In consequence, we find that although almost all tariff barriers have been reduced to minimal levels, but international trade still faces another obstacle: restrictive commercial practices which limit competition on an international level. This kind of behaviour not only slows the process of economic globalization, but also represents a heavy burden on economic growth by distorting the competitive process. This, in turn, leads to net social loss and a redistributive effect from consumers towards producers.

Competitive markets allow consumers access to a variety of goods at lower prices. The worst performing suppliers are expelled from the market, allowing the overall economy to operate at the highest possible degree of efficiency. This brief description summarizes the virtues of the competitive process. Currently, more than 100 countries have established agencies whose mission is to promote and defend its proper functioning.

Despite all this, the global economy lacks an international authority that deals with competition problems that surpass national borders. The debate on whether or not it would be convenient for one to exist is ongoing after almost one hundred years and now as the current model, which is based on soft-convergence and inter-jurisdictional cooperation, proves ineffective in some cases its relevance will grow.

This paper has various objectives. First, we will draw a brief historical sequence of events which, over the years, have motivated the debate on international cartels. We will begin with the League of Nation's Geneva World Economic Conference (1927). The interest in this episode rests on two points: first, it is the earliest meeting which considered regulating cartels on an international scale, despite many nations having not yet established a competition framework; and, second, we can find a variety of common elements between the historical and institutional context of the 1920s and the present. However, these two debates are not exactly the same. While in 1927 the focus was on the economic effects of national cartels – and whether they should be regulated –, the current debate begins with the assumption that all attempts at monopolization are prejudicial to the economy. The question lies in whether the current the strategy for developing an international competition policy has proved itself deficient enough for countries to be willing to cede their sovereignty on these matters to a supranational institution.

Our second objective is to examine the 1927 debate. To this end, we will present the cartel problem just as it was conceived at that time, study the main arguments for and against cartelization and, finally, analyze the resolution that the conference adopted. Our final objective is to extract lessons from the historical process, especially from the 1927 Geneva conference, which has conditioned the state of international competition policy, so as to shed light on the issues currently affecting its development.

Concerning this paper's scope, we will include the 1927 debate into the wider discussion on the existence of an international competition framework. At the Conference –section II, the debate centered on international cartels, their effects, and the pertinence of regulating them. As time passed this dispute lost relevance. However, some of the issues raised during the participant's discussions are central to the present controversy: Should there be a true international competition policy? If so, then what shape should it take?

In the third section we study how the debate evolved in the years between 1927 and present times. Without a doubt, the most relevant event of this period is the negotiation at Bretton Woods, in the aftermath of the Second World War. These meetings not only set the stage for developing an international competition policy but also provided a document which set out all types of behaviours that must be curtailed.

We then move on to the present debate and, in the fourth section, we reflect on the possibility of a global competition framework. Since this debate is well-known, we limit ourselves to presenting the principal arguments which motivate those in favour and those against the internationalization of competition policy.

In the fifth and last section we conclude by synthesizing the principal ideas that can be taken away by confronting the 1927 and present debate, as well as its evolution in the decades in between.

1.1. Methodological sources and main contributions

The present work is based on a wide array of literature of the current controversy surrounding and, also, the documents published during the debate at the World Economic Conference in Geneva. The importance of primary sources in these kinds of analysis cannot be understated, which is why we have made ample use of the documentation which emanated from the Conference.

This documentation can be divided into three categories: the first of these is made up of the essays provided to the Preparatory Committee (1925-1927) by experts. Among these essays, we highlight those by Gustav Cassel[1] and Julius Hirsch[2] for being the most representative and, at the same time, the most insightful into the issue at hand. The second category includes the documents relating to the meetings of the Industry Committee. It was in these meetings that the actual debate took place and also where proposed regulation was taken into account. Finally, the third relates to the plenary sessions and the Conference's final report, which presents the adopted resolutions.

The relevance of the presented arguments stems from the fact that they did not come from politicians defending their national interests, but from some of the most brilliant and influential minds of the time. These experts met to debate on international cartels and the resulting exchange of ideas has proven to be extremely interesting, both now and then. Also

[1] Swedish economist known for promoting the economic theory on the parity of purchasing power theory and for his study into the nature of interest rates.
[2]German Minister of Economics and professor at the University of Cologne.

at the meetings were the representatives of employers and businessman, referred to as industrialists throughout the documentation, workers and consumers.

With our study we will show that the present debate suffers mainly two problems. First, its arguments prove to be somewhat feeble, as they take an unquestioned and established hypothesis as their starting point. Second, if we compare it to the 1927 World Economic Conference, we find that it is also lacking in methodological richness. The advance of economic sciences has produced homogenous positions on some topics: for example, the toxic role played by cartels[3]. However, even if there is empirical evidence that competition serves as a motor for economic prosperity, it is not any less true that cartelized economies can attain high levels of economic growth, such as those shown by inter-war Germany or China during the last few decades.

2. Rationalisation of Industry. International Cartels debate at the International Economic Conference (1927)

2.1. The historical-institutional context

World War I marked the end of the growth model in place since the first great crisis of capitalism, which came in 1873 when the train bubble collapsed. The so-called Second Industrial Revolution meant a change in the production model. New means of communications –such as the invention the telegraph, the widespread use of internal combustion engines, improvements in production techniques of steel and chemicals and, of course, oil, unleashed new productive capacities that materialized in the massive development the railway network (Goldstein, 2012).

The economic activities of virtually all the world were interrelated, giving way to the phenomenon of globalization. And, like today, its growing wealth was distributed asymmetrically. Few contemporary accounts best describe the situation to which we refer than the following passage from Keynes (1920: 11):

"The inhabitant of London could order by telephone, sipping his morning tea in bed, the various products of the whole earth, in such quantity as he might see fit, and reasonably expect their early delivery upon his doorstep; he could at the same moment and by the same means adventure his wealth in the natural resources and new enterprises of any quarter of the world, and share, without exertion or trouble, in their prospective fruits and advantages; or he could decide to couple the security of his fortunes with the good faith of the townspeople of any substantial municipality in any continent that fancy or information might recommend. He could secure, forthwith, if he wished it, cheap and comfortable means of transit to any country or climate without passport or other formality, could dispatch his servant to the neighboring office of a bank for such supply of the precious metals as might seem convenient (…)"

Keynes's lament for the end of this first globalization denotes another characteristic of his time is also present today: the shift of geopolitical balance. After the war, the US was erected

[3] It is not out of place to question the bias of orthodox positions on this topic, nor is it out of place to wonder who benefits from this assumption. However, mainstream economics assumes it to be true.

as a hegemonic power in the world thanks to its strong internal market and its high capital stock, replacing the British Empire[4].

Therefore, in this second phase of capitalism, a turbulent period, the uncertainty and pessimism that the Great War had left behind were the general sentiment. The scenario was particularly bleak in Europe. The hostilities that the war had arisen among the major European powers, exacerbated by the draconian conditions the Allies imposed on Germany and denounced by Keynes (1920), we must add the economic hardships that they faced.

In the political sphere, it is a period of significant change. The participation of the working class in political life, through the voting, led to the emergence of parties advocating the interests of workers, starting a political economy dispute between labour and capital that continues to this day[5].

The 1920s began with a crisis of overproduction caused by oversizing many industries (mainly chemical and metallurgical) had suffered due to the military conflict. The increased supply, combined with insufficient demand from an impoverished population, plunged the world into a deflationary period which demanded a policy response. This action was conditioned by the negative consequences of that liberalism, taken to its ultimate extreme, had sewn in recent decades[6].

Thus, the reaction of various countries was protectionism, which further aggravated the problem. The most representative cases were those of Britain, which in 1921 introduced the "Safeguarding of Industries Act" and the "Import Act"; and the US, which enacted the "Fordney McCumber Tariff Act" a year later, by which customs duties were risen (Alonso García, 1990: 22).

To restore international relations and return to the path of prosperity, the victorious countries created the League of Nations through the Treaty of Versailles (1919). This is the first multilateral institution of its kind and is considered a precursor to the UN. While it's main task was to prevent conflicts like the one that had recently ravaged the world (Henig, 2010: 42), it also addressed economic issues through the Economic and Financial Section.

The economic difficulties we have referred to led to the call for a World Economic Conference where the main obstacles that were slowing the world economy were addressed. The idea came from Louis Loucheur, former Minister of Defence and French Industrial Reconstruction, who relied on cooperation among countries as a means of conflict resolution. At that conference, scheduled for 1927 in Geneva, it was the first time the

[4] This can be extended to Europe. For the first time in many centuries, the old continent was no longer the focus of the world economy and its inhabitants began to be perceived as poor.

[5] For further discussion on social progress in political life, see Muñoz de Bustillo (2000).

[6] After the depression of 1870 and the Great War, the idea that markets, regulated solely by anarchic competition, were not bringing prosperity as predicted by British classical economists began to spread. Competition rules were enacted in Canada ("Canadian Combines Act") and the US ("Sherman Act") in 1889 and 1890, respectively, are a testimony of this change in perspective. Europe's first attempt to regulate the restrictions on competition took place in Austria, also in the 1890s. A detailed analysis of this episode is available in Gerber (1992).

problem of cartels was approached for the first time in a systematic, international and scientific way.

2.2. International cartels and industrial rationalization

The objective of the Conference was that the global economy -and especially the European one, went back to prosperity that had prevailed before the war. To do this would require think about the elements needed to improve production and reduce prices. Furthermore, the removal of barriers to international trade that countries had raised was perceived as fundamental to the economic recovery.

In particular, the Committee on Industry posed three major lines of inquiry for further discussion[7]:

a) Rationalization of industry. From the scientific organization of work it was sought to increase productivity through the specialization and standardization of production.
b) International cartels. It was to study the phenomenon of the cartel and decide under what conditions would be useful without harming the legitimate interests of producers, consumers and certain countries.
c) Collection of statistical information of the main industries in the world, which would allow a correct diagnosis of the situation.

We will focus on the first two points, and will put special emphasis on the role of international cartels to link this debate with the current controversy about setting up a global framework for competition policy. In order to do the analysis in an organized manner, we start with the texts elaborated by the Preparatory Committee to focus later in the various meetings of the Committee on Industry and in the final resolution[8].

2.2.1. International Cartels. Main Insights at the Preparatory Comitee: Cassel Vs Hirsch

Perhaps the authors who most clearly represent the two opposing positions in the debate were Gustav Cassel and Julius Hirsch[9]. The first submitted one paper entitled "*Recent monopolistic Tendencies in Industry and Trade*", which constitutes a defence of the liberal principles of competition where any distortion of it involves a brake on economic growth. Meanwhile,

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[7]League of Nations, *Provisional minutes of the First Meeting*.S.C.E./II/P.V.1.
[8]It is woth mentioning that it was Louis Loucheur's, the Conference's promotor, idea to organize European industry into a network of international, sectorial cartels. This would help with industry's rationalization, leading to a rise in wages and, ultimately, the recovery of aggregate demand. This situation would make it easier to address tariff reductions, as well as lead to better agreements.
[9] Among the authors who participated in the Preparatory Committee by submitting documents, we highlight Clemens Lammers (member of the Reichstag and the National Federation of German Industry): "Review of Cartel Legislation"; William Oualid (professor of Political Economy in the Faculty of Law of the University of Paris), "The Social Effects of International Industrial Agreements. The protection of workers and Consumers "; Paul de Rousiers (professor at the "Ecole des Sciences Politiques" of Paris), "Cartels and Trusts and Their development"; Eugene Grossman (professor at Zurich University): "Methods of Economic Rapprochement"; Karl Wiedenfeld (Professor of Economics at Leipzig University): "cartels and combines"; and DH MacGregor (Professor of Political Economy at the Oxford University): "International Cartels".

Hirsch, conducted a contextual analysis of the phenomenon of the cartel to inquire under what conditions industrial agreements could be beneficial under the heading "*National and international monopolies from the point of view of labour, the consuming public, and rationalization"*. We will discuss the arguments offered by each.

Cassel laments that the world had plunged into a race to implement all possible mechanisms to restrict the division of labour at a time in which that principle was more relevant than ever. After the war, the principles of liberalism on international trade (theory of comparative advantage) had been replaced by a new doctrine, according to which:

"(…) *a free exchange of goods could not be allowed with countries where the conditions of labour are inferior, where state regulations concerning unemployment are less stringent, where the working day is longer or where wages and the whole standard of living are essentially lower, and so on"*(Cassel, 1927: 4).

Throughout the memorandum, Cassel identifies a series of factors which, taken together, were responsible for the sluggish economic recovery that plagued European countries in the aftermath of the Great War.

The first of these is the establishment of protectionist regulations which created large barriers to entry and, consequently, limited trade among European countries. As mentioned in the previous quote his critique is centred on the populist policies adopted by European governments, which claimed that increased duties, tariffs and quotas were put in place to protect their worker's standard of living. His position on this topic differs little from that of other orthodox economists of the time, such as Ohlin (1933).

The second cause of Europe's slow economic recovery is the tendency towards monopolistic behaviour, both in domestic and international markets. However, his focus is not on the anticompetitive practices of colluding firms or sanctioned monopolies, but on the newly empowered trade unions. According to Cassel, these organizations, whose influence and power had been considerably increased in the years after the War, were limiting potential economic growth by restricting the supply of labour and lobbying for increased wages and improved work conditions. Therefore, the workforce's monopolistic actions are to blame for high unemployment and the ensuing social crises. In his words:

"*The economic consequence has been that the amount of current useful work of the nation has been restricted (…). As the unemployed cannot be left to starve, it has been necessary to support them, obviously by the aid of the employed. Thus the real income which the employed could retain for themselves [sic] has been considerably curtailed."* (Cassel, 1927:9)

Cassel's criticism of trade unions forms the core of the memorandum's content and is a topic which he revisits frequently throughout the document. Cartels, on the other hand, are only briefly discussed.

However, we find that his analysis of the situation differs from the description provided by Gerber (2010:29-30). Although his argument is based on the tenants of neoclassical economics, he denies the existence of "*universal verdicts*" on such a complicated process, i.e. *enterprise concentration*. Not only this, but he also argues that cartels or other supply-limiting forms of business could, given the correct circumstances, have beneficial effects on society as a whole. To illustrate this point, he provides the example of an agricultural cartel which hoards its harvest to avoid excessive price volatility caused by differences between yearly yields. Nonetheless, he considers these to be rare exceptions and concluded that a monopolist's, or cartel's, goal is most usually securing higher profits at consumer's expense.

On the design and implementation of a state-enforced competition framework, Cassel (1927: 18) takes a position similar to that of modern Austrian economists[10]:

It is natural enough that people should look for Government action as a means of combating all monopolistic tendencies of this kind. (…) A consistent policy entrusting the State with the control of monopolism and the prosecution of all kinds of price raising combines would imply so much Government interference in economic life that the drawbacks of such a policy would easily outweigh any advantages that might possibly be gained.

The government, incapable of properly enforcing a hypothetical domestic competition framework, could not be expected to succeed at enforcing one on the international scene. For Cassel, the largest obstacle to this international policy being properly implemented is the fine line between private and state interests, which could result in market competition between firms into a dispute among governments.

The third cause of Europe's economic woes can be found in the reduced flow of capital towards the "*colonial world*". In the decades prior to the Great War, Europe had provided its colonies with a steady flow of credit. Part of this credit was used to fuel the colonies' consumption of manufactured goods but, more importantly, it was also used to acquire the necessary machinery and other capital goods which allowed their economic development. The need for reconstruction and the reduced income, and therefore savings, of the European populace meant that this flow could not be continued in the years following the War. The main result of this situation was the stifling of the colonies' demand and the shrinking of one of Europe's most important foreign markets.

A return to economic growth and development would require European governments to address these three main issues. Cassel concludes by reiterating the danger posed by the growing power of "*monopolies of labour*", which is equal to that of traditional business monopolies. His recommendation to the representatives present at the Conference is to ensure that the principles of classical economics continue to govern their trade policies:

Free movement of goods, free movement of labour and free movement of capital are the three great safeguards against monopolism. Any curtailment of them in itself means creating monopolism in the broad economic sense of the word, and, if brought about by the state, often acts also as a furtherance of private monopolistic designs. (Cassel, 1927:44)

Thus, the Government should move to control the influence that both trade unions and cartels exert on the market.

[10] Such as Kirzner (1998).

As we will see below, Cassel's memorandum differs greatly from those provided by the German historicists. Despite the ample use of statistics and data, his analysis of the situation appears to be based more upon the dominant economic doctrine than a deep, systematic analysis of the situation.

At the other extreme, the Hirsch's (1926: 5) text begins with two widely accepted hypotheses, according to him:

a) Free competition, on which the industrial economy was based, generates contradictions as it develops.
b) No legislation can prevent mergers among the competitors on the market, and if any State tries to do that, it means that only one form of fusion is replaced by another[11].

From these ideas, Hirsch argues that when the nature of the product allows it, competition is replaced by new forms of organization that lead to a monopoly. The empirical evidence seemed to confirm this statement. He estimated that at least two-fifths of industrial output in Germany was produced by companies seeking to monopolize the market. In the US, the proportion rose to two-thirds.

If cartels are revealed to be the most developed form of production, the problem moved to pricing. According to Hirsch (1926: 11), the price system must enable consumers to purchase commodities of prime necessity. Furthermore, the author does not believe that monopolies reach a point where they are absolutely free of competitive pressure, as demand may turn to substitute products[12]. Instead of representing the end of the competition, Hirsch (1926: 22) thinks that cartel phenomenon denoted that the economic system, in its evolution, was becoming self-conscious.

The next paragraph indicates the Hisch's (1926: 18) exact economic policy recommendation concerning cartels and monopolies:

Free competition was never a principle for its own sake, but was adopted by because of the correct conviction that this was the best way to organize industry and trade to its highest productivity. When, however, competition among competitors means that a greater part of productive effort and labour is wasted for the same purpose, then the basic idea of free competition is abandoned. (…) The organization of cartels and trusts may result in an increase of productivity and a decrease of the total cost of industry and trade. Where and to what extent this is the case obviously varies greatly in various branches of industry.

Consequently, it would be incorrect to conclude that the government's duty is to support, pursue or not to intervene in the formation of cartels. In a preview of the paradigm structure-conduct-results developed by Bain (1963), Hirsch recommends to study how industrial agreements impact on each sector. In addition, public authorities should ensure that the

[11] The leniency policy that applies in our day, which denotes the inability of the competition authorities to uncover cartels, seems to confirm this hypothesis Hirsch.

[12] In the words of Hirsch (1926: 13), "*even in cases of complete raw materials monopolies the power of the monopoly in question May be curtailed by substitute products and by the possibilities of producing these products synthetically*".

concentration of economic power is not a threat to the rationalization and productivity of the industry.

Beyond national markets, Hirsch (1926: 19-22) identifies a number of special conditions affecting international cartels. First, there are large differences in their influence, scope and effectiveness. Second, structural characteristics of international cartels were different from the domestic cartels; third, there is the specific case of the monopolization of raw materials, often supported by the state; and, finally, the special international cartels affecting products in the final stages of the value chain, which accounted exception.

In favour of international cartels, Hirsch (1926: 22-23) stated that they could also serve to reconcile the two sides that had been divided Europe during the war through the establishment of common economic interests. However, these positive effects could be cancelled out by the negative political and economic consequences that could bring rigged international cartels of raw materials and finished products. This is because these two types of cartel involved the danger of irrationalisation of industry and trade.

Thus, Hirsch avoids simplistic and general analysis. The cartel could not be perceived as a threat or as a blessing, but as both; and the duty of public authorities must be to maximize their advantages (rationalization and productivity) and minimize its adverse effects (increase in prices). Moreover, he does not only call for studying the monopolization independently in each branch of the industry, but also address the particularities of the international dimension of the cartel; how cartels affect different operators; the evolution cartels had suffered; the relationship and type of existing cartels in Germany; and legislation that concerning them in the more developed countries (mainly USA, UK and Germany). This contextual approach is characteristic of the German Historical School.

His recommendation to the League of Nations consists in that reports about the negative effects and distortions that monopolies can generate on the market were developed. Finally, Hirsch (1926: 24) is in favour of creating an international agency for elaborating these reports at the request of the parties who feel aggrieved by international cartels.

2.2.2. International Industrial Agreements discussion at the Industry Comitee

Among those who saw the cartel as an opportunity were Pirelli[13], Lammers, Pugh[14], Jouhaux[15], Battaglia[16], Baltrusch[17], Zimmerman[18], Ballod and Toenisson[19].

Pirelli thought that cartels could help industrial rationalization and contribute to stability in the labour market. However, he also warned that they must be controlled to prevent its

[13] Italian member of the Economic Committee from 1922 to 1927.
[14] Unionist, member of the general council of the British Trade Union Conference (1920-1936).
[15] French trade union leader.
[16] Expert of the Government of Poland.
[17] German Christian union leader.
[18]Zimmerman had been Zimmerman General Commissioner of the League of Nations in Austria.
[19] Chief of the Estonian National Economic Council and former president of the Parliament.

activity being detrimental to workers, consumers or certain countries; or take the form of dumping[20].

Meanwhile, Lammers thought it was a necessity to eliminate the bad reputation of cartels, which were perceived as definitive, not transitional. His recommendation was to educate society on the benefits of the cartel, which he believed were the key to unleash the productive potential of the European industry, constrained by too compartmentalized markets. Here lay the main difference between Europe and the US, and therefore the American attitude toward the cartels was very different.

In the same vein, Pugh saw the cartel as a new phase in the evolution of capitalism and was in favour as long as workers and consumers were protected against the risk of exploitation. On the other hand, he considered transparency in such industrial agreements to be fundamental, so that both workers and consumers had evidence that the benefits of the cartel were distributed in an equitable manner.

Lammer's argument was criticized by Jouhaux despite his pro-cartel stance. He agreed that the public would need to be well informed on how the cartels would work, but believed that workers and consumers should play a more important role in the creation and organization of these cartels and claimed that Lammer's approach treated them as an obstacle.

Battaglia, favoured international cartels, citing their ability to regulate production and stabilise prices, which would eliminate the possibility of *dumping*. In his view, workers would also benefit from international cartels as these would limit the growth of unemployment. However, he states that a supranational framework would be necessary for a system of international cartels to function properly. This, in effect, would remove the necessity of trade agreements by putting this responsibility into the hands of the international ententes[21].

Similarly, Baltrusch also aligned himself with Hirsch, considering cartels to be the remedy to Europe's industrial woes. At the same time, he recognized the possible dangers of establishing international cartels and suggested that there be legislation in place to protect consumers, as well as a *Cartel Tribunal* to register existing cartels and provide oversight[22].

Some of the arguments in favour of cartelizing international markets were very optimistic on its benefits. This is the case of Zimmerman, the Dutch representative, who stated that these ententes would be able to provide a more rational organization of the market and improve productive processes by rapidly adopting new techniques. This would allow for a better convergence between European countries, reducing and stabilizing prices and lowering unemployment[23].

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[20]League of Nations Pub 1927: *Provisional Minutes of the first meeting*.Industry Comitee. (S.C.E./II/P.V.1).

[21]League of Nations Pub 1927: *Provisional Minutes of the seventh meeting*.Industry Comitee. (S.C.E./II/P.V.7).

[22]League of Nations Pub 1927: *Provisional Minutes of the seventh meeting*. Industry Committee. (S.C.E./II/P.V.7).

[23]League of Nations Pub 1927: *Provisional Minutes of the seventh meeting*. Industry Committee. (S.C.E./II/P.V.7).

Some participants sided with the pro-cartel participants but showed their concern on the possible outcomes. In Toenisson's case, the creation of international cartels was a "*reaction against complete economic liberty*" and, to be justified, would have to lessen the severity of cyclical economic crises and improve employment and wages. Also, he argued in favour of reduced national control of these cartels and proposed that it be the League of Nations who oversees their affairs. Ballod also showed some reservations on whether it would be possible to provide proper oversight of cartels, fearing that at some point these would raise prices excessively.

On the other side, Balfour expressed his opposition to industrial agreements. For him, the economic recovery required a reduction of production costs through production growth and the pursuit of new markets[24]. In the same vein, Lavonius[25] added that cartelization also slowed the free movement of factors of production, undermining economic growth[26].

Jahn[27] did not approve of international cartels. His reasoning was that the goal of the overall economy is to maximize output, while the final objective of cartels is to maximize member's profits. This conflict between the public's and the cartel's interests is insolvable. He also mentioned the difficulties that national authorities had faced in enforcing antitrust laws on a national scale and suggests that doing so on an international level would prove even more difficult[28]. Urban[29] and Cunha Leal[30] also shared this opinion, although the latter also believed that the Europe's problem was that its productive capacity far surpassed its demand[31].

Lundvik[32], also from Sweden, also preferred the current market force-based approach to economic planning. His position on cartels, however, was relative to their ability to eliminate tariffs and other protectionist measures and he would agree with them if they were to result in an increase of trade among European countries. Just as the other Swedish representative, he feared the effects of a reduction in competition in national and international markets.

Another of those to oppose international cartels was the United States' Robinson[33], who made it clear that it was his nation's policy to minimize government interference in economic affairs and, therefore, he could not support any attempt of establishing government-sanctioned international cartels. At the same time, he recognized that the competitive process was able to function more effectively in the United States than in Europe, in part due to the

[24]League of Nations Pub 1927: *Provisional Minutes of the first meeting*. Industry Committee. (S.C.E./II/P.V.1).
[25]Finnish director-general of the Suomi Life Insurance Co.
[26]League of Nations Pub 1927: *Provisional Minutes of the seventh meeting*. Industry Committee. (S.C.E./II/P.V.7).
[27]Director of the Norwegian central office of statistics.
[28]League of Nations Pub 1927: *Provisional Minutes of the eighth meeting*. Industry Committee. (S.C.E./II/P.V.8).
[29]Former Minister of Commerce.
[30]President of the Ministry of Portugal
[31]League of Nations Pub 1927: *Provisional Minutes of the fifth meeting*. Industry Committee. (S.C.E./II/P.V.5)
[32]Director general of the federation of Swedish industries (1926-41)
[33]American economist and financier

unity of American markets, the high levels of capital investment and the more rapid adoption of new organizational models[34].

It is worth mentioning that although we have tried to divide the participants into two groups, one for and one against international cartels, some figures were not convinced on the superiority of either of these options. The most notable case is that of Sokolnikoff[35], the representative of the USSR, who used his frequent interventions in the proceedings to criticize the prospect of establishing international cartels as the obvious next step in the capitalist system[36].

2.2.3. The final resolution

Given the different views that were expressed on international cartels throughout the Conference, it was not possible to draw any specific conclusion as to its regulation. However, at the final resolution the main ideas were discussed are synthesized:

1) Given that the field of operations of industrial agreements is limited to certain branches of production, they cannot be seen as the solution to all European economic problems.

2) In these branches of production, national and international cartels can secure gains in efficiency, reduce prices and foster rationalization, always under certain circumstances. In addition, they can check uneconomic competition and reduce the threats from fluctuations of industrial activity. It will result in workers greater stability of unemployment. Due to all these reasons, national and international cartels are able to favour consumers, industrialists and workers.

3) On the other hand, such agreements can lead to monopolistic behaviour on international markets; perpetuate deficient business methods, checking technical progress; and involve dangers for broad sections of society, as well as some countries.

These contradictory arguments pushed the Assembly to take the following decision[37]:

The League of Nations should closely follow these forms of international industrial cooperation and their effects upon technical progress, the development of production, conditions of labour, the situation regards supplies, and the movement of prices, seeking in this connection the collaboration of the various Governments. It should collect the relevant data with a view to publishing from time to time such information as may be of general interest. The Conference is of the opinion that the publicity given in regard to the nature and operations of agreements constitutes one of the most effective means, on the one hand, on securing support of public opinion to agreements which conduce to the general interest and, on the other hand, of preventing the growth of abuses.

3. Other attempts to internationalize competition policy

[34] League of Nations Pub 1927: *Report and Proceedings of the World Economic Conference* p. 94-97
[35] Former People's Commissar for Finance of the USSR (1923-1926)
[36] League of Nations Pub 1927: *Provisional Minutes of the ninth meeting*. Industry Committee. (S.C.E./II/P.V.9).
[37] Ibid.

Beyond this first initiative, there have been other attempts at regulating restrictive practices on the international level. As we will see in the following lines, the issue of international competition policy has been a debated subject whenever the need to reorganize the world economy arose.

3.1. Havana Charter in the International Trade Organization

The Second World War left the United States as the first economic and military power on the planet, which allowed it to play a fundamental role in the design of the international institutions that would "rebuild the world and ensure peace. This was the goal of the Bretton Wood negotiations. The idea of creating an institution to organize and stabilize international commerce was present throughout the discussions. For many, international trade was the key to promoting economic development. The original institution that was proposed to this end was the International Trade organization, which was to be adopted by the Havana Charter.

The provisions relative to competition can be found in the fifth chapter, titled *Restrictive Business Practices*. The proposed rules aimed to impose the obligation, onall signatory nations, of preventing businesses from operating in a manner that would "*restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade*"[38]. The member-states would be empowered to file complaints with the ITO. On its part, the ITO would be able to initiate investigations and demand relevant information on the parties involved, as well as recommend government actions directed at resolving disputes caused by anticompetitive practices[39].

The Charter went even further and even specified what behaviors were prohibited. Among these, we can find "*fixing prices; terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product; excluding enterprises from any territorial market; discriminating against particular enterprises; limiting production or fixing production quotas; preventing by agreement the development or application of technology or invention whether patented or unpatented*"[40].

The Havana Charter – together with the entire ITO project– was taken to the US Congress. Without its approval, the US would not be able to participate in the organization. However, and contrary to other votes on similar Bretton Woods's organizations, Congress did not support its creating.

3.2. International Competition Policy in the New World Order

Since the fall of the Soviet bloc in 1990, the world has undergone profound political and economic changes which have accelerated the integration of the world economy. This globalizing process has made it clear that global solutions are needed for international problems.

[38] Article 46.1 of the Havana Charter.
[39] Article 48 of the Havana Charter.
[40] Article 46.3 of the Havana Charter.

In 1993, a group of academics known as the "Munich Group" praised the potential benefits of creating a global competition framework. The document in which they did so is titled the *Draft International Antritrust Code* (DIAC), also known as the "*Munich Draft Code*"[41]. The Code was part of a *Max Planck Institute for Foreign and International Patent, Copyright and Competition Policy* study, and its thesis was to highlight the growing need for global competition rules, given the extreme level of development and maturity of capitalism.

The main prohibition cited in the document was centered on horizontal anticompetitive agreements which lowered production and raised prices. Furthermore, they proposed to pursue both vertical agreements and firms with dominant behaviour when these restrained competition for no reason. Lastly, they also outlined the possibility of creating a series of rules on notifying authorities of mergers, so as to avoid the possibility of reinforcing already dominant market positions.

The project aspired for there to be an international agreement which would make it obligatory for all states to apply the DIAC through their relevant authorities. In a similar way, there would also be a mandatory conflict-resolution procedure which would, inevitably, lead to the creation of an international agency to enforce the proposed rules.

Sadly, the US Congress' firm opposition brought the initiative to a halt. According to Gerber (2010:102), the reasons for which Congress could not approve the DIAC were that its definitions of anticompetitive behavior were not precise enough, it gave an excessive amount of power to international regulators and it would add an unnecessary layer to international bureaucracy.

On the basis of the "Munich Group"'s work, a group of experts published "*Competition policy in the New Trade Order. Strengthening international cooperation and rules*". In this essay the authors listed the gravest inconsistencies that derived from the absence of global completion rules. Said problems could undermine the benefits of trade liberalization and urged the WTO to examine the possible impact on competition implied in trade related provisions.

From the premises outlined in the document, the European Commission proposed the creation of a competition policy working group within the WTO at the Singapore Ministerial (1996). The EU took on the role of leader in build international consensus and encourage other WTO members to support multilateral work in this field (European Commission, 1996).

Thanks to the efforts of the "Singapore Group", it seemed as though the turn of the century would see the first steps to introducing a competition legal framework into the WTO. The event at which this would take place was the Doha Ministerial (2001). At the meeting, leaders agreed that competition policy would be included in the Ministerial Declaration and to begin formal negotiations for its inclusion into the heart of the WTO.

This meeting was followed by the Cancun Ministerial (2003), where the hope was that a final agreement would be reached. The Declaration which resulted from said meeting envisioned

[41]For a deeper discussion on this topic, consult Wolfgang Fikentscher (1997): "The Draft International Antitrust Code (DIAC) in the context of International Technological Integration"

a brilliant future for the WTO's competition policy agenda, and listed the topics which had been negotiated. Most notably, there had been agreements on the control of hard core cartels, supporting NCAs in developing nations and promoting cooperation among all of the world's NCAs (Dabbah, 2010: 124).

However, the EU's continued attempts at introducing international competition rules into the WTO's framework have not had the expected success, mostly due to the US's opposition to the project. Although they initially appeared willing to compromise, they later proved weary of creating a global competition framework.

The so-called "July Package" (2004: 4) resolved the competition policy issue with the next statement:

The Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.

Thus, the working group on the Interaction between Trade and Competition Policy was suppressed. Without a doubt, it was the suspicions of influential countries, such as China or, mainly, the US, that finally brought the project to an end.

3.2.1. ICN and the change of strategy: convergence and cooperation

We will now study the institution that is leading the efforts to address issues related to international competition: the ICN[42]. This organization –exclusively composed of competition policy experts– offers NCAs a specialized and informal forum which allows them to maintain regular contact, as well as work towards solving the practical problems that they face. This gives way to a dynamic dialogue which serves the purpose of building consensus and convergence towards unified principles of competition policy throughout the world's NCAs[43].

The ICN's second objective consists in promoting better cooperation among NCAs, with the hope to avoid disputes derived from differing interpretations of competition policy. The issues which affect common interests are argued and addressed with the goal of finding solutions that do not invade member-states' sovereignty. This reduces the number of disputes, as well as the probability of one appearing, by allowing the constant exchange of differing points of view. This, in turn, allows participating NCAs to develop a rapport with their foreign colleagues and, therefore, a better understanding of how they behave and work.

[42] In reality, the ICN was born as a response to the US Federal Trade Comission's and Department of Justice's resistance to the EU's initiatives to advance on the topic of international competition policy. The highest levels of the EU have spoken on the need to solve the persistent international competition policy problem with a binding framework. The strategy proposed by the US, though, is that of non-binding multilateralism.

[43] We highlight that, due to its composition, the ICN constitutes and attempt to separate issues competition policy from those of trade policy.

Despite the ICN's non-binding approach has proved quite successful, we must reflect on the limits of this strategy. The first limit is that it usefulness is temporary. At some time, it can be expected that the process of convergence and harmonization among NCAs will reach a point at which no significant advances can be achieved. Currently, NCAs adopt the best practices that the ICN identifies and develops only as long as they do not contradict their vision of competition policy. This brings us to the second limitation: the non-binding strategy cannot reach favorable ends if its recommendations are directly opposed by member-states and their competition authorities. This would mean that the current "system"'s faults would go unchecked.

Furthermore, a review of the documents published at the ICN's Annual Conferences reveals that certain aspects cannot be solved with non-binding multilateralism. For example, relative to cartels, we find that the limits to the transfer of what is categorized as *confidential information* of infringing firms is a major obstacle to international cooperation[44]. Thus, we should not be surprised if one of the ICN's new objectives is to aid in the design and implementation of a true mechanism of international competition policy (Hollman and Kovacic, 2011).

4. The controversy about international competition policy in a global economy

4.1. The world economic integration

We live in a period of profound and rapid change. The economic order established after the Second World War, structured around two major hegemonic blocs – the USSR and the United States – who disputed control of the countries in their periphery, which functioned as suppliers of raw materials and consumers of manufactured goods (Baran, 1975), with Europe disarmed and playing an almost colonial role subordinate to US policy came to an end more than fifteen years ago. After the fall of the Berlin Wall, the fragmented state of affairs that characterized the old order quickly gave way to a period of increased integration which continues still today. This process of integration is not only limited to the global scene, but is also extremely important on a regional level[45]. Regional integration process' goal is twofold: first, to escape from the structural dependence on western countries and, second, to better defend their common interests. There is no doubt that the European experience has greatly influenced this global trend.

The process that we have described finds its intellectual justification in the theories of Adam Smith: economic growth is the product of capital accumulation and expansion of markets, which requires the free movement of productive factors. This situation leads to important regulatory challenges, which we will study in more detail.

From the beginning, the international community recognized that to accelerate globalization it was necessary to eliminate tariffs and duties which slowed the development of international

[44] The last Annual Conference took place in Marrakech, from 22-25 April of 2014. To examine the topics that they studied, visit http://www.icnmarrakech2014.ma/

[45] These attempts at more intense integration can be seen all over the world: from America (Mercosur, Unasur or ALBA, among others), Africa (African Union) and Asia (Pacific Alliance), to the center of the capitalist world: the Transatlantic Trade and Investment Treaty between the US and the EU.

trade. However, other barriers to entry, such as the economic power wielded by private industries to protect their national markets from foreign competition, did not receive the same treatment. This crusade for economic integration by eliminating tariffs contrasts with the skepticism and refusal to establish international control to obstacles created by private agents.

If markets are no longer contained within national borders then it would seem logical to consider that, perhaps, nation-states may not be the best institution to control commercial activities. Stated clearly, we ask whether global markets should be disciplined by equally global competition institutions.

4.1. Inconsistencies of the current regime of international competition policy

In this subsection we will present the motivations most typically cited by those in favor of establishing a multilateral competition framework and, afterwards, those arguments which are used by those who are more skeptical of its effectiveness.

Currently, competition cases which surpass national borders are dealt with unilaterally or, in some cases, through the cooperation of the affected states' competition authorities. Both of these options can potentially lead to difficulties. There is an obvious inconsistency between the problem and the solution: regulators are limited to operating within the borders of their jurisdiction and, meanwhile, firms operate on an ever more international scale. As noted by Palma (2008), global problems must be tackled with measures or by institutions that equal in scale. In practice, this would require that sovereignty in these matters be relinquished.

It's clear that the internationalization of markets automatically transforms competition policy into a supranational issue. Thus, we have a plethora of national competition authorities – and even some supranational ones – that must ensure that competition is effectively maintained within their respective jurisdictions, while at the same time their efforts are hindered by the increasingly international nature of restrictive practices.

If the relevant market affected by a certain restrictive practice includes various jurisdictions, NCAs face a situation in which the practice has its origin outside of its borders (this would be the case of all but one of the hypothetical NCAs) but whose effects are felt throughout all jurisdictions (Budzinski, 2012). We will elaborate on these two particular issues.

The first, related to the fact that the restrictive practice has its origin outside of the NCAs jurisdiction, leads us to the "Effects Doctrine", which empowers national competition authorities to prosecute any business practice that affects competition in their jurisdiction, independent of its origin (Klodt, 2001). This principle has its origins in the 1944 *Alcoa* case[46] and, obviously, its practice is a threat to national sovereignty.

[46] In said case, the US Supreme Court prohibited an international cartel using the Sherman Act, which up until then had only been applied on a national scale, due to the Swiss firms dividing up the market for US aluminium imports. See US Vs Aluminium Co of America, 148 F.2º416 at http://myweb.clemson.edu/~maloney/424/alcoa.pdf. Página consultada el 23.07.2011.

As to the second point, because NCAs focus solely on the anticompetitive practices which affect their jurisdiction and interpret competition policy in their own way, many times we will find that their investigations are uncoordinated. This leads to wasted effort due of the duplicity of investigations, and in the most extreme cases, even contradictory. The problem is one of overregulation and it implies that welfare is lower than if there were only one international competition authority dealing with the restrictive practice[47].

When NCAs function this way it can lead to competition policy becoming subordinate, a mere instrument, of other national policies (Fox, 2000; Guzman, 2004; Budzinski, 2008: 53-64, Mitschke, 2008:44-52, Motta and Ruta, 2011). *Antitrust* policy could be applied as a strategy to promote "national champions", firms that compete in international markets with special guarantees to the detriment of competition in third countries[48].

Also, competition policy can be used as a neo-protectionist tool. NCAs could intervene in their jurisdiction asymmetrically, applying more pressure to foreign firms than national ones. The most explicit case is the exemption from competition rules given to export cartels. This asymmetric treatment of firms could lead to disputes among countries, as well as limiting the chance of maintaining effective competition in domestic markets. The subordination of competition policy is a problem that affects all international trade. The benefits that should be obtained thanks to free-trade agreements are threatened by private restrictive practices and also by the misuse, and abuse, of competition policy by States. A multilateral agreement on competition policy would allow for a consistent solution to both problems (Sweeney, 2004).

Another example of the misuse of competition policy appears when transnational firms attempt to merge. NCAs could be tempted to impose restrictions on the merger of foreign firms with the goal of defending domestic business[49].

Summing up this last point, the use of competition policy to promote protectionist policies reflects States' inability to effectively defend competition on an international level. Furthermore, it can even lead to diplomatic conflicts, which in turn threaten the stability of countries' commercial agreements.

There are two final problems derived from the lack of an international competition institution. The first has to do with regulatory loopholes. Despite the fact that the number of countries with competition laws has grown considerably in recent years, there are still many that cannot effectively enforce competition in domestic markets. Also, some authorities lack the necessary power to impose fines on large, multinational firms.

Finally, the multiplicity of competition regimes can lead countries to compete on an institution level, a sort of "dash to the end" in which NCAs only offer minimal consumer

[47] Para una modelización de la situación descrita basada en decisiones racionales se puede consultar Barros y Cabral (1994); o Head y Ries (1997).
[48] Competitiveness is a relative concept. If a Public Entity supports to a certain transnational firm, increasing its capabilities, its competitors will have automatically suffered a loss of competitiveness.
[49]It was precisely this that the US complained about when the EU initially denied permition for Boeing and McDonnel-Douglas to merge in 1997.

protection, both domestically and internationally. With the goal of increasing competitiveness or foreign direct investment, States' could relax their policies to a bare minimum. In time, this would lead States to converge on a lower-quality competition framework and, once again, we would find ourselves in a prisoner's dilemma, harming the whole economy (Mitschke, 2008: 52).

4.2. Resistance to the initiative to set up a framework of international competition policy

Despite all of the problems mentioned above, all attempts at configuring a global framework for competition policy up until now have failed. To the theoretical arguments used by skeptics, we must add a series of questions which are no less important, such as different competition regimes and the traditional resistance of some States to cede sovereignty, such as the US. The truth is that the continued expansion of international trade – and therefore the expansion of restrictive practices– will keep the debate alive.

In academia, there are authors[50] who argue against a global competition framework for a variety of reasons. Some, such as Evans (2009), state that it would not be desirable for all countries to share the same competition framework as it is relative to the historical circumstances and experiences of each one. Also, this homogeneity would eliminate the gains from there being a variety of systems, each approaching problems with their own techniques and methods and, by doing so, learning the most effective practices to counter ever-evolving restrictive behaviours by firms.

According to Mitschke (2008:42), before anything else it would be convenient to do a cost-benefit analysis of the proposed competition framework. Said analysis would take into account the burden of adding to the already bureaucratic and complex web of international institutions. At the same, we should ask ourselves whether there is a more effective mechanism for solving the current model's problem, such as the ICN's method of inter-jurisdictional cooperation

There are authors, such as Rosenthal and Nicolaides (1997:356-360) that believe that many of international trade's problems are caused by nation's trade and industrial policy, such as protectionist regulations. In this type of affairs, an international competition institution would prove ineffective.

More liberal economists, such as those of the Austrian school[51], align themselves with the postures defended by Cassel almost a century ago. For them, globalization is a valued result, rather than a threat for the maintenance of competitive markets. By eliminating obstacles to commerce, domestic markets become more open to foreign competitors and achieve a degree of "contestability" which guarantees competitive outcomes. However, recent experience shows that the last few decades have brought a new wave of international cartels.

5. Conclusions

[50] Such as McGinnis (2004).

[51]We must remember these economists find almost unjustified national competition policy.

The debate on the establishment of a global competition policy framework has evolved from the first time this possibility rose, in 1927. At the International Economic Conference of Geneva, the issue was addressed from two perspectives. First, it reflected on the economic effects of industrial cartels. The consequences of the first great crisis of capitalism (1873) and, especially, the Great War, provoked in many cases the construction of the collective imagination of the idea that industrial agreements posed a new phase in the evolution of more mature capitalism. In other cases, the cartel was seen as a temporary solution to the imbalances between supply and demand, aggravated by the protectionist measures taken by individual states. In any case, it was desirable to analyze the economic consequences of this new model of production and trade to ensure that it was actually greater than the anarchic competition prevailing since Adam Smith.

Secondly, there are the issues concerning regulation. If industrial agreements had the potential to contribute to economic recovery, the authorities would be obliged to ensure this was so. If, on the contrary, cartels entailed a definite threat to the economy, it was necessary to establish rules for their control.

Today, after the globalization of American principles of competition, the debate on the cartel has become a political issue. Countries are reluctant to give up their sovereignty in competition policy in favor of a supranational body. Despite the strength of the economic arguments, the lack of a global view of the economy is preventing an agreement is consumed, resulting in shaping a global framework for competition policy. Instead, they are opting on the convergence of various systems and cooperation between the NCAs to address cases of international dimension through an institution designed specifically for this: the ICN.

Returning to the League of Nations, the debate that took place there represents a clash between two opposing schools of economic thought: one is the neoclassical school, defended by Cassel, with its emphasis on the universal principles of the economy and its bias favoring the interests of capital and therefore against the workers. Especially striking are his criticisms of unions and the great social progress that led to the establishment of the working day of 8 hours.

On the other hand, Hirsch defended the cartel under the principles of the German Historical School conducting a rich contextual analysis of the phenomenon of the cartel, distinguishing forms thereof and the way it can affect each of the operators. We can also find some passages in which, to some extent, are elements of analysis that years later form the theory of imperfect competition and the theory of industrial organization.

The interest of this episode lies not only in the arguments offered by each of the participants, but the methodology used by the then fractured international community to find solutions to the economic hardship of the moment. Experts from various ideologies and countries, government delegates and representatives of workers spent three years -the Preparatory Committee began its activity in 1925- reflecting on the best solutions to promote global economic development. It was to seek out the best solution in a democratic and equitable way.

This contrasts with the modus operandi of the international community today. Just remember how the great crisis of 2008 was addressed: the G8 and G20, as well as the Economic Forum in Davos, were responsible to lead the way to recovery of the rate of capital gains, bypassing the interests of workers and consumers. Proofs of this are both the lack of solutions to the financialisation of the economy, responsible for the crisis, and the fact that the burden of adjustment has fallen on labor.

On the other hand we must note that the issue of international competition policy has been a recurring theme each time the world has experienced a shift in the geopolitical balance. When organizing home-world, policy makers have always considered the possibility of establishing an international control to restrictive practices. This happened after the two world wars and after the collapse of the Soviet bloc and the end of the Cold War.

Today we are witnessing as US leadership gives way to a multipolar world thanks to the explosion of some emerging countries in recent decades. The emergence of China as the world's largest economy, the development of new multilateral funding mechanisms[52], or the loss of importance of the dollar as international reserve currency[53], corroborate this crucial turn.

Therefore, we believe it is the ideal time to reflect on new ways to help the world economy out from the current secular stagnation time. They must ensure an inclusive, democratic and equitable economic growth. In a time when there are large multinationals with greater power than many states, it is crucial to address once and for all the problems concerning international competition policy.

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[52] As the BRIC´s Development Bank, or the Alba Bank, to replace the traditional World Bank and International Monetary Fund.

[53] Years ago that countries are diversifying their reserves portfolio for becoming less dependent on the dollar. Furthermore, many of trade that before was doing in dollars, is today from other currencies like the Euro since 1999, or from Sucre (2010).

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