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International Experience in Fighting Cartels

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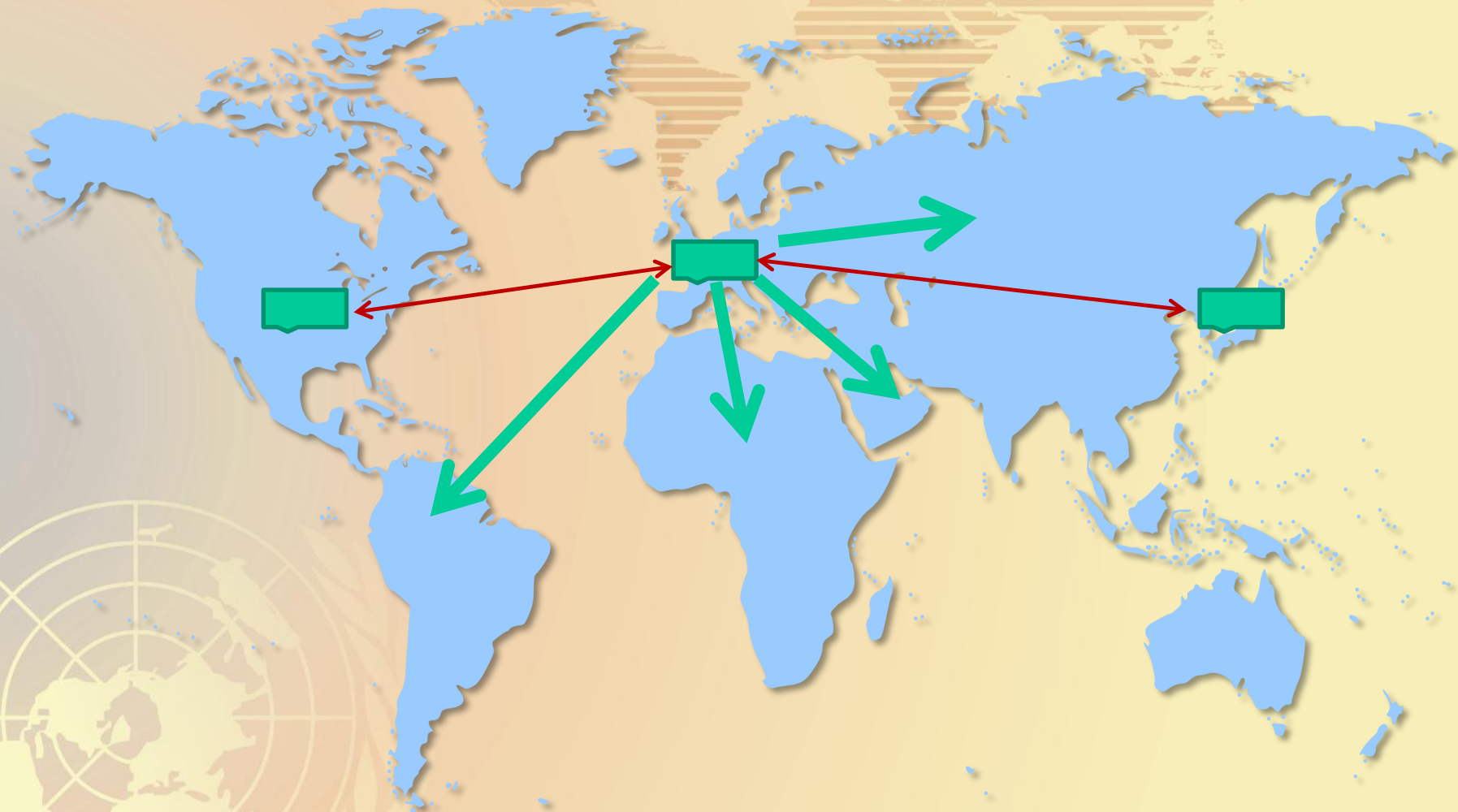
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The problem: Cross-Border Cartels (CBCs)

Since 2000:

- Over 1,000 new CBCs.
- More than 100,000 companies liable for international price fixing.
- Overcharges exceeding USD 950 billion.
- 1.2% of gross domestic product (GDP) in developing countries affected.


Multinational CBCs



The Lysine Cartel (1992-1995); The Vitamins Cartel (1990-1999),
The Marine Hoses Cartel (1986-2007); the Air Cargo Cartel (2000-2006)

Transnational CBCs

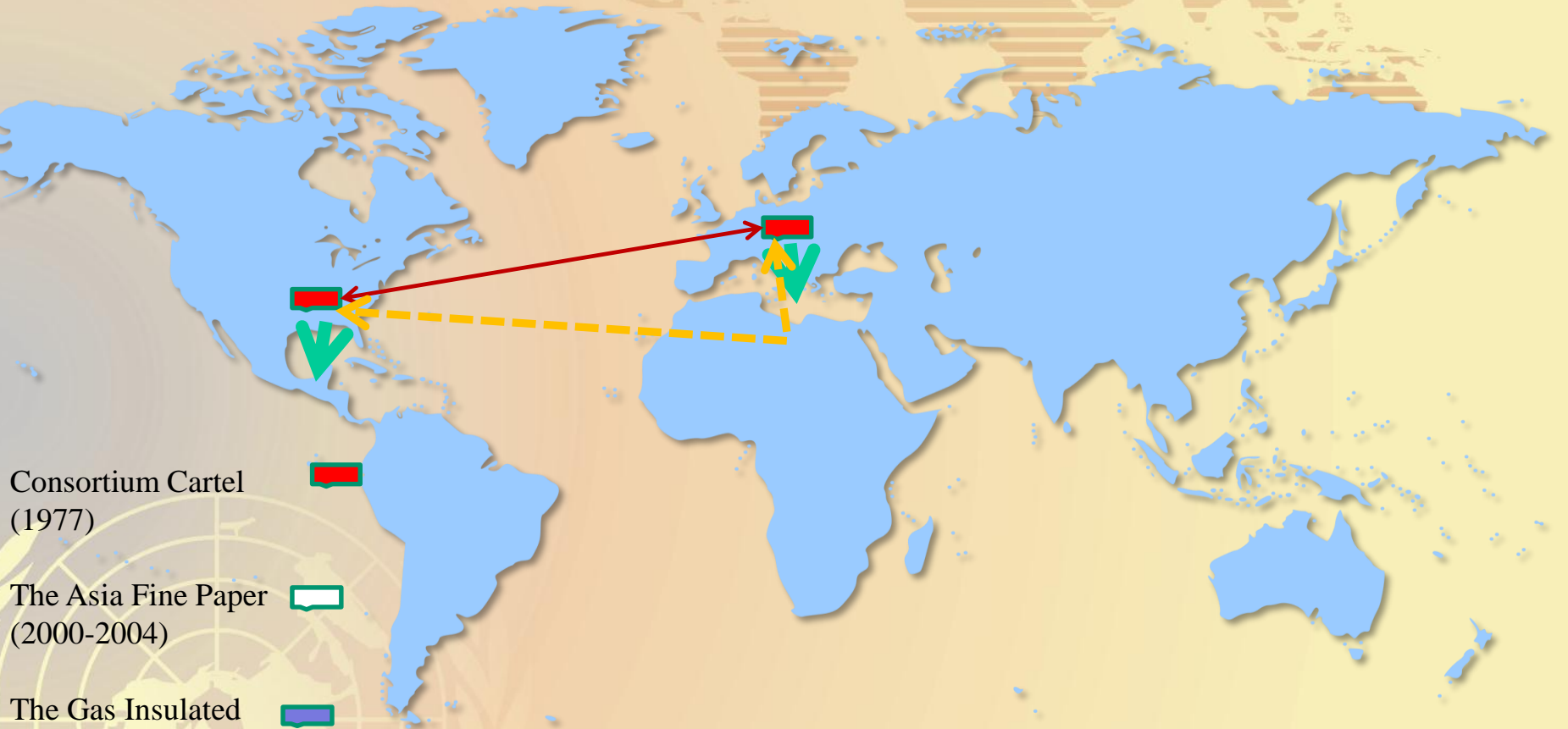
Consortium Cartel (1977) 

The Asia Fine Paper (2000-2004) 

The Gas Insulated Switchgear Cartel (1988-2004) 

Hypothetical BRICS cartel 

transnational CBCs



Consortium Cartel
(1977)

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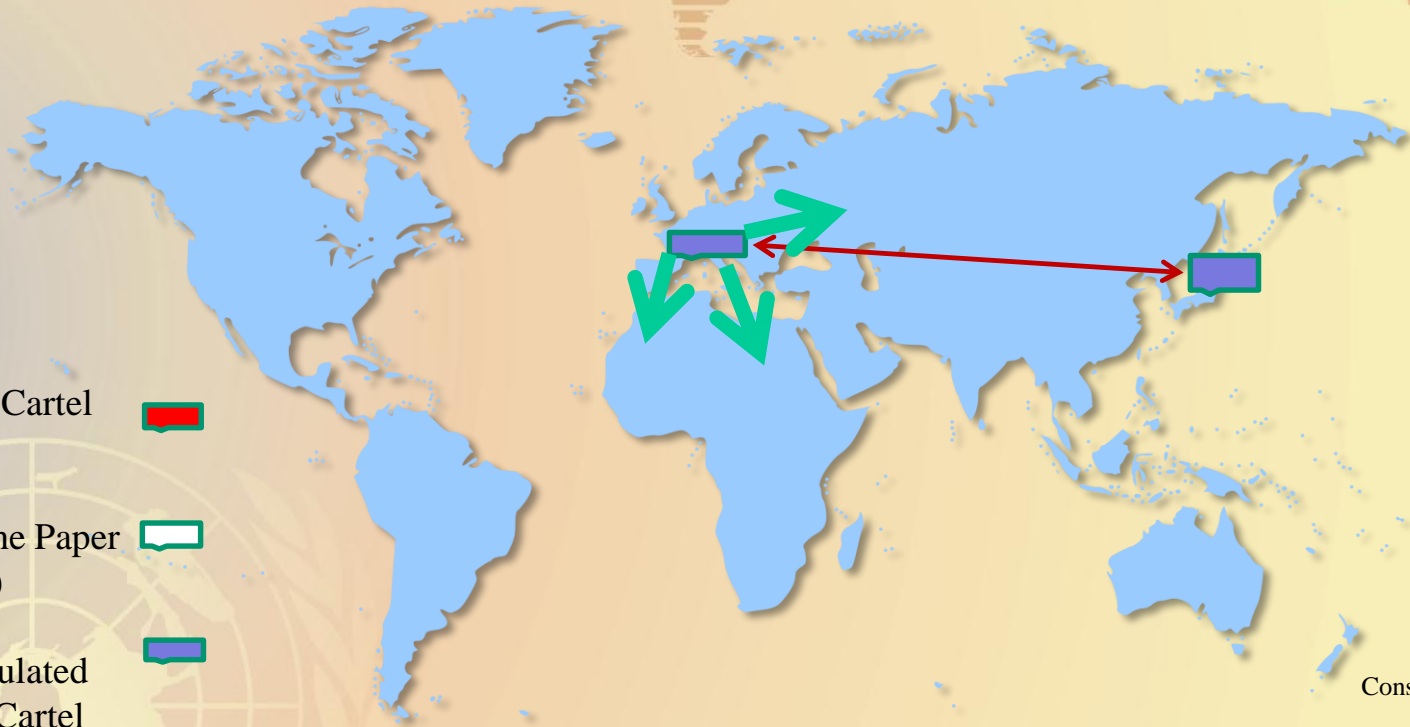
Hypothetical BRICS
cartel

transnational CBCs

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transnational CBCs



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Hypothetical BRICS
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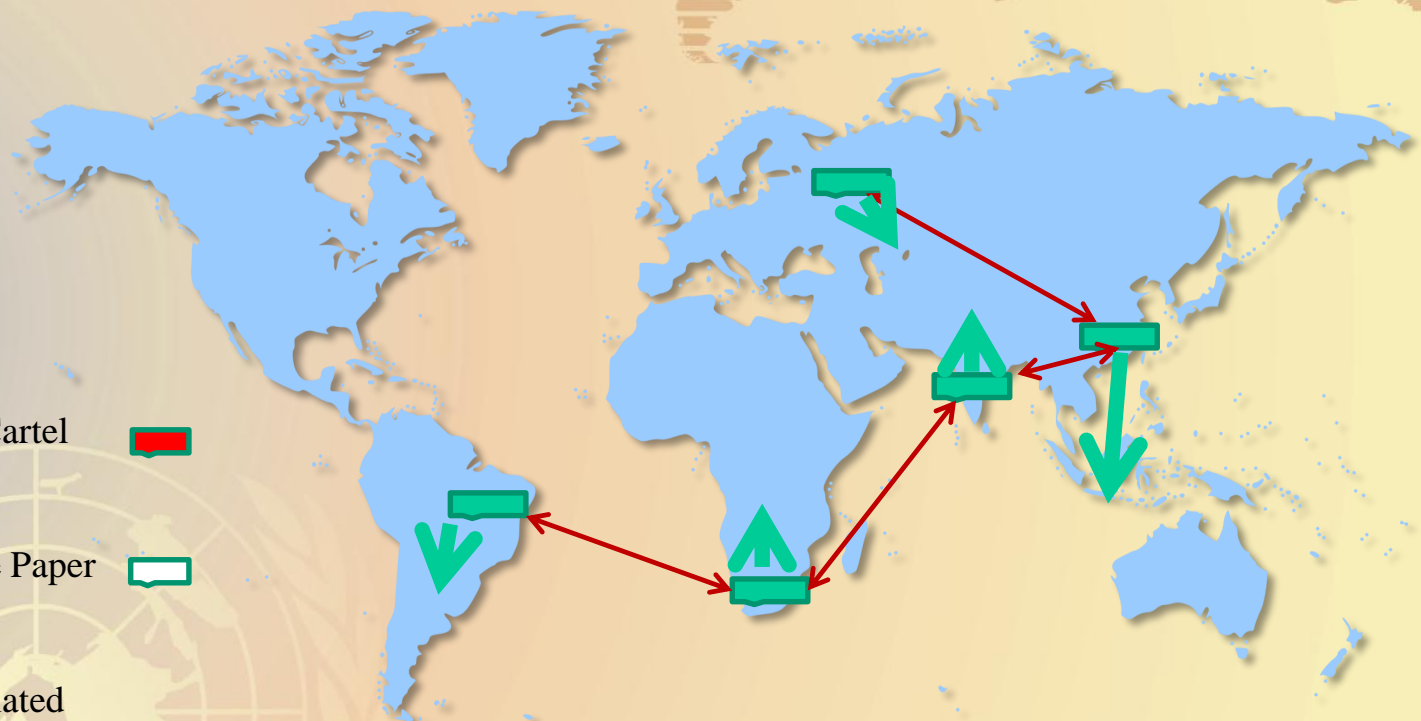
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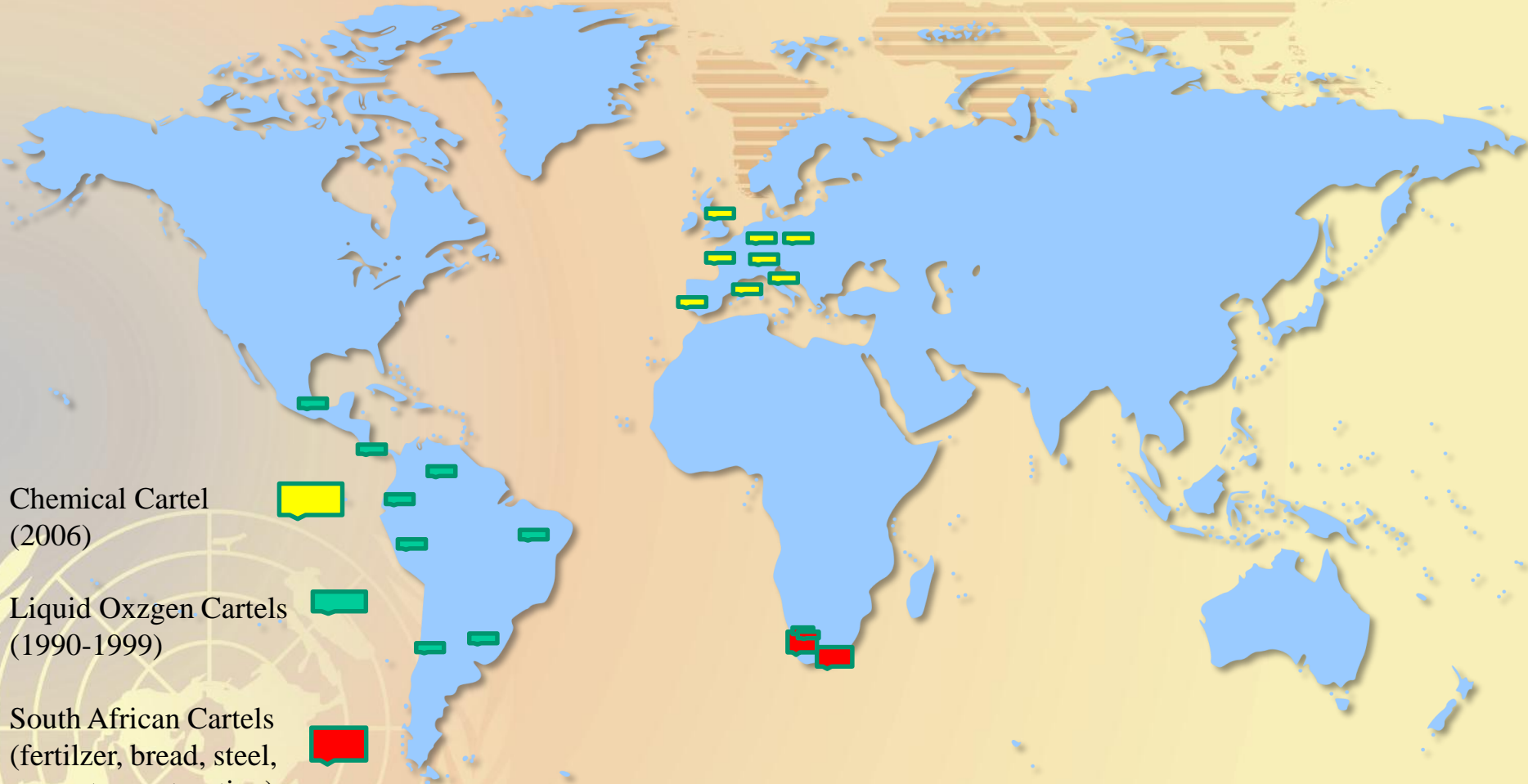
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REGIONAL CBCS

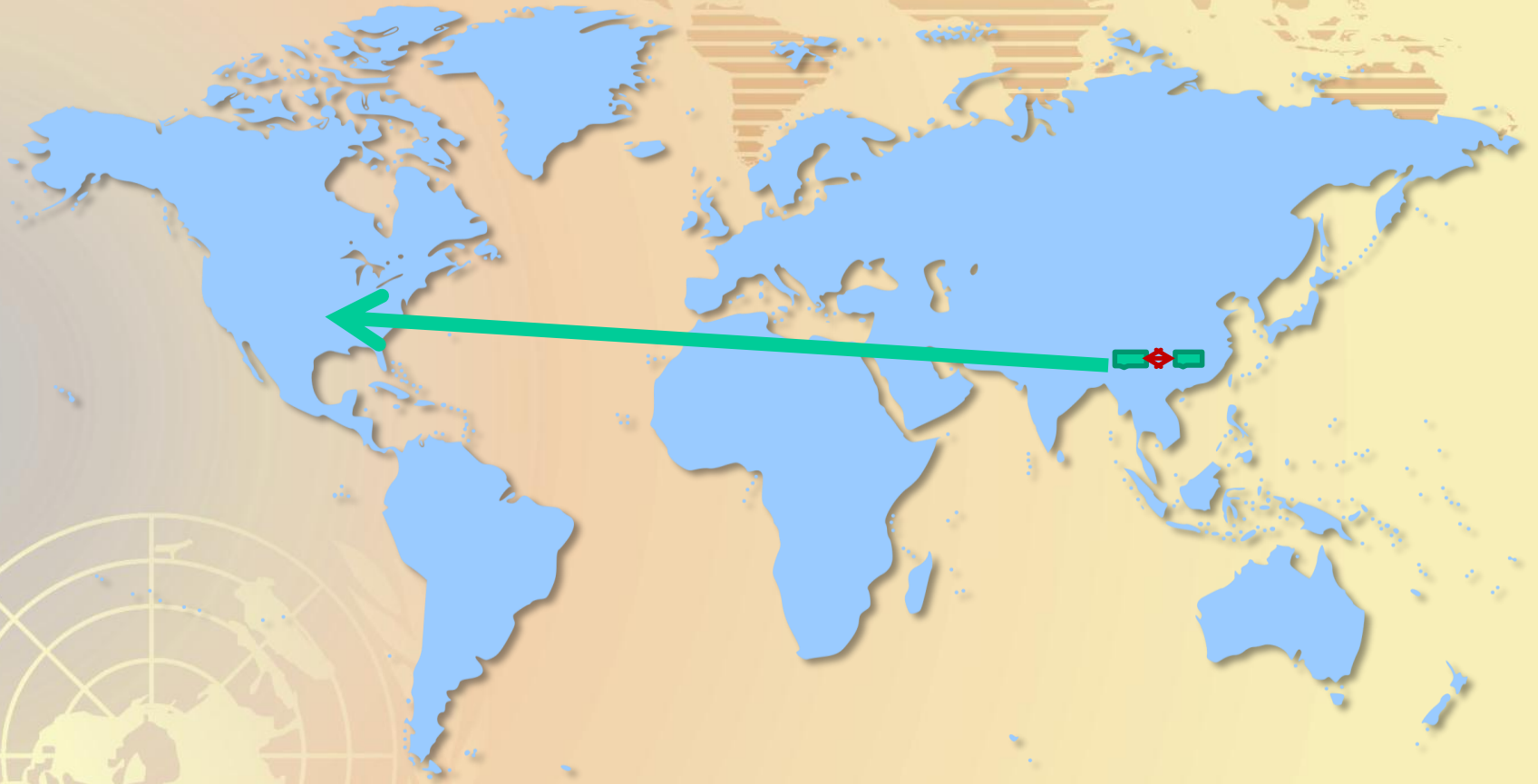


Chemical Cartel
(2006)

Liquid Oxzgen Cartels
(1990-1999)

South African Cartels
(fertilzer, bread, steel,
cement, construction)

EXPORT CBCs



Chinese Vitamin C Export Cartel (2002-2013)

IMPORT CBCS



New Deal Sugar
Cartel (1930)

Soda Ash Cartel
(1983)

Chiquita Banana
Cartel (2011)

RESPONSE OF THE INTERNATIONAL COMMUNITY TO CBCS

- New competition laws and institutions in emerging economies
- Almost 140 jurisdictions count with competition laws and institutions
- Many cooperation agreements between competition authorities
 - Informal cooperation arrangements
- Unilateral application of competition laws

YOUNGER AND SMALLER COMPETITION REGIMES

- Less developed competition culture
- Too weak to deter multinational CBCs

Therefore:

- Capacity-building
- Focus on transnational and regional CBCs



Main Problems with transnational cross-border cartels

1. “competition” of competition laws & Forum shopping
2. Differences in leniency regimes
 - (a) Lack of effective implementation
 - (b) Lack of trust by the leniency applicants
 - (c) Lack of specific cooperation arrangements
3. Lack of an international definition of confidential information
4. Lack of physical presence

Novel proposals

three building blocks:

(1) Trust development

(2) Exchange of “sharable” Information

(3) Use of already adopted international legal instruments

1. TRUST DEVELOPMENT

- For **transnational CBCs** investigations:
 - Introducing calculus-based trust (CBT) activities between mature and young competition authorities
- For **regional CBCs** investigations:
 - Strengthening/inducing knowledge-based trust (KBT) through informal cooperation arrangements amongst young competition authorities
 - Inducing the agencies to cooperate through “coordination games” schemes (beyond the prisoners’ dilemma/PD) such as “Assurance or Stag Hunt Game”; “Battle of the sexes BOS” or “Hawk-Dove HD” games.

2. Setting up an international benchmark for the definition of “sharable information”

Most common benchmark for confidential information:

- (1) the information is NOT publically available;
- (2) requested by the entity that provides the information;
- (3) the information needs to be justified, i.e. industrial secrets on prices, and the like;
- (4) summary of the non-confidential information must be provided

Proposed benchmark:

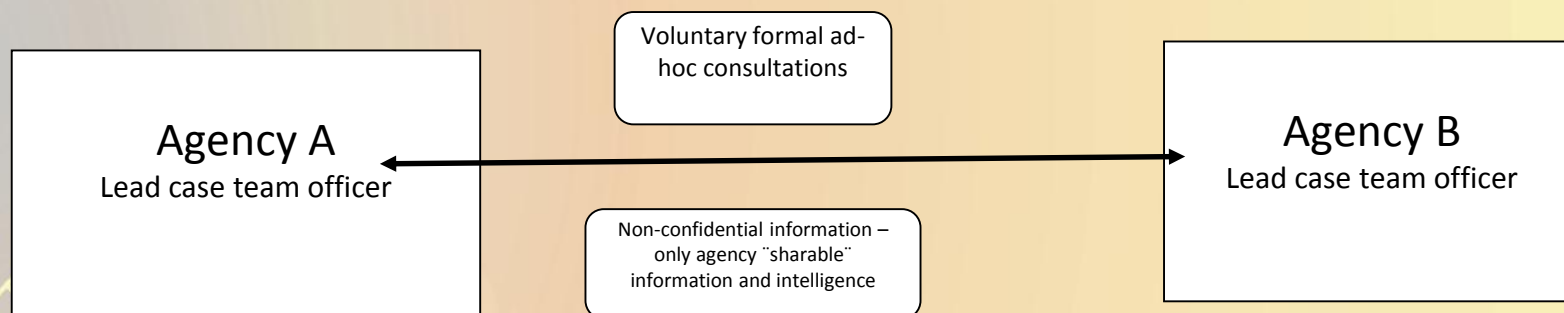
- (1) existence of a formal and open investigation;
- (2) theories of harm, markets or remedies;
- (3) industry background;
- (4) the formation of the cartel.



3. Strengthening the ICN Framework for promotion of sharing non-confidential information for cartel enforcement

- Weaving the UN mechanism into the ICN
 - Work with young and small competition regimes
 - Wider membership

Reinforcing the ICN Framework to foster international cooperation in case investigations



Source: Own elaboration based on the Japan proposal of 2015

Testing the novel solutions with enforcers: results of the interviews made at the latest ICN Porto 2017

- **Trust Development:** measures to develop the first stage of trust (CBT) is to suggest activities that would close the gap between these authorities such as technical assistance and capacity building in selected beneficiary jurisdictions
- **“sharable” information:** should be provided on the basis of trust and leniency waivers. In the absence of that, “conditional information gateways”.
- **Platform (ICN & UN) :** can complement each other without additional costs to cooperation. Moving towards multilateral platforms.

Working paper published on how UN and ICN can work together:

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Working Paper CCLP (L) 45

David & Goliath: How young competition agencies can succeed in fighting cross-border cartels

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Abstract:

How can small and young agencies cope and target cross border cartels? This paper explores the related challenges and puts forward a pragmatic tool to break down international cooperation barriers. Given the efforts of the ICN in seeking ways and means to operationalise cross-border cooperation in investigation of cases as well as those of selected UNCTAD member States in trying to trigger the international measures section of the UN Set on Competition, this brief contribution attempts to strengthen the ICN framework for non-confidential information sharing between competition agencies by incorporating specific key elements that are provided by the section F.4 related to voluntary consultations so as to address effectively the harmful effects of international cartels in emerging markets.

Keywords: competition, international cooperation, United Nations, voluntary consultations, sharing of non-confidential information

JEL codes: K21, K33, K39