

Trade and Competition Policy*

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1. Competition Policy: Definition and Rationale

Competition policy refers to a set of laws and regulations aimed at maintaining a fair degree of competition by eliminating restrictive business practices of private enterprise. According to Graham (2000, p. 205), competition policy includes “both antimonopolies (antitrust) and regulation of state aid (i.e. subsidies and subsidy-like measures).” Restrictive (or anti-competitive or unfair) business practices are those which limit other enterprises from entering a market or which regulate supply in a way that is deemed harmful either to other existing (or potential) producers or to consumers. Such practices include predatory pricing behavior, collusion, entry-deterrent capacity expansion and competition-reducing mergers and acquisitions.

The rationale for competition policy was one of the first insights of economists. Adam Smith’s Wealth of Nations contains long passages about the detrimental effects of monopoly and the benefits of competition. The benefits of competition are often characterized by economists as “allocative efficiency,” a condition whereby productive resources move to where the returns are greatest and sovereign consumers demand goods at their lowest possible prices. Monopoly competition creates a deviation from this welfare optimum, often resulting in less output of a good and at a higher price than would occur under competitive conditions. Competition policy is thus aimed at limiting monopoly in order to encourage competition and its beneficial welfare effects. While competition policy may help particular firms or consumers, in principle it is aimed not at helping specific competitors but at establishing conditions of competition. A key characteristic of competitive market conditions is that “sellers and potential sellers be as

free as possible to enter and leave the market as they see fit—or, in other words, that markets be contestable.”¹

2. Domestic Competition Policy and Sustainable Human Development

Any country may unilaterally adopt a domestic competition policy. And most countries have done so. Today there are more than 90 countries with competition laws. Still, about one-third of WTO members do not currently have such laws.

The developed country experiences with domestic competition policies provide some useful lessons for developing countries, both as they formulate their own domestic policies and as they consider a possible multilateral agreement in the WTO.

The first lesson comes out of the variety in competition policies across the developing world. In the United States, the focus has been on anti-trust actions, and over time the vigilance with which such policies have been enforced has fluctuated. Recently there has been a move away from prosecution of cases which threaten competition *per se* (that is, irrespective of the context or consequences), and toward a more case-by-case consideration of anti-competitive practices which do take into account context and consequences.² In the E.U., competition policy consists of an E.U.-wide policy that promotes economic integration and the national policies of the individual countries. The E.U. competition law has been described as largely focused on static efficiency and is less specific on issues relating to social policy and state subsidies.³ In Japan, competition policy was closely coordinated with industrial policy, especially during Japan’s period of rapid economic growth and especially from 1950-1973.⁴ Industrial policy, run by the

¹ Graham (2000, p. 207).

² See Baker (1999).

³ See Audretsch et al. (2001).

⁴ This section draws on Singh (2002, section IV.B.3).

Ministry of Trade and Industry (MITI), dominated competition policy, enforced by the Fair Trade Commission. MITI sought high rates of profit and reinvestment for industry, and this required such “anti-competitive” actions as sponsoring cartels, coordinating investment by rival firms, and intervention in firm exit and entry. All of these, according to Singh (2002), ‘contributed to the high concentration ratios observed in the Japanese economy.’ MITI also played its oligopoly firms off each other, rewarding successful performers (in terms of exports or technological innovation) with subsidies and protection from imports. MITI’s promotion of both cooperation and competition among oligopoly firms may have sacrificed static efficiency to attain the maximum long-term productivity growth that economists have termed “dynamic efficiency.”

The variation in emphasis of competition policies across developed countries indicates that when it comes to competition policy, one size does not fit all. A country must be able to regulate competition in a fashion compatible with its long-term development strategy, taking into account its stage of development, its institutions of labor relations and innovation, and its place in the world economy. Given the rapid changes in technology and the heightened mobility of capital today, developing countries must focus on these dynamic factors in the development of competition policies. Given its emphasis on dynamic forces, the Japanese experience with competition policy in the post World War II period would seem the most appropriate model for developing countries today.⁵

A second lesson for developing countries from the competition policy experience of the industrialized countries is the highly selective application of these policies across

⁵ Audretsch et al. (2001) in fact suggest a move to a more dynamic policy in the industrialized countries as well.

sectors within national economies. According to U.S. competition policy experts Graham and Richardson:

Competition policy is usually tailored to sectoral public interest regulation—especially in transportation, telecommunications, and utilities—and often tailored to industrial policies that favor agriculture or high-technology sectors over others...Competition policy has never been applied indiscriminately to financial markets... Occasionally, competition policy even differentiates among competing firms, with state-owned or state-chartered firms treated with more leniency.⁶

A third lesson for developing countries is that competition policy was put in place in most developed countries quite recently, certainly only after they had attained levels of development far beyond that of most developing countries today.⁷ The U.S. has had its laws in place for over a century, while Europe and Japan have effectively enforced competition regulations only in the last 50 years. In some cases (France and England), laws were on the books but not enforced. In other cases (Germany) cartels were not opposed, but were in a number instances encouraged to operate. Following this example, developing countries today should be careful to adopt competition policies compatible with their level of development.⁸

In sum, competition policy in the industrialized countries arrived late relative to their level of economic development and, even then, has varied considerably across countries and been applied very selectively across sectors and interest groups in each country. This should not be surprising, since all of these countries pursued economic development strategies that included considerable protectionist and anti-competitive behavior in the effort to promote the development of domestic industrial capacity and to

⁶ Graham and Richardson (1997), p. 34.

⁷ This section draws on Chang (2002), chapters 2 and 3.

⁸ As Chang (2002) and others have argued about trade liberalization, competition policy is perhaps most accurately understood as the *result*—not the cause—of industrialization in the now-developed countries.

attain dynamic efficiency in the form of technological progress or its potential. As they formulate and revise their competition policies, developing countries today should draw from the lessons of the countries that have already achieved industrialization.

3. The WTO Agenda on Trade and Competition Policy

The experience of the now-developed countries suggests that developing countries should resist tying their hands on competition policy. However, the world economy has changed considerably since the now-developed countries underwent the process of industrialization. Do these changes—and in particular the globalization of production—make it reasonable for developing countries to pursue an Agreement on competition policy in the WTO?

There is a *prima facie* case for including competition policy in the WTO purview. The main purpose of the WTO is the establishment of liberal and non-discriminatory rules for international trade. Since trade liberalization serves to increase competition in affected sectors by allowing entrants (foreign exporters) to compete against domestic producers, trade liberalization can be considered a subset of competition policy.⁹ One can see clearly the link to foreign investment as well, since the opening to inward foreign direct investment can also serve to increase competition with domestic producers. As we will see below, such investment can also unfairly drive out domestic producers, to the detriment of developing country entrepreneurs and workers.

It was precisely in recognition of the relevance of anti-competitive practices for the direction and volume of international trade flows that the WTO Ministerial in Singapore in December 1996, established a Working Group on “The Interaction between

⁹ Graham (2000, p. 212) makes this point.

Trade and Competition Policy.” The task of the Working Group as set out in the 1996 declaration is:

to study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework.

In the conduct of the working groups, we encourage cooperation...*to ensure that the development agenda is taken fully into account*....It is clearly understood that future negotiations, if any, regarding multilateral disciplines in these areas, will take place only after an explicit consensus decision is taken among WTO Members regarding such negotiations.¹⁰

The Working Group has explored the links between trade and competition policy, debated the merits of a possible agreement and made annual reports on its deliberations:

They will not negotiate new rules or commitments. The ministers made clear that no decision has been reached on whether there will be negotiations in the future, and that any discussions cannot develop into negotiations without a clear consensus decision¹¹

The WTO recently reiterated that the Working Group:

must take full account of developmental needs. It includes technical cooperation and capacity building, on such topics as policy analysis and development, so that developing countries are better placed to evaluate the implications of closer multilateral cooperation for various developmental objectives. Cooperation with other organizations such as the UN Conference on Trade and Development (UNCTAD) is also included.¹²

The 2001 Doha, Qatar declaration of the WTO Ministerial did not formally launch negotiations, but makes it possible for negotiations on an Agreement to begin after the Fifth Ministerial Conference in Mexico in 2003. According to the Doha declaration:

¹⁰ WTO (1999), Annex 1, emphasis added.

¹¹ Quoted from the WTO website, www.WTO.org.

¹² Quoted from the WTO website, www.WTO.org.

negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations [i.e. how the negotiations are to be conducted].¹³

The opacity of the above phrasing has created much confusion over the issue of whether a decision has already been made to begin negotiations or if such a decision will be made in Mexico in 2003. Negotiations, should they occur, would take place in the Trade Negotiations Committee and its subsidiaries.

The Working Group has met regularly and, under the direction of Frederic Jenny, has produced annual reports on the discussions. These discussions reflect the broad agreement that anti-competitive practices are in fact related to trade. But the report of the discussions also shows considerable disagreement as to whether there is a need for an internationally standardized competition policy and, even if there is such a policy, if it should be enforced by the WTO. Even among the industrialized countries, there is a difference of opinion: While the EU and Japan are strongly behind the establishment of a WTO Agreement on competition policy, the US appears to have some reservations.¹⁴

Most important for the issues raised in this book, the Working Group annual reports reveal considerable concern among Working Group members that such an Agreement would limit the ability of developing countries to pursue policies that promote sustainable development, in particular industrial policies and infant industry protection. The importance of this concern cannot be overstated in that such policies have been essential in every case of successful industrialization leading to human development over

¹³ Quoted from the WTO website, www.WTO.org. See Singh (2002) for a summary of the various interpretations of the Doha declaration.

¹⁴ Graham (2000) describes U.S. as opposed, citing reasons why both the US Departments of Justice and Commerce are skeptical. On the other hand, the Global Trade Network (2002) describes the U.S. as a “vigorous supporter” of an international competition policy in the WTO.

the past 300 years.¹⁵ It is crucial that developing countries make these concerns explicit in the Working Group, especially if the issue moves to the Trade Negotiations Committee after the Fifth Ministerial Conference in Mexico in 2003.

The Working Group discussions in the WTO are officially only exploring the idea of putting competition policy on the agenda for negotiation of an Agreement, but it is noteworthy that existing WTO Agreements already comprise elements of competition policy. Anti-dumping actions are aimed specifically at predatory and below-cost pricing behavior that is deemed unfair to domestic producers. Investment regulation under the Agreement on Trade-Related Investment Measures (TRIMS) would possibly need revision if a binding competition policy were to be imposed. The Agreement on Intellectual Property (TRIPS), to the extent that it validates national patent obligations, allows anti-competitive practices: intellectual property protection is a case of restricting contestability based on the logic that such restrictions promote greater innovation over the long run. The General Agreement on Trade in Services (GATS) already accomplishes some of the goal of market access that developed countries seek. Many services in developing countries are provided through state-owned monopolies, and Article VIII of the GATS requires signators to “ensure that the supplier does not abuse its monopoly position to act in a manner which is inconsistent with the national treatment obligations and specific commitments made by the member in respect of the service.”¹⁶ This list shows that the WTO has dealt with competition issues as they relate to specific aspects of trade. From a developing country perspective, other competition issues, such as predation in national anti-dumping actions, could continue to be resolved in this

¹⁵ This point will be revisited in detail below. Evidence on the first wave of industrialization can be found in Chang (2002). The experience of the late industrializers is described in Amsden (2001).

manner if appropriate changes to the anti-dumping rules, some of which are proposed later in this book, are made. It is not clear that a comprehensive, uniform WTO-based Agreement on competition is necessary.

4. Globalized Production and Market Competition

Beyond the conceptual link between trade and competition policy, the WTO agenda is driven by the fact that the practical connection between international trade and competition policy has grown steadily over the past twenty years, in particular as the international movement of goods and services has become more closely tied to the activities of transnational corporations. Since transnational corporations exist only as a result of foreign direct investment, this implies that international trade is increasingly tied to foreign direct investment. That is, as transnational corporations expand their operations and use their foreign operations as the basis for trade, competition policies and their enforcement are of growing consequence for international trade.

Transnational corporations accounted for \$6.1 trillion in trade in goods and services in 1995. Much of international trade in fact takes place within transnational corporations. This is known as intra-firm trade, and it accounts for about 40% of trade for the U.S., and between 25 and 35% of trade of Sweden and Japan.¹⁷

Regarding foreign direct investment, its share of developing country economic activity has risen substantially in the past ten years. Foreign direct investment in 1998 accounted for an average of 10% of gross fixed capital formation in developing countries. Of global foreign direct investment, 24% in 2000 went to developing countries. Especially important in the discussion of competition policy, is that today most foreign

¹⁶ Vautier et al. (1999) p 19.

¹⁷ UNCTAD (2000)

direct investment is the result of mergers or acquisitions. In 2000, 100% of foreign direct investment into the developed countries was due to M&A and 40% of foreign direct investment into the developing countries was M&A activity. Moreover, of this M&A activity in the developing countries, a significant portion was the result of privatization, especially in Latin American and most of all in Eastern Europe.¹⁸

5. Potential Benefits of an International Agreement on Competition Policy in the WTO for Developing Countries

Inward foreign direct investment is now viewed in many policy circles as unambiguously positive for economic development, providing a non-volatile source of capital that requires neither a fixed interest payment nor a repayment of principal at a specified date. Inward foreign direct investment, it is argued, promotes economic growth and development by raising employment and wages, spurring efficient competition, generating technological spillovers that raise productivity, providing export market access, and improving the balance of payments. According to an OECD study, “Like trade, foreign direct investment acts as a powerful spur to competition and innovation, encouraging domestic firms to reduce costs and enhance their competitiveness.” (OECD 1998, p. 47).

But with these potential benefits of inward foreign direct investment come potential risks, including that of reducing socially beneficial domestic competition.¹⁹ While it is possible that inward foreign direct investment could spur competition among domestic firms and move them to a level of productivity consistent with international competition, it is also possible for foreign firms to “crowd out” domestic investment,

¹⁸ UNCTAD (2000).

¹⁹ For a discussion of the benefits and costs of an fdi-led development strategy, see Milberg (1999).

squelching domestic competition, reducing domestic productivity growth, raising domestic prices and diminishing prospects for industrialization. Agosin and Mayer (2000) report that out of 16 countries studied for the effect of inward foreign direct investment on domestic investment, crowding out of domestic investment was found in eight countries, all located in Latin America or sub-Saharan Africa.

More directly related to competition policy is that the boom in cross-border mergers poses a potentially significant threat to competition in developing countries. Mergers can result in greater market power for the transnational corporation affiliates operating in the developing countries which, according to some analysts can create “increased barriers to entry and contestability” (Singh and Dhumale, 1999, p.7).²⁰

There is disagreement among economists over the possible benefits that might accrue to developing countries from a WTO-based competition policy. Perronni and Whalley (1998) estimate a significant positive effect, up to 6% of developing country national income. The gains could come from a reduction of predatory anti-dumping actions against developing countries, less price gouging on imported inputs and increased domestic competition. Hoekman and Lloyd (1999), on the other hand, are more skeptical about the effectiveness of a WTO-based Agreement to effectively reduce anti-competitive merger activity in developing countries.²¹

6. Potential Costs of an International Agreement on Competition Policy in the WTO for Developing Countries

²⁰ Hoekman and Holmes (1999) also argue that the presence of international mergers which create an anti-competitive market are one important reason for developing countries to pursue an international competition policy in the WTO. The other is the case where anti-competitive export cartels are left unrestrained because it is not in the interest of the home country of the cartel.

²¹ This point is also made in the 2001 report of the WTO Working Group, par. 58.

The previous section detailed some reasons why expanded TNC activity in developing countries might lead these countries to support the adoption of an international competition policy in the WTO. Concern with static inefficiency that may result from anti-competitive practices of transnational corporations is an important reason for developing countries to have a competition law in place. Regulating this anti-competitive threat could be handled with a domestic policy, but an international policy would presumably give countries some influence over purely foreign mergers and acquisitions.

But there are reasons why an internationally standardized and WTO-enforced competition policy might not serve the interests of economic development. Since each country has unique considerations with respect to sectoral strength, national institutions of labor relations and social policy, and place in the world economy, it is hard to imagine that a uniform competition policy could serve the economic development strategies of all developing country members of the WTO. Most of these unique features relate to the underlying need of developing country for room to maneuver economically and politically to establish dynamic, rather than static, efficiency. Dynamic efficiency—the maximization of long-run productivity growth—is admittedly a difficult objective, as it relates to skill and technology attainment as well as to good governance. We focus here on four issues that render the notion of an internationally standardized and WTO-enforced competition policy potentially detrimental for sustainable human development: the optimum degree of competition, state-industry relations, inter-firm cooperation, and the importance of upstream linkages for international competitiveness.

(a) The optimum (not maximum) degree of competition

More competition is not always better, especially when the objective is technological progress, capital accumulation, economic growth and sustainable development. Economists have learned this point from theory and history. Joseph Schumpeter (1942) wrote most insightfully about the benefits of some degree of market power for the generation of new technologies and ultimately for competitive success. Technological innovation hinges on innovative effort, and such effort requires resources. In a perfectly competitive environment, firms break even by powerlessly charging the “going price”. To charge a higher price is to risk collapse—thus the economic term “ruinous competition.” According to Singh and Dhumale (1999) p. 12, “unfettered competition may lead to price wars and ruinous rivalry and therefore may be inimical to future investment: from this perspective too much competition can be as harmful as too little.” Rather than pursue a maximum degree of competition, countries should seek the *optimum* degree, that is that amount of rivalry among firms that still generates profits such that firms are able to invest in innovation and other non-price dimensions of success. Oligopoly firms are able to price at a markup over costs and this markup can be determined, in part, by the investment needs of the firm, including those related to technological innovation. In this environment, firms compete not over price, but over other issues, including product quality, marketing, reliability of supply and even after-sales service. Such non-price competition has been found in numerous studies to be more important than price competition in the determination of international trade flows.²²

(b) State-industry relations

²² See Fagerberg (1996) for a review of empirical studies of the relative importance of non-price competition in international trade. Note that the rise of international outsourcing has reintroduced the ruinous competition from which now industrialized capitalist countries escaped in the late 1800s. This has brought an expansion of sweatshop labour and informal employment. See Balakrishnan, (2002).

Industrial policy was by most accounts highly successful in the case of the East Asian growth miracles, including Japan, the Republic of Korea and Taiwan. In each case, the state recognized that largeness of firms in itself was an advantage—for capturing the economies of scale and scope necessary to launch a successful export drive.

Competition was not encouraged for its own sake. Instead, the state used selective industrial policy, including export subsidies, import and foreign investment controls, production targets, low-interest credit and technical support, in order to generate the long-run efficiency defined above.²³ In South Korea as well as in the case of Japan mentioned above, oligopoly profits were deemed useful for continued growth of investment, production, employment, technology and international competitiveness. Moreover, in each of these cases, and in other recent cases of relatively successful development strategies (e.g. in Mexico and Chile) countries implemented a variety of industrial policies. A competition policy that did not allow this type of state-industry relation would not be in the interest of developing countries and would never have been acceptable to developed countries when they were in the process of economic development.

(c) Inter-firm cooperation

Economic geographers have found that, especially in specialized and middle- and high-tech industries, competitive success tends to occur with a geographic concentration of firms.²⁴ Classic cases are the automobile industry in Detroit, USA, the ceramic tile industry in northern Italy, and the semiconductor industry in northern California. The reasons for such “agglomeration effects” are no doubt many, but one that has been

²³ See Amsden (1989).

²⁴ See Krugman (1991).

identified by management experts is the sharing among firms of technical, management and marketing know-how. Obviously there are limits to such inter-firm cooperation since the firms are separate, profit-seeking entities. But the firms are also competing internationally against foreign producers. Trade associations and the movement of personnel across firms can promote information sharing. It can also happen in more informal ways. Some have argued that such production networks are central to success in a new dynamic of competition.²⁵ The point is that the synergies required in this environment are delicate and difficult to establish, and could be restricted by an international standard competition policy that failed to take into account particular niche market considerations by developing country exporters.

(d) Upward linkages

The import substitution strategies pursued by developing countries in the 1960s and 1970s were aimed at building capacity for production of basic industrial products like steel and agroindustry, creating what were termed “backward linkages.” Often such a strategy required tariffs or other restrictions on imports. Today, import substitution has largely given way to efforts toward export-led growth. And exports are often not final products, but intermediate goods that are part of a global production network. The goal of backward linkages has given way to the desire to compete with other potential suppliers in the production of intermediate goods required in the production of final goods which are assembled in another country for sale in yet another country. Despite the role of many developing countries in globalized production networks, the conditions needed for a country to move up the “value chain”—that is to move into the production of goods with higher value added-- has been associated with the existence of forward

²⁵ See Best (1991).

linkages, that is a domestic market for the goods produced.²⁶ Such “learning by selling,” presumes two conditions. First, the existence of one or (preferably more) domestic producers of a good. Second, domestic consumers must have the income necessary to establish adequate demand for the good. Porter (1990) documents the importance of domestic capacity and sales as a prerequisite for international competitiveness. Amsden (2001) shows that the development of a large group of late industrializing countries, including China, India, South Korea, Malaysia, Taiwan, Thailand, Argentina, Brazil, Chile, Mexico and Turkey, hinged in part on the preexistence of considerable domestic manufacturing capacity that allowed learning from domestic competition. The development of forward linkages would be helped by a domestic competition policy. An international policy, however, is likely to be insufficiently flexible to allow countries to promote the upward linkages necessary for international competition.

7. Towards a Pro-Active Strategy on Competition Policy for Developing Countries

The preceding discussion of the benefits and costs of an internationally uniform and WTO-enforced competition policy for developing countries implies that developing countries face a difficult task. While seeking room to capture dynamic efficiency by establishing the types of activities discussed above (optimum competition, industrial policy, inter-firm cooperation and forward linkages), developing countries should also welcome protection from the anti-competitive effects that may come with foreign direct investment.

Unfortunately, the developed countries do not seek an international agreement on competition policy in order to maximize the net benefit for developing countries. The developed countries, naturally, have their own interest in establishing international

²⁶ See Fagerberg (1995) for a review.

competition policy. And these goals are likely to be in conflict with the long-term economic growth strategies of developing countries. The developed countries support a WTO Agreement on Trade and Competition largely for reasons of market access, with the aim of expanding net exports and especially profits on foreign direct investment. The GATS has provided some expansion of market access in public utilities, telecommunications and financial services, but a WTO-based competition code would further these market access interests further without necessarily aiding economic development. According to Graham (2000, p. 218):

U.S. telecommunications services providers are certainly in favor of the ending of government policies that grant monopoly rights in the provision of telecommunications services to local providers. Such rights have long been insurmountable barriers to market access. Although many nations are now in the process of ending or substantially modifying state-sanctioned telecommunications monopolies, these markets nevertheless will remain highly regulated and probably not very contestable. Further market opening measures by the WTO in this domain are welcomed by providers that stand to gain market access.

The E.U. has been known to use competition policy for similar reasons. It has been noted that the resistance to the Boeing-McDonnell Douglas merger by E.U. competition authorities was motivated largely by a desire to protect long-run market share of Airbus, the European consortium enterprise that competes globally in the commercial aircraft market. In each of these cases, the goals of the developed countries are contrary to the interests of the developing countries.

An exception is the apparent Japanese interest in substituting a WTO-based Trade and Competition Agreement for the existing panoply of antidumping practices.²⁷ This

²⁷ Graham (2000), p. 218. Graham (2000, p. 219) notes that this risk to the antidumping regime is precisely the reason the U.S. Department of Commerce opposes any competition policy agreement in the WTO.

could certainly serve the interests of developing countries, given they are more often targets of such action than the instigators of it.²⁸

Developing countries should continue to build their own domestic competition policies, both to regulate domestic monopoly and to control the possible anti-competitive behavior of transnational corporations. These same countries should enter discussions of a WTO-based international competition policy with much caution, as the potential costs of such an agreement are likely to outweigh the potential benefits. The benefits of a WTO-based Agreement would possibly be in the ability to temper the anti-competitive effects of transnational affiliates. The costs will result from likely restrictions on countries' freedom to run targeted industrial policies, and to nurture domestic producers as they seek to move up the value chain of global production. There is a risk that negotiations will lead to an Agreement that will mainly serve the developed countries who want market access, in particular when where there are large private or state enterprises controlling an industry. According to Hoekman and Holmes (1999), a WTO-based agreement is unlikely to be helpful since,

the agenda is likely to be dominated by market access issues more than international antitrust...[T]he WTO process is driven by export interests (market access), not national welfare considerations, and there is no assurance that the rules that will be proposed or agreed will be welfare enhancing. (Hoekman and Lloyd, 1999, p. 16)

The developing country experience indicates that a WTO-enforced Agreement on competition policy will be in the interest of developing countries only if (a) it allows exclusion for the least developed countries; (b) it allows for a variety of domestic competition policy regimes like the developed countries themselves maintained over the past 50 years; (c) it allows adequate flexibility with respect to sectoral coverage and

²⁸ See Stiglitz (2000) on this point.

enforcement. Because such contingency and flexibility is almost impossible to negotiate and enforce at the level of the WTO, developing countries must be very careful not to sacrifice the tools for the attainment of dynamic efficiency at the cost of furthering the goal of static or allocative efficiency.

This section has argued that the net benefits of a WTO-based competition policy are likely to be negative for developing countries. What, then, might developing countries do? A pro-active stance by developing countries on competition policy could contain four elements:

- (1) For those countries who do not have a domestic competition policy: begin to develop one. Developing countries should formulate domestic competition laws to thwart anti-competitive practices detrimental to long-term development, whether those unfair practices come from foreign or domestic enterprise. The policy should encourage the development of infant industries, public utilities, services and technology, managerial and marketing capacity generally, and be flexible in terms of the sectoral application of competition policy.
- (2) Coordinate competition policy as much as possible with foreign countries. The European Union has done this, but extensive information sharing and even policy harmonization has also begun in Mercusor and APEC. The APEC agreement is based on four core principles: non-discrimination, comprehensiveness, transparency and accountability—a good starting point for any coordinated agreement.²⁹

²⁹ See (Vautier et al., 1999) for an overview.

- (3) Actively register both economic and broader human development concerns about any proposed competition policy agenda at the WTO Ministerial in Mexico in 2003. Silence or acquiescence from developing countries at the Mexico Ministerial discussion would not accurately reflect the tenor of the discussions in the Working Group on Trade and Competition Policy.
- (4) Develop very specific proposals for the reform of existing WTO Agreements in order to address two key issues related to static efficiency-- predatory anti-dumping actions and anti-competitive effects of cross-border mergers. Some proposals on the former are elaborated later in this book.

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