Competition Policy in the WTO and FTAA:
A Trojan Horse for International Trade Negotiations?

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Summary

When World Trade Organization Ministers gather in Cancun in September 2003, they will decide whether to proceed with full negotiations on competition policy (one of four "Singapore issues") as part of the Doha Round. Competition policy is also a negotiating area in the proposed Free Trade Area of the Americas. This paper provides an overview of competition policy, which has a long history at the national level in industrialized countries, and the elevation of competition policy to the international level as part of trade negotiations.

At first glace, competition policy appears to be an uncontroversial contribution to good governance. Competition policy has historically been concerned with reining in the excessive market power of large corporations as manifested in cartels, restrictive business practices, and abuses of market power. Whereas international trade agreements to date have focused on restricting the capabilities of governments, competition policy could be seen as an important tool for regulating the private sector at the international level. This is of particular interest given a wave of cross-border mergers and acquisitions in the 1990s.

In the context of globalization, however, competition policy is intimately connected with the policy pillars of liberalization, deregulation and privatization, known as the "Washington consensus" or neoliberalism. The push for competition policy as part of international trade agreements has come from rich countries. It is seen as a means to ensure the market access of their large corporations. It is also viewed as facilitating the process of cross-border M&As, which currently must negotiate separate regulatory hurdles in different countries.

There are two broad concerns that arise in the transition from competition policy from the national to the international level. The first is that the scope of competition policy will be extended to public sector enterprises rather than the typical private sector focus at the national level. Both the WTO and the NAFTA already contain competition provisions designed to limit the capabilities of public enterprises. These are being invoked by the US to challenge Canada Post and the Canadian Wheat Board. If new competition disciplines are equally applicable to the public sector, they may be used to further attack and undermine public sector monopolies (e.g. public health insurance) and state enterprises (e.g. Crown corporations).

Second, competition policy may further restrict the capacity of governments to engage in public interest regulation and industrial policies. New provisions may be used to challenge regulatory approaches to protect the environment, to restrict foreign ownership in certain sectors, to promote local content, or to foster the development of "national champions." New competition provisions would undercut these policy tools to the advantage of large foreign corporations seeking better market access. This would be highly problematic for poor Southern countries or for smaller industrialized countries like Canada.

Neither the FTAA or WTO negotiations are considering the creation of a new international competition authority. Rather, they seek to harmonize the scope of what national or regional competition authorities would be obliged to sanction. Proponents of multilateral competition policy view these negotiations strategically as incremental steps towards a more complete agreement in the future.

The Cancun WTO Ministerial will be a key decision point, as WTO Members must decide

on whether to proceed with competition policy as a full-fledged negotiating item. Many Southern countries do not support competition policy negotiations, and to the extent that they do, are seeking broad provisions of "special and differential treatment." Without an explicit consensus, competition policy will advance no further than the discussions to date.

The key *demandeur* of competition policy at the WTO, the EU, is seeking the establishment of core principles that must be adhered to by competition authorities. The most controversial is a proposed principle of "non-discrimination," an innocuous-sounding term that in practice could prevent countries from shielding domestic companies from the actions of large global companies, as well as inhibit policies to spur the growth of domestic companies.

Less controversial is a proposed ban on "hard core" cartels (those that engage in international price-fixing, bid-rigging and market sharing arrangements). Such arrangements do harm poorer countries. However, there is no proposed ban on export cartels that have long been used by rich countries to extract profits at the expense of poorer countries.

The draft FTAA text on competition policy contains a number of alarming provisions that point to how far-reaching competition policy can be. Provisions are likely to be equally applied to both public and private sectors, which would place greater restrictions on public enterprises. The draft also contains new language that makes it a vehicle for pushing deregulation by ensuring that public interest regulations would have to be "pro-competitive" and not impair access to markets or the "conditions of competition."

The draft FTAA chapter is heavily bracketed (many areas of disagreement), and will be revised over time. There may not be an FTAA, and if there is, the competition policy chapter may be dropped in the push to complete negotiations. Nonetheless, there is much in this chapter for civil society actors to keep abreast of.

Ultimately, there is a danger that the negotiations promote an unattainable textbook caricature of competitive markets that is biased against alternative policy approaches. Competition in many instances is not a substitute for strong domestic regulation in the public interest, or for the utilization of public enterprises as industrial and social alternatives. The history of competitive markets (or "real-world capitalism") suggests a stronger role for the public sector than permitted when competition is prioritized.

As a result, competition policy can be viewed as a "Trojan horse" in current international trade negotiations: it looks appealing, but once inside could turn out to be a means of letting the invaders in. At the national level, competition policy is an important element of the architecture of corporate governance. But countries need to be able to determine for themselves whether they need a national competition policy, and if so, what type of competition policy is appropriate. The legitimate concern of Southern countries about the growing market dominance of large global companies is not addressed in either the WTO and FTAA negotiations. If anything, the competition policy negotiations further the interests of global companies.

Ultimately, the global economy needs a multilateral body to address some of the really substantive issues with regard to the dominance of global corporations, and global mergers and acquisitions-something that is not on the table in either the FTAA or WTO negotiations. In the current political climate, however, such a formulation is wishful thinking, although the recent spate of corporate scandals in the US could begin to roll back a tide that has been obsessed with restricting the public in favour of the private.

In the meantime, there is reason for skepticism about the current international negotiations. Given the realpolitik of international trade negotiations, the pitfalls loom large while the prospective gains seem remote.

1. Introduction

Competition policy is a new area of international trade negotiations, though one with a long history in national contexts. Negotiations on competition policy have been included in the proposed Free Trade Area of the Americas (FTAA), scheduled to be wrapped up by January 1, 2005. Competition policy is also one of the "Singapore Issues" included in Doha Round of the World Trade Organization, launched in November 2001.

This paper provides an overview of competition policy and its interaction with international trade rules, and what is at stake in the WTO and FTAA negotiations on competition policy. At the Cancun Ministerial in September 2003, WTO members will decide by consensus whether competition policy will become a full-fledged negotiating item on the Doha agenda. This paper seeks, first, to inform civil society actors and developing country governments so that they can influence this critical decision and other international trade negotiations on competition policy. It is also intended to enable Canadians to influence their own government to better defend Canadians' significant interests in this arena.

At first glace, competition policy appears to be an uncontroversial contribution to good governance. Competition policy has historically been concerned with reining in the excessive market power of large corporations as manifested in cartels, restrictive business practices, and abuses of market power. Whereas international trade agreements to date have focused on restricting the capabilities of governments, competition policy could be seen as an important tool for regulating the private sector at the international level. This is of particular interest, given a wave of cross-border mergers and acquisitions in the 1990s.

The nature of the negotiations on competition policy, however, suggests cause for concern. Transported to the international level, competition policy occupies the same ideological terrain of liberalization, privatization, and deregulation that is so problematic in modern international trade agreements. Competition provisions in the WTO are likely to reinforce corporate rights and market access themes embodied in the General Agreement on Trade in Services (GATS), the Agreement on Trade-related Investment Measures (TRIMs), and other parts of the WTO Agreements. In other words, competition policy could potentially become yet another tool for prying open markets—whether the markets of developing countries, activities provided by the public sector or state enterprises, or specific industries given special treatment for public policy reasons.

This type of framework for international competition policy has some serious implications. There are a number of reasons why competition policy rules in the WTO or FTAA should be resisted by Canadians and developing countries:

- they will be used to attack and undermine public monopolies (e.g., public health insurance) and state enterprises (e.g., Canada Post or the Canadian Wheat Board);
- they limit the scope for national industrial policies, particularly in the South;
- they threaten regulatory approaches used to promote local content (e.g., in cultural industries) and to restrict foreign ownership (e.g., in the telecommunications industry);
- they reinforce other proposals that public interest regulation not "burden" corporate interests and be "pro-competitive"; and

- they will be administratively costly and difficult for Southern countries, yet fail to address their most serious concerns, such as the market power wielded by transnational corporations.

Ultimately, there is a danger that the negotiations promote an unattainable textbook caricature of competitive markets that is biased against alternative policy approaches. Competition in many instances is not a substitute for strong domestic regulation in the public interest, or for the utilization of public enterprises as industrial and social alternatives. The history of competitive markets (or "real-world capitalism") suggests a stronger role for the public sector than permitted when competition is prioritized.

As a result, competition policy can be viewed as a "Trojan horse" in current international trade negotiations: it looks appealing, but once inside could turn out to be a means of letting the invaders in. Thus, it is important for citizens and civil society actors to get a handle on what competition policy is, and what its promise and pitfalls are.

The next section takes a critical look at the rhetoric and reality of competition, as a background to competition policy, then sets out the issues involved in competition policy's transition to the international level. Section 3 looks at competition policy in the WTO with a review of what is on the table for the current Doha Round. Section 4 looks at competition policy provisions in the NAFTA, then provides an analysis of the draft FTAA text on competition policy. The final section summarizes the findings and argues against the inclusion of competition policy in international trade agreements. Two appendices are also provided to give interested readers more information on national competition regimes in Canada, the U.S., the European Community and the South (Appendix 1) and on international cooperation agreements related to competition policy (Appendix 2).

2. Bait and Switch: What's at stake in competition policy negotiations

Competition policy emerged more than a century ago in response to concerns about market power, and a range of abusive practices by dominant businesses. It remains an important policy tool for governments. This terrain is shifting, however, in the face of globalization. Deregulation and trade liberalization are increasingly seen as the means by which competition will be ensured. The push to harmonize global rules on competition seeks to further entrench this perspective.

This section reviews the issues involved in competition policy discussions at the international level, as a prelude to looking at the specifics of the FTAA and the WTO negotiations in the next sections. First, we look at what competition policy is and how it has found its way onto the global negotiating table.

What is competition policy?

Competition policy is a subject area that is more often the terrain of government bureaucrats and corporate lawyers than the general public. At heart, it embodies a simple, but far-reaching, premise: competition is good. However, competition policy means different things to different people. Discussions about competition *policy* in international trade agreements are very different from the traditional notions of competition *law* in national economic contexts.

The first competition laws (or anti-trust laws) were pioneered by Canada (1889) and the United States (1890) in response to concerns about the excessive market power—and the resulting economic and political influence—obtained by a few exceedingly large conglomerates. These laws emerged during a period of unprecedented corporate merger and acquisition activity and the formation of "trusts" (a 19th century term for "cartels"). These laws were deemed necessary to protect a growing capitalism from its own worst excesses.

Today, many national governments, through their competition authorities, enforce laws and administrative rules to maintain fair competition in the marketplace. These provisions apply to the private sector, relating to three broad areas (*see Box on next page for a glossary of terms*):

- collusive agreements between companies (including cartels), that involve anti-competitive practices such as big-rigging, raising prices by limiting production, and splitting up markets;
- abuse of dominant market position, where a leading company uses its advantage to drive out competitors through practices such as predatory pricing, limiting access to essential facilities, or tied selling; and
- regulation of mergers to prevent excessive market dominance that affects other companies or consumers.

Each of these areas calls for a legitimate role of the state in the regulation of the marketplace. They are by no means the only tools available, as states may opt for less competition and more regulation as an alternative strategy, or to keep a certain sector within the domain of the public sector. The scope of competition policy ultimately reflects political decisions about how to organize and regulate economies, and this will differ depending on size of economy, level of development, the specific sector, and other particular circumstances.

A competition policy glossary

People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.

—Adam Smith in *The Wealth of Nations*

Competition policy covers a number of areas. Below is a list of common practices and formations that are of concern from a competition policy perspective. These practices may or may not be permitted depending on the jurisdiction.

Monopoly: A situation where one company is the only supplier to a market. Unless regulated, monopolies are free to raise prices, reduce production and take other measures to maximize profits.

Oligopoly: A situation where only a handful of companies supply a market. They may or may not collaborate to attain the equivalent of monopoly profits.

Cartel: A situation where a number of companies cooperate to control a market in a manner similar to the way a monopoly would. Members of a cartel can agree to fix prices, split markets along geographic lines or by market segment, and engage in bid-rigging. The term "hardcore cartels" is often used to refer to illegal international cartels as opposed to export or import cartels that are legal in some jurisdictions.

Mergers and acquisitions: A takeover of one company by another, or a merger of two or more companies. Such actions can be "horizontal," within the same industry, or "vertical," involving upstream or downstream activities.

Abuse of dominant market position: This includes a variety of anti-competitive practices to entrench the market dominance of a company, such as predatory pricing to keep new entrants out or drive them out of business, pre-emptive control or purchase of key input sources or distribution facilities.

Price fixing: The act of a cartel to coordinate prices in the marketplace, rather than having prices determined by competitive pressures.

Bid-rigging or collusive tendering: This involves attempts by a cartel to coordinate the submission of bids for a contract in a manner that a specific, previously-determined member of the cartel makes the most attractive bid and therefore wins.

Resale price maintenance: A situation where the manufacturer fixes the price at which the distributor must sell, rather than allowing the distributor to set its own margin.

Refusal to deal: This involves dominant suppliers that refuse to sell their product to a potential purchaser, typically unless the purchaser agrees to a number of conditions (such as price maintenance).

Exclusive dealing: A situation where a producer gives a distributor a local or regional monopoly on the product for sale.

Differential pricing: A situation where a dominant company sets different prices in different markets in order to extract the maximum prices from consumers.

Tied selling: A situation where a producer requires the distributor to purchase more than what it wants (i.e., being forced to buy certain software bundled with the purchase of a computer).

Predatory pricing: Where a dominant supplier or suppliers sell their product at a very large discount or below cost in order to drive a competitor out of business. Alternatively, a supplier could be selling intermediate goods to a competitor at excessively high prices to achieve the same end.

Transfer pricing: This involves the setting of prices for goods sold between a parent company and a subsidiary, usually in order to avoid taxes on profits in higher tax jurisdictions, while paying them in low (or no) tax jurisdictions.

Source: Based on UNCTAD 1996.

Competition laws are one aspect of corporate governance frameworks by which the state regulates private sector activity. Because large companies can take actions that can have negative—even if unintended—consequences for the economy as a whole (such as the failure of a bank) or that impact on other economic actors and consumers (such as the abuse of a monopoly position), there is a need for many different tools to regulate the behaviour of corporations. (Chang 2002) Competition alone is not sufficient to make these protections, nor is the promotion of competition through competition laws and authorities.

Competition laws exist at the national level, with a few regional exceptions, such as the European Union and the Caribbean Community. Appendix 1 provides an overview of competition regimes in Canada, the U.S., the E.U., and the South. Competition laws are a subset of competition policy, which in the broadest conception includes all forms of government policy, laws and institutions that affect competition in markets. Thus, competition policy in the context of globalization encompasses neoliberal policies such as trade liberalization, loosening restrictions on foreign investment, deregulation, and privatization of state enterprises.[1] These measures expose domestic producers to foreign competition, which, in theory, increases competition and leads to lower prices for consumers, greater efficiency, and stronger economic growth.

Competition policy goes global

This juncture of competition policy, globalization and international trade agreements is riddled with pitfalls. Southern countries and industrialized countries alike need to be cautious about competition policy negotiations, and should not assume that the issues under the purview of national competition laws are merely being transported to the international level. While international negotiations on competition policy hold out the promise of disciplining abusive practices by increasingly consolidated transnational companies, this promise is not likely to be realized amid the *realpolitik* of the WTO or FTAA.

To the extent that large transnational companies wielding global market power can be disciplined, it is by the actions of large powerful state actors like the U.S. or the E.U. And in these places, the architecture of competition laws is already in place, although there are ebbs and flows to investigation and enforcement, depending on the political leanings of a given administration. For example, the Bush administration's decision to drop efforts inherited from the Clinton administration to break up Microsoft suggests a shift to a more *laissez-faire* approach. Heaps of international cooperation agreements among the principal competition authorities have been negotiated and are in place, thereby facilitating information-sharing, coordination of investigations, and merger reviews, if mutually desirable. Thus, there are few incremental gains to be had on this front for those concerned about growing global corporate power.

The more likely scenario is that competition policy rules will further reinforce the rights of traders and investors at the expense of governments and citizens. International trade agreements have steadily eroded the capacity for democratic decision-making to implement and enforce public interest regulations, to provide public services, and to place conditions and restrictions on foreign investment. Competition policy at the interna-

[1] At the international level, competition policy also interfaces with anti-dumping policies and intellectual property rights. However, these aspects of competition policy are not on the table for the competition discussions taking place at the international level, although they are being addressed to a limited extent at other negotiating tables. We do not consider them in this paper.

tional level would add another layer of corporate rights that privilege market access, while limiting the policy options available to governments.

One reason why competition policy is being put on the table is the perception that formal commitments to market access in trade agreements are hindered by practices by governments and businesses inside the border. As emphasized by the World Bank, trade liberalization *per se* is not sufficient to ensure competition. After liberalization of government measures, the next bottlenecks to market access are domestic industrial arrangements, many of which are deemed to be the legacy of socialist governments or wrong-headed attempts to protect the domestic market. (World Bank 2002)

The rhetoric of competition can serve as a smokescreen for the real economic interests that stand to benefit from specific types of changes. For example, the U.S. has long wanted to ensure better access to the Japanese market, and even launched an unsuccessful WTO challenge to this end. Competition provisions will be supported by the U.S. or E.U. to the extent that they facilitate market access for their corporations beyond existing levels. This is tied to investment liberalization, as constraints on foreign investors, by their very nature, limit market access and favour domestic corporations. As Vautier et al. (2002) write: "A contestable market spanning more than one country requires both freedom of international trade and freedom of movement for foreign direct investment and national treatment for foreign investors in the host country."(p. 4)

Another impetus for competition policy is due to the increasing cross-border movements of goods, services, and investments by transnational corporations (TNCs). There is a desire to harmonize procedures in the wake of a 1990s boom in cross-border mergers and acquisitions (M&As). From a 1992 trough of $79 billion, the value of cross-border M&As grew to spectacular heights over the 1990s, and hit a peak of $1.1 trillion in 2000. The value of these M&As in 2000 represented 77% of total FDI inflows of $1.5 trillion. (UNCTAD 2002a: tables B1 and B7) Companies have found M&As to be an effective route to quickly gaining market share in overseas markets, without the start-up costs involved with setting up facilities and distribution networks. M&As have been viewed by transnational corporations as the primary means of expanding global networks of production. (Evenett, Lehmann and Steil 2000)

But prospective global giants have found the regulatory hurdles emanating from different competition regimes annoying, due to their compliance costs and time requirements. Such concerns came to a head in July 2001, when the E.U. blocked a proposed merger between two U.S. companies, General Electric and Honeywell. The deal was already approved in the U.S., and would have been the largest merger ever between two industrial companies. The E.U. objected to the merger on the grounds that the combined entity would have anti-competitive implications for the aerospace products and industrial systems markets. Writing for the European Commission, Giotakos et al (2001) note that "the combination of the leading aircraft engine maker with the leading avionics/non-avionics manufacturer would create/strengthen a dominant position in various relevant markets in which the merging companies are active."

Such games of international brinkmanship are rare, and generally reserved for the most powerful state players. Nonetheless, the frequency and size of mega-mergers, and the potential for major frictions, served to focus attention on developing more coherent competition policy rules and procedures at the international level. This has become a hot topic for the International Competition Network, a loose network of officials from national competition authorities, which recently released a report on the "costs and burdens of multi-jurisdictional merger review." (ICN 2002)

One interim response is for more and better co-operation agreements among competition authorities as a step towards a more harmonized multilateral regime. A summary of some international cooperation agreements is provided in Appendix 2.

Competition policy and the public sector

Despite the admonitions of free market fundamentalists, there is a great deal of "interference" by governments that affects competition in the market. Fundamentally, the state creates the conditions within with businesses act through all manner of laws and regulations to protect the public interest.

In addition, a wide variety of services are provided either directly through the public sector, or under the auspices of non-profit organizations or state enterprises. These public services account for 15-25% of the economies of OECD countries (OECD in Figures 2002) and in the majority of cases they are publicly-sanctioned monopolies.

Publicly-delivered services and state enterprises (such as Crown corporations) have historically been created and maintained for a number of purposes:

- where social and environmental objectives, such as universal access and minimum quality standards, are more important than market prerogatives;
- where service delivery is more efficient through a public monopoly, as is the case for health insurance, and public works, such as sewage disposal and water delivery;
- where price stability and long-run planning are essential, as is the case in electricity generation, transmission and delivery; and
- where state interventions are desirable to bolster the market power and incomes of small producers, as with the Canadian Wheat Board and agricultural marketing boards.

While policy fashion in recent decades has moved to privatize public services and state enterprises, or to open them up to competition, they still maintain a strong presence and firm public support.

Moreover, the record of public services and state enterprises in terms of "efficiency" looks quite good in the wake of attempts to impose competitive models in areas that traditionally were treated as "natural monopolies." Pro-competitive re-regulation has been the mantra in industries such as electricity, telecommunications, and water. Such efforts have a spotty track record, and in some instances have led to massive problems.

In telecommunications, for example, competition amid the bubble economy of the 1990s led to huge over-investment in fibre-optic infrastructure, based on wildly optimistic assumptions about growth prospects. The ensuing crash hit new providers (like Vancouver's 360 Networks, which filed for bankruptcy protection) and equipment suppliers (like Nortel, which saw its stock value plummet and has had to lay off thousands of workers). (For a colourful account, see Kalba 2002)

In electricity, the results have been disastrous. Higher prices for consumers, both residential and industrial, has been the result of privatization and pro-competitive restructuring. The Ontario government recently abandoned its move to market-based pricing after prices jumped substantially. The Alberta government paid consumers millions of their own tax dollars prior to an election to shield itself from criticism about skyrocketing post-deregulation prices. In the most egregious cases, market manipulation has been the result, as in the California energy crisis of 2000-01. Through a series of trading schemes, with colourful titles like "Get Shorty" and "Death Star", companies like Enron (prior to its spectacular

collapse after accounting frauds came to light) were able to manipulate the electricity market, drive up prices for consumers, and garner the company billions of dollars in revenues. (King et al 2002)

Imposing a competitive model is not appropriate in certain areas. There is a great danger that an international competition policy regime would aim to increase competition for its own sake without consideration of the democratic choices made by governments to defend and promote alternative approaches. At the very least, attempts will be made to blunt the effectiveness of state enterprises as alternatives to capitalist ones.

State trading enterprises are also likely to be attacked under global competition rules. The recent decision by the U.S. to challenge the Canadian Wheat Board under WTO rules highlights such concerns. The CWB is a single-desk monopoly that purchases wheat and barley from Western Canadian farmers for sale on international markets. The government essentially uses the CWB to create market power (read: higher incomes) for farmers who would otherwise be at the mercy of global agribusiness. In this sense, the CWB is a counterweight to the market power of a handful of dominant corporations in the agricultural sector, and is an alternative to the lavish subsidies provided to farmers in the U.S. and the E.U. (Murphy 2002) Competition policy at the international level could sharpen the U.S. attack by providing new legal bases of challenge in the name of open competition.

Agriculture in general is a special economic area, as it is about the provision of a basic necessity of life, with the vast bulk of production allocated to domestic markets. Various forms of collective action, such as cooperatives, marketing boards, and state trading enterprises, have been devised to better the lot of farmers—the weakest link in the supply chain—most of which would go against the spirit of competition policy. Yet, most international discussions about agricultural trade rules have focused on restricting farm policy and governments, not the transnational companies that exercise enormous market power from the plantation to the supermarket.

Government actions on a number of other fronts would also conflict with competition rules. These include:

- *Restrictions on foreign investment*. Global competition policy rules would reinforce investment liberalization efforts in other parts of the "trade" agenda. Since market access in many sectors entails freedoms to invest and acquire domestic companies, rules that prevent or restrict such actions would be deemed "anti-competitive."
- *Ownership restrictions*. In key areas of the economy, a country might find it in its interest to keep out or restrict foreign competitors. Telecommunications, energy, banking, and other vital services, even though run through the private sector, should not be forced open to foreign competition, in the name of market access.
- *Domestic or local content rules*. In Canada, for example, content rules support the development of a domestic cultural industry distinct from the dominant entertainment industry of the U.S. In markets dominated by U.S. players, there may not seem to be a competition issue based on a traditional competition test, but the problem is the crowding out Canadian voices. From a competition policy perspective, the presence of Canadian content and "shelf-space" requirements could be construed as anti-competitive vis-à-vis U.S. industry.

Because competition policy is so expansive in its scope, it clashes with attempts by governments to increase standards of living by carving out sectors of the economy from market competition, and putting in place public interest regulations

that govern markets when there is competition. Protecting such widespread heresies against the market at the negotiating table would require sweeping exclusions and exemptions. And, even if such exceptions could initially be attained, they would, as in other international trade treaties, face continual pressure to be eliminated over time. (Sinclair and Grieshaber-Otto 2002)

Concerns for Southern countries

Even in more traditional areas of competition law that address concerns with the private sector, there are grounds for caution about a multilateral competition regime, particularly for countries of the South. As Stewart (2001:14) notes:

> The distribution of benefits from a strong competition regime becomes more complex at the regional or international levels. The effects for weaker economies in the more widely defined market can be compared to that for weaker firms in the national economy, in that most competitive firms, usually powerful MNCs, would win large shares of the local market, weeding out less efficient local firms. But the emergence of entrepreneurs, increased investment, and more production may more likely take place in the more powerful economies.

Southern countries have increasingly been pushed or coerced by Northern countries into adopting binding international standards with regard to commerce, trade and investment. WTO rules already significantly limit the scope for industrial policies in Southern countries, and the addition of competition policy rules that favour the North would further undermine the capabilities that remain. There is a danger that international rules on competition policy will not take adequate account of the different needs and levels of development in Southern countries. (see Khor 2002 and Das 2002) That is, that the model, once again, could become a one-size-fits-all prescription that does not provide the requisite flexibility Southern countries need to steer their own development.

For instance, export cartels have been used historically (and to some extent, to this day) by industrialized countries to gain benefits for their producers. Cartels were legal in Britain up to the end of the Second World War, and were actively encouraged in Germany's developmental phase. (Chang 2002) It would be unreasonable for Southern countries to give up similar tools, at a time when they are already severely handicapped in trade relations with the North.

A recent example is the attempt by coffee exporting countries to establish a coffee bean cartel to capture better prices on world markets by controlling supply. The cartel collapsed in early-2002 amid failed attempts to prevent coffee bean prices from falling to 30-year lows. (BBC 2001) Nonetheless, despite the failure of the cartel, such action is a legitimate response by producers to world market conditions in order to increase their incomes, given that most of the revenue from high retail prices for coffee goes to Northern retailers, traders and distributors.

Similarly, Southern countries may wish to use import cartels to counteract the pricing power of TNCs when buying from abroad. Both import and export strategies could form part of an industrial strategy to develop national champions, or to provide a higher standard of living for workers (via higher export prices) and consumers (via lower import prices).

Policies that restrict investment or support state enterprises are also important to Southern countries. While in theory competition policy would increase total welfare in the global economy, even if this is the case (and there are good reasons to be skeptical), the welfare gains are less likely to be in the South. The danger for Southern countries is what Stewart (2001) calls "excessive mar-

ket entry" where the winners would be large foreign firms, and the gains sent out of the country. In a national economy, there is also a clear government role and (to varying degrees) capacity through redistributive policies to mitigate any damage done. At the global level, this is not the case.

Power imbalances between Southern and Northern nations, and between Southern countries and large transnational companies must also be considered in the effectiveness of any multilateral competition policy regime. Investigation is a time-consuming and costly process. Even in Canada, a nation that has adequate resources, a litigated case by the Competition Bureau costs about $1 million. (SCIST 2002) For a Southern country, this is a huge sum of money that must be weighed against many other possible uses of public funds. (See Finger and Schuler 2000 for thoughts on the costs and benefits of the Uruguay Round.)

Southern countries already have great difficultly proving the existence of anti-competitive behaviour. Information may not be available for investigators, as decisions are typically made outside their borders. They are not likely to receive cooperation from, say, the U.S. to prove anti-competitive behaviour on the part of a U.S. TNC, when the object of U.S. policy is to enhance market access for its corporations. And, even if successful in proving wrongdoing, enforcement may be very difficult, if not impossible. (Singh and Dhumale 1999) Hence, Southern countries may find that domestic competition laws provide powers to constrain domestic formulations, but not the market power exercised by foreign companies.

The growing market dominance by the largest TNCs is the real issue that competition policy at the global level should address. Southern countries would be the primary beneficiaries of competition provisions aimed at tackling global market abuses. Unfortunately, there is little in current discussions to suggest that anything along these lines for global competition policy will make it on to the negotiating table any time soon. Instead, current global competition policy appears to be a means to facilitate market access, and accelerate M&A approval processes, to the benefit of TNCs, but not necessarily consumers or domestic economies.

There is no obvious reason why competition policy should be foisted on Southern countries. If individual countries do decide that competition laws would be beneficial, what shape they take should be determined by appropriate democratic processes in response to particular political and economic circumstances. Competition policy should not be uniform; the marked differences in competition law and overall policy objectives among industrialized countries illustrates the desirability of allowing nations to adopt competition frameworks that suit their needs.

Don't believe the hype

The rhetoric of competition can be excessive, and the promises made for competitive markets overstated. While there can be benefits from the rivalry of a competitive marketplace, there is a gap between this simple point and the reality of capitalist economies as we know them. The *glorification* of markets and competition can be a large obstacle to clear thinking about the actual *nature* of markets and competition, and therefore what role competition policy should play.

There is a danger in viewing competitive markets as a substitute for public interest regulation, redistributive policies, and public services and enterprises. Even perfectly competitive markets are still plagued by many undesirable outcomes, such as underproduction of basic research, pollution, resource depletion, and high levels of inequality.

The overwhelming dominance of a small number of large corporations in certain sectors is

quite common in industrialized countries. Indeed, a number of features of capitalist economies lead to greater concentration in markets:

- Size matters to achieve economies of scale at which production is efficient. This is true for traditional manufacturing industries and newer high tech industries where upfront costs for research and development can be very high.
- In many industries, large advertising budgets are used to carve out market share, as a form of investment in corporate brand name.
- Mergers and acquisitions reinforce these trends through consolidation.

In these circumstances, the best approach for policy to address market power may not be to impose greater competition in the marketplace, but rather to ensure strong regulation in the public interest, or public provision on a monopoly basis. Choices around competition policy, even when strictly considered in the context of the private sector, are ultimately political in nature and involve trade-offs: there is no "optimal" competition policy on a one-size-fits-all basis that can be specified *a priori* in strict, legal terms.

The broad scope of competition policy means it has a great potential for obstructing legitimate democratic choices about how to structure relations in particular economic sectors (this idea is considered a heresy in free market circles). These choices implicitly create winners and losers, but such is the nature of public policy.

3. From Doha to Cancun: Competition policy at the WTO

The launch of the Doha Round of multilateral trade negotiations in November 2001 included preliminary negotiations on competition policy. A key decision point will occur in September 2003 at the Cancun Ministerial meeting, when WTO members must decide by consensus on whether to proceed with full-fledged competition policy negotiations for the remainder of the Doha Round.

The Doha Round negotiations are not as expansive as those in the FTAA, though even small provisions could have sweeping impacts on national economies. If negotiations proceed, they will, at a minimum, represent a first step towards global rules—with more steps likely to come in subsequent rounds of negotiation. Competition policy negotiations also complement market access efforts in other perilous areas of negotiation, in particular, services and investment.

A number of competition rules already exist in the WTO. This section reviews the existing competition provisions, what is on the table for the Doha negotiations, and the status of those negotiations to date.

WTO and competition policy

Like other international trade agreements, the focus of the WTO is on government-created barriers to trade and investment. WTO commitments to liberalization are seen as promoting competition in domestic markets by facilitating the entry of foreign companies. This emphasis on market access by reducing or eliminating barriers at the border (tariffs, quotas) and inside the border (regulations and other government-imposed restrictions) is intimately connected to a broad conception of competition policy.

The WTO also contains competition provisions that specify limitations on state enterprises and designated monopolies. While they do not ban the creation and maintenance of such entities, the limitations can have significant impact on the ability to use state enterprises for public purposes. Moreover, the creation of new state enterprises will be subject to a Member making equivalent commercial concessions to others whose economic interests have been adversely affected.

The General Agreement on Tariffs and Trade (GATT 1994) permits the creation and maintenance of state trading enterprises (including marketing boards), but specifies that they must act in a non-discriminatory manner with regard to imports and exports, and in accordance with commercial considerations (i.e., consistent with normal business practices). These provisions apply, for example, to the export activities of the Canadian Wheat Board; indeed, the allegation that the CWB does not act in accordance with commercial considerations forms the basis of the U.S. challenge against the CWB at the WTO.

The addition of the General Agreement on Trade in Services (GATS) as part of the creation of the WTO in 1995 has placed stronger restrictions on state enterprises and designated monopolies. Article VIII says that a monopoly supplier or exclusive service supplier must ensure that it does not abuse its monopoly position in activities outside the scope of its monopoly position. Monopoly suppliers must act in accordance with Most Favoured Nation and any specific commitments made by the Member.

These restrictions can have meaningful implications for Crown corporations such as Canada Post. In its monopoly service area, letter-mail han-

dling and delivery services, Canada Post is subject to a number of universal service and community obligations, as set out in legislation. Outside of this area, Canada Post competes with courier companies, a sector for which Canada has made specific GATS commitments. The impact of Article VIII is to say that Canada Post cannot use its monopoly position to cross-subsidize its competitive services. The allegation of cross-subsidization has been made repeatedly by U.S.-based courier companies against Canada Post (this is also the basis of claim for the UPS case under the NAFTA). While numerous investigations and reviews have found that Canada Post does not cross-subsidize, it is plausible that a WTO panel could reach a different conclusion. (see Sinclair 2001)

The GATS annex on telecommunications has a pro-competitive basis of approach to a sector that has historically been treated as a natural monopoly. Where a Member has made specific commitments in the GATS, they would be required to ensure access to and use of public telecommunications networks on reasonable and non-discriminatory terms.

One other option for bringing competition policy into the WTO lies in the provisions of Article XXIII of the GATT 1994 which allows a challenge of measures that purportedly nullify or impair the benefits of trade liberalization when the measures are not subject to WTO rules.

This article was cited in the Fuji-Kodak case brought by the U.S. against Japan at the WTO. The U.S. alleged that Fuji was engaging in anti-competitive behaviour by denying Kodak access to Fuji's wholesale distribution network (i.e., an exclusive vertical relationship). Japan argued that Kodak engaged in exactly the same practices in the U.S. The WTO report on the matter, released in April 1998, concluded that there was no impairment of market access. (Hoekman and Holmes 1999) This case, however, is indicative of the type of cases that could arise should an agreement on competition policy be concluded at the WTO.

There is little in the way of WTO provisions aimed at regulating *private* business conduct. The GATS does recognize that certain business practices of service suppliers may restrain competition, but provides only for consultations with the other Member, rather than dispute settlement. This shows a clear double standard, as restrictive business practices by private companies are glossed over, with the only recourse being consultations, but state enterprises are subject to disciplines that can be enforced by dispute settlement.

It has been argued that this imbalance is precisely what the competition policy negotiations seek to address, by bringing in restrictive business practices within the realm of the WTO. (Jenny 2002) As we shall see below, there are many grounds for skepticism that this will be the ultimate result.

The Road to Doha

Competition policy has been a topic at the WTO since the 1996 Singapore Ministerial. Together with investment, transparency in government procurement, and trade facilitation, competition policy is one of the so-called "Singapore issues" that had been under discussion at the WTO up to the launch of the Doha Round. Despite opposition from many developing countries, the Doha process led to the inclusion of these issues in the final declaration—with the caveat that official negotiations will not take place until after the Cancun Ministerial, scheduled for September 2003, and only if "explicit consensus" is attained. Until then, the modalities of the negotiations (i.e., the structure of the negotiations) will be discussed.

After the 1996 Singapore Ministerial, a Working Group on the Interaction between Trade and Competition Policy met to discuss the topic. At the Working Group, discussion was wide-ranging, from calls for a multilateral competition

framework to a completely hands-off approach by the WTO, leaving competition policy to national governments. The E.U. was the lead driver for including competition policy in the WTO. The U.S. was generally opposed to a multilateral competition regime, but appears to have been swayed in support of the E.U. position due to bilateral negotiations between the two trade powers in support of launching a new WTO round.

While both the U.S. and E.U. undoubtedly seek to eliminate anti-competitive practices at home, their interest in the negotiations appears to be driven by the prospect of further prying open other countries' markets to their domestic transnational companies. World Bank researchers Hoekman and Holmes (1999:5) note:

> The interest of the E.U. and U.S. is to use competition policy disciplines as an export-promoting device and to reduce the scope for conflict in the approval of mergers between large firms; they are less interested in subjecting the behaviour of their firms in foreign markets to international disciplines that will benefit foreign consumers.

Competition policy disciplines should thus be seen as complementary to other market-opening efforts in other negotiating groups. The GATS negotiations carry a strong deregulatory thrust as part of "securing greater market access." And should investment also become a full-fledged negotiating item, it will be a powerful vehicle for ensuring market access. Competition policy is not the only game in town, but a completed agreement would provide yet another avenue of attack for American and European corporations to better penetrate Southern markets, and prevent the emergence of rivals based in the South.

The market access intentions of the U.S., E.U. (and likely other rich countries) have some strong implications for the development aspirations of Southern countries. Singh and Dhumale (1999) of the South Centre affirm that the development side of competition policy is largely absent from the current dialogue on trade and competition at the WTO, and that addressing the issue through the framework of market access, national treatment, and other traditional WTO concerns is prejudicial to the development interests of poor nations.

One important consideration for Southern countries is the close link between competition policy and national industrial/economic policy. There seems to be a consensus that competition policy is often couched in the context of a given nation's broader economic objectives, and that a multilateral approach to competition policy should not negate efforts by governments to foster national economic well-being.

The U.S. and E.U. have addressed this argument by peppering the Doha Declaration with language about supporting the "needs of developing and least-developed countries." While this language ostensibly suggests that industrial policy and development considerations will be taken into account, there are many reasons to be skeptical that the power politics of the WTO will lead to a meaningful agreement on this front that would blunt U.S. and E.U. objectives for market access. At the WTO, addressing the needs of developing countries tends to consist of time-limited exemptions from the full disciplines, plus provision of technical assistance, rather than clean carve-outs for development purposes.

What's on the table

The Doha Declaration specifies the following areas for the negotiations: "core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building." (Doha Ministerial Declaration, para.

25) This is a more limited set of items than outlined in previous sections of this paper, or included in negotiations towards an FTAA.

At this early stage, it is unclear how far along these lines a final agreement could be, if discussions even get that far. Numerous issues around "modalities" are still being discussed, such as whether countries could opt out of a competition policy agreement, and whether countries would be compelled to put in place a competition law to exercise the provisions of the agreement.

Many developing countries, led by India, have questioned the value of competition negotiations, and do not support the notion that countries would be required to develop their own comprehensive regimes. Currently, only 80 out of 146 WTO members have competition laws in place. (Clarke and Evenett 2003)

Even among countries that do have competition regimes in place, there is wide divergence in the scope and coverage of such regimes. Vautier et al (2002) argue that this makes the establishment of specific rules at the WTO close to impossible. But instead, an agreement could move forward on the basis of agreed-upon principles that capture the spirit of creating a global "culture of competition."

This type of approach may sound innocuous, but could be very far reaching. A key principle such as non-discrimination in the context of a competition policy agreement could undermine development prospects in the South or even in smaller Northern countries. A key concern, in the words of Singh and Dhumale (1999), is that "the establishment of 'level playing fields' would prohibit developing countries both from taking measures to shield their firms and industries from competition from massive foreign corporations and from pursuing measures to promote the growth of strong domestic corporations."

Another substantial area for competition policy negotiations relates to provisions on hard-core cartels (those that engage in international price-fixing, bid-rigging, and market-sharing arrangements). As many Southern countries support the idea of competition policy as it relates to anti-trust provisions and the dominant market power of transnational corporations, they may be agreeable to provisions on hard-core cartels.

Southern countries are adversely affected by the pricing practices of international cartels, but are often in a weaker position at a national level to be able to address these concerns, whether in terms of proving wrongdoing when decisions are made outside their borders, or in terms of prosecuting the offenders. (For an examination of the negative effects of cartels on developing countries, see Levenstein and Suslow 2001.)

However, in this area, the U.S. and E.U. are supporting a narrow definition of hard-core cartels that would be limited to the domestic arena, not to export cartels that benefit the exporting country at the expense of the importing country. In the U.S., for instance, both the 1918 *Webb-Pomerene Act* and the 1982 *Export Companies Trading Act* protect American export cartels from prosecution under U.S. law. (Levenstein and Suslow 2001) A current dispute between the U.S. and India revolves around measures by India to impede market access for a consortium of U.S. soda ash producers. (Inside U.S. Trade 2001) It is unclear whether the U.S. would support stronger measures, particularly if they adversely affected U.S. economic interests.

There are also good reasons why Southern countries could themselves benefit from participation in export cartels to, for example, bid up the prices of resource commodities on international markets (as was the case for coffee beans). Hard-core cartel provisions could be seen as an attack on existing formulations like OPEC (Organization of Petroleum Exporting Countries). This would require an expansion of the definition of cartels to include "price undertakings made by sovereign states." Nonetheless, OPEC leads to

higher world prices for oil, and clearly benefits oil-producing countries. Accordingly, multilateral measures would likely face some form of resistance from OPEC member countries.

Also on the table are provisions for voluntary cooperation. There are a number of international cooperation agreements, but these are almost exclusively among developed nations. Only a few cooperation agreements are North-South in nature. It is unclear what voluntary cooperation measures would look like in the context of the WTO, and whether they would address any real issues beyond what already exists in international cooperation agreements.

The key term is "voluntary." Southern countries could benefit from an agreement that compelled another country to investigate and prosecute the anti-competitive practices of its companies, a position put forward by Thailand. When it is convenient, the U.S. and other rich countries agree to work together to investigate anti-competitive practices, or to coordinate merger approvals. But the U.S. has been reluctant to take on any requirement that it investigate a case at the request of another country, and also opposes the review of decisions made by competition authorities by WTO dispute settlement panels.

Because the U.S. exercises effective veto power over such items of negotiation, the promise of disciplining transnational corporations, or reviewing global mergers and acquisitions, is likely to remain illusory for Southern countries. They would not be able to ensure that their competition concerns were taken seriously. On the other hand, if Southern countries were required to put in place competition laws and authorities, the U.S. and others would be better able to pressure Southern countries to investigate the practices of their own companies.

A final consideration would be any provisions for special and differential treatment. As mentioned, competition policy has the potential to impede industrial policy objectives. A large degree of flexibility would be required for Southern countries in a competition agreement, because of the wide scope such an agreement would cover. By supporting a competition agreement in principle, Southern countries would have to negotiate hard to ensure that they maintain the requisite policy space to meet industrial policy objectives. And any reservations or exemptions would likely be time-limited, or would be eroded by future rounds of negotiations.

Hence, for Southern countries there appears to be little to gain and much to lose from the Doha competition policy negotiations. This explains why many are opposed to moving further to a full negotiating phase. They are rightly viewed as yet another set of institutional requirements imposed on them by more advanced countries that impede their ability to implement independent policies in their national interests. India, in particular, is leading the charge against including competition policy at the WTO.

We must keep in mind that the discussions are at an early stage, and the "official" negotiations have not yet begun. Southern countries still have an opportunity at Cancun to prevent further negotiations from beginning. The Cancun Ministerial will be a clear test of Southern countries' resolve; their capacity to resist pressure tactics from the U.S. and E.U. will determine whether competition policy negotiations survive.

4. From the NAFTA to the FTAA: Competition policy in the Americas

Competition provisions are under discussion in the negotiations towards a Free Trade Area of the Americas, due to be completed by January 1, 2005. Because of the public release of the FTAA draft text, we now have a sense of what is on the table in terms of these negotiations. This section reviews the evolution and potential directions for competition policy in the Americas, beginning with existing provisions in the NAFTA.

NAFTA and competition policy

The inclusion of a chapter on Competition Policy, Monopolies and State Enterprises (Chapter 15) in the NAFTA was a new development from the original Canada-US FTA. The NAFTA recognizes the importance of competition policy but leaves responsibility to each nation to deter anti-competitive practices. The NAFTA says nothing about specific anti-competitive behaviours, such as cartels, predatory pricing, bid rigging, and the like. It leaves the determination of what represents "anti-competitive business conduct" to individual competition authorities. The NAFTA model does not establish a set of trilateral competition rules, a formal framework for cooperation, or even a list of proscribed deceptive business practices.

The bulk of Chapter 15, and its strongest provisions, are instead devoted to defining restrictions on state-designated monopolies (whether public or private) and state enterprises (such as Crown Corporations). The NAFTA does not prohibit a Party from creating or maintaining a monopoly or state enterprise, although creating one would likely require compensation under the Investment chapter of the NAFTA if actions by Canada, for example, affected the interests of a US or Mexican company. This situation could arise if public health care in Canada were to be expanded to new areas such as prescription drugs or dental care. US private health insurance companies and pharmaceutical companies with a presence in Canada would likely use Chapter 11 of NAFTA (the investor-state provisions of the Investment chapter) to sue for billions in compensation for lost business. (see CCPA 2002)

There are a number of important limitations and obligations with regard to designated monopolies and state enterprises in the Chapter, ostensibly to guard against anti-competitive behaviours. Article 1502 ensures that monopolies act "in accordance with commercial considerations"; provide "non-discriminatory treatment" to investments, goods and service providers of other Parties; and do not use their monopoly position to engage in anticompetitive practices in other markets in a way that affects the investment of another Party (procurement by government agencies is exempted from this provision). Article 1503 ensures that state enterprises provide non-discriminatory treatment in the sale of its goods and services.

These provisions have some significant implications for public enterprises. One example of trade challenge facilitated by the NAFTA is postal services. The US courier company UPS is suing the government of Canada under Chapter 11 for US$160 million in damages, arguing that the Crown corporation is subsidizing its express delivery service through its regular letter infrastructure, thereby obstructing UPS's investments in Canada. The case is based in part on provisions of Chapter 15 (although UPS is reading in more of Chapter 15 than the text of Chapter 11 specifies).

UPS has a long list of complaints about Canada Post's alleged anti-competitive practices,

and is deliberately using the anti-monopoly provisions of Chapter 15 to force Canada Post to either segregate its courier activities or to get out of the courier business altogether. A UPS victory would create pressure to break-up Canada Post's integrated mail, courier and package delivery services, and would have an impact on basic services provided by the Crown corporation, such as delivery to rural and remote areas. (see Sinclair 2001 for summary of UPS's charges)

The UPS case is also significant because most areas of public sector service delivery occur with some degree of commercial presence along side. Beyond the direct implications to Canada Post, a victory by UPS would also set a dangerous precedent for many other public services and Crown corporations. It would open a line of attack that could be used to challenge the viability of integrated public monopolies.

The NAFTA's Chapter 15 thus demonstrates the double standards of competition policy in international trade negotiations. Provisions applying to the private sector are vague, consultative and toothless, while the provisions applying to the public sector are legally binding, enforceable through dispute settlement, and may be used to undermine state enterprises and public services. Talk of competitive markets can be used to mask a serious ideological agenda to privatize public enterprises, restrict their capabilities, and to prevent new ones from coming into existence.

While Canada's free trade agreement with Chile essentially replicates the NAFTA language on competition policy, the new US-Chile free trade agreement adds new language that is indicative of what may be in the FTAA. The US-Chile FTA calls for the maintenance of competition laws that are transparent and do not discriminate against the other FTA partner. While this may sound like a level-playing field, US corporations are much larger than their Chilean counterparts. This agreement would prevent Chile from taking measures that shield, or promote the growth of, domestic corporations.

The US-Chile FTA also makes a pre-emptive strike against postal service monopolies. At the behest of the US express delivery industry (Inside US Trade 2002a), the US pushed for language that restricts the ability of the Chilean postal service from subsidizing a competitive express delivery service, even though Chile currently has no such service (Annex 11.6, paragraph 4).

The US also unsuccessfully sought language in the US-Chile FTA that would prevent government ownership of telecommunications providers, even though Chile has already privatized its telecommunications companies. (Inside US Trade 2002b) Such language, opposed by Chile, would have prevented a future government from entering into this market. In the FTAA context this is important, as many Latin American countries have been pushed to privatize public enterprises over the past two decades. Reading these type of rules into the FTAA would likely prevent their re-emergence should future governments desire to rebuild their public sectors.

South America and the Caribbean

Other countries in the Americas have also set out competition provisions in their sub-regional trade and investment agreements. Mercosur, the Andean Community and the Caribbean Community each have (or are in pursuit of) regional agreements on competition policy.

The countries of Mercosur (Common Market of the Southern Cone, composed of Argentina, Brazil, Paraguay and Uruguay) are signatory to the Protocol of the Defense of Competition (Fortaleza Protocol), which sets out competition arrangements for the trade bloc. The Protocol relies on the national competition authorities of each member country for investigation, and establishes a formal mechanism for cooperation among national competition authorities.

The Protocol thus sets out a very comprehensive list of prohibited behaviours, but at the same time establishes a test that would have to be met in terms of real market outcomes. It does not set out separate rules for state monopolies and enterprises. Article 2 notes that such enterprises are covered by the agreement, but only "insofar as the rules of this Protocol do not prevent the regular exercise of their legal attributions." This latter provision seemingly provides protection for public enterprises by giving some degree of latitude for state monopolies or enterprises to run afoul of the competition provisions.

However, such provisions remain hypothetical in terms of actual practice. Despite being signed in December 1996, the Fortaleza Protocol is not operational at present because Paraguay and Uruguay have not yet passed national competition laws. (Tavares de Araujo Jr, 2001)

Decision 285 of the Andean Community (composed of Bolivia, Columbia, Ecuador, Peru, and Venezuela) sets out a framework for competition policy in the region. It was signed in 1991, and is based on a model similar to the Forteleza Protocol. Decision 285 relies heavily on national competition authorities, and also creates a Board to investigate cross-border complaints, with a number of anti-competitive measures spelled out. The onus is on national competition authorities to carry out the decisions of the Board (although the Board seemingly has less enforcement teeth than in the case of Mercosur).

The Caricom (Caribbean Community and Common Market) has a distinct multilateral competition regime as part of a single market composed of 15 small nations. Protocol VIII created a supranational Competition Commission possessing broad powers of investigation and enforcement. Within the Americas, this multilateral model most resembles the supranational equivalent of a coherent national regime, although the rationale for its existence is rooted in the very small sizes of individual Caricom nations.

FTAA negotiations

The FTAA Negotiating Group on Competition Policy is the lead body responsible for competition policy at the moment. Closer to the January 1, 2005 deadline to conclude the FTAA negotiations, trade-offs will likely be made at the level of the overarching Trade Negotiations Committee, or directly by Ministers themselves. (For more on the FTAA negotiating process, see Lee 2001)

In response to public pressure in the lead-up to the Quebec City Summit of the Americas in April 2001, the first draft of the FTAA negotiating text was made public in the Summer of 2001. A second draft was released in November 2002. The text is heavily bracketed (where brackets indicate areas of disagreement). Nonetheless, the bracketed text gives an indication of the positions being taken in the negotiations, hinting at some of the provisions that could make it into a final deal. Unfortunately, no national attributions are made, so it is not possible to state which proposal comes from whom.

The NAFTA language around competition policy is the starting point for the draft FTAA chapter. However, the FTAA draft is clearly NAFTA-plus—a variety of other proposals go beyond the NAFTA provisions. There is general agreement on a model where each nation (or subregion) would have its own competition authority to enforce certain agreed-upon principles and measures within its own jurisdiction. These competition authorities would cooperate with one another, and there would be some FTAA-wide mechanism to oversee it all.

The FTAA parties would adopt or maintain measures against anti-competitive business practices [1.1], and would require the maintenance of a competition authority at the national or subregional level [3.1] (both of these articles are not bracketed). The overall thrust of these provisions is that nations would be put in a position of in-

vestigating and enforcing public and private activities within their jurisdications that inhibit the market access of foreign companies.

Section 1.4 sets out a detailed list of measures that would be considered anti-competitive business practices. Many of these can be seen as preventing restrictive practices by large companies, while others would benefit large corporations by increasing market access. As in the NAFTA model, a number of provisions in the draft Chapter suggest that anti-competitive disciplines will apply equally to private and public sectors. Indeed, an objective of this chapter is to establish disciplines on public enterprises.

The proposed language on state monopolies and enterprises is based on that of the NAFTA. This follows the NAFTA model whereby countries would ostensibly maintain the ability to designate such enterprises, but they are subject to important conditions, such as non-discrimination and acting in accordance with commercial considerations.

Some bracketed language softens the NAFTA benchmark, while other brackets put greater restrictions on state monopolies and enterprises. An example of the latter is language that allows the maintenance or designation of a monopoly or state enterprise "insofar as they are subject to national or sub-regional rules on promotion and protection of competition." [2.2.1] This would explicitly ensure that all disciplines on the private sector would also apply to the public sector, a strong NAFTA-plus restriction on such enterprises.

As the examples above of postal services and public health insurance indicate, these restrictions are strong. Many public services and Crown corporations would likely get caught in the crossfire of a NAFTA-plus competition chapter in the FTAA. The chapter could also be considered a stake through the heart of agricultural marketing boards and state trading endeavours such as the Canadian Wheat Board, unless specific exemptions were acquired.

Moreover, the restrictions on regulated monopolies and state enterprises go beyond those placed on private firms. The implication is that many countries may not bother to establish state enterprises or regulated monopolies, as the core purpose for doing so may be defeated or restricted. The chapter aims to limit the potential role that could be played by state enterprises in the economy as alternatives to private actors—a role that *deliberately* distorts market forces in order to remedy market failures or to achieve certain social goals, such as universal service or environmental protection.

The draft chapter contains new language that makes it a vehicle for pushing deregulation, language that goes well beyond the NAFTA. The proposed preamble to Section 2 notes that: "[Anti-competitive [business] practices may have their origin in regulatory policies and practices, administrative measures, [legal] [designated] monopolies], and state aids].]" With regard to regulatory policies and practices, the section cites that "their design supports the use of pro-competitive regulatory principles"[2.1.1] and it would prevent regulatory policies "from [unreasonably] limiting access to the markets or in any way [unreasonably] impairing the conditions of competition in the FTAA"[2.1.2]

These proposals, if accepted, could amount to a blanket requirement that international trade in goods and services be unhindered, that no restrictions on foreign investment be tolerated, that regulations that restrict competition in any manner be eliminated, and that all foreign corporations be granted national treatment-unless specific exemptions were negotiated. The intent appears to favour the "self-regulation" of a competitive market over direct regulation by governments-a premise that could impose legal and institutional obligations on countries that are breathtaking in scope.

Section 2 also contains a proposal to study "state aids," or regional development programs,

to the extent that they affect competition. Nothing more specific is proposed in terms of disciplines, but this suggests that regional development programs (legal under WTO rules) are on the FTAA radar screen.

Sections 3 and 4 set out provisions to create a formal framework for cooperation and review between the various competition authorities of the Americas. It would create a Committee composed of competition officials and experts from all jurisdictions, whose tasks would consist of actively promoting cooperation, monitoring the state of the various competition regimes, providing technical assistance, and conducting studies [3.2]. The Chapter would also establish a Competition Policy Review Mechanism, whereby each regime would be periodically assessed, and non-binding recommendations would be made for improvement [3.5]. Chapter 4 provides for the possible establishment of formal mechanisms for the exchange of information.

These institutional provisions may be of limited benefit to smaller countries with complaints against large TNCs. A Latin American country, for example, could not force the U.S. to investigate the anti-competitive practices of a U.S. company; such a decision would be at the discretion of U.S. authorities. This closes a major potential avenue of gain by Latin American countries related to being better able to challenge the anti-competitive practices of foreign transnational companies. It also demonstrates the double standard of weak disciplines on the private sector but strong ones on the public sector.

Whether the institutionalization of a system for information-sharing would aid the competition authorities of developing nations to strike more frequently and potently at transnational firms engaged in anti-competitive acts is not so clear. The system, in order to be effective, would have to impose obligations on the nations of the FTAA, but especially the wealthier ones, to share sensitive business information when there is a valid concern of business abuse. But, as mentioned earlier, this is unlikely given the reluctance of countries such as Canada and the U.S. to have their large firms prosecuted internationally.

At the same time, the chapter suggests that rigid obligations would be imposed on national competition authorities. These long lists, if adopted, seem over-prescriptive and would limit the role of governments to have competition policies and authorities that reflect the development aspirations of their nation. Enforcing the letter of the law would likely undermine attempts to create national champions by ensuring that national competition authorities would be used to attack them should they be successful.

Finally, the Chapter has provisions related to dispute settlement, with two differing proposals. One would open up dispute settlement possibilities over whether national competition authorities are abiding by their FTAA commitments, but the dispute settlement mechanism would not be able to overturn decisions made by national competition authorities. The second proposal would exempt most competition matters from dispute settlement, with the exception of monopolies and state enterprises. Thus, under both of these proposals, the public sector could potentially be challenged for a wide variety of behaviours deemed to be anti-competitive, irrespective of public interest considerations, unless specifically exempted from the chapter.

It is worth reiterating that the FTAA chapter on competition policy is heavily bracketed, and due to be revised over time. Specific provisions noted above may be dropped in the course of the negotiations or due to public pressure—or not. Specific reservations and exemptions may be negotiated. And moreover, it is still far from certain that an FTAA will ever come into being. Much depends on developments in Latin American countries, especially Brazil, and on the progress of negotiations at the WTO's Doha Round.

5. Conclusion

The FTAA or WTO negotiations fail to address the real issues that would be of benefit to Southern countries or to consumers in both the North and South. With the exception of export interests seeking to penetrate foreign markets more deeply, there is little to gain in these negotiations for a country like Canada that already has a competition regime. The same could be said for Southern countries that may have or desire competition regimes, but could lose autonomy in the context of an international agreement that meets the needs of the bigger powers.

While there are some interesting provisions in the draft FTAA and Doha declaration that would address restrictive business practices of private corporations and hard-core cartels, the overarching emphasis on market access is problematic. Any prospects for reining in private sector power are likely to be watered down and be unenforceable in the current political climate of either the WTO or FTAA. On balance, there is more to worry about—such as consequences for Crown corporations and domestic regulation—than there is to benefit from, given the philosophical thrust underpinning the negotiations.

The successful conclusion of competition policy agreements in the FTAA or WTO (advances in one negotiation may spur the other) is likely to reflect the pre-existing hierarchy of power within the world. In terms of competition policy, any agreement on competition policy in the context of the WTO or FTAA is likely to reflect, in substance and intent, the interests of the stronger powers, not the smaller and weaker countries.

The U.S. and E.U.—the dominant powers in international trade, with the biggest markets and the most powerful corporations—would likely maintain the status quo of being able to utilize their domestic competition policy effectively when their interests dictate. They would gain, however, the capability of asking (even forcing) Southern competition authorities to investigate and prosecute behaviours by domestic entities that may spring from companies' cultivation of distribution networks and other relationships, or that may spring from state-led industrial policy. Competition policy would buttress their market access ambitions, including greater market access to public sector activities.

In contrast, most developing and less developed nations need a lot of help if they are to effectively target anti-competitive practices that spring from the most powerful corporations. This is due primarily to an enduring lack of resources, lack of information from richer countries, and an inability to punish anti-competitive behaviour, again due to lack of resources and threats by large corporations of withdrawals of FDI in the event of successful prosecution. It is far from clear that such assistance would come from, say, the U.S. if an influential U.S. corporation were involved. At best, a multilateral regime would enable national authorities to tackle practices by domestic corporations. Such authorities would then become proxies for Northern countries to ensure the prevalence of their corporations in the South. Because large corporations are disproportionately housed in the North, Southern countries have far less local champions to defend in Northern markets.

The private sector bias in international trade agreements is also cause for concern. Limited steps have already been taken in the NAFTA and the WTO to place restrictions on state-designated monopolies and state enterprises. Further negotiations are likely to strengthen these disciplines, thereby undermining the potential these institu-

tional forms play as alternatives to private corporations. In a push for rules to restrict private behaviours, public institutions may also be included, with negative consequences for many countries. Further entrenching deregulation, as proposed in the draft FTAA text, under the rubric of competition, is also highly problematic.

Ultimately, the global economy needs a multilateral body to address some of the really substantive issues with regard to the dominance of global corporations, and global mergers and acquisitions, something that is not on the table in either the FTAA or WTO negotiations. What a multilateral competition regime would look like is an issue which has been taken on, discussed, thought and written about, and conceptualized by several actors from a wealth of different perspectives.

Some UN agencies, such as the UNDP (1999) and UNCTAD (1997), have argued that there is a need for some form of multilateral framework to rein in the growing power and influence of TNCs, especially to prevent such companies from abusing their power in countries ill-equipped to deal with anti-competitive behaviour. A multinational competition authority, not housed at the WTO, that would ensure diverse product choice for consumers, and consumer welfare generally, and that would have the power to break up large global concentrations of private power, is an intriguing possibility. In the current political climate, however, such a formulation is wishful thinking, although the recent spate of corporate scandals in the U.S. could begin to roll back an approach that has been obsessed with restricting the public in favour of the private.

In the meantime, there is reason for skepticism about the current international negotiations. Given the *realpolitik* of international trade negotiations, the pitfalls loom large while the prospective gains seem remote. Like the story of the Trojan horse, appearances can be highly deceiving, and there is danger in viewing competition policy negotiations as something that they are not.

Appendix 1: National competition policy regimes

Competition policy has its origins at the national level. About 50 countries worldwide have competition laws as part of their corporate governance apparatus. This appendix reviews the major legal features of competition regimes in Canada, the U.S., and the E.U., with some comments on regimes in Southern countries, in order to give readers a sense of what national competition regimes do, and how this contrasts with competition policy in the context of international trade agreements.

A key point is that competition regimes have unique characteristics, reflecting the evolution of procedures and policies in distinct economic circumstances. Canada's regime balances competition considerations against economic efficiency objectives. The E.U.'s competition regime is concerned with the integration of its member economies. The U.S. is preoccupied with consumer welfare. Many Southern countries do not have competition regimes, and those that do give lots of leeway for domestic policy considerations.

Canada

Canada's competition laws and regulations are contained in the *Competition Act* (the *Act*), which came into force on June 19, 1986. The predecessor of the *Act*, the *Combines Investigation Act*, represented the first ever legislation proscribing conspiracies in restraint of trade to fix prices or restrict output, and was nearly 100 years old when renamed. The lead agency for the investigation and enforcement of the Act is the Competition Bureau, although criminal matters are referred to the Attorney-General of Canada for prosecution.

The *Act*, rather than promoting competition as an end in itself, seeks to create a legal environment where the perceived benefits of competition are maximized. The *Act* thus has several objectives beyond competition *per se*. Examples include: the growth and viability of small and medium-sized businesses, as well as "efficiency and adaptability" within the Canadian economy. It applies to all sectors of the Canadian economy, and to Crown corporations in industries where they compete with other firms. (American Bar Association, 1997)

The *Act* contains both civil and criminal provisions for dealing with anti-competitive behaviour. The criminal provisions proscribe such actions as conspiracies in restraint of trade, bid-rigging, predatory and discriminatory pricing, price maintenance, misleading advertising, and other misleading marketing practices. The penalties incurred for violating the criminal provisions of the *Act* range from small fines to prison terms.

The most important civil provisions regulate conducts such as abuse of a dominant position that prevents competition or lessens it substantially, refusal to deal, exclusive dealing, and mergers. If wrongdoing is ascertained, or if a merger is likely to lessen competition below a certain threshold, orders can be issued to remedy the situation. In the case of a merger, the parties may be asked to dissolve the merger or enter into specific agreements to ensure the merger does not contravene the prescriptions of the *Act*.

Because the purpose of the *Act* and its associated institutions is neither competition proper nor the protection of competitors, the Bureau may refrain from interfering with activities that lessen competition if it is ascertained that such activities will result in "efficiency gains." This means, in effect, that the damages caused to the economy as a whole by the loss of competition resulting

from a merger must be at least nullified by gains in efficiency. Within a certain range of market concentration, mergers are unlikely to be challenged by the Bureau if it could be ascertained that it would lead to a total surplus for the economy resulting from increased efficiency.

This "efficiency argument" that justifies leniency with regard to market concentration can be problematic. It lumps producer and consumer benefits together, even if the gain is clearly on the side of the producer, to say that efficiency has increased in, for example, cases of mergers. The growing trend to sacrifice competition for efficiency is generally excused, in Canada as elsewhere, by the need to adapt to the constraints of a changing, global economy—acute in the context of Canadian companies seeking to compete with larger rivals south of the border. Those constraints include, among other things, the necessity for economies of scale and scope—attainable by concentration or close cooperation—in order to cover the high overhead costs and R&D budgets required to stay afloat in today's "knowledge-based economy."

Goldman and Kissack (1993) argue that Canada's competition policy is largely a reflection of Canada's industrial policy objectives. They note that:

> The relatively small size of the Canadian economy is such that, in some industries, relatively high levels of concentration are necessary before minimum efficient scale can be achieved. Domestic firms often need to achieve these scales to compete more effectively in international markets.

Size is equated to efficiency, suggesting a tolerance for concentrations of market power if they are related to pushing Canadian companies successfully onto the global stage. The consequences for exports are considered when the Competition Bureau reviews mergers. But this may lead to perverse policy, in that a merger could have anti-competitive impacts at home, but be justified because of its supposed increase in the international competitiveness of Canadian companies.

United States

The U.S. is reputed to have the toughest system of anti-trust law and enforcement in the world. The high-profile Microsoft case is just the leading edge of anti-trust cases that include the break-up of AT&T in 1984 and Standard Oil in 1911. Over the decades, U.S. trustbusters have taken on the Hollywood movie industry, U.S. Steel, Alcoa in the aluminum market, IBM during the heyday of its market dominance, and many others, sometimes successfully, sometimes not, but always willing to go after concentrations of economic power that are believed to hurt American consumers. (Crandall 2000)

The U.S. competition laws, contrary to the Canadian ones, seek to protect and promote competition *per se,* as well as consumer welfare. U.S. competition policy sees competition as a desirable outcome and attempts to discourage anti-competitive practices that may have adverse effects on prices. For instance, merger cases are generally assessed with respect to their effect on consumer prices.

U.S. competition policy is geared towards protecting competition as an end in itself. Like Canada, the aim is not to protect individual competitors, but to ensure that the benefits of competition prevail. Although efficiency gains may be considered, the primary concern is price levels within the affected industry. The main difference is that, while Canada's focus is efficiency gains and total welfare for the economy, the U.S. approach is aimed at ensuring competition and consumer welfare. (Industry Canada 1995) Accordingly, U.S. competition authorities have generally shown more teeth than their Canadian coun-

terparts in restricting market concentration, although it is often argued that the Canadian approach is necessary due to the size of its market.

At the federal level, both the Department of Justice (DoJ), specifically the Anti-trust Division, and the Federal Trade Commission (FTC) are responsible for the enforcement of federal statutes. The DoJ is both an investigator and a prosecutor in federal courts for both civil and criminal provisions. The FTC also has investigatory and prosecutorial powers, although its policy is to encourage settlements whenever possible. (American Bar Association 1997) The FTC's focus is largely on the civil provisions of American anti-trust laws, as well as consumer protection. The two agencies have developed a consultative process whereby they notify each other before launching a formal investigation or issuing enforcement intentions. They then determine which agency is better able to handle the matter based on, among other things, relative expertise, staff availability, and interest. (Ibid., 1997)

Unlike Canadian provinces, individual U.S. states may, if they wish, develop and enforce their own competition regimes. The State Attorneys General are responsible for the administration of individual states' competition policies. State and federal competition agencies generally share resources, but states may not enforce federal competition laws. (Hawk & Veltrop in Slot and McDonnell, 1993)

Furthermore, private parties (i.e., citizens or corporations) can initiate private suits to seek redress for harm caused by anti-competitive behaviour. This has proved to be a powerful enforcement mechanism in the U.S. An interesting feature of the civil litigation side of U.S. anti-trust enforcement is its treble damage component. In effect, what this does is triple the amount fined for damages incurred by anti-competitive behavior.

The U.S. has not been constrained by its borders in pursuing anti-trust actions. The 1945 Alcoa aluminum case set a precedent that activities outside the U.S. that affect U.S. commerce is not beyond the reach of the Sherman Act. The Department of Justice also retains the authority to challenge anti-competitive behaviours that affect U.S. exports. This has been used by the U.S. in attempts to break open foreign markets. Other countries have been dismayed by the sovereignty implications of these actions, leading "blocking statutes" in Canada, the U.K., and other countries forbidding cooperation with the U.S. when it claims extraterritorial jurisdiction. (Akbar 1999)

European Community/E.C.

The E.C. competition policy's main objective is to ensure unity and dynamism in the common market. As trade and investment barriers were reduced as part of European integration, there was concern about maintaining contestability of markets in the face of mergers and acquisitions. Accordingly, competition policy has been used as an industrial and economic policy instrument to a greater extent than has been the case in Canada or the U.S. (Industry Canada, 1995)

The attainment of the E.C.'s main competition objective is underpinned by two sub-objectives: a) to restrict the abuse of dominant position by large firms that control large shares of specific markets, thereby allowing small and medium-sized firms to exist and prosper, and b) to prevent Member States' abuse of their right to provide state aid to public or private domestic firms, thereby levelling the playing field for all firms across the Community.

Similar to the U.S., within the European Union individual Member States may have their own competition regimes and watchdogs. However, to the extent acceptable to Member States, the Commission's law is pre-emptive and national competition authorities and courts may be responsible for investigation and adjudication under E.C.

law. In merger cases, however, the E.C. is the final authority. (Industry Canada 1995) The Commission itself has broad investigatory powers.

The E.C. finds itself in an interesting situation as some of its Members are new to competition and anti-trust policy, while others have long traditions and established enforcement mechanisms. Cooperation on competition matters between Member States is crucial to fulfill the E.C.'s competition objectives. Civil actions by private parties are allowed in some Member States but are, unlike in the U.S., seldom relied upon as enforcement mechanisms. (Hawk & Veltrop in Slot and McDonnell, 1993)

E.U. competition policy has served the E.U.'s industrial policy objectives to a greater extent than has been the case in either Canada or the U.S. Accordingly, state aid to public or private firms is permitted, and a framework exists through which Member States must obtain clearance for certain types of aid, while others may be performed at will. E.C. competition law also explicitly provides for collusion and cooperation between firms, given net gains in efficiency and/or technical and economic progress.

Competition policy in the South

The creation of competition authorities in the South is a relatively new development. Like other "good" policies and institutions, competition laws and authorities are often pushed onto Southern countries from well-intentioned Northern countries. This can have negative consequences, if prescriptions are too much of a one-size-fits-all variety.

While generally adhering to the same principles around contestability of open markets, competition laws in the South have generally been designed in a manner that suits the economic development needs of the particular nation. For example, Korea only recently adopted broad competition laws in the wake of the Asian crisis. During its period of fast economic growth, Korea exempted many sectors from the application of competition law, had a high threshold before looking at mergers, and did not prosecute cartels.

Many Southern countries with competition laws grant exemptions when actions that would otherwise contravene the law are of benefit to the domestic economy. Indonesia and Pakistan are two examples. Some countries do not have general competition laws, but enforce the principles we associate with competition laws on a sectoral basis (e.g. Hong Kong), or through a patchwork of other corporate governance laws (e.g., Malaysia). A general concern, whether in the context of general competition law or on a more *ad hoc* basis, is ensuring that state monopolies that are privatized do not simply become private monopolies.

Southern countries must also deal with a high level of market penetration by foreign companies, and a dependence on imported goods in certain areas (such as capital equipment). The competition concerns of Southern countries often have more to do with anti-competitive practices on the part of transnational corporations than domestic ones. In addition, corporations that behave competitively in major markets like the U.S. and E.U. may simultaneously engage in anti-competitive behaviours in developing countries. There are cases of international cartels—for example, in synthetic fibres, chemical textile products, and prism, lenses and lighting equipment—which have applied in countries without effective competition laws, but not in the U.S. or E.U. (Jenny 2001)

For an overview of the different competition laws around the world, see Chakravarthy (2002).

Appendix 2: Bilateral and plurilateral competition arrangements

The process of globalization has posed distinct challenges for competition regimes that are national in character. Anti-competitive practices may spill across borders, and mergers are increasingly creating new giants on the global stage.

National competition authorities have been responding to the global economy by increasingly striking agreements to cooperate with one another.

A 1991 bilateral competition agreement between the U.S. and E.U. contains a variety of provisions related to the coordination of enforcement activities. They aim to bring their positions and remedies closer to each other to avoid a harmful impact on the market of the other. And they agree that one party can request the other to take action when the former is being adversely affected by anti-competitive conduct. Since the agreement, the U.S. and E.U. have cooperated in hundreds of cases, including transatlantic mergers. (Devuyst 2000)

The U.S. has since signed a number of bilateral competition agreements, including with Germany, Australia, Canada, Israel, Japan, and Brazil. As a prelude to the FTAA, the U.S. signed on to the Panama Communique—with Argentina, Brazil, Canada, Colombia, Costa Rica, Jamaica, Mexico, Panama, Peru, and Venezuela—to facilitate greater cooperation among competition authorities in dealing with cartels and anti-competitive behaviour. (Devuyst 2000) Those agreements vary in substance, depending on the contexts of individual countries. Some include clauses for capacity building (generally Southern countries), while others merely provide for the sharing of non-confidential information. The U.S. will generally craft the agreements with regard to what it perceives as being priorities with the other signatory(ies).

Canada is signatory to a number of bilateral and plurilateral cooperation agreements with other governments to share resources on competition policy and enforcement matters. The principal partners are the U.S., the E,C., Australia/ New Zealand, Chile, Mexico, and Costa Rica. (Competition Bureau, 2002)

One of the main shortcomings of these endeavours is the unlikeliness of cooperation between rich and poor nations because of marked differences in legal environments, trade flows, and economic development, as well as several other economic and social factors. Certain governments have also been apprehensive about sharing sensitive business information on domestic firms, involved in anti-competitive practices abroad, with foreign competition authorities. Hence, competition authorities may be unwilling or unable to provide a foreign competition authority with vital information that could lead to the dismantling of cartels and other such harmful behaviors. (Jenny 2002)

For more details on competition agreements between countries or regions, see FTAA Working Group on Competition Policy (2001) and UNCTAD (2002b).

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