

Multilateral Competition Policy and Economic Development.
A Developing Country Perspective on the European Community
Proposals

by

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Multilateral competition policy and Economic development: A Developing Country perspective on the EC proposals

At the Doha Ministerial meeting of the WTO in 2001, a number of decisions were taken that were regarded by developing countries as being controversial if not unhelpful. These included, notably, recommendations for work on the four “Singapore Issues” comprising competition policy, investment, government procurement and trade facilitation with a view to preparing these for possible negotiations. This paper is concerned with the first of these subjects, competition policy, and particularly with the question: what kinds, if any, of domestic and multilateral competition policies will be most conducive to economic development in emerging countries.

Specifically on competition policy the following paragraphs of the Doha declaration are relevant:

23. “Recognizing the case for a multilateral framework to enhance the contribution of competition policy to international trade and development, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 24, **we agree the negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations.**

24. We recognized the needs of developing and least-developed countries for enhanced support for technical assistance and capacity-building in this area, including policy analysis and development so that they may better evaluate the implications of closer

multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

25. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of: 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. Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them.”
[UNCTAD, 2002, emphasis added]

There is a dispute about the interpretation of the words highlighted in the last part of paragraph 23. According to the chairman of the session at Doha Mr. Youssef Hussain Kamel, the wording in the paragraph 23 gave “each Member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that Member is prepared to join an explicit consensus”.

This explanation by the chairman has been taken by many developing countries to imply that the negotiations on competition policy and other Singapore issues can only start if there is an explicit consensus between all countries on modalities. There is however a dispute about the interpretation of the term “modalities”. The EC’s position is that it is

simply a minor procedural matter of setting out an agenda and a timetable for negotiations. As the concept of modalities is not defined in the WTO Agreements, developing countries, on the basis of the practice with respect to modalities for negotiations on agriculture, attribute a more substantive meaning to the concept. This includes a consideration of the following kinds of questions: what kind of competition policies should be considered in the negotiations - all kinds or just multilateral and plurilateral, or domestic as well as bilateral. What kind of burden such policies would impose on developing countries (DCs) and what can be done to relieve these burdens. The answers to these questions are important for defining the terms of modalities to be followed and for the focus of prospective negotiations.

However, it is quite clear that we are far away from satisfactory answers to these questions. Therefore any negotiations on the subject are premature. The Working Group on the interaction between trade and competition policy, (hereafter referred to as the Working Group), has made some progress but there is still a need for further period of reflection and clarification of issues between DCs and ACs (advanced countries). Developing countries, thus, have a substantive point that unlike Canada and the US, which have had competition policies in their domestic economies for the last 100 years, until the end of 1980s, very few developing countries had any competition laws at all. Most of the 90 or so developing countries, which now have such laws, acquired these only during the 1990s on the encouragement of the international financial institutions and the OECD¹. However, for such laws to be effective new institutions have often to be created, judges and lawyers trained and the laws to be understood and assimilated by the corporations and the people. All this takes time, perhaps a couple of decades for the

appropriate social and legal culture of competition and competition policy to evolve. In this context Professor Scherer (1996, p.18) rightly reminds us:

“... it must be recognized that historically, a considerable time interval passed before national competition policy enforcement agencies learned how to do their work effectively. Seven years elapsed between passage of the US Sherman Act and the first Supreme Court prohibition of a price-fixing ring; twelve years between the Treaty of Rome and the first imposition of fines against European Community Cartels; eleven years between the creation of the UK Monopolies and Restrictive Practices Commission and the first prohibition of a cartel by the Restrictive Practices Court; and 20 years between the post-occupation amendment of Japan’s Anti-Monopoly Law and a Fair Trade Commission attack on illegal cartels, including the Commission’s first criminal price-fixing indictment. Before serious enforcement can proceed, much learning must occur, and political support must be built.”

In these circumstances, it is perfectly legitimate and reasonable for developing countries to argue that they do not have sufficient experience with these laws to be able to participate meaningfully in a treaty concerning multilateral competition policy.

The purpose of this paper is educational and clarificatory: it reviews some new developments in the international debate on the subject². The paper provides an economic analysis of the main issues involved in the new European Community (EC) proposals for a multilateral competition treaty². These proposals, which have only recently been tabled

¹ See Table 1 in the Appendix, which provides information, collected by UNCTAD, on how many

by the EC at the WTO Working Group on the Interaction between Trade and Competition Policy, involve significant concessions to the criticisms, which had been made of these countries' earlier submissions. The latest EU proposals, which are undoubtedly more modest than those put forward by this group of countries in the previous five years are outlined in Section II.³

An essential issue for this paper is whether these new EC proposals go far enough, or more to the point, are scaled down sufficiently so as not to harm the developmental interests of emerging countries. Will the adoption of these proposals at both the national and international levels be helpful for developing countries or would this hinder their development? Are there alternative policies, either at the domestic or at the international level in the area of competition policy, which will be superior to those proposed by the EC?

There is however, a prior question: why should competition policy, which is normally a domestic issue, be considered at all at the WTO, an organization that concerns itself with multilateral issues in the field of trade? To elucidate the links between the two subjects, the WTO Working Group, mentioned above has been discussing for several years in a 'non-negotiating educational mode' the relationship between international trade, competition and competition policy in the domestic economy. These discussions have been able to indicate the nature of some of the links between these phenomena. There is however, no consensus on the robustness of these links or whether these are strong enough to warrant the need for a multilateral competition policy let alone for an agreement on such a policy under the aegis of the WTO. However, the Working Group

countries have competition laws and when those were established. See also World Bank (2002)

has at least provided a forum for clarifying the issues involved and to consider proposals such as those of EC on trade and competition policy matters. Singh and Dhumale (2001) expressed grave disappointment that the Working Group's considerable efforts did not appear to be development oriented. Indeed it was argued that the basic concepts being used in the Group's discourse were inimical to the interests of developing countries and that new definitions and concepts were required to address adequately the concerns of developing countries. Singh and Dhumale went on to provide a few of these new concepts and definitions. This issue will be examined further in section 5 in the analysis of the so-called core WTO concepts: transparency, non-discrimination and procedural fairness.

The rest of the paper is organised as follows: section 2 outlines the EC's proposals for multilateral competition policy and section 3 discusses whether DCs need a domestic or international competition policy, or both. The question what kind of these policies at the domestic and international levels will be appropriate will be examined in section 4 which includes *inter alia* an analysis of the relationship between industrial policy and competition policy with particular reference to the East Asian experience. In the light of this analysis section 5 provides a critical examination of the new EC proposals for establishing a multilateral competition policy. Section 6 suggests an alternative policy framework, which may better meets the needs of developing countries, section 7 concludes.

² The paper is thus squarely in the "non-negotiating educational mode" as described below.

³ See European Community (2003)

Section II EC Proposals on multilateral competition policy⁴

The European Community's revised and more modest proposals for a multilateral competition policy have the following main features:

- a. All member countries should declare hard-core cartels to be illegal. Countries should co-operate in implementing such a ban. Other than this ban on hard-core cartels countries can have any provisions in their competition laws as they like.
- b. However, these domestic competition laws should be in conformity with the core WTO principles of MFN, non-discrimination, national treatment, transparency and procedural fairness.
- c. The proposal is for a multilateral agreement under the WTO and therefore subject to its dispute settlement mechanism. In response to objections from both rich and poor countries, the EC have agreed to limit the scope of the application of WTO's Dispute Settlement Understanding (DSU) in the manner specified below.
 - i. Thus the proposals stress that "WTO dispute settlement would be strictly limited - as is also currently the case under the DSU and the covered agreement - to complaints brought forward by WTO Members. Private individuals and firms would have no standing therefore" (EC 2003 pp 2). There will be no obligations on the conduct of individual competition cases.
 - ii. The proposals suggest: "we also agree with this view, and strongly believe that dispute settlement should be strictly limited to assessing the overall conformity of the actual law, regulations and guidelines of general

⁴ I am grateful to Dr. Kern Alexander of the Judge Institute of Management Studies in Cambridge for helpful discussions on this subject.

applications against the core principles contained in a WTO agreement, including a ban on hard core cartels”.

- iii. In addition the proposals indicate that the DSU would recognise the “specific circumstances of developing country members” in considering a dispute.
- iv. The proposals also contain an informal peer review in relation to compliance and issues of confidentiality. Thus the proposals: “Unlike dispute settlement which would apply to the obligations contained in the WTO competition agreement (cf. above), peer review would aim at a wider range of competition law and policy matters. As a WTO competition agreement would merely set out a limited number of binding obligations, WTO Members would remain at liberty to decide for themselves whether or not to include additional substantive areas in their domestic competition law, including e.g. abuse of dominance. Given the distinct nature of peer review, it would be natural and indeed appropriate for such a process to address the entirety of a domestic competition law framework”. This kind of peer review would compliment the provisions of the dispute settlement understanding (DSU).
- v. In addition the proposals envisage that “a consultation and a co-operation mechanism would be a key component of any WTO competition agreement. A range of issues could be raised under the consultation provisions of such an agreement, including one WTO Member’s assessment - rightly or wrongly - that the domestic legislation of another WTO Member does not meet the standards contained in the WTO agreement, in particular as regards the core principles of transparency, non-discrimination and procedural fairness”.

On the face of it these EC proposals would seem to be entirely reasonable to which nobody should be able to object. The claim is that the proposed multilateral competition policy for the whole world involves only a minimum set of rules on which all right-minded people everywhere would agree. It is recognised that many developing countries will, nevertheless, not have the capacity to implement competition laws and so assistance with capacity building is an important part of the EC proposals. How could anyone be against the banning of hard-core cartels, especially once they have been so labelled?

As we shall see below the answer to this rhetorical question is not straightforward. Economic theory and analysis have a much more sophisticated and nuanced view of cartel price fixing. But before we examine this issue in section 6 below, it may be useful to set out what in an ideal world would be the best kind of competition policy, domestic or multilateral, which would be most conducive to economic development. That perspective will give us another benchmark against which to assess the EC proposals.

Section III Domestic and international competition policies for developing countries: Developmental perspective

III.1 Need For Domestic And International Competition Policies

It was noted above that few developing countries have had experience with competition policies over any length of time. Most of these countries have not had competition policies until recently. A main reason for this was that such policies were probably not needed as the governments often intervened directly in economic activity, setting prices for essential products. (Even an advanced country such as Belgium did not have a competition policy until 1987). However, with worldwide deregulation, privatisation and liberalisation the situation has changed and developing countries do now need a

competition policy. The growing role of the private sector in the economy needs to be monitored to ensure essentially that public monopolies are not simply replaced by private monopolies.

In addition to these domestic considerations for competition policy it is also essential for developing countries to cooperate with competition authorities in advanced countries to be able to contain:

- (a) the anti-competitive effects of the vast merger movement in advanced countries which characterised the 1990s and
- (b) the international cartels from advanced countries which may charge monopoly prices in poor countries.

Both (a) and (b) provide adequate reasons for an international competition policy which would protect developing countries from these potentially anti-competitive developments.

III.2 Appropriate Competition Policy For Developing Countries

To sum up, the above analysis suggests that there are sound economic reasons for developing countries to consider instituting domestic competition policies as well as to seek international co-operation for protecting themselves from monopolistic abuses arising from international mergers or cartels⁵. This brings us to the question, what kind of competition policies will be suitable from a developmental perspective. As Singh and Dhumale (2001) note economic theory does not provide any simple answer to this

⁵ This is most emphatically not a proposal for DCs to prepare themselves for negotiations on a multilateral competition policy at the WTO but rather a suggestion that they should examine the case for domestic competition policy (which does not require an international agreement). They should also seek concessions from advanced countries (ACs) on international cartels and mergers, a point which will be examined more fully in the last part of the paper.

question for all developing countries. Thus, Professor Laffont, one of the world's leading industrial organisation economists:

“Competition is an unambiguously good thing in the first-best world of economists. That world assumes large numbers of participants in all markets, no public goods, no externalities, no information asymmetries, no natural monopolies, complete markets, fully rational economic agents, a benevolent court system to enforce contracts, and a benevolent government providing lump sum transfers to achieve any desirable redistribution. Because developing countries are so far from this ideal world, it is not always the case that competition should be encouraged in these countries”. (Laffont, 1998, p237).

The essential point here is that when conditions of a competitive equilibrium are violated, economic efficiency may require restrictions on competition to achieve a second best solution. However, the nature of the restrictions would in general differ in each case, requiring a case by case analysis of the conditions for the second best equilibrium. Professor Laffont points out that in the case of many developing countries the institutional deficit is so large, the governments are so corrupt and ineffective that it may do more harm than good to establish a competition policy at all.

Professor Laffont is of course right on his essential point. However, his diagnosis is not necessarily applicable in a large number of developing countries, which have successful interventionist states with a proven record of prudent management of the economy as well as a good long-term economic growth. This set of economies would include industrializing countries such as India, China, South Korea, Taiwan Province of China, Chile and Mexico.

A second shortcoming of the Laffont analysis for the purposes of the present exercise is that the second best framework outlined above is too narrow and static to be applied to dynamic developments in these newly industrialising economies. Considerations of static efficiency have traditionally been the basis of the competition laws in advanced countries such as in the US and the UK⁶. However for a developing country it is not enough to achieve static efficiency and low short-term prices for consumers, but it is also essential to attain long-term growth of productivity which alone can give rising real wages to its citizens. This in turn requires, inter alia, high rates of investment. Such investment rates can only be obtained in a private enterprise economy if the entrepreneurial class is willing and able to invest. This requires a reasonable as well as a stable rate of profit so that the businessmen's propensity to invest is not dented.

In view of these factors, Singh and Dhumale (2001) and Singh (2002) had recommended for developing countries the Japanese competition policy as a role model during the period 1950-1973 when Japan was more like a developing country than subsequently. Similarly, Korean competition policy during that country's high growth phase in the 1970s and 1980s was also regarded as being relevant. An important point is that in both these economies, although there were competition laws these were subordinated to the requirements of industrial policy in each country.

IV. Industrial Policy and Competition Policy: a Critique of a Critique

⁶ The word traditionally is important in this sentence. The nature of anti-trust laws have been changing and evolving in ACs and competition authorities have been attempting to introduce more dynamic

In a recent contribution, Dr. Evenett (2003) has presented a critique of the above recommendations. His critique raises important analytical and conceptual issues as well as those of economic history; these bear directly on the policy matters under discussion here. However, the treatment of these topics will necessarily be brief in this paper so as not to detract from its main purpose. The analytical and conceptual issues will be discussed first followed by those relating to economic history of East Asian countries. For reasons of brevity and focus, most of the discussion will concentrate on the experience of Japan in its developmental phase, 1950-73.⁷

IV.1 Analytical and Conceptual Issues: the Critical Role of Profits

It may be useful to start here with Dr Evenett's comments on my suggestion that high and stable rates of profit are *ceteris paribus* essential to induce a high rate of investment. He suggests that, "Implicit in this perspective is the assumption that firms in developing economies have to raise funds internally and not through borrowing from banks or other financial intermediaries. If such borrowing is not possible, then an attenuation of competitive pressures is said to enable firms to raise prices and secure funds for investment." This statement is qualified with a footnote which reads, 'Of relevance to this argument is the evidence presented in Glen *et al.* (2001, 2002) that implies that the profits earned by firms in developing countries tend to fall faster than in the industrialised economies. If this finding is correct, and firms in developing countries are indeed unable to raise funds from banks or from stockmarkets, then market forces would be effectively undermining the capacity of profitable firms to invest.' I am afraid that the observation in the text is not quite correct. Further, the text is also not fully, or obviously, linked to

considerations in relation to the implementation of competition laws. See further Audretsch, Baumol and Burke (2001) and Baker (1999).

the footnote. The latter requires some elaboration. I shall take up each of these in turn below, with the text first.

The level of investment a firm undertakes depends both on its inducement to invest and its ability to invest. *Profits are both the source of investment as well as the outcome of investment. They also provide the inducement to invest.* If profits suddenly collapse, a corporation cannot just replace them with funds from the stock market or the banks. This is because the banks will be influenced by the profits shock to the company and so will the stock market. If profits collapse so would the firm's share price in a well functioning stock market. With respect to borrowing from banks even if a firm is below its maximum safe gearing ratio its ability to borrow may be adversely affected by low profits. More importantly the latter may also affect negatively the entrepreneur's animal spirits, i.e., the firm's inducement to invest. Therefore there is a significant contradiction between the objectives of competition policy, which is normally reduced prices and corporate profits to benefit the consumer and the industrial policy whose main aim is usually to increase investment. This in turn, requires stable and reasonable profits. In the case of developing countries this contradiction is often best resolved by industrial policy dominating the competition policy.

The reasoning behind this reasoning is that contrary to much, not very careful, economic analysis the more competition the better is not always an optimal strategy⁸. This point was made above in relation to the discussion of the second best but it is particularly relevant with respect to questions of investment, technical progress and dynamic

⁷ The Korean experience is examined in Amsden and Singh(1994) and Amsden(1989). For Taiwan Province of China, see Wade(1990). On alternative analyses of economic development in East Asia see Singh(1995b).

⁸ See further Telser (1987); Amsden and Singh (1994).

efficiency. The latter is best achieved not by maximum competition but by an appropriate blend of co-operation and competition. Apart from restraints on competition, co-operation may also take the form of government co-ordination of investment activities of firms in a world of incomplete or missing markets, which is typically the case in DCs (see further Aoki *et al.*, 1997). Co-operation may also take the form of government sanctioned restraints on competition as in the case of WTO's own TRIPS agreement. In the case of intellectual property rights and patents, competition is allowed to be restrained for a longish period in order to allow the innovators sufficient opportunity to appropriate the fruits of their invention. The basic idea is that such restraints will lead to temporary monopoly profits which would motivate firms to keep on innovating i.e. their inducement to innovate will be maintained. The argument for some restraint on competition to maintain firms' inducement to invest is an analogous one.

Dr. Evenett enquires why not provide a subsidy to the firm instead of imposing restraints on competition. It is a good question, which he should address first to the architects of TRIPS! In the case of inducement to invest and the maintenance of stability and growth of profits, the latter may in principle be achieved by a subsidy provided this does not lead to, or exacerbate, the fiscal deficit. This may be a tall order in many DCs in view of their chronic fiscal disequilibria. Moreover, a subsidy is hardly a substitute for the state's investment co-ordination activities in relation to groups of firms. This point is very important because an essential role of the government in Japan and Korea during their developmental phase was the coordination of investment activities⁹. The short-term costs the consumers bear as a result of limiting competition in the above analysis would be

⁹ See further Aoki *et al* 1997, see also Singh (1999, 2002)

compensated for by long-term gains in growth and productivity which higher rates of investment are likely to bring.

Turning briefly to Dr Evenett's footnote mentioned above it may be useful for the reader to have information on the main conclusions of Glen, Lee and Singh (2001, 2002). The two studies are concerned with measuring the relative intensity of competition in emerging and mature markets. Surprisingly, using the same methodology (that of persistence of profits studies in industrial organization) for both country groups the results show that there is, if anything, a greater intensity of competition in leading emerging countries than in advanced countries. This finding is surprising in view of the general presumption that emerging markets are inefficient, imperfect and riddled by governmental rules and regulations and barriers to entry. Dr. Evenett emphasizes these barriers for emerging countries on the basis of the work of De Soto (2000) and Djankov *et al* (2002). Glen, Lee and Singh however, argue that their empirical results are economically fully plausible. They suggest that just as there are structural forces which are anti-competition in developing countries there are also other factors which are pro-competition for e.g. the lower sunk costs of entry, the faster rate of growth of developing countries relative to advanced countries, the structure of demand, etc. Moreover the role of the government may not always be anti-competition; often the governments have encouraged contest-based competition (World Bank 1993).

However, despite the fact that there is lower persistence of profits in leading emerging countries than in advanced countries, "it is not the case that firms in developing countries are unable to raise funds from banks or from stock markets." In some of the first large scale studies of financing of corporate growth in emerging markets Singh and Hamid

(1992) and Singh (1995a) showed that large quoted firms in leading industrialising countries rely overwhelmingly on external finance and within external finance they use new issues in the stock markets to a surprisingly large degree. Both these paradoxical results (a. concerning intensity of competition in emerging markets and b. financing of corporate growth in these markets) are subjects of much attention in the literature on finance and industrial organization.¹⁰ The fact that developing country corporations finance a large part of growth from stock markets or the banks does not mean, for reasons given above, that they can ignore profitability. Indeed because of their greater use of stock markets and banks, firms would need to pursue profits even more vigorously than otherwise, as they will now be subject to external monitoring and scrutiny (Singh, 2003).

IV.2 Issues related to East Asian economic history:

Turning to economic history Dr. Evenett (2003) disputes the analysis of Singh and Dhumale (2001), Singh (1995b, 2002), Amsden (1989, 2001), Wade (1990) and other economists who suggest that industrial policy made an important contribution to fast economic growth in East Asian economies. These authors indicate that industrial policy in Japan, Korea and Taiwan Province of China dominated competition policy during their developmental phases i.e. if there was a conflict between the two, industrial policy prevailed. Evenett takes issue with these analyses and argues “the state (in these countries) occasionally took measures to constrain competition ... Overall, any claim that measures constraining rivalry were a central component of development policies, and certainly the view that such measures were effective, is increasingly at odds with the conclusions of more recent empirical research into East Asian development. Recent

¹⁰ See the forthcoming symposium on the subject in the *Economic Journal*. The symposium includes

research on the effectiveness of cartelisation in Japan seriously calls into question whether the success of Japan's internationally competitive industries depended on state-sponsored or state-tolerated price-fixing and similar practices.”

The word ‘occasionally’, in the first sentence of Dr Evenett’s quotation above, is surely a mistake. Apart from governments sponsored cartelisation, which could perhaps be regarded as ‘occasional’ (although Caves and Ukeusa (1976) would disagree)¹¹, Dr. Evenett seems to have overlooked the effective restrictions on imports and on multinational investments which shielded Japanese companies from external competition and rivalry. As Table 2 shows, as late as 1978, long after Japan had become a member of OECD and therefore, was committed to trade liberalization that country’s imports of manufacture amounted only to 2.4% of GDP.¹² The latter figure is considerably less than even the comparable figure for the US economy, which because of its continental size has historically been a low-imports economy. Similarly, the Japanese government discouraged multinational investments, which provided the nascent car industry protection from takeovers.

Dr. Evenett may wish to recall the Strategic Impediments Initiative talks between the US and the Japan in the 1980s and the 1990s when the US complained bitterly about Japanese restrictions, either formal or informal, on imports and on FDI. Leading students of Japanese industrial policy, Johnson, Tyson and Zysman (1989) suggested, in their seminal work, that in response to the liberalization pressures of the post-1973 period, the

revised versions of Singh (2002) and Glen, Lee and Singh (2002). It also includes Gugler, Mueller and Yortuglu (forthcoming) and Aw, Chaung and Roberts (forthcoming).

¹¹ Thus Caves and Ukeusa (1976) in their classic study observed, “the mere presence of these cartel in such broad stretches of manufacturing sector attests to their importance ” (p. 147).

Japanese government had implemented a “moving band of openness” in which “restrictions on the ability of foreign firms to develop a permanent presence in the Japanese market have been removed only where Japanese firms have already achieved a dominant position at home and a strong, often dominant, position abroad. In other words, restrictions have been removed when they don’t matter anymore”. Okimoto (1989), Dore (1986) and Tabb (1995) essentially corroborate this view of Japanese industrial policy.

Like Japan, Korea during the reference period also made extensive use of import controls as well as limited foreign direct investment.¹³ Restriction on imports as well as FDI raised corporate profits, which were further increased by the lax enforcement of competition laws in the high growth period in each country. In addition, in Japan in particular the government provided a variety of fiscal incentives to boost corporate profits even further. However, the government ensured that these increased profits were not wasted on capitalist consumption or large dividend payouts to shareholders.¹⁴

Further Amsden and Singh (1994) note that protection, together with restrictions on domestic competition, provided the Japanese companies with a captive home market leading to high profits, which enabled them to undertake high rates of investment, to improve the quality of their products, and also to capture markets abroad not least by engaging in learning-curve pricing. The latter was of particular importance to Japanese firms, since in return for protection, MITI often imposed on them export and world market share performance targets. Companies recognized that to move forward, to have

¹² As the formal controls had long been virtually abolished, this low figure most likely indicates the importance of informal controls on Japanese imports, including those arising from the Japanese business practice in relation to retailing and distribution of goods.

¹³ For a fuller discussion of the Korean case, see Singh (1998), Amsden (1989), Chang (1998)

¹⁴ As Dore (1985) pointed out that in some years the total dividend payments by Japanese corporations were less than the aggregate amounts managers spent on the perks and entertainment.

access to foreign technology, licenses etc., they had to export. The emphasis on exports and on maintaining oligopolistic rivalry – instead of concentrating resources and subsidies on a single ‘national champion’, which many governments in their industrial policies are prone to do – are the key factors which distinguish Japanese policies from those of other dirigiste countries. It is important to appreciate that even the industries, which were protected by government-approved cartels or other support measures were subject to ‘contest based’ competition. They did not simply receive government’s favours without meeting performance standards in various areas.

MITI further encouraged domestic rivalry by basically organising investment races among large oligopolistic firms in which exports and international market share were significant performance goals. Very importantly MITI also provided the central coordinating role in these races which otherwise could have led to ruinous competition price wars and excess capacity reducing the inducement to invest.

It is therefore no paradox that despite heavy government intervention in Japan, not just at the industry level but also down to the level of the individual firm, Japanese producers in mature industries experienced intense competition in their domestic markets. Indeed, persistence of profitability studies shows that in the period 1964 to 1980, the US recorded lower intensity of competition in manufacturing industry than Japan (see further Odagiri, 1994).

The corpus of evidence outlined above concerning the relationship between industrial policy and competition policy in Japan particularly during its developmental phase 1950 to 1973, does not corroborate the points made in Dr. Evenett’s quotation at the beginning

of this subsection. He however, mainly relies on the empirical studies by Porter et al (2000) in defence of his position. Porter and his colleagues suggest that those Japanese industries did well where the government did not follow what Porter thinks is the popular conception of the Japanese model, i.e. extensive government intervention. Similarly, industries where the government intervened heavily, performed poorly.

There are, however, several points which may be made with respect to the interpretations which Porter and his colleagues put on their empirical results. First, their broad interpretation of the Japanese experience fails to address the question of reverse causation, i.e., instead of heavy government intervention industries performing poorly because of the intervention, it may be the case that these industries are subject to greater intervention because for whatever reason they were performing poorly. Firms in these industries for example, may not have reached the international standard and therefore required government assistance. On the other hand, for the general run of the industries, the strong industrial policy measures were not required. It is however, important to appreciate that both the pro-competition and the anti-competition stances of the government for different industries and over different time period, were part and parcel of the same industrial policy.

Secondly, Porter and his colleagues suggest that the car industry, which is a paradigm case of Japanese success in the world markets, did not receive much government assistance. However, the acclaimed earlier study by Magaziner and Hout (1980) pointed out that “government intervention in this industry was characterised by three major goals: discouragement of foreign capital in the Japanese industry and protection against car imports, attempts to bring about rationalization of production, and assistance with

overseas marketing and distribution expenditure” (p. 55). The government imposed comprehensive import controls and adopted a variety of measures to discourage foreign investment in the car industry. Quotas and tariffs were used to protect the industry; the former were applied throughout the mid-1960s, and prohibitively high tariffs until the mid-1970s. Moreover, “... the government controlled all foreign licensing agreements. To make technology agreements more attractive to the licensor, it guaranteed the remittance of royalties from Japan. The policy stipulated, however, that continued remittances would be guaranteed only if 90 per cent of the licensed parts were produced in Japan within five years” –about as powerful a domestic-content arrangement as one can get.

Similarly, Tabb (1995) observes: “the American occupation authorities had restricted car production, which they did not consider essential, in the recovery period after the war. MITI took the opposite position. It saw the stimulating effect such a leading sector, as automobiles would have on everything from machine tools to basic steel. MITI policies combined low-cost loans, tax privileges, and protection. It allowed firms to deduct from income any revenues obtained from export sales and exempted machinery and tools the industry needed to import from restrictions and taxation. When GATT forbade some of these practices in the mid-1960s MITI invented new ones. It allowed the auto companies to establish tax-free reserves for expenditures related to overseas marketing and adopted depreciation schedules linked to export performance. With MITI’s determination to build the industry, car firms had no trouble raising low-cost bank loans.”

One way of reconciling these radically different interpretations of the effects of Japanese industrial policy is to note its evolution over time. The studies I am referring to are

relevant to the developmental phase of Japanese post –World War II economic history, i.e. the period 1950-73. As is well-known, the focus of MITI's work, its relationship with the competition agency and its instruments for persuading firms and industries to accept its proposals, have all changed with times and with the liberalization, globalization and other developments in the world economy¹⁵. The period 1950-73 is not only of interest because Japan was at that time more like a newly industrialized country than it has been subsequently, but also in that period it is important to remind ourselves that the Japanese economy expanded at an extraordinary rate of 8 % p.a., its industry grew at a rate of 10% pa and its share of world exports rose at a phenomenal rate – to 8 percentage points. This was one of the most successful episodes of fast industrialization in the history of mankind. So what industrial, competition or other policies were followed by the Japanese government to achieve such extraordinary success are therefore of wide interest.

V. Appropriate Competition Policy for Economic Development

The discussion of conceptual issues as well as historical evidence in the last two sections suggests that an appropriate competition policy for development would differ between countries depending on their level of development, on the state of their governance and many other factors. This requires a case by case approach rather than a one-size-fits-all. For many countries Japanese and Korean industrial policies will be a useful role model; for some others as Prof. Laffont suggests, no competition policy may be suitable at all.

The paper has emphasized the importance of dynamic efficiency as the central element in any consideration of competition policy for developing countries. This highlights the role of profits, investments and technical progress as well as the achievements of an

¹⁵ See further Singh (1996) and Johnson et al (1989)

appropriate blend of competition and co-operation in the operation of competition and industrial policies. Coherence between these two policies is of course essential, and it has been suggested here, that in general, this will involve the competition policy being subordinated to the industrial policy during the course of economic development. This dynamic perspective is very much in line with the emphases of the modern theory of industrial organization. For example, in a recent contribution Audretsch, Baumol and Burke (2001) argue in favour of a dynamic competition policy for the European Union, which they believe currently focuses on static efficiency. Their analysis indicates that a dynamic efficiency perspective must give proper consideration to: (a) the variation in the abilities of firms to exploit particular profit opportunities; (b) the evolution of such capability with the passage of time; or (c) the manipulation of barriers to entry or the incentives for innovations and its possible abuse as a means to undermine competition.

How do the EC's multilateral competition policy proposals, outlined earlier, measure up to the requirements of an appropriate competition policy for developing countries? It might be argued that at least at one level the proposals are in harmony with the development perspective in that they do not ask for a uniformity of competition policy that countries must adopt, but for only declaring hard-core cartels to be illegal. It, however, is not just the hard-core cartel provisions, which all competition laws need to incorporate but the EC proposals also subject member countries to accept the core principles of MFN, non-discrimination, etc. Singh (2002) has strongly argued that these principles are not in the best interests of developing countries. This is mainly because they do not recognise the great disparity that exists between rich and poor countries in relation to their technological development, human capital and infrastructural endowments, as well as the cost of raising external funds and so on. Developing country

corporations need the principle of affirmative action i.e. non-reciprocity to give them a chance to build their productive capabilities. In the absence of an affirmative action programme the WTO concepts become onerous from a developmental perspective. This is particularly the case when market access is added to these principles as explained below.

Market access is at present not included in the WTO core principles relating to competition policy. However EC may find it tactically prudent to introduce it into the discussion at a later date when the rest of their proposals have been accepted. Indeed, World Bank (2003) suggests that market access is almost always linked to the question of competition policy. The basic aim of the EC would appear to be to establish a framework based on WTO principles which will give their multinational competitors unfettered access to developing country markets. Essentially they will be able to invest whenever they like, wherever they like and whatever they produce. It would seem that for tactical reasons this objective is being approached in two stages. In the first stage only action against hard-core cartels is being asked for, plus adherence to the so-called key WTO principles. At the next stage, when poor countries have accepted these core principles in relation to competition policy, they will be asked to accept the market access part of the EC programme as well. This may be regarded as speculation but it is fully warranted by the experience of DCs at the Uruguay round and at subsequent negotiations on these subjects at the WTO.

To sum up, contrary to the impression given, the latest EC proposals contain significant elements of one-size-fits-all syndrome. Under the proposals, all signatory countries will be subject to the core WTO principles of national treatment, etc outlined earlier. This

limits the domain of policy options which developing countries can adopt to assist economic development. For example, two of the most important policies used by the Japanese government during that country's developmental phase are unlikely to be permitted. These are administrative guidance and the extremely important co-ordinating role of MITI through the so-called deliberation councils (Aoki *et al.*, 1997). The latter not only carry out a central function of co-ordinating investment and other activities of firms through trade associations and such like bodies, but they also help cement the close relationship between the government and business. Although the EC document does not comment on this issue, in orthodox quarters such relationships are regarded negatively as indicating crony capitalism and as violating rules of transparency (Singh 1999).

The seemingly innocuous EC proposal that there should be voluntary peer reviews of competition laws is another vehicle for homogenization of competition policy around the world that should ring alarm bells in the ears of developing countries, as such reviews are likely to end up in 'best practice' models which inevitably will be based on US and EU competition laws. As argued implicitly in this paper and explicitly in the author's previous contributions (Singh, 2002 and Singh and Dhumale, 2001), such laws are far from helpful in assisting economic development.

The next section will comment on the limitations of the anti-cartel clause of the EC proposals, as well as on the question of their multilateral aspect under the aegis of WTO. These issues will be examined both from the perspective of the developing countries and that of the world economy as a whole. A further section will conclude the paper.

VI. Multilateral Competition Policy and International Cartels

In relation to the EC's proposed prohibition of international hard-core cartels as the corner-stone of a multilateral competition policy, Dr. Evenett (2003) observes that this proposal is widely regarded as the relatively undisputed high-ground of competition policy, observing in a footnote (p.33) “ ... the practical and conceptual arguments for attacking cartels are widely regarded as stronger than the arguments in favour of intervention in other areas of anti-trust or competition policy (such as vertical restraints and mergers).” How could anyone not be in favour of banning hard-core international cartels that, once so-labelled, are odious by definition! Yet, if there were such a solid case for banning hard-core cartels, how is it that it was not until 1993 that the US government strengthened its anti-cartel enforcement practices and subsequently the EU began to take a more serious view of such activity? One cannot help wondering that if they were to be called co-operative agreements to achieve price stability, attitudes would likely be different. This illustrates the fact that economic theory does not have such a black and white attitude towards cartels¹⁶. Some cartels aim to maximize monopoly profits through collusion but also result in greater price stability, intended or otherwise, which promotes social welfare. Others may do the opposite, that is, seek to promote price stability but achieve neither this nor higher monopoly profits. As a minimum, the EC should be asked to spell out the economic rationale underpinning its current proposal, and why they waited so long before bringing about a “sea-change” in enforcement in the early 1990s.

¹⁶ See further Scherer(1994,1996)

The reason for seeking this clarification is to determine whether the current proposals are a prelude to the subsequent banning of state-supported international cartels (for example, international commodity agreements) and also domestic cartels (such as those used by the Japanese government during its developmentalist phase to promote industrial development, or co-operative arrangements between firms for their mutual development that may require investment and market coordination). It is not enough for protagonists of the EC proposals to tell us that under the current scheme developing countries may retain existing state-supported cartels. The important question is, what will be their position tomorrow *vis a vis* state and private cartels that may actually increase social welfare. These questions, it will be appreciated, are salient to the discussion on the framework of modalities structuring possible negotiations on competition policy matters.

Nevertheless, the Justice Department of the US government and the European Commission deserve to be congratulated by developing countries for establishing the extent of damage done to them by some international hard-core private cartels, most of whose constituent member firms are headquartered in advanced countries, although for tactical reasons some firms may be registered in developing countries with weak or no enforcement of anti-cartel laws or no such laws at all (Lavenstein *et al.*, 2003).

At this point it may be useful to introduce explicitly into this discussion the concept of special and differential treatment for developing countries whose guiding principle, it may be recalled, is non-reciprocity. Specifically, it is proposed that advanced country governments should legislate that anti-competitive conduct that is illegal within their jurisdictions would also be illegal when carried out by these firms in any developing country. Further, that citizens and corporations in developing countries who are harmed

by these illegal practices can sue for damages in the courts of advanced countries and that there should be a fund to facilitate such legal action. The principle behind this recommendation is the same as that established regarding corruption.

Returning finally to the multilateral aspect of the EC's competition policy under the aegis of the WTO, there are important arguments from the perspective of the organization itself against such an arrangement. Competition policy is a complex undertaking, which is certainly required today as a discipline on large multinational companies in a globalized world. This is an enormous challenge that cannot be undertaken by an institution that is already overloaded. Apart from anything else, there are good organizational reasons for the WTO to remain sharply focused and to use its accumulated capabilities to their best advantage. Moreover, it is not just a matter of cartel conduct that needs to be regulated but also other kinds of market conduct that reduce the ease of entry into international markets due to the anti-competitive conduct of dominant firms. For example, if private harmful cartels are banned, theory and evidence suggest that these will often be replaced by full-scale mergers between the previously cartelised, and often convicted firms. Levenstein *et al.*, 2003 provide recent evidence on this matter.

In considering these competition proposals it is also important to emphasize the fact that the links between competition policy and international trade are no more significant than, say, tax policy and international trade, infrastructure deficiencies and international trade, or education and international trade. As the Strategic Structural Initiative Talks between the US and Japan showed, there were more than one hundred ways in which trade between these countries was arguably being distorted. It would therefore be best for the WTO to confine itself to its core competences regarding strictly trade matters, rather than

overextend through mission creep to an endless string of trade-related matters. This would be not just in the interests of developing countries but also be of benefit to the world at large.

V11. Conclusion

The main argument of this paper is that the multilateral competition policy proposed by the EU is neither suitable from the perspective of developing countries nor from that of the world economy as a whole. As far as developing countries are concerned, the policy goes too far in instituting homogenization of competition policy and thus deprives them of important developmental instruments. On the other hand, from an international perspective, the proposed policy is too feeble to deal with the challenges posed by large multinational corporations intent on monopolizing world markets. To deal with this, what is required is greater policy autonomy for developing countries and at the same time a more stringent framework for dealing with mammoth multinational companies and their endless appetite for overseas expansion often through mergers and takeovers. Both the EC's proposals on competition policy and on FDI seem more concerned to provide TNCs with additional tools to give them unfettered access to developing countries and undermine the latter's ability to control the economy and foster their own domestic companies and national economic development.

Singh (2002) put forward proposals for an international competition agency organizationally modelled along the lines of the European Commission's Competition Policy for the EU. This would be a stand-alone authority that would primarily be concerned with cartels, mergers and anti-competitive conduct of the world's largest multinationals while leaving domestic competition matters to national authorities under

the subsidiary principle of the kind used by the European Commission. The central proposal of the paper is that large multinationals would not be allowed to expand through mergers. Normally they would only be allowed to expand through organic growth, mergers being permitted only if the acquiring firm divests itself of a subsidiary of equivalent size. This is argued on the basis of detailed evidence concerning mergers and takeovers over the last four decades. Singh (2002) suggests that such a policy would not only promote world economic efficiency but would also be more equitable between large and small firms.

It is hoped that the discussion of the important wider competition policy issues raised above will encourage the European Community to recognize their complexity and their serious implications for development. It is these that contribute to the lack of consensus among professional economists, between developed countries themselves and also between developing and developed countries. Until the intellectual and political validity of firmly grounding international competition policy matters in developmental concerns, in keeping with the spirit of the WTO's preamble, is accepted, the gap between the North and the South will not be bridged.

Table 1: Countries that have adopted competition laws, as of June 2000.

| Africa | Asia and the Pacific | Central and Eastern Europe | Developed Countries | Latin America and the Caribbean |
|------------------------------------|--|---|--------------------------------------|-----------------------------------|
| Algeria (1995) | Azerbaijan ^b | Albania (1995) | Australia (1974) | Argentina (1923, 1980, 1999) |
| Benin ^a | Bahrain ^b | Belarus (1992) | Austria (1998, 1993, 1999) | Barbados ^a |
| Botswana ^a | China (1993) | Bosnia and Herzegovina ^a | Belgium (1991, 1999) | Bolivia ^a |
| Cameroon ^b | Cyprus (1990, 1999) | Bulgaria (1991, 1998) | Canada (1986, 1999) | Brazil (1962, 1990, 1994, 1998) |
| Central African Republic (1994) | Fiji (1993) | Croatia (1995) | Denmark (1997) | Chile (1959, 1973, 1980) |
| Chad ^a | Georgia (1996) | Czech Republic (1991, 1992, 1993) | Finland (1992, 1998) | Colombia (1959, 1992, 1996, 1998) |
| Côte d'Ivoire (1978, 1991) | India (1969) | Estonia (1993, 1998) | France (1986, 1995) | Costa Rica (1994) |
| Gabon (1989) | Indonesia (1999) | Hungary (1984, 1990, 1996) | Germany (1957, 1998) | Cuba ^a |
| Ghana ^a | Iran, Islamic Republic of ^a | Latvia (1991, 1993, 1998) | Greece (1977, 1995) | Dominican Republic ^a |
| Egypt ^a | Jordan ^a | Lithuania (1992, 1999) | Iceland (1993) | Ecuador ^a |
| Ethiopia ^a | Kazakhstan (1999) | Poland (1990) | Ireland (1978, 1991, 1996) | El Salvador ^a |
| Kenya (1988) | Kyrgyzstan (1994) | Republic of Moldova (1992) | Israel (1956, 1988, 1989) | Guatemala ^a |
| Lesotho ^a | Lebanon (1967) | Romania (1991, 1996) | Italy (1990) | Honduras ^a |
| Malawi (1998) | Malaysia ^a | Russian Federation (1991, 1992, 1995, 1998, 2000) | Japan (1947, 1998) | Jamaica (1993) |
| Mali (1997) | Malta (1994) | Slovakia (1991, 1994, 1998) | Liechtenstein (1992, 1995) | Mexico (1992, 1998) |
| Mauritania (1991, 1999) | Mongolia ^b | Slovenia (1993, 1998) | Luxembourg (1970, 1981) | Nicaragua ^a |
| Mauritius (1980, 1999) | Pakistan (1970) | The Former Yugoslav | Netherlands (1997) | Panama (1996, 1999) |
| Morocco (1999) | Philippines (1992) | Republic of Macedonia ^b | New Zealand (1986) | Paraguay (1997) |
| Namibia ^a | Republic of Korea (1980) | Ukraine (1992, 1996, 1998) | Norway (1993) | Peru (1991) |
| Niger (1992) | Saudi Arabia ^a | Yugoslavia (1996) | Portugal (1993) | Trinidad and Tobago ^a |
| Rwanda ^a | Sri Lanka (1987) | | Spain (1989, 1996, 1999) | Uruguay ^a |
| Senegal (1994) | Taiwan Province of China (1992, 1999) | | Sweden (1993) | Venezuela (1973, 1992, 1996) |
| Sudan ^a | Tajikistan (1993) | | Switzerland (1962, 1985, 1995, 2000) | |
| South Africa (1995, 1998, 1999) | Thailand (1979, 1999) | | United Kingdom (1973, 1994, 1998) | |
| Tunisia (1991) | Turkey (1994, 1998) | | United States (1890, 1976) | |
| United Republic of Tanzania (1994) | Turkmenistan (1993) | | | |
| Zambia (1994, 1998) | Uzbekistan (1992, 1996) | | | |
| Zimbabwe (1996, 1999) | Viet Nam ^a | | | |
| | Yemen | | | |

^a Competition law is under preparation.^b Date of adoption of law not available

(Source, UNCTAD, 2000)

Table 2: Import-Penetration in Manufactures in Advanced Industrial Countries, 1961-1978 (ratio of manufactured imports to GNP)

| | 1961 | 1965 | 1969 | 1973 | 1979 |
|---------------|------|------|------|------|------|
| USA | 1.5 | 2.1 | 3.4 | 4.0 | 4.5 |
| UK | 4.6 | 6.7 | 8.0 | 11.7 | 14.2 |
| Rest of EEC 9 | 6.1 | 7.6 | 10.1 | 13.0 | 15.8 |
| Japan | 1.8 | 1.5 | 2.2 | 3.0 | 2.4 |

Source: CEPG (1979)

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