

TRADE AND COMPETITION POLICY: AT THE WTO ISSUES FOR DEVELOPING COUNTRIES

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Is there a need for global rules?

Concerns about competition and trade have a long pedigree, back to Adam Smith who devoted a large fraction of the *Wealth of Nations* to the evil consequences of international trading monopolies such as the East India Company, which he said impoverished both Indian sellers and British consumers. The 1948 Havana Charter of the abortive International Trade Organization (ITO) included a requirement on members to police international restrictive business practices:

Each Member shall take appropriate measures and shall co-operate with the Organization to prevent, on the part of private or public commercial enterprises, business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives set forth in Article 1.

(UNCTAD 1948:Article 46, para. 1)

There was provisions for the ITO secretariat to investigate cases and make recommendations to members. Of course the Havana Charter was not adopted as a whole, only the chapter on trade in goods which became the GATT. Discussions continued in other for about the trade and competition interface, at the GATT, the OECD and UNCTAD subsequently, GATT and the OECD working groups developed voluntary codes. This work perhaps slightly obscured the fact that the heart of GATT did in fact touch on competition law. Article III of GATT requires non-discrimination (National treatment) in all domestic laws, regulations and taxes that may affect trade. This sweeping obligation was largely neglected by trade policy analysts before the WTO was created in 1994 because GATT obligations were not easily enforceable before the creation of the WTO dispute settlement mechanism.

¹ This paper draws heavily on earlier work with Rob Anderson of the WTO and Bernard Hoekman of the World Bank, who are responsible for many of the ideas but not for the remaining and newly introduced errors.

As trade liberalisation advanced and the WTO was created, attention came to focus more on the ‘non-border’ barriers that might affect trade. The Uruguay Round brought regulatory barriers such as food safety and service rules into the WTO system, and more importantly armed the DS system to address other rules that might affect trade and which Article III could touch.

The topic ‘trade and competition policy’ was put on the WTO agenda by the Singapore Ministerial meeting in 1996. Along with a series of other ‘new issues’. A decision was taken to set up a working group to consider this interface.

Do we need any further agreements?

A fundamental requirement to justify a multilateral agreement on competition must be that, in some senses, anti-competitive practices in one jurisdiction may have spillover effects in the global economy as may national policies towards them. Examples include the following:

- Worldwide market sharing arrangements
- Export Cartels based in one country affecting consumers in another
- Import cartels operating to exclude foreign suppliers, or other private barriers to entry
- Mergers which may occur in competitive markets at home but where parties may have substantial market shares in other parts of the world
- Abuses in one market of a dominant position in another, including abuses of intellectual property rights.

But it does not follow that the existence of spillovers automatically means that a WTO agreement could actually solve the problems created.

Antitrust

International antitrust concerns primarily relate to the effect on consumer welfare of agreements or acts by dominant firms or cartels. They may, for example, charge excessive prices for exports. A dominant firm or cartel may also use power in one market to leverage its position in another, e.g. by predatory behaviour.

The antitrust remedy is likely to be different from that for market access. Indeed, the dynamics are almost exactly opposite. In the case of market access the problems are that the authority for the market in which the anti-competitive behaviour occurs is unwilling to act,

while the authority that wishes to act has no jurisdiction. With antitrust the problem is that the authority of the economy experiencing the anti-competitive behaviour has jurisdiction but is unable in practice to act, while the other authority has the means but is unwilling to do so!

Evidently, very different and complementary WTO rules would be needed to deal with these two situations. And this dichotomy has direct relevance for policy because there is a tendency for developing countries to focus on one cause and the industrialised countries on the other. Developing countries are mainly concerned about abuses by Northern exporters, while the EU and the USA worry about import cartels and the like.

The cross-border effect in the export cartel is failure by the home jurisdiction to act against the anti-competitive behaviour of 'its firms' in another market. Consider also the case of international mergers, which pose problems that were not foreseen when the GATT was created in 1947. A merger between two firms may be allowed by the competition authorities in the 'home' market because there remains plenty of domestic competition. But this may not be true of the markets in which their subsidiaries operate. There, the new combined entity may have a dominant position.

National competition authorities have as their objective only the interests of their own jurisdiction. Thus, while the EU and the USA take into account in their decisions the effects on their economies of actions taken elsewhere, they do not consider the effect on foreign markets of actions by their firms; these are captured if at all only as a corollary of regulation of activities on the domestic market. Indeed, it is not unusual for competition laws specifically to exclude sectors of activity where foreigners may be the main victims of anti-competitive practice. Shipping conferences, for example, have traditionally been exempted, and many jurisdictions exempt export cartels either explicitly or implicitly. But many commentators have observed that even if there were no such exemptions the EU or the USA governments could not easily prosecute their own firms for harm done to consumers elsewhere.

If governments in the parent firm's home country cannot act, why cannot those in countries where the affiliates operate? The answer is they face a major practical problem. It is unlikely that governments in the affected country will be able to get the evidence needed to pursue infringers even if they have effective laws. The capacity of competition authorities to assess

adequately all the factors in transnational mergers may well be limited even if there is no problem of a willingness to act. The increasing number of international mergers and strategic alliances where the authorities are forced to rely on whatever information the parties supply clearly raises the question of the need for enhanced co-operation.

Even if we accept that the problem is a real one further questions arise before we can be confident that it is one that can be resolved by some sort of multilateral arrangement but cannot be resolved without one.

- why cannot national governments take the necessary action, whether through their own laws using ‘effects’ doctrine or by bilateral cooperation;
- what advantages does a multilateral agreement have over other forms of cross-border co-operation;
- if there is to be a multilateral agreement where should it be?

Evidence on anti-competitive behaviour

There is indeed powerful evidence that cross border cartels are active and are not being adequately policed. There is a long history of global cartels some of which have been investigated and some of which have not: we seen the heavy electrical equipment cartel, the aluminium cartel, the vitamins cartel, the lysine cartel, and the international soda ash cartel.

In the 1990s the United States (US) Department of Justice became very active investigating and prosecuting cartels in industries such as vitamins, steel, and animal feeds. They uncovered evidence on a massive scale of global violations. The citric acid and lysine cartels involved global markets of around \$2 billion in the late 1990s. These developments prompted the Department of Justice to set up an International Competition Policy Advisory Committee (ICPAC). Its report (ICPAC 2000) found that cartels existed on a large scale.

Extensive work at the World Bank carried out and reviewed by Evenett, Levenstein and Suslow (2000) suggests that nearly 7% of imports into developing countries were in sectors where firms had been found by the US authorities to be involved in cartels. Evenett and Clarke (forthcoming) show evidence that indicates that the impact of the international vitamins cartel prosecuted by the USA authorities was more serious in those developing countries that had no competition law.

Reasons for intervening

It is very important to distinguish two different reasons for attempting to curb anti-competitive activity because WTO members attribute different weight to them. They may involve market access, that is to say where private barriers to entry have been created by local firms against the will of certain foreign suppliers. Or they may involve pure international antitrust issues, where collusive or monopolistic behaviour by all firms is directed explicitly against consumers. In both cases consumers lose out, but a solution that 'shares' markets may satisfy exporters (and, hence, the instigators of the enquiry), but it does nothing for consumers. In neither case (although for different reasons) will unco-ordinated action by domestic competition authorities solve the problem.

Market access

Anti-competitive collusion in a domestic market may be a very effective way to keep out imports, especially if distributors and wholesalers are involved. US policymakers and business circles expressed great frustration at US exporters' failed attempts to gain access to the Japanese market. From the mid-1980s onwards, the USA argued that the Japanese authorities had tolerated their own firms engaging in anti-competitive business practices, in particular through vertical integration between producers and distributors. A vast legal and economic literature emerged on whether Japan's markets were relatively more closed than other nations' markets, with little agreement emerging (Evenett, Levenstein and Suslow, 2000) survey much of this debate).

In the early years of the establishment of the European Common Market (EEC), the need to ensure market access led to the establishment of a supra-national competition policy with the goal of preventing private actions causing distortions to trade between member states. In 1957 only Germany had a vigorous domestic competition policy. The Rome Treaty gave the European Commission powers to intervene directly and control anti-competitive behaviour by firms. This addressed the problem identified in the Havana Charter, but went further than the Charter in giving the executive the authority to act, not merely to report and recommend.

The jurisdiction of the European Commission was, and strictly speaking still is, limited to practices affecting cross border trade. The EEC did not create an internal competition regime for its members. At that time market access considerations led to a focus on the interests of

exporters rather than consumers, but the effect has been positive for consumers as well as producers.

At the global level we have more of a problem. The governments of exporting states exercise no jurisdiction in the importer's market, and whilst use of the 'effects doctrine' allows the importing country to claim jurisdiction over foreign firms whose actions affect it.. The EU has been able to attack alleged cartels by foreign firms in the 'Woodpulp' case and has also claimed jurisdiction over mergers of US based firms operating in the EU. But in practice, it is only the largest jurisdictions who have leverage to get the evidence and secure compliance needed to really apply the effects doctrine. In the 1990s some suggestions were made, for example by Fikentscher et al (2003) for a multilateral to directly act in competition cases. But these were resoundingly rejected. Any international agreement would have to be among states and their competition authorities.

It is not surprising that when the view emerged that inadequate competition policy enforcement could undermine the expected market access gains from trade reforms, some began to argue that international disciplines on competition policies were necessary to ensure market access. And it was natural to think of this taking place within the WTO: bargaining over market access concessions in multilateral trade negotiations has been the time honoured and highly effective means of lowering border barriers. But by 1996 the USA had come to the conclusion that it could use its own unilateral and bilateral instruments to achieve these ends. Consequently the demand that trade and competition should be on the post-Singapore WTO agenda came essentially from the European Union (EU).

What is the current legal position?

Curiously enough a detailed examination of the current state of trade law leads us to the somewhat paradoxical case that one of the most powerful reasons for wishing to see an agreement at the WTO on competition policy is that competition rules are indeed covered already but in a haphazard and unclear way, and unless there is negotiation over what the obligations really mean, we risk a messy process where the dispute settlement body may be asked to define the rules in costly litigation, as in the notorious 'Kodak Fuji' case.

We find in fact that there are two alternative motivations for addressing competition issues explicitly at the WTO. The minimalist agenda says: WTO obligations exist already but are imprecise and incoherent. Let us be more precise and consistent, and if necessary narrow

down the meaning. The other is to say that WTO rules are currently too weak and we need a stronger set of rules.

In fact, although the GATT 1947 made no explicit reference to private business conduct, its very general provisions almost certainly cover competition laws. GATT Article III calls for 'National Treatment' for goods that have passed the frontier; it thus contains a general ban on any domestic rule or application of regulation in a manner that discriminates against imported products, for example tougher safety standards for foreign goods. The wording of Article III indicates that it was most obviously designed to deal with discriminatory taxation and basic quantitative restrictions, but the text refers to 'all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use'. The result is that if it could be shown that the way a country operates its competition policy could be said to discriminate against imports or in some manner implicitly violate a GATT or WTO commitment, then this becomes potentially actionable. The Appellate Body in its ruling on Japan - Taxes on Alcoholic Beverages (1996) stated firmly:

'The Article III national treatment obligation is a general prohibition on the use of internal taxes and other internal regulatory measures so as to afford protection to domestic production.'

With the introduction of the new system of binding dispute settlement since 1994, it now does matter whether the wording of the GATT and WTO agreements can be stretched to cover competition issues. The OECD (1999) study argued that Article III could be used in this context, and as we shall see below there is nothing in the Kodak-Fuji decision to indicate otherwise. It must be remembered that Article III only covers discrimination by nationality of goods not firms, and its equivalent in the GATS only refers to what has been scheduled. Significantly, the Appellate Body has ruled that the national treatment obligation currently applies to de jure or de facto discrimination. This means that it is a violation of the GATT to have rules that are identical for home and foreign goods but which in practice are much harder for imports to meet. Typically alleged violations occur when there are regulations which treat two 'like' products differently, where one happens to be home produced and the other an import, for example a high tax on large cars imposed by a country that only makes small cars.

Another element in the GATT is Article XXIII the so-called ‘non-violation article’. Article XXIII was for long an obscure and, until the 1990s, ignored article. It provided for dispute settlement in cases where it is alleged that a GATT signatory has introduced new laws or measures which, whilst not explicitly forbidden by the rules nevertheless act so as to ‘nullify or impair’ elements of the trade liberalisation they agreed to in their GATT commitments: it is similar to Article III but is much harder to prove. (It was used without success by the US to claim Japanese competition rules were unfair in the ‘Kodak Fuji’ case)

One interesting provision is the recent agreement on safeguards (Article XIX) , the wording of which would explicitly outlaw industry to industry ‘Voluntary Export Restraint’ agreements. The problem here is that such arrangements are in many cases already illegal under national competition laws but the authorities often choose not to act, and there is room for a stronger obligation to do so.

GATT Article XVII authorises Contracting Parties to maintain state trading enterprises, even monopolies, so long as they do not discriminate between home and foreign goods in their purchases and sales. Article II requires that any trading monopolies authorised by the state must not restrict sales of imports in a manner inconsistent with tariff commitments. GATT obligations, dealing with *goods* cannot require a state to open its trading sector, a service industry to foreign competition, except where a specific offer to do so has been made under the General Agreement on Trade in Services (GATS).

Interestingly, the GATS does in fact incorporate a form of words recommended by a 1960s working group for adoption with respect to trade in goods. Articles 8 and 9 of the GATS lay down in very general terms an obligation that is not far removed from Article 46(1) of the Havana Charter. Article 8 requires that where a country has agreed to open part of a service sector up to trade, a supplier who retains a monopoly in a related market must not ‘abuse its monopoly’ when dealing in the unprotected market. Article 9 further says:

‘Members recognise that certain business practices of goods suppliers may restrain competition and thereby restrict trade in services. Each member shall, at the request of any other member, enter into consultations with a view to eliminating such practices.’

In the field of telecommunications the text is somewhat more specific and does provide more detailed grounds for action in the event that a firm supplying a service, not subject to foreign competition under the GATS schedule of its government, leverages its market power into a supposedly open market segment. The GATS telecoms negotiations in fact continued after the end of the Uruguay Round as coverage of liberalisation was extended to basic voice telecommunications. In order to implement the commitments in the GATS to prevent foreclosure by dominant suppliers a 'reference paper' was agreed in 1997, which spelled out more detail what these obligations entailed, including cost based access of new operators to incumbents networks.

The other WTO agreement that makes specific reference to competition policy is the Trade-Related Intellectual Property (TRIPs) agreement which requires all WTO members to adopt patent and copyright laws along the lines of developed countries, albeit with transitions periods for less developed countries. Critics of the TRIPs agreement argue it gave considerable extra market power above all to pharmaceutical and agrochemical firms, without imposing restraints on potential abuses. However, the TRIPs agreement specifically referred to competition policy. It allowed countries to take steps such as compulsory licensing when they could show that an anti-competitive abuse had occurred. It provides an incentive to have a competition law by making compulsory licensing easier when this route is used. It allowed the host countries of multi-national corporations and importers to act in this way, but it did not oblige home countries to require their firms to behave in pro-competitive ways in foreign markets. No explicit mechanisms were established to deal with the information problems that might arise.

A key issue that has arisen is the treatment of parallel imports, vertical restraints and the international exhaustion of intellectual property rights (IPRs). Some developed countries have argued that WTO rules should prevent countries from allowing unlimited parallel imports. The issue is basically whether a supplier of IPR protected goods, who lawfully sold them in one country, should be able to prevent those goods being sold on into another market where prices may be different. IPR holders frequently assign sole selling rights to their own subsidiaries or agencies country by country in a manner that permits international price discrimination, and do not license export sales. Competition law may invalidate such conditions. For example any product sold in one part of the EU by a manufacturer to a wholesaler anywhere in the EU may be sold again anywhere else in the EU, but firms have

the right to prevent the import into the EU of their branded or otherwise IPR protected goods that have previously been sold outside the EU. Many consumer groups believe this to be abusive, but some economists argue it permits efficient price discrimination. This issue is at the heart of the current dispute between South Africa and thirty-nine drug firms. The 1997 Medicines Act, challenged by pharmaceutical firms, would allow the South African authorities to import into South African products legally sold by the manufacturers at lower prices elsewhere, by-passing the official distribution channels. At first the US government backed the drugs firms but it has since acknowledged that the TRIPs agreement (Article 6) does allow member states to adopt their own policies on parallel imports (Maskus and Lahovel, 2000). This is a different issue from authorising the sale in South African of products without a license (eg in India). The TRIPs agreement provides for the issuing of compulsory licenses under a number of conditions, one of which is that a due-process competition investigation has found an abuse.

Trips Article 31 (k) states

‘Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur’

The reference to 31 (b) and (f) refer to the requirement that any compulsory licensing must be for home consumption, eg ruling out Indian exports to Uganda.

Current WTO discussions are much preoccupied with how to allow compulsory licences for countries that do not have their own pharmaceutical industry. But it is clear that if licensing could only work in a situation where prices were well above marginal cost (otherwise it would be cheaper to just buy from the patent holder), in a situation where competition rules come into play.

The weakness of the dispute settlement system of the GATT before the Uruguay Round may well have led policy-makers to under-estimate the scope for litigation provisions. Before

1994 GATT contracting parties could refuse to accept a panel decision given against them. So contracting parties could operate their competition rules in whatever way they wished free of the fear that a GATT panel would declare their practice illegal. This assurance is no longer available. There are other provisions in the original GATT, which when combined with the teeth given to them by the WTO Dispute Settlement procedure, could be invoked in a competition case, as it has in Kodak Fuji (where really there appeared to be no factual case to answer) and Mexican telecoms.

What sort of new agreement?

For a long time the EU and the US have included competition provisions in bilateral agreements with important partners. The EU has focussed on ensuring that its close neighbours incorporate similar provisions to those of the EU on trade and competition into their laws. The US has signed a number of rather far reaching MLATS (Mutual legal assistance Treaties). The EU and the US have a rather weaker agreement including what is known as 'positive comity'.

In the late 1990s the EU was criticised (see for example Hoekman and Holmes, 1999) for putting forward an agenda that derived from its bilateral trade agreements; that it to say the EU was apparently motivated by the wish to ensure that competition policy or the lack of it did not obstruct market access by EU firms into developing countries. (This had been the US complaint against Japan in the Kodak Fuji case). Partly in the light of such criticisms the EU has since modified its position very substantially. Its papers to the WTO stress the need to have international competition rules that will be favourable to developing countries

The EU argues that bilateral arrangements need to be supplemented by multilateral agreements, and argue that few developing countries can profit from bilateral arrangements. Brazil is one of the few developing countries to have a bilateral arrangement with the US and there is some debate about how useful it has been.

The EU approach at the WTO is to seek an agreement to define core principles of competition policy as they apply to all WTO members. The EU and other advocates of such agreement argue it would have to cover:

1. A commitment by WTO Members to a set of core principles relating to the application of competition law and policy, including transparency, non-discrimination, and procedural fairness in the application of competition law and/or policy.
2. A parallel commitment to the taking of measures against hardcore cartels.
3. The development of modalities for cooperation between Member states on competition policy issues. These would be of a voluntary nature, and could encompass cooperation on national legislation, the exchange of national experience by competition authorities and aspects of enforcement.
4. A commitment to ongoing support for the introduction/strengthening of competition institutions in developing countries, in the framework of the WTO but in cooperation with other interested organizations and national governments.

Points 1 and 2 here would involve obligations, but what is rather interesting about the EU proposition is that as we have seen many of these points are already covered by WTO law. The EU position has been summarised thus

‘More specifically, we suggest that WTO negotiations should focus on three key issues:

1. core principles of domestic competition law and policy;
2. co-operation between competition authorities, including both specific cases and more general co-operation and exchange of information; and
3. technical assistance and capacity-building for the reinforcement of competition institutions in developing countries’, (Mogens, 2001).

The EU is in fact proposing an agreement to define the existing competition provisions including national treatment more precisely; their proposal would probably narrow rather than widen existing obligations because the EU calls for the obligation of national treatment to be confined to the de jure wording of laws, not to the de facto application, and for derogations to be allowed. Thus the EU could reduce the ‘depth’ obligations, but it also would extend the scope of coverage. It wants a comprehensive agreement that would extend such obligations from their present scope, i.e. tradable goods and scheduled services, to all goods and services not covered by an exemption. At the same time the EU are proposing

a general framework for voluntary cooperation, which would give some additional rights to those who accepted the redefined obligations

The EU calls for:

‘A competition agreement should include provisions to facilitate voluntary case-specific cooperation in relation to anti-competitive practices having an impact on international trade. Such provisions should apply to three main types of anti-competitive practices: practices that affect international trade (e.g. international cartels); practices that affect market access (e.g. import cartels, exclusionary abuses of a dominant position), and, practices with an impact on the trade flows to and from a different geographical market than that in which the practices have been conceived (e.g. export cartels, abuse of a dominant position by a foreign corporation)’.

(WT/WGTCP/W/193 1 July 2002)

Critics complain that the cooperation provisions are voluntary and that they make no provision for the exchange of confidential information. Case studies suggest however that non-confidential information can be of value: for example the EU has advised South Africa on how it defined the ‘relevant market’ in a number of cases, thus saving local resources and providing a solid legal footing for proposals for brand divestiture as a condition of merger approval.

Some critics are worried that the EU’s proposals would undermine national development strategies by introducing a requirement of non-discrimination against foreign firms. The EU argues that its proposals would apply very specifically to competition law, and most experts agree that it is hard to conceive of circumstances in which you would promote economic development by encouraging anti-competitive abuses by local firms. The one possible exception to this that has been raised concerns the South African commitment in competition law to ‘black empowerment’. However, the South African Competition Commissioner and South African legal practitioners, when asked have argued that the objective of helping their historically disadvantaged people can be achieved by firms of any ownership base.

If anything the problem with the EU proposal is not so much that it imposes excessive burdens on developing countries. Its requirements are very flexible, but they are also very flexible with respect to international co-operation which would not cover just cartels.

So far there are no comprehensive counter proposals. The US was deeply opposed to any negotiations at the WTO until July 2001, when a compromise agreement was made for the Doha agenda. The US now says they are prepared in principle to consider an international agreement but constantly pick holes in the EU proposals, mainly because they are too watered down. Latin American countries, with several years' experience of competition regimes and using them to deal with international problems, tend to be more supportive, as is South Africa. Opposition comes mainly from Asia. India, Malaysia and Hong Kong have spoken vociferously against new WTO negotiations. Hong Kong argues its policy of free trade ensures an absence of monopolies and cartels: it argues that the worst anti-competitive practices are those sustained by EU and US anti-dumping rules. India has a long history of supporting calls for international action against international restrictive business practices and has spoken out in favour of the application of the UNCTAD 'Set', but it sees no benefit in what the EU is proposing. It already has a competition law and does not need an international agreement to get one. And it is suspicious of the EU's motives. India agrees that international competition issues are the proper matter for the WTO in principle, but argues that the time is not ripe. India's position on this almost wrecked the Doha agreement, but they have recently taken a slightly more constructive line. One of their main concerns is that no competition agreement should limit the existing scope for developmental industrial policy; advocates of the EU proposals argue there is no reason why it should do so.

Conclusions

This paper has looked at the debate over trade and competition at the WTO. It has deliberately avoided debates about the impact of competition and competition policy on economic development. But it takes as a premise that on the whole more rather than less competition in international markets would be favourable to developing countries, a view point quite widely shared these days. The debate, therefore, becomes not so much whether this is a sensible aim, but whether a WTO agreement would be a good way to achieve this.

What we have argued is that in principle there is a case for WTO negotiations, if only because there are extensive but unsystematic WTO rules at the moment, which need to be made more precise if we are not to run the risk of their being defined by the Dispute Settlement Body. The kind of obligations proposed by the EU would be very modest, and there is scope for derogations : the EU claims its main concern is these should be transparent

and predictable. As we noted, the EU proposals would extend the scope of existing national treatment obligations from just tradable goods and scheduled services into non-traded goods and non-scheduled services. It would also extend the scope in this way of existing obligations on transparency and procedural fairness.

There are genuine fears that the extension of the national treatment obligation might restrict some aspect of development policy, but there has been little evidence that this is likely to be a real problem. The proposals on the table would allow countries to take exemptions from their existing obligations and would leave all other rules on subsidies, for example, unaffected. They would not require countries to open their markets to imports more than at present, except where imports were kept out by private barriers to entry.

If there is a weakness in the EU proposal it is rather that the proposals for voluntary co-operation are very weak. This is however inevitable: no competition authority in the world can guarantee that it will fully deal with all of the complaints put to it by its own citizens, and it is unthinkable that they would be taken on an open-ended commitment to tackle complaints brought by foreign governments. Nevertheless, experience shows that competition agencies are more likely to respond to requests for assistance when there is a formal framework, even a voluntary one, and that the kinds of non-confidential information which can be so exchanged can be of great value.

References

Evenett, S. and J. Clarke "The Deterrent Effects of National Anti-Cartel Laws: Evidence from the International Vitamins Cartel" WTO Berne, forthcoming

Evenett, S. and V. Suslow, "Private International Cartels and Their Effect on Developing Countries" (with Margaret LeVine), background paper for *World Bank's World Development Report 2001*, December 2000.

W. Fikentscher et al (1993) "Draft International Antitrust Code as a GATT-MTO-Plurilateral Trade Agreement" *Antitrust & Trade Regulation Report*, Vol. 65, No. 1628, Special Supplement (August 19);

Hoekman, B. and Holmes, P. (1999) 'Competition Policy, Developing Countries and the WTO', *The World Economy*, 875-893.

ICPAC (2000), 'International Competition Policy Advisory Committee to the Attorney General and Assistant Attorney General for Antitrust: Final Report', Washington DC: International Competition Policy Advisory Committee
(<http://www.usdoj.gov/atr/icpac/finalreport.htm>)

Maskus, K. and Lahouel, M. (2000) 'Competition Policy and Intellectual Property Rights in Developing Countries', *World Economy*, 595-611

Mogens, P. C. (2001), 'Towards basic rules on trade-related competition policy'. Speech by Director General, DG TRADE, Brussels, 2 March
http://europa.eu.int/comm/trade/speeches_articles/sp_mpc01.htm

UNCTAD (1948), 'Final Act of the United Nations Conference on Trade and Employment: Havana Charter for an International Trade Organization', Geneva: United Nations Conference on Trade and Employment: Havana Charter for an International Trade Organization (<http://www.worldtradelaw.net/misc/havana.pdf>)

WTO (2001), 'Report (2001) of the Working Group on the Interaction between Trade and Competition Policy to the General Council', WT/WGTCP/5, 8 October, Geneva: World Trade Organization (<http://docsonline.wto.org>)