SUSTAINABILITY IMPACT ASSESSMENT OF PROPOSED WTO NEGOTIATIONS

COMPETITION

FINAL REPORT

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CONTENTS

ABBREVIATIONS

ASEAN	Association of South East Asian Nations
CAFOD	Catholic Agency for Overseas Development
CEFIC	European Chemical Industry Council
CUTS	Consumer Union and Trust Society (India)
EC	European Commission
EU	European Union
EUR	Euros
IBRG	International Business Research Group
ICC	International Chamber of Commerce
ICFTU	International Confederation of Free Trade Unions
ICN	International Competition Network
ICPAC	International Competition Policy Advisory Committee
IWOGDA	International Working Group on the Doha Development Agenda
GATT	General Agreement on Tariffs and Trade
LDC	Least Developed Country
LPB	Liquefied Petroleum Gas
MFN	Most Favoured Nation
N/A	Not Applicable
NGO	Non-Governmental Organisation
NT	National Treatment
NTB	Non-Tariff Barrier
OECD	Organisation for Economic Cooperation and Development
OPEC	Organisation of Petroleum Exporting Countries
SDT	Special and Differential Treatment
SIA	Sustainability Impact Assessment
SMEs	Small and Medium-sized Enterprises
TNC	Transnational corporations
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
US	United States
USD	United States Dollars
WGTCP	Working Group on the Interaction Between Trade and Competition Policy
WTO	World Trade Organization

1. INTRODUCTION

1.1 Competition and Trade Policy

Discussions over the relationships between trade policy, competition policy and private anti-competition practices have been going on for a long time. This is not to say that the issues at the centre of the debate have remained the same over the years. In fact, since the Singapore Ministerial Declaration there has been a pronounced shift in emphasis away from the market access related aspects of competition policy towards the minimum standards and core principles for national competition law and the enforcement of such laws.

In the 1980s and until the mid-1990s much of the debate over the relationship between trade and competition policy centred on the fear that domestic private anti-competitive practices might be able to frustrate foreign access to national markets. This concern is particularly important given the prominent role that the reciprocal exchange of 'concessions' on market access plays in the multilateral trading system.

A number of ambitious proposals were advanced at that time for international disciplines on national competition law. A prominent example is a proposal by a group of academics and experts (known as the "Munich Group") for a multilateral antitrust code that could be incorporated into the WTO as an annex. Such a code would provide for minimum standards, which would be enforceable in domestic jurisdictions by national enforcement agencies. International disputes were to be handled in a dispute settlement regime that would include a permanent international antitrust panel. The current proposals for a multilateral framework on competition policy are far less reaching in scope, reflecting in part discussions on competition policy that have taken place in the WTO and in other international fora since the meeting of the Ministers of WTO Member States in Singapore in 1996.

Paragraph 20 of the Singapore Ministerial Declaration in 1996 directed that a Working Group on the Interaction between Trade and Competition Policy be established. This paragraph stated that:

> "Having regard to the existing WTO provisions on matters related to investment and competition policy and the built-in agenda in these areas, including under the TRIMs Agreement, and on the understanding that the work undertaken shall not prejudge whether negotiations will be initiated in the future, we also agree to:
>
> * establish a working group to examine the relationship between trade and investment; and
>
> * establish a working group to study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework.
>
> These groups shall draw upon each other's work if necessary and also draw upon and be without prejudice to the work in UNCTAD and other appropriate intergovernmental fora. As regards UNCTAD, we welcome the work under way as provided for in the Midrand Declaration and the contribution it can make to the understanding of issues. In the conduct of the work of the working groups, we encourage cooperation with the above organizations to make the best use of available resources and to ensure that the development dimension is taken fully into account. The General Council will keep the work of each body under review, and will determine after two years how the work of each body should proceed. It is clearly understood that future negotiations, if any, regarding multilateral disciplines in these

areas, will take place only after an explicit consensus decision is taken among WTO Members regarding such negotiations."[1]

The shift away from a market access-based discussion of competition policy issues can be discerned from both the writings of participants in those discussions and from the various Annual Reports of the Working Group on the Interaction Between Trade and Competition Policy. The following quotation from the 1998 Annual Report indicates the scope and purpose of the Working Group's deliberations:

"It was said that there were three principal objectives that the ongoing discussions in the Group should have: (i) the securing of a basic commitment by Members to adopt and enforce a competition law, as the appropriate means of addressing anti-competitive practices of enterprises that affected international trade; (ii) agreement on measures to address those anti-competitive practices which were particularly harmful to trade; and (iii) the adoption of measures to strengthen international cooperation in this area. It was also said that the Group should undertake work on minimum standards for competition law and policy and on promoting international cooperation in competition law and enforcement.

> "A third view expressed was that the Group should adopt a balanced approach, covering both the effects of the anti-competitive practices of enterprises on trade and the effects of trade measures and other forms of government regulation on competition. (WTO 1998, pages 26-27).

The mandate of the Working Group was further clarified by WTO Ministers at the Doha Ministerial Meeting. The paragraphs relating to competition policy-matters in the Doha declaration are as follows:

> "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 that 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 recognize 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 organisations, 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[2], 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."

It is worth noting that this Declaration confines the debate in the Working Group to one area of substantive competition law (laws relating to hardcore cartels) and does not refer at all to market access-related aspects of competition law. Moreover, the Declaration makes clear that matters relating to developing countries are to be central to discussions on the role of

[1] Singapore WTO Ministerial 1996: Ministerial Declaration, Adopted on 13 December 1996. Paragraph 20. Available online at http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm

[2] That is, before the WTO Ministerial Meeting in Cancun in September 2003.

competition policy in the WTO. Recently, the Chairman and the Secretary of the Working Group have described the evolution in the Working Group's deliberations as follows:

> "First, the Working Group, in its work over the past five years, has eschewed a narrow approach to the "trade and competition interface", concerning itself not only with practices that can disrupt the *flow* of trade (e.g., vertical market restraints) but also, very much, with practices that undermine the benefits that are intended to flow from trade liberalization (e.g., international cartels). In addition to the role of competition law enforcement, attention has been given to the benefits of effective competition advocacy work. Second, the Group has had a major focus in its work on the importance of and the challenges involved in implementing competition policies in developing countries. Indeed, in our view a major contribution of this work has been to raise awareness of the harm caused to developing countries by international cartels and other anti-competitive arrangements, thereby promoting interest in modern approaches to competition policy among developing country Members and reinforcing related consciousness-raising efforts in other fora such as the OECD, UNCTAD and the ICN.
>
> "Third, and perhaps contrary to the expectations of some, the Working Group has shown little or no interest in the international "harmonization" of competition law, if by harmonization is meant an insistence on uniform approaches to competition law and policy at the national level. Indeed, the observation that "one size does not fit all" in the field of competition law and policy has become a staple of the dialogue in the Working Group. On the other hand, central to the dialogue in the Group have been two more basic concerns: (i) a recognition that, for political-economic reasons, developing countries often suffer from an under-investment in competition policy institutions relative to the harm caused to them by anti-competitive practices; and (ii) a belief that sound application of competition law and policy in ways that promote trade, investment and development - particularly in countries where such law is only recently established or that lack an entrenched "competition culture" - could be facilitated by explicit commitments in the WTO regarding application of the fundamental principles of non-discrimination, transparency and procedural fairness in this area" (Anderson and Jenny 2003, pages 3 and 4).

This quotation highlights just how far discussions on trade and competition policy have shifted since the early 1990s, when far-reaching proposals for multilateral disciplines on many substantive areas of competition law were advanced. At present discussions are confined to the four competition policy-related matters raised by the Doha Development Declaration; namely, core principles, hardcore cartels, modalities for voluntary cooperation, and capacity building.

- **Objectives and instruments of competition policy**

There has been an evolution in the importance given to different objectives of competition or antitrust policy over the past 100 years. Initially, protecting market processes and rights to engage in commerce were accorded a high priority, as the following quotation from a joint World Bank and OECD study points out:

> "While many objectives have been ascribed to competition policy during the past hundred years, certain major themes stand out. The most common of these objectives cited is the maintenance of the competitive process or of free competition, or the protection or promotion of effective competition. These are seen as synonymous with striking down or preventing unreasonable restraints on competition. Associated objectives are freedom to trade, freedom of choice, and access to markets. In some countries, such as Germany, freedom of individual action is viewed as the economic equivalent of a more democratic constitutional system. In France emphasis is placed on competition policy as a means of

securing economic freedom, that is, freedom of competition" (World Bank-OECD 1997, page 2).

This quotation suggests that protecting economic freedom and competitive processes as well as fairness have historically been seen as objectives of competition policy in many countries. In a similar vein, the new competition law of India refers, in its preamble, to the objectives of preventing practices having adverse effects on competition, promoting and sustaining competition in markets, protecting the interests of consumers and ensuring freedom of trade carried on by other participants in markets in India.

Only after competition laws were enacted did a school of thought develop that justified certain competition laws on the grounds that they resulted in improvements in economic efficiency. In fact, the logic of static analyses of efficiency in markets and the rhetoric of "protecting the competitive process" as well as a focus on consumer welfare often went hand in hand. Posner (1976), for example, was to argue in his seminal treatise on US antitrust law that its "fundamental objective" is "the protection of competition and efficiency" (Posner 1976, page 226). This perspective gained considerable currency and accounts for the role that static economic efficiency still plays in the implementation of competition policy.
More recently, a wide range of opinion has stressed the importance of dynamic efficiency as an objective of competition policy. For example, Singh (2002) argues that competition policy in developing economies should support the overall development path of an economy. He points to:

"the need to emphasise dynamic rather than static efficiency as the main purpose of competition policy" (Singh 2002, page 22).

Audretsch *et al*. (2001), Baker (1999), Baumol (2001), and Posner (2001) argue that the nature of technologies or consumer preferences in certain industries, or the fast pace of innovation in some industries, call for a reassessment of the weight given to static efficiency as an objective of competition policy. Indeed, in many jurisdictions with active competition regimes the promotion of innovation or dynamic efficiency gains has become an important goal of competition policy, and the application of competition law explicitly takes account of this objective.

As well, it should be noted that many states have explicitly introduced other objectives into their national competition laws. For example, the Competition Act of 1998 in South Africa states that:

"The purpose of this Act is to promote and maintain competition in the Republic in order-

(a) to promote the efficiency, adaptability and development of the economy;

(b) to provide consumers with competitive prices and product choices;

(c) to promote employment and advance the social and economic welfare of South Africans;

(d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;

(e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and

(f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons" (Chapter 1, article 2).

This multiplicity of goals reflects the fact that:

> "A fundamental principle of competition policy and law in South Africa thus is the need to balance economic efficiency with socio-economic equity and development" (Introduction, web page of the South African Competition Commission, http://www.compcom.co.za/aboutus/aboutus_intro.asp?level=1&desc=7).

This example demonstrates that competition law need not be directed towards a single objective.

Turning now to the instruments of competition policy, it is important to recognise that such policy is concerned both with private anti-competitive practices and with government measures or instruments that affect the state of competition in markets. For example, trade barriers, barriers to foreign direct investment, and licensing requirements (amongst others) can influence the extent of competitive pressures in markets.

In many jurisdictions, the anti-competitive effects of government measures are addressed through an instrument known as competition advocacy. In a report to the International Competition Network, its Advocacy Working Group defined this instrument as follows:

> "Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationship with other governmental agencies and by increasing public awareness of the benefits of competition" (ICN 2002, page i).

The potential contribution of competition advocacy activities to national economic performance has been discussed extensively in international fora. An overview of the different types of competition advocacy and some claims about its effectiveness is provided in Box 1.

Box 1: Competition advocacy

The growing importance attached to competition advocacy is described by Anderson and Jenny (2002).

"Apart from the potential benefits for developing countries of appropriate competition law enforcement activities, discussions in the WTO Working Group on the Interaction between Trade and Competition Policy and other fora such as the OECD Global Forum on Competition Policy have called attention to the importance of so-called competition advocacy activities. These may include public education activities, studies and research undertaken to document the need for market-opening measures, formal appearances before legislative committees or other government bodies in public proceedings, or "behind-the-scenes" lobbying within government. These, it has been suggested in the Working Group, may be among the most useful and high payoff activities undertaken by agency staff" (page 7).

Anderson and Jenny (2002) go on to discuss the particularly strong link between competition advocacy and regulation:

"The importance of competition advocacy activities arises partly in relation to regulation. Of course, in both developed and developing economies, regulation can and often does serve valid public purposes. For example, it is well-established that regulation can be an efficient response to market failures such as imperfect information, the existence of a natural monopoly (a situation in which a market is most efficiently supplied by a single firm) and other such problems. Nonetheless, it is important to recognize that, notwithstanding its avowed aims, regulation often thwarts rather than promotes efficiency and economic welfare. This is likely to be the case, for example, where it imposes restrictions on entry, exit and/or pricing in non-natural monopoly industries. In fact, experience in both developed and developing countries shows that, in many cases, rather than having regulation imposed on them for the public benefit, incumbent firms have often sought regulation for their own benefit, for the purpose of limiting entry into the industry and helping them to enjoy higher prices for their products. Recognition of the significance of such conduct as a formidable barrier to economic development dates back at least to Krueger (1974), and is affirmed in recent analyses by the World Bank and other development-related agencies. In the light of this, efforts to remove inefficient regulatory restrictions and related interventions can be central to the establishment of healthy market economies in developing and transition economies" (page 7).

Notwithstanding the importance attached to competition advocacy in both national competition regimes and the work on competition policy in international organisations, another instrument—namely competition law—is at the centre of competition policy in many countries. Audretsch *et al*. (2001) describe competition law as follows:

"Competition (or antitrust) law lays down the rules for competitive rivalry. It comprises a set of directives that constrain the strategies available to firms" (page 614).

Hoekman and Holmes (1999) add more specificity by defining national competition law:

"as the set of rules and disciplines maintained by governments relating either to agreements between firms that restrict competition or to the abuse of a dominant position (including attempts to create a dominant position through mergers)" (page 877).

UNCTAD (2002) provides a list of firms' actions that can fall within the purview of competition law. Although there is no agreed list of the elements of competition law, the following five figure prominently in most accounts of such laws:

1. Measures relating to agreements between firms in the same market to restrain competition. These measures can include provisions banning cartels as well as provisions allowing cartels under certain circumstances.

2. Measures relating to attempts by a large incumbent firm to independently exercise market power (sometimes referred to as an abuse of a dominant position).

3. Measures relating to firms that, acting collectively but in the absence of an explicit agreement between them, attempt to exercise market power. These measures are sometimes referred to as measures against collective dominance.

4, Measures relating to attempts by a firm or firms to drive one or more of their rivals out of a market. Laws prohibiting predatory pricing are an example of such measures.

5. Measures relating to collaboration between firms for the purposes of research, development, testing, marketing, and distribution of products.

This list of five instruments is not supposed to be exhaustive, nor is it meant to suggest that each element is given the same weight or referred to in the same terms in each country that has enacted a competition law.

An important point is that there are many types of competition law and that there are many types of government laws and policy that fall outside the domain of competition law but within the definition of competition policy. This point will become even more significant later because, as will be discussed in section 3.2 below, many of measures that are traditionally regarded as competition policies will fall beyond the reach of the disciplines of a multilateral framework on competition policy, as currently articulated by proponents of such a framework.

- **Selected recent experience in jurisdictions with competition laws**

The decade of the 1990s saw considerable changes in the priority given to competition law in many jurisdictions. Perhaps the single biggest change is in the number of countries that have enacted such laws. Although counts vary, all point to the fact than many countries have adopted competition laws for the first time (Palim 1998, ICPAC 2000, and White & Case 2001). Table 1 presents data on the number of jurisdictions that adopted some form of competition law in the 1990s and is based on an cross-country survey by a well-regarded international law firm (White & Case 2001). The principal finding is that 38 jurisdictions adopted some type of competition law since 1990 taking, according to this source, the total number of jurisdictions with such laws to above 80. Also of interest is that 27 of the 38 jurisdictions were developing countries and that no least developed country appears to have adopted a competition law from 1990 to 2001, when the survey was published.

Two other points are noteworthy in this regard. First, as there are at present 145 members of the WTO, the factual record (Table 1 and the above paragraph) suggests that dozens of WTO members have not enacted any form of competition law. Second, one of the first competition laws that jurisdictions tend to enact are those that include provisions against the cartelisation of markets; which is important as discussions at the WTO on competition law and policy have given a prominent role to hardcore cartels.

Table 1: Just under forty countries enacted competition laws in the 1990s

Countries adopting their first competition law after 1990				
Total	of which ... are EU Member States	of which ... are non-EU developed countries	of which ... are developing countries	of which ... are Least Developed Countries
38	8	3	27	0

Source: White & Case, *Worldwide Antitrust Merger Notification Requirements*, 2001 Edition.

- **Enforcement actions against cartels**

An important aspect of the enforcement of competition laws in the 1990s has been the actions taken against cartels. Policy discourse tends to focus on so-called hardcore cartels, which the OECD has defined as follows:

"an anticompetitive agreement, anticompetitive concerted practice, or anticompetitive arrangement by competitors to fix prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by allocating consumers, suppliers, territories, or lines of commerce.[3]"

Table 2 summarises several of the prominent enforcement actions against cartels in industrial and developing economies. This table was assembled by the OECD and interestingly, Mexico, Korea, and the Slovak Republic have joined higher-income OECD members in initiating enforcement actions against hardcore cartels. The evidence presented in table 2 is noteworthy in two other respects. First, it appears that cartels are not confined to a small number of sectors; which tends to favour an economy-wide approach to cartel enforcement rather than a sector-specific approach. Second, the fines levied by many jurisdictions are only a fraction of the estimated harm done by these cartels, which raises the question whether previous—and perhaps even current—enforcement practices had sufficiently strong deterrents to cartelisation.

Table 2: Selected cartels prosecuted in the 1990s: affected commerce, estimated harm, and sanctions applied

Country or enforcement agency	Good	Affected commerce (national currency or euros in eurozone countries)	Estimated harm (value in local currency or percentage price increase)	Sanctions (including damages to private parties where applicable)	Fines as % of affected commerce	Fines as % of estimated harm
EU Members States						
Denmark	Electric wiring services	NA (many billions over "several decades")	20-30%	Some cases pending; largest find to date DKK 3.2 million	NA	NA
European Commission	Graphite electrodes	More than 2 billion	Up to 50%	218.8 million	11%	22%
European Commission	Lysine	NA	NA	110 million	NA	NA
European Commission	British sugar	NA	NA	50.2 million	NA	NA
European Commission	Pre-insulated pipe	More than 2 billion	NA	92.210 million	5%	NA
Finland	Purchases of raw wood	NA	NA	1.5 million	NA	NA
Germany	Ready-mix concrete	2.5 billion	220 million (9% of affected commerce)	300 million	12%	136%
Germany	Road markings	More than 750 million	"Hundreds of millions" (more than 13% of affected commerce)	25.6 million	3%	NA
Germany	Power cables	Many billions	As much as	249.5 million	NA	NA

[3] Organisation for Economic Cooperation and Development, 2002. This definition was proposed when the members of the OECD reached an accord—technically a Recommendation—on hardcore cartels in 1998.

Country or enforcement agency	Good	Affected commerce (national currency or euros in eurozone countries)	Estimated harm (value in local currency or percentage price increase)	Sanctions (including damages to private parties where applicable)	Fines as % of affected commerce	Fines as % of estimated harm
			50%			
Spain	Hotel association	1 billion	30 million (3% of affected commerce)	1.1 million	Less than 1%	3.30%
The Netherlands	Veterinary products	58.5 million	NA	10.5 million	18%	NA
Non-EU Developed Countries						
Australia	Distribution Transformers	320'505'000	NA	1.5 million (incomplete at time of response)	NA	NA
Australia	Frozen foods, Tasmania	NA	10 – 12% price increase	1.245 million	NA	NA
Australia	Installation of fire protection devices	More than 500 million	5-15% price increase	15.386 million	3%	31%
Canada	Lysine	89 million	NA	17.57 million	19.74%	NA
Canada	Citric acid	104.6 million	NA	11.575 million	11%	NA
Canada	Sorbates	37 million	NA	7.39 million	19.97%	NA
Canada	Vitamins	Up to 750 million	NA	91.475 million	12.70%	NA
Canada	Graphite electrodes	440 million	90% price increase	24 million (incomplete at time of response)	NA	NA
Japan	Ductile iron pipe	NA	NA	230 million	NA	NA
Norway	Hydro-electric power equipment	1.6 billion	140 million (9% of affected commerce)	75 million	5%	54%
Developing Countries						
Korea	Military fuel	USD 548.3 million	NA	USD 14.6 million	3%	NA
Korea	Graphite electrodes	USD 553 million	USD 139 million	USD 8.5 million	2%	6%
Mexico	Lysine	NA	NA	1.699 million	NA	NA
Slovak Republic	Flour	NA	200-300/ton	2.24 million	NA	NA
Slovak Republic	Beer	4 billion	NA	.1 million	Less than 1%	NA

Source: OECD (2003).

In addition to national enforcement actions against national cartels, since 1990 officials in the United States and the European Commission (EC) have taken over 40 enforcement actions against international cartels made up of private firms. Table 3 lists the countries whose firms

were found to be members of these international cartels; again the impression is given that such anti-competitive acts are not a localised or insignificant phenomenon. In fact, private international cartels are found to have raised prices between 15 and 40 percent (Levenstein and Suslow 2001) and are estimated to have inflicted billions of dollars of overcharges per year on customers in developing economies (Evenett and Ferrarini 2002). A single international cartel, which lasted ten years in the vitamins industry, was estimated to have inflicted nearly two and three quarter billion dollars of overcharges on vitamins imports by to 90 countries (Clarke and Evenett 2003). Moreover, the same study found that jurisdictions in Asia, Latin America, and Western Europe with active cartel enforcement regimes tended to suffer much smaller overcharges than those jurisdictions that do not (Clarke and Evenett 2003). This finding is evidence of the deterrent value of active cartel enforcement regimes; not just deterring the formation of cartels in the first place but reducing the damage done by those cartels that do have the audacity to form.

Table 3: Economies whose firms were found to be engaging in cartelisation by the US and the EC during the 1990s

Economy	Cartel
EU member states	
Austria	Cartonboard, citric acid, newsprint, steel heating pipes
Belgium	Ship construction, stainless steel, steel beams
Denmark	Shipping, steel heating pipes, sugar
Finland	Cartonboard, newsprint, steel heating pipes
France	*Aircraft*, cable-stayed bridges, cartonboard, citric acid, ferry operators, *methionine*, newsprint, *plasterboard*, shipping, sodium gluconate, stainless steel, steel beams, seamless steel tubes
Germany	*Aircraft*, graphite electrodes onboard, citric acid, aluminum phosphide, lysine, *methionine*, newsprint, pigments, *plasterboard*, steel heating pipes, seamless steel tubes, vitamins
Greece	Ferry operators
Ireland	Shipping, sugar
Italy	Cartonboard, ferry operators, newsprint, stainless steel, steel heating pipes, seamless steel tubes
Luxembourg	Steel beams
Netherlands	Cartonboard, citric acid, ferry operators, ship construction, sodium gluconate, Tampico fiber
Spain	*Aircraft*, Cartonboard, stainless steel, steel beams
Sweden	Cartonboard, ferry operators, newsprint, stainless steel
UK	*Aircraft*, cartonboard, explosives, ferry operators, newsprint, pigments, *plasterboard*, shipping, stainless steel, seamless steel tubes, steel beams, sugar
Non-EU developed countries	
Canada	Cartonboard, pigments, plastic dinnerware, vitamins
Japan	Graphite electrodes, lysine, *methionine*, ship transportation, shipping, sodium gluconate, sorbates, seamless steel tubes, thermal fax paper, vitamins
Norway	Cartonboard, explosives, ferrosilicon
Switzerland	Citric acid, laminated plastic tubes, steel heating pipes, vitamins
US	*Aircraft*, aluminum phosphide, bromine, cable-stayed bridges, cartonboard, , citric acid, diamonds, ferrosilicon, Graphite electrodes, isostatic graphite, laminated plastic tubes, lysine, maltol, *methionine*, pigments, plastic dinnerware, Ship construction, ship transportation, sorbates, Tampico fiber, thermal fax paper, vitamins
Developing countries	
Brazil	Aluminum phosphide
India	Aluminum phosphide
Malaysia	Shipping
Mexico	Tampico fiber
Singapore	Shipping

Economy	Cartel
South Africa	Diamonds, newsprint
South Korea	Lysine, *methionine*, ship transportation, shipping
Least Developed Countries	
Angola	Shipping
Unclassified	
Israel	Bromine
Taiwan	Shipping
Zaire	Shipping

Source: Adapted from Evenett, Levenstein, and Suslow (2001).

Note: Products in italics were under investigation at time of publication of Evenett, Levenstein, and Suslow (2001).

Yet more evidence on cartel enforcement is available. Table 4 summarises the information presented to the OECD by 11 developing economies and one least developed country on 28 recent enforcement actions against cartels. These twelve economies differ markedly in their stages of development and yet they were all affected by the detrimental effects of cartels. Furthermore, the number of bid rigging cases reported (six) suggest that the private sector is not the only victim of cartelisation—governments (and by extension taxpayers) are too. In fact, the three cartel cases described by the Chinese authorities were all bid rigging examples.

Table 4: Cartel enforcement cases in 11 developing economies and one least developed country

Economy engaging in enforcement action	Cartelised market	Duration of cartel	Summary of conspiracy and any fines imposed
Developing countries			
Bulgaria	Transportation on variable routes (intermediate transportation)	2000	Conspirators agreed on a price increase of approximately EUR 0.1 on transportation services. The companies were fined a total of EUR 47,000.
	Phone cards sales	One year (year not specified)	A common shareholder acted at as intermediary in price co-coordination between two conspiring companies. Both were fined of EUR 9,000.
	Gasification	2002	Two companies agreed on a five-years contract with non-compete clauses. A fine of EUR 25,500 was imposed on both companies.
China	Brickyard	1999	Bid rigging conspiracy involving five groups of companies affecting the operation of a brickyard plant in Zhejiang Province. They were fined EUR 6,500 each.
	School building	1998	Bid rigging involving ten construction companies. The bid was declared invalid and illegal gains confiscated.
	Engineering construction	1998	Bid rigging involving two construction companies.
Estonia	Milk products	2000	Price-fixing attempt by four leading milk processors and ten wholesalers. A prohibiting order was issued before an agreement came in place.
	Taxi services	1999	Three taxi companies (over 40% of the taxi market) convicted of price fixing, and fined EUR 639 each.
	Road transport	1999	The Association of Estonian International Road Carriers was prosecuted for participating in price fixing involving the

Economy engaging in enforcement action	Cartelised market	Duration of cartel	Summary of conspiracy and any fines imposed
			provision of international transport services. The Competition Board issued a proscriptive order. No sanctions were applied.
Indonesia	Pipe and pipe processing services	Formed in May 2000	Bid rigging involving four companies. The ensuing contract was dissolved. No fines were imposed.
Latvia	Aviation	1998-1999	International cartel involving one Latvian and one Russian company agreeing to co-cooperate in the organisation of passenger flights between Riga and Moscow. The Latvian company was fined 0.7% of its total turnover of 1998.
	Courier post	1999	Agreement between a Latvian state-owned courier post services and an international courier services operator. No sanctions were applied, as no practical effect on competition was ascertained.
Peru	Building and construction	1997	Three companies involved in bid rigging. Fines of nearly EUR 1,800 were imposed on each of the respondents.
	Taxi Tours	1999	Price fixing agreement between a number of local companies. Only one company, which did not express their commitment to cease the restrictive practices, was fined EUR 900.
	Poultry market	1995-1996	Several associations and 19 firms investigated and subsequently prosecuted for price-fixing, volume control, restraint of trade, for a conspiracy to establish entry barriers and for the development of anti-competitive mechanisms to suppress and eliminate competitors, in the market of live chicken in Metropolitan Lima and Callao.
Romania	Mineral water	1997	Price fixing conspiracy relating to the bottling of mineral water. Fines not specified.
	Drugs	1997-2000	Members of the Pharmacists Association were found to be participating in a conspiracy relating to market sharing in pharmaceutical distribution (approx. EUR 430 million per year) and to be deterring entry by other competitors. Fines were calculated as a percentage of profit of the Pharmacists Association (amount not specified).
Slovenia	Electric energy	2000 (year of enforcement decision)	Price fixing conspiracy relating to the provision of electric energy in Slovenia. The cartel was prohibited.
	Organisation of cultural events	2000	Two companies agreed to co-operate and prevent entry in the market. The amount of fines imposed is not specified.
South Africa	Citrus fruits	1999	Conspiracy relating to the purchase, packaging, and sale of citrus fruits. Fines not specified.
Ukraine	Electronic cash machines	1999	Price fixing conspiracy involving two companies. As an effect of the agreement, prices rose by EUR 1.0–2.0. The sanctions applied, if any, were not specified.

Economy engaging in enforcement action	Cartelised market	Duration of cartel	Summary of conspiracy and any fines imposed
	Kaolin	2000	Two competing distributors concluded a contract specifying amounts of sales of the product. The sanctions applied, if any, were not specified.
Least Developed Countries			
Zambia	Poultry	Not specified	Two companies, the dominant producer and the largest buyer in the poultry market, made agreements foreclosing competition. The agreement was declared invalid.
	Oil	1997 – not specified	Nine oil-marketing companies convicted of price fixing. The cartel leaders also forced other companies to comply with standard behaviour on prices. The sanctions applied, if any, were not specified.
Unclassified			
Taiwan	Wheat	1997-1998	The Flour Association was convicted of organising a buyers' cartel, instituting quantity control and quota system among 32 flour producers. The association was imposed a fine of EUR 620,000.
	Mobile cranes	1998	Six companies convicted of bid rigging. No fines specified.
	Liquefied Petroleum Gas (LPG)	Not specified	Twenty seven companies, controlling most of the market share, convicted of participating in a price fixing conspiracy relating to delivery of LPG in southern Taiwan. Total fines amounted to EUR 4,123,000.
Source: Assembled from national submissions to the First and Second OECD Global Fora on Competition.			

- **Other types of competition law enforcement in developing economies**

As the number of developing economies adopting competition laws rises over time, more evidence of anti-competitive practices is emerging from the enforcement records of national competition authorities. Many such authorities have their own websites, where annual reports and press releases are posted. In addition, numerous developing economies have reported on significant enforcement actions in submissions or notifications to the OECD, to UNCTAD, and to the WTO. The evidence reported in this subsection was assembled from such sources.

Developing economies' enforcement actions are not confined solely to cartels. Firms with sizeable market shares may individually or collectively raise prices and take other measures to distort market outcomes. Such corporate acts are said to be abuses of a dominant position and are regularly the target of developing economy competition policy enforcement. In their last annual reports to the OECD on competition enforcement, Hungary, Korea, Mexico, Russia, and Turkey took steps against abuses of dominant positions (see Table 5).

Table 5: Findings of anti-competitive conduct in selected developing economies

Economy	Year	Findings of horizontal agreements, cartels, and concerted agreements	Findings of abuse of a dominant position
Hungary	1997	0	8
	1998	2	5
	1999	7	7
	2000	11	19
Korea	2000	38	19
Mexico	1999	41	
	2000	63	
Russia	2000	18	438
Turkey	2000	0	12

The factual record on competition policy enforcement in Eastern Europe is particularly well developed (see Kovacic 2001 and Neven and Mavroidis 2000). This reflects the fact that many of these economies have been preparing to accede to the European Union and that the European Commission has in recent years published annual reports on (amongst other matters) the status of each applicant's competition policy enforcement regime. The latest reports published in 2002 refer to the enforcement record in 2001 and perusing these reports reveals that many of these Eastern European nations have active competition authorities and that they are increasingly targeting anti-competitive practices. It would appear that the fact that these economies' competition enforcement agencies have been established only recently has not prevented some of them from taking a relatively aggressive stance against private anti-competitive practices; suggesting that nations need not wait long before investments in competition enforcement begin to bear fruit. This is not to say that all of these economies' competition authorities are up to full strength as the European Commission's adverse commentary on the resources and personnel available to the Latvian and Slovenian competition authorities demonstrates.

- **International agreements and cooperation on competition matters**

The 1990s saw a number of jurisdictions sign bilateral agreements on competition law and policy matters with other nations. These agreements differ markedly in their content and legal status; ranging from Mutual Legal Assistance Treaties (such as the one treaty between Canada and the United States) to more informal arrangements between enforcement agencies.

The extent of cooperation between enforcement agencies varies across different types of competition law, with cooperation on merger reviews tending to be greater than cooperation on cartel enforcement cases (Jenny 2002). Moreover, cooperation between enforcement agencies is predominantly between industrialised countries, and only recently has evidence of cooperation between industrialised countries and counterparts in developing countries come to light (see, for example, Brazil 2002). Of course, this may well change in the future as expertise and experience on competition enforcement matters deepens in developing countries. Finally, there are many different types of cooperation including notifications to other countries when their interests are affected, discussions about specific industries or about the so-called theory of a case, close collaboration on the analysis of a case (where permitted by national law) and joint enforcement actions, such as dawn raids.

While precise measures of the extent of bilateral cooperation on competition law-related matters are hard to come by, the public record does include those international agreements between national enforcement agencies. Figure 1 portrays graphically which nations have signed bilateral or trilateral agreements; and it is immediately evident that many pairs of nations do not have any formal cooperative machinery in place. This is important as bilateral

cooperation is much less likely to occur without a formal agreement to structure the nature and content of such cooperation.

Figure 1: Bilateral and trilateral cooperation agreements on competition law enforcement

-	USA	EC	Ger.	Aus.	Fra.	NZ	Can.	Chi.	Rus.	Taiwan	Isra.	Jap.	Kaz.	Bra.	PNG	Mx.	Ice.	Nor.	Den.	Chil.
USA	-	1991 and 1998	1976	1982 and 1997			1995				1999	1999 and 1999		1999		2000				
EC	1991 and 1998	-					1999 and 2000													
Germany	1976		-		1984															
Australia	1982 and 1997			-		1994 and 2000**	2000**			1996					1999					
France			1984		-															
New Zealand				1994 and 2000 **		-	2000**			1997										
Canada	1995	1999 and 2000		2000**		2000**	-									2001				2001
China								-	1996				1999							
Russia								1996	-											
Taiwan				1996		1997				-										
Israel	1999										-									
Japan	1999 and 1999											-								
Kazakhstan								1999					-							
Brazil	1999													-						
Papua New Guinea				1999											-					
Mexico	2000						2001									-				
Iceland																	-	2001**	2001**	
Norway																	2001**	-	2001**	
Denmark																	2001**	2001**	-	
Chile							2001													-

Shaded boxes/entries implies no cooperation agreement. White entries indicate a cooperation agreement exists. Date that the agreement was signed is also indicated. Key: ** Tripartite agreement. Source: UNCTAD (2002).

1.2 Doha Agenda for the Sector and Scenarios

In this section two scenarios about the future course of national competition law and enforcement, and international cooperation on competition-related matters, are described. Fortunately, the proponents of a multilateral framework on competition policy have spelt out quite clearly what their proposals are in a number of areas; making it easier to characterise the further liberalisation scenarios. However, the latter will be described after the base line scenario is summarised.

Base line scenario

Characterising the base line scenario is difficult for the following reason. As the previous section made clear, many nations are independently choosing to enact competition laws. Moreover, nations have to choose to what extent and with what vigour to enforce any competition laws that they enact. As there is only a small body of literature about the circumstances under which nations enact and enforce competition law, it is almost impossible to predict with any confidence which nations will enact competition laws for the first time in the coming decade or so. In addition, one cannot predict which nations will continue to enforce these laws effectively or to start doing so.

For these reasons, the base line scenario takes as given the nations which have already enacted competition laws and assumes that no other nation will enact such laws. Moreover, this scenario assumes that those nations which are currently enforcing their competition laws continue to do so and are not joined by other nations. Analysis of national submissions to the OECD over the last two years reveal that the competition enforcement agencies or other state bodies in the following jurisdictions have taken enforcement actions against cartel laws in recent years: Australia, Brazil, Bulgaria, Canada, China, Estonia, Hungary, Korea, Latvia, Norway, member states of the European Union, the European Commission, Mexico, New Zealand, Peru, Poland, Romania, Slovak Republic, Slovenia, South Africa, Taiwan, United States, and Zambia (see Clarke and Evenett 2003 and Evenett 2003). In subsequent analysis and discussion, nations that have a cartel law enacted but for which there is no evidence in OECD submissions or public documentation of enforcement actions against cartels are treated in the same manner as those nations that have not enacted a cartel law in the first place.[4] As will become clear later, much of the attention will fall on the latter jurisdictions as they will bear the costs and reap the benefits of effective enforcement of a national cartel law.

Further liberalisation scenario

Before characterising this scenario it will be useful to summarise what appear to be the major elements of the proposals for a multilateral framework on competition policy, to be implemented under the auspices of the WTO. For purposes of this section, the authors have relied on the various elements that are set out in paragraph 25 of the Doha Ministerial Declaration and on related proposals by the proponents of a multilateral framework and clarifications that have been offered in the WTO's Working Group on the Interaction Between Trade and Competition Policy. These sources suggest that a multilateral framework might have the following elements:

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 policy.
2. A parallel commitment to the taking of measures against hardcore cartels.
3. The development of modalities for cooperation between WTO members 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] In so doing, we distinguish between active enforcers of cartel laws and non-enforcers of such laws.

4. A commitment to support the introduction and strengthening of competition laws and related institutions in developing countries, in a framework agreed at the WTO but in cooperation with other interested organisations and national governments.[5]

It should be appreciated that, to the extent that the eventual contents of any framework differ from the foregoing elements, the Assessment presented below might have to be qualified or revised.

Clarifying—where possible—what has and what has not been proposed

Further analysis of these proposals provides answers to a number of potentially important questions. First, would a multilateral framework on competition policy be directed at government measures that restrain competition, or would it focus on anti-competitive acts of enterprises and their treatment under national competition laws? A related second question is: would a possible framework apply only to competition law and its enforcement as such, or to other policy instruments, such as industrial policies?

The proposals of proponents of a multilateral framework on competition policy indicate that the focus is on private anti-competitive practices, in particular on hardcore cartels. Furthermore, the proponents have argued that intergovernmental or state-to-state arrangements would not likely be covered by a WTO agreement on competition policy. The observation could be taken to mean that arrangements such as OPEC would not be affected by a multilateral framework.

Specifically, the adoption of such a framework would—the proponents note—require the enactment of one type of competition law; namely, an anti-cartel law. Moreover, the proponents have argued that WTO members need not create a separate state body to enforce this law (WTO 2002, page 39).

With regard to the second question noted above, the EC's contribution on core principles focuses on the implications of potential provisions for competition law and not for other policies—such as industrial policy. In the case of the proposed provision on non-discrimination, the EC states that:

"In other words, what would be at issue would be the *treatment accorded to firms pursuant to the terms of domestic competition laws* as such, and not the treatment accorded to firms under a range of other policies" (EC 2002, page 4).

Moreover, in the specific context of national treatment, the EC has stated that:

"We are not proposing that a competition agreement should seek to introduce an absolute standard of national treatment to be applied to *any form* of government law or regulation" (EC 2002, page 4).

With regard to the ability to define freely the objectives of national competition laws, at this point in time no proposal has been put forward to constrain the objectives that would be incorporated in relevant national laws. Certainly, there is nothing in the proposals that would constrain a country to focus only on static as opposed to dynamic efficiencies. The following excerpt from the Annual Report of the Working Group for 2002 is also germane to this point:
"the proponents also affirmed their belief that the proposed multilateral framework could and should preserve adequate "policy space" for developing countries to pursue economic and social policies they deemed necessary for their own development. It is perfectly legitimate for a government to decide that there were policy goals which overrode the need to protect competition" (WTO 2002, page 15).

[5] For a similar compilation of the possible contents of a multilateral framework, see Anderson and Jenny (2001) or Anderson and Holmes (2002), page 35.

With regard to the ability to tailor the application of competition law so as explicitly to take into consideration possible implications for innovation and other determinants of long-run economic performance, it is worthwhile to ask what implications, if any, would potential provisions on core principles have for the factors that a nation can take into account when it enforces its competition law? Two related questions are: would these provisions prevent a nation from taking into account non-economic factors and evidence when implementing its competition law? And would these provisions prevent a nation from taking into account long term or dynamic factors and evidence when implementing its competition law?

In answer to these questions, nothing in the proposals would seem to rule out tailoring the application of competition law to promote innovation or long run economic performance. Indeed, as already noted, the current proposals do not seek to limit the criteria to be employed in the application of national competition law. Moreover, in principle, nothing prevents the potential provisions on core principles from being drafted in such a way that non-economic factors, short-term factors, and long-term factors are stated as permissible considerations during the enforcement of competition law.

One aspect of the proposals that could have implications for certain application of competition law for industrial policy-related purposes is the proposed obligation concerning national treatment. If a nation has a merger review law and the proposed provisions on non-discrimination apply, then without some kind of sectoral exemption, it would be obliged to evaluate any proposed merger involving one or more foreign firms in the same way that it evaluates a merger between two domestic firms, for example.

However, a nation that wants to discriminate in this manner *without violating the proposed provisions on non-discrimination* in a multilateral framework on competition policy might be able to do so through the application of its laws on foreign investments. This possibility is stated without endorsement or criticism, and highlights the fact that there exist mechanisms other than competition law through which discrimination can be conducted. Therefore, with careful choice of policy instruments, it would seem that the goal of creating so-called national champions need not fall foul of a multilateral framework on competition policy.

With regard to the ability to implement relevant exceptions, exemptions and exclusions in national competition law, the following excerpt from the Annual Report of the WTO's Working Group on the Interaction Between Trade and Competition Policy for 2002 is pertinent:

"With regard to the relevance of exceptions and/or exemptions from national competition laws and/or from a multilateral framework as a tool for managing any conflicts with national industrial policies, the view was expressed that given the diversity in stages and patterns of economic development among Members, sufficient flexibility had to be incorporated in any possible framework to make it workable among all WTO Members. A multilateral framework on competition had to provide for the possibility of appropriate exemptions or exclusions in two respects. First, many Members – including LDCs and other developing countries, but also some industrialized countries – wished to provide greater flexibility for small and medium-sized enterprises than for other firms under their competition laws. The proposed framework should permit this kind of flexibility. Second, as mentioned above, national interests might be safeguarded simply by providing for exclusion of sensitive economic sectors altogether from the substantive provisions of a multilateral framework, or from some of the core principles. Provisions for exemptions and exceptions would provide greater flexibility for WTO Members to achieve other national objectives such as industrial and economic development. Exceptions and exemptions must, however, be subject to appropriate transparency procedures, in order that firms trading with a Member or investing in a Member's economy would know where they stood. The suggestion was also made that the ability to implement exemptions should not be phased out over time, or be subject to periodic review" (WTO 2002, page 15).

Moreover, one leading proponent of a multilateral framework has recognised the importance of this issue and proposed that a flexible approach be taken to it. Specifically, the delegation of the European Community and its member States argues:

"The issue of sectoral exclusions and exemptions from the scope and application of competition law is of great importance from both a competition and a trade perspective. At the same time it must be acknowledged that it constitutes a question of great sensitivity and complexity both among developing countries as well as several OECD members, including the EC. Some countries have made the point that, in order to gather consensus for the introduction of competition legislation, it has proved necessary to introduce certain sectoral exclusions and exemptions, but that these have then been limited over time. When analysing the recent developments, the trend has clearly been to eliminate such exclusions or to define them in increasingly narrow terms. We suggest that a flexible approach would be to focus - at this stage - on the essential question of transparency and its application to sectoral exclusions and exemptions, as well as their review over time. For instance, the Working Group could also usefully examine the experience of WTO Members who have phased out exemptions and exclusions (including the reasons for and the timing of such phasing out), as well as the domestic processes employed to enact such exemptions and exclusions" (EC 2002, pages 6 and 7).

On the basis of the foregoing remarks, the principal elements of the future liberalisation scenario are taken to be:

1. A commitment to enact and enforce a national cartel law.
2. A commitment to apply a set of core principles (including non-discrimination) to whatever competition laws a nation already has on the statute books.
3. The development of a set of modalities on voluntary cooperation between competition agencies and such cooperation need not be limited to cartel enforcement actions.
4. A framework of measures that support the introduction and strengthening of competition policy-related institutions.

Given the earlier analysis of the current statements by proponent of their proposals, it might be useful to state that this scenario need *not*:

1. Require the creation of a new enforcement agency.
2. Require the enactment of any competition law other than a cartel law.
3. Require the abandonment of pro-development objectives for competition law.
4. Require the abandonment of existing exclusions, exemptions, and exceptions to national competition law.
5. Prevent the creation of so-called national champions, so long as those champions were nurtured using measures outside of a nation's competition law regime.

It should be stressed that the report in no way commends or condemns any of the five policy options listed directly above. These five points are important for our current purposes, however, as they reduce the number of factors that need to be considered in evaluating the further liberalisation scenario. (In the absence of the fourth point, for example, our analysis would have had to assess the impact of eliminating exclusions, exemptions, and exceptions to national competition laws; a sizeable undertaking as these clauses differ markedly across nations.)

1.3 SIA Methodology Applied to Competition

Unlike many trade policy reforms – which involve the reduction of a continuous variable such as a tariff – the further liberalisation scenario considered here involves a number of discrete – and in many cases, binary – changes. For example, the decision to enact a cartel law is a binary choice. This makes it more difficult to specify the scenarios for assessment, and to carry out the detailed assessment of potential impacts.

The SIA methodology is applied to four main country groupings: the EU, other developed countries, developing countries and least developed countries. The potential impacts on sustainable development of adopting a multilateral framework on competition policy that includes provisions on core principles, hardcore cartels, voluntary cooperation, and capacity building, are identified in terms of nine core economic, social and environmental indicators, and two process indicators.

The trade measure itself, and the scenarios used in the assessment, were described in detail in the preceding sections.

The next section of the report describes the causal links between the implementation of the proposed elements of a multilateral framework on competition policy and various indicators of sustainable development. These causal links are direct (for example, when the enforcement of cartel law affects market outcomes) and indirect (for example, when the enforcement of competition law influences the degree of rivalry between firms which in turn, has consequences for economic performance). This discussion of causal links is informed by the arguments advanced by members of civil society and other experts on the likely impacts of adopting multilateral disciplines on competition policy.

The third section summarises the available empirical research and evidence that is pertinent to an assessment of the strength of these links and, therefore, to the assessment of the effects of adopting a multilateral framework on competition policy. The sustainability impacts are then summarised for the four groupings of countries.

The fourth section contains the mitigating and enhancing measures part of the SIA methodology.

The final section presents the key findings of the study.

2. CAUSAL CHAIN ANALYSIS

2.1 Identifying the Key Lines of Causation

Unlike many trade policy reforms—which involve the reduction of a continuous variable, such as a tariff—the further liberalisation scenario considered here involves a number of discrete—and in many cases, binary—changes. For example, the decision to enact a cartel law is a binary choice. The discrete nature of the components of the further liberalisation scenario do not lend themselves to the traditional tools used to evaluate trade policy changes. However, a number of causal links can be traced out that, in some cases, lend themselves to quantification.

The principal lines of causation are as follows:

1. The effect of more vigorous cartel enforcement on the prices paid by consumers, including, but not limited to,
    a. the poor and
    b. governments.
2. The effect of more vigorous cartel enforcement on the intensity of competition in markets more generally, and its knock-on effects for dynamic economic performance.
3. The effect of more voluntary cooperation on the effectiveness of national competition law, including the strength of any deterrents contained in those laws.
4. The effect of more vigorous cartel enforcement on the environment.
5. The effect of greater technical assistance and capacity building on the effectiveness of national competition law and enforcement and on government budgets in developing economies and in the least developed economies.

With respect to the first line of causation, box 2 provides a detailed overview of the incentives supplied by effective anti-cartel laws to firms that are members of, or are contemplating being members of, a cartel. Effective enforcement creates two types of deterrents: deterrents to the formation of cartels in the first place and strong disincentives to raise prices in cartels that do form. Customers—who may be the poor, other firms, or the government—are the principal beneficiaries of stronger deterrents to cartelisation. In the case of imported goods, in the presence of strong deterrents import prices will be lower than otherwise; which, in turn, improves the terms of trade. In the important case of the poor, the prices of necessities will tend to be lower in jurisdictions where the disincentives to cartelisation are stronger, holding all else equal.

Box 2: The Economics of Cartel Enforcement

The purpose of this box is to describe—from a traditional "law and economics" perspective—the incentives supplied to firms by national anti-cartel enforcement regimes.[6]

From a law and economics perspective, the objective of anti-cartel laws should be to deter, and where necessary punish, firms who engage in cartelisation.[7] Three characteristics of cartels are germane to understanding the incentives supplied by anti-cartel enforcement. First, cartels typically involve secret agreements between firms. Second, the objective of these agreements is to secure pecuniary gains for cartel members. Third, sustaining the cartel requires careful attention to crafting incentive

[6] For a recent exhaustive survey of the law and economics literature, see Kaplow and Shavell (1998). The discussion in Box 3 focuses on the incentives supplied by public enforcement practices. Private suits—brought for damages by cartel victims—that are permitted in some jurisdictions, may reinforce these incentives.

[7] As a testament to the influence of this perspective it is worth noting that the Ministry of Commerce in New Zealand recently published a report on the effectiveness of the deterrence provided by that nation's enforcement practices and courts which was explicitly built on the lines of reasoning discussed in this section. See Ministry of Commerce, Government of New Zealand (1998).

compatible agreements between firms that discourage cartel members from cheating by selling more than the agreed amount or by selling below agreed prices.[8]

A group of firms will be *collectively* deterred from cartelising a nation's markets if that country's enforcers of competition law are expected to fine them *more than* the gains from participating in the cartel. Assuming that the firms are risk neutral; there are no costs to the firms in defending themselves before a fine is imposed; the pecuniary gain from cartelisation equals *G*; and the probability of the enforcement authority detecting and punishing the cartel equals *p*, then a fine *f that equals or exceeds (G/p)* will provide the necessary collective deterrent. An important insight is that even though cartel agreements are typically secret—and even though the probability of detection and punishment *p* is typically low—so long as *p* is positive there exists a fine that will collectively deter cartelisation.[9] Secrecy may impede investigations but deterrence is still, in principle, feasible. These arguments may also provide a rationale for why some nations, such as the United States and Germany, have made the maximum fines for cartel members a function of the pecuniary gain from their illicit activity.[10]

Interpreting existing enforcement practices in the light of the above conceptual considerations

Anti-cartel enforcement officials have exploited the "incentive compatibility" problems faced by cartels through the introduction of corporate leniency programs. These programs—which offer reduced penalties to firms that come forward with evidence of cartel conduct—induce members to "defect" from cartel agreements. These programs have also been motivated by the observation that the successful prosecution of cartels typically requires evidence supplied by at least one co-conspirator.[11]

The US corporate leniency program, last revised in 1993, can be rationalised in these terms. Currently only the *first* firm to come forward with evidence about a currently uninvestigated cartel is *automatically* granted an amnesty from all US criminal penalties. This encourages a "winner takes all" dynamic, where members of an otherwise successful cartel each have an incentive to be the first to provide evidence to US authorities.[12] A second feature is that even if a firm is not the first to approach the US authorities, such a firm can gain a substantial reduction in penalties by admitting to cartel practices in *other* markets that are (at the time of the application for leniency) uninvestigated. This provision has set off a "domino" effect in which one cartel investigation can result in evidence for subsequent investigations.

Jurisdictions differ considerably in whether they impose criminal penalties in cartel cases. In particular, few jurisdictions allow the incarceration of business executives responsible for cartelisation.[13] However, US officials strongly believe that criminal penalties including the threat of incarceration are essential deterrents to cartelisation.[14] How does a law and economics approach

[8] These forms of cheating are sometimes referred to as chiseling.

[9] This simple calculation can be extended in a number of ways, see Government of New Zealand (1998). Perhaps the most important extension is to include enforcement costs, which leads to the finding that the optimal enforcement of cartels may result in some less distortionary cartels not being prosecuted.

[10] Although this box focuses on the deterrent effect of state antitrust enforcement, it should be borne in mind that some jurisdictions permit private suits by those entities whose interests are hurt by a cartel. In principle, the expectation of damages won by those interests can act as a deterrent to cartelisation too.

[11] At the core of such leniency programs lies the incentive to give evidence in return for reduced (or even no) punishment for criminal acts. Some members of the Bar have pointed out that this incentive may well distort the information offered to enforcement authorities and the statements that former conspirators are willing to make in court. See "The World Gets Tough on Price Fixers," *New York Times*, June 3, 2001, section 3, pages 1ff.

[12] The German Bundeskartellant (Federal Cartel Office) revised their corporate leniency program in April 2000 to include such a provision. Dr. Ulf Boge, President of the Bundeskartellant, argued in explicitly economic terms as follows: "By granting a total exemption from fines to the first firm that approaches us, we want to induce the cartel members to compete with each other to defect from the cartel." See Bundeskartellant (2000).

[13] Although the criminality of cartel behaviour has considerable implications for international cooperation and evidence sharing, the role of these sanctions as a deterrent is what concerns this paper.

[14] See, for example, Hammond (2000) who argues: "based on our experience, there is no greater deterrent to the commission of cartel activity than the risk of imprisonment for corporate officials. Corporate fines are simply not sufficient to deter would-be offenders. For example, in some cartels, such as the graphic electrodes cartel, individuals personally pocketed millions of dollars as a result of their criminal activity. A corporate fine, no matter how punitive, is unlikely to deter such individuals." Mr. Scott Hammond is the Director of Criminal Enforcement at the US Department of Justice. In interpreting his remarks it is worth bearing in mind that the maximum fine under US law for individuals convicted in engaging in cartel behaviour is $350,000 which given recent trends in executive compensation is likely to be much less than the potential stock-option and other gains paid to an executive whose firm's profits have increased due to participating in a cartel.

assess this claim? First, incarceration involves costly losses in and re-allocation of output: managers' productivity is by definition less during their period of incarceration, and resources must be devoted to the construction and operation of prisons. If these were the sole considerations, then incarceration would be a less desirable alternative to fines. However, given the low probability of punishing a cartel and the sizeable gains from engaging in such behaviour, the minimum fine that would deter a cartel may in fact bankrupt a firm or its senior executives. Bankrupting a firm that has been engaged in cartel behaviour could actually reduce the number of suppliers to a market resulting, perversely, in less competition and higher prices. Furthermore, personal bankruptcy laws put a limit on what corporate executives can lose from anti-cartel enforcement. Incarceration may provide—through the loss of freedom, reputation, social standing, and earnings—the only remaining means to alter the incentives of corporate executives. This argument is particularly important in industrialised economies because in recent years the use of stock options in executive compensation packages provides very strong incentives to senior managers to maximise firm earnings and stock market value.

The second law and economics argument is that incarceration is needed to reduce or eliminate the expected harm caused by repeat offences. There may be legitimate concern that executives who have successfully arranged explicit agreements to carve up a market will, after the cartel is broken up, attempt some other form of anti-competitive practice. The imposition of fines alone may not induce a firm's shareholders to replace the offending executives, especially if the latter can convince shareholders that the fine was a "cost of doing business" and that the benefits from implicit collusion (which they expect to secure in a market that is well known to them) will soon flow. In these circumstances, the incarceration of executive may serve two purposes: first, to create a clean break with the past and second to act as a threat to incoming senior executives not to attempt re-cartelisation. When considering the merits of incarcerating executives, the advantages of stronger deterrent effect of incarceration might be considered against the higher levels of evidence that are required to secure criminal convictions. The threat of incarceration exacerbates the difficulties that officials face in securing evidence and testimony from cartel participants, which in terms of the framework outlined above effectively lowers the probability of detection and punishment, *p*.

The effectiveness of national anti-cartel laws against international cartels

The law and economics perspective explains why national enforcement efforts may be particularly ineffective in deterring international cartels. First, the ability of executives to organise cartels (including attending meetings and the writing and storing of agreements) in locations outside the direct jurisdiction of the national competition authority, where the cartel's effects are felt, can effectively reduce the probability of punishment *p* to zero. For example, in 1994 the US case against General Electric, which along with De Beers and several European firms were thought to be cartelising the market for industrial diamonds, collapsed with the trial judge citing the inability of US enforcement authorities to secure the necessary evidence from abroad.[15] Second, constraints on the ability to collect evidence and to interview witnesses abroad imply that the probability of punishment *p* is lower than it might otherwise be. Increasing the fines *f* imposed may not, given the substantial reduction in *p* and the limits imposed by bankruptcy, be sufficient to deter cartelisation. In sum, supplying the right deterrent is more difficult when conspirators can hatch and execute their plans abroad. Both of these arguments imply that a nation which under-enforces its anti-cartel laws can effectively become a "safe haven" for international cartels, so creating adverse knock-on effects that harm its trading partners. **Indeed, the case for an international agreement that includes minimum standards for national cartel laws and enforcement is that it will help eradicate safe havens for private international cartels.**

Finally, the effectiveness of national leniency programs is compromised by firms' participation in cartel activities in many nations. A firm may be reluctant (to say the least) to apply for leniency in a single jurisdiction if that leaves it potentially exposed to penalties in other jurisdictions. Furthermore, even though a firm may be willing to offer evidence on cartel activities in many nations, a national competition authority will only value information on activities within its jurisdiction. Both factors reduce the benefits of seeking leniency.

Source: Substantially adapted from Evenett, Levenstein, and Suslow (2001).

The effect on the government budget of enacting and enforcing a cartel law *for the first time* is ambiguous. The stronger deterrents will reduce the propensity for bidders for government contracts to rig bids and the like. The associated reduction in the prices paid by the

[15] See Waller (2000).

government will enable government outlays to fall or will permit greater quantities to be purchased. (To the extent that any price reductions free up funds that enable a government to spend more on social safety nets, education, and health services, then improvements in social well-being are likely to result.) The potential reduction in the levels of government spending are to be weighed against the cost of effectively enforcing a cartel law. As far as the latter is concerned, holding all else equal, these costs are likely to be lower in those jurisdictions with stronger deterrents to cartelisation because the case load of the enforcement authority will be smaller in the first place. Consequently, it is misleading to state that implementing a cartel law must be a net burden to the national treasury (see Evenett 2003 for a further elaboration of this and associated remarks.)

With respect to the second line of causation, it should be noted that many experts have pointed out four ways in which greater rivalry between firms enhances dynamic economic performance. And to the extent that cartel enforcement promotes such rivalry—by deterring firms from engaging in price-fixing and the like—then the enactment and effective enforcement of cartel law will further promote economic development. The four channels identified by experts (and described and analysed at greater length in Evenett 2003) are as follows:

1. Greater inter-firm rivalry is said to focus managers' attention on raising productivity, so as to reduce the probability of bankruptcy or to increase current or expected future profits.
2. Greater inter-firm rivalry helps to ensure that the dynamic benefits of trade and investment reforms are not reduced or eliminated by private anti-competitive practices.
3. The enforcement of competition law improves the business climate in a nation and enhances its attractiveness as a destination for foreign direct investment.
4. Greater inter-firm rivalry in product markets sharpens firms' incentives to innovate.

If these causal links are valid, then one would expect to see in the data the enforcement of competition law positively contribute—along with many other factors—to measures of dynamic economic performance, such as economic growth.

With respect to the third line of causation, greater voluntary cooperation between enforcement agencies can result in stronger deterrents to anti-competitive acts by firms. In the case of cartels, the disincentive to price fix will be stronger if potential conspirators know that a nation's competition enforcement agency may receive assistance from another enforcement body in searching for evidence, interviewing witnesses, and conducting dawn raids. Furthermore, with more extensive provisions on voluntary cooperation, a nation may be willing to launch investigations into a cartel that has been prosecuted abroad, if the former anticipates receiving considerable assistance from the agencies that have already prosecuted the cartel. As a result, greater voluntary cooperation is likely to have the same *eventual* consequence as the first line of causation discussed above; namely, lowering prices paid by customers. These gains are to be set against any increase in enforcement costs that come from request for cooperation from abroad. Having said that, requests for cooperation from abroad can also reduce domestic enforcement costs (as resources spent on evidence collection may, for example, be less); so the net effect of cooperation on total enforcement costs is ambiguous.

With respect to the fourth line of causation, there are likely to be a number of distinct effects of greater cartel enforcement actions on the environment. First, to the extent that cartelisation is deterred and firms no longer curb output so as to keep prices high, then increased production levels may result in greater resource use, environmental pollution, and the like. In the opposite direction, to the extent that cartels take steps to impede the introduction of more environmentally-friendly products by new entrants, or to slow the introduction of such products by cartel members, then more vigorous enforcement actions against cartels will improve environmental outcomes. (For accounts of the means by which

cartels block the entry of new firms and slow innovation, see Levenstein and Suslow 2001). Moreover, to the extent that enforcement of competition policy leads to price reductions of environmental services, this could encourage the use of such services, to the benefit of the environment.[16] In sum, then, the respective strength of these three lines of argument will determine whether or not greater cartel enforcement improves the environment.

With respect to the fifth line of causation, greater technical assistance and capacity building are likely to improve the enforcement of competition law in developing economies and in the least developed economies, but probably not immediately after signing a multilateral framework on competition policy. To the extent that such improvements increase the deterrent effects of national cartel law, then the benefits identified earlier—namely, lower prices for consumers—can be expected to follow.

To summarise, these lines of causation suggest that the likely effects of adopting a multilateral framework on competition policy are to:

1. Strengthen the deterrent to cartelisation, which reduces the prices paid by customers, including the poor, importers, other firms, and the government.
2. Reduce bid rigging for government contracts, freeing up funds for other government purchases including expanded social programmes.
3. Potentially necessitate additional expenditures on cartel enforcement, the magnitude of which will depend in large part on the case load of the enforcement agency, and therefore on the strengths of the deterrents of cartelisation.
4. Foster inter-firm rivalry more generally, which improves dynamic economic performance.
5. Expand production which can lead to greater resource use and pollution; but also to lower prices and larger sales of environmentally-friendly products.

2.2 Civil Society Views on WTO Disciplines on Competition Law and Policy

Introduction

Many members of civil society—taken to include, amongst others, non-governmental organisations (such as consumer organisations, business groups, and the like), scholars, other experts, and those non-state bodies with keen interests in the prospects of developing and industrial countries—have advanced views on the desirability of negotiating and developing multilateral disciplines on competition law and policy. This section attempts to summarise many of the important points made by civil society, but space inevitably precludes an exhaustive overview of every position advanced. To organise the discussion, the positions of civil society have been grouped together around the following four matters: institutional issues; negotiations issues; developmental issues; and capacity building issues.

Institutional Issues

Some non-governmental organisations (NGOs) are concerned with whether the WTO is the appropriate forum for an agreement on competition law and policy (see, for example, CAFOD et al. 2002). Some see competition policy as "intimately" linked to trade (South Centre 1998, International Business Research Group 2002), and therefore the WTO is thought to be the most appropriate body to address the trade-competition relationship (CEFIC 1999). Others contest that trade and competition policy are "philosophically quite different", where the "market access approach targets trade maximisation" while the "competition approach targets efficient resource allocations and welfare maximisation" (ActionAid 2001, page 7). Others have contended that international organisations such as

[16] For a recent example of how environmental factors have been taken into account in the enforcement of competition law within Europe, see http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/01/850|0|AGED&lg=EN&display=

the OECD and UNCTAD have greater expertise in competition law and policy than the WTO (ActionAid 2001, page 7).

There are also concerns expressed that competition law and policy if incorporated into the WTO will be used as a vehicle for industrialised countries' firms to acquire greater access to developing country markets (South Centre 1998, Consumers International 2001, Khor 1999). An agreement is seen as being motivated by producer interests' concerns for greater market access (CUTS 2002d) rather than national welfare considerations without any assurances that "agreed rules will be welfare enhancing and pro-economic development" (Consumers International 2002). Those producer interests, it is argued, will likely prevail in any WTO agreement on competition policy (Friends of the Earth 2000). Greater market access will be the more likely result, rather than combating the increasing concentration of economic power (Khor 1998). However, CUTS has responded to the alleged potential of a multilateral competition agreement to result in unbridled market access, by arguing that the existing barriers to entry into foreign markets would still remain (CUTS 2002a).

The argument of an institutional misfit between the WTO and competition policy is related to the application of the multilateral trading system's core principles of Most Favoured Nations treatment (MFN) and National Treatment (NT) to competition. Without clarifying precisely how NT would apply in the context of competition policy "the suspicion will remain that improving access for foreign companies" is part of the EU-led agenda (ActionAid 2001). Some perceive this as reinforcing the "uneven playing field between TNCs and local firms" (Consumers International 2001).

A consistent theme amongst critics is that introducing multilateral competition law and policy, in addition to the other Singapore issues, will overburden the negotiating agenda at the WTO. Competition law is said to be a highly complex, technical and specialised discipline, which contains "competing philosophies and principles" (ActionAid 2002, World Development Movement 2002). Such complexity, and limited understanding of the law and policy and the implications for their economy, put developing countries at a disadvantage and they are expected to be "confined to playing at most a defensive role in negotiations" (CUTS 2002d).

Attention to competition law and policy may divert attention away from the built-in agenda at the WTO (ActionAid 2001). Abandoning competition would demonstrate to developing countries that it will "build confidence in the developed countries commitments to change the way the WTO operates" (CAFOD 2002).

Combined with the concern for a crowded agenda, is the concern that many countries are inadequately prepared for negotiates on this issue, and lack a "full understanding of different competition policy options" (ActionAid 2001). Essentially, negotiations would proceed in advance of any capacity built in developing countries (ActionAid 2001).

It is argued that most developing countries oppose the negotiations on trade and competition policy (CAFOD et. al 2002). There is also a general mistrust of the WTO since there has not been effective use of existing provisions in the Uruguay Round Agreements to combat anti-competitive practices such as anti-dumping action or cartel-like powers of patent holders (ActionAid 2001).

Development Issues

Overall, most NGOs and other groups advocate the introduction or greater enforcement of competition laws and policies at the national level. This is seen to benefit consumers by offering goods at cheaper prices and at a better quality, in the light of the innovation and creativity spurred on by competition (South Centre 1998). Monopolies and cartels "impede long-term growth and development, while reducing quality and choice and increasing prices

for consumers" (Consumers International 2001, page 10). Competition policy is seen to promote public welfare and economic efficiency (IWOGDA 2002).

An international agreement can be effective in promoting cooperation in enforcement and institution building and "in providing muscle to overcome domestic vested interests hindering reform" (Consumers International 2001). Competition policy is recognised as benefiting developing countries by

"promoting a competitive environment and in building and sustaining public support for a pro-competitive policy stance by the government" (Consumers International 2002, page 4).

Competition can be seen to induce firms to become more efficient, to offer a greater variety of products and services at lower prices and, overall, in

"reducing the degree of market imperfections in the economy…" (Consumers International 2002, page 4).

A major concern expressed by civil society concerning a WTO Agreement is that it will compel countries to reduce, if not preclude, any protection afforded to local producers and/or small and medium sized enterprises (CUTS 2000b). One way that has been advanced to preserve the right of exemptions in competition policy for local SMEs is to apply special and differentiated treatment for certain industries and SMEs (IWOGDA 2003, page 11). It is argued that a multilateral competition agreement will facilitate the entry of foreign firms into the local economy. This could result in the concentration "on production of high profit goods" that do not accord with the basic needs of developing country consumers (Consumers International 2002).

Moreover, foreign firm dominance of the market may limit the consumers' right to information and redress where the product is of foreign origin (Consumers International 2002). As a result of having competition policy on the WTO Agenda, "consumer rights are likely to be eroded further" (Consumers International 2002). What is more, local firms' competitiveness in the international market would be undermined (South Centre 1998) resulting in possible losses of employment and increasing poverty due to the closure of so-called infant domestic firms (Consumers International 2002). Foreign company dominance can also lead to the repatriation of their profits to the home countries "thus stifling economic development" (Consumers International 2002). Governmental intervention is needed to "secure a more level playing field for domestic firms" (South Centre 1996).

In addition, there are fears that the government's ability to regulate public goods and services, such as water utilities, schools, hospitals, would be challenged by foreign for-profit corporations (Consumers International 2002). Preferential funding to domestic providers of water services would be prohibited (Consumers International 2002). As a result, any competition law and policy at the international level should contain:

"necessary derogations and exceptions for public and developmental objectives which accommodate the different national regimes in terms of its laws and policies" (CUTS 2002b). However, there is some caution directed towards imposing any obligations on developing countries whose economic situation may make it:

"practically impossible to prioritise the establishment of an administrative structure to monitor and regulate national and international firms" (ActionAid 2001, page 3).
Developing countries should have the option to:

"maintain the freedom in deciding whether or not to enter into negotiation in competition policy in the next round". (CUTS 2002d, page 4).

The level of economic development in many developing countries suggests that it might be premature to enter into any multilateral agreement, since the countries can maintain their

freedom to implement competition policies independent of the "demands or coercion by developing countries" (CUTS 2002).

Negotiations Issues

Some NGO Statements have noted the absence of a legal obligation for WTO members to enter into negotiations on the Singapore Issues, such as competition. The World Development Movement points to the fact that negotiations are not to begin until a "decision has been taken at the Fifth Ministerial." (World Development Movement 2002); although this claim is contended by those that note that paragraph 23 of the Doha Declaration specifically states that negotiations will take place after the Fifth Ministerial, leaving only the (albeit important) decision on negotiating modalities to be taken at that time.

Most of the positions of civil society do not address the progress made in the Working Group on the Interaction Between Trade and Competition in identifying the issues to be negotiated. Some have reserved their views on WTO rules on competition until the modalities linking the negotiating proposals to the overall WTO framework and other policy objectives are better delineated (ICC 2002). However, where it is conceded that the WTO should be a forum for regulating competition at the international level, it is argued that the agreement should be limited to establishing principles and minimum standards for implementation (Consumers International 2002, CUTS 2002b) adds that:

"a framework for rules should be based on core principles rather than specific provisions".

The core principles would not result in the harmonisation of all national competition laws but allow for diversity where countries can retain:

"the necessary flexibility to accommodate differences in national legal systems and institutional capacities" (CUTS 2002b).

Some members of civil society are concerned that a WTO agreement on competition law may result in the imposition of developed country competition laws and policies on developing countries. (ASEAN Chamber of Commerce and Industry 2000, as referred to in Khor 1998).

Core principles

On the core principles (transparency, non-discrimination, and procedural fairness), some NGOs have called for differentiated obligations for developing countries (CUTS 2002). (This is often referred to as the need for "special and differential treatment" for developing countries.) Uniform application of the core principles should be based on "a level-playing basis only if national circumstances are comparable" (CUTS 2002). This would allow for implementation to be based on "different levels of resources and institutional endowments", reflecting the "extensive diversity of economic development, socio-economic circumstances, laws, cultural norms and history" (CUTS 2002).

Moreover it has been argued that developing countries would be permitted to "provide temporary relief from competition to domestic manufacturers and service providers" (CUTS 2002). Special and differential treatment can, it has been argued, include the concepts of "progressivity, flexibility and capacity building" (Consumers International 2002). This could be affected through technical cooperation; transnational periods for implementation; and the maintenance of exceptions and exemptions (for certain anti-competitive practices or sectors).

In clarifying the principle of non-discrimination as it applies to competition regimes, its application is restricted to "how the law is enforced within the national jurisdiction" (CUTS 2002a). Foreign firms would be equally subject to competition laws and policies while having equal access to lodge a complaint with competition authorities. And, it is argued,

"Non-discrimination towards foreigners would in reality be discrimination against locals who would not be able to compete on equal terms" (Consumers International 2002).

Governments would not be able to place special restrictions on the scale of what foreign investors can own nor provide economic assistance programmes that exclusively benefit domestic companies (Consumers International 2002). Local firms' development prospects would suffer from the entry of foreign competition, especially in the services sector (CUTS 2002). As a result, there may be a genuine need to

"clarify and adapt the non-discrimination principles with regard to competition laws and policies for developing and lesser developed countries". (CUTS 2002).

Strict application of the principle of non-discrimination should be modified so that local firms can pursue their development objectives (IWOGDA 2003).

There appears to be less controversy surrounding the concept of transparency. CUTS notes that the role of transparency should be to

"explain to the public what are its priorities, how it investigates and makes decisions, and the reasoning behind its enforcement and policy decisions" (CUTS 2000a).

However, it is advised that

"developing countries need to make it absolutely clear that they retain their sovereign right to choose the type of sanction, the standard of review and the judicial and administrative process which, in their view, are best adapted to their circumstances" (CUTS 2000a).

A culture of transparency is needed for each country's competition regime although this will depend on

"resources and expertise to provide all the necessary elements itemised above that lends transparency to the regime" (CUTS 2000a).

Hardcore cartels

One matter that has received substantive comment is hardcore cartels. The ICC notes the importance of pursuing hard-core cartels and the requisite international cooperation although there are concerns over how legal safeguards and protections for parties involved in investigations will be guaranteed (ICC 2002). The ICC has set out a list of guiding principles with regard to the investigation of hardcore cartels:

1. horizontal agreements only;
2. limitations – no extension to agreements that are reasonable related to efficiency enhancing activity;
3. protection of confidential information (consistent with need for disclosure necessary for effective enforcement in concerned jurisdictions);
4. non-discrimination on basis of nationality or location of parties;
5. transparency of hardcore cartel investigation process; and,
6. due process (right to be informed of legal concerns that form basis for a proposed adverse decisions and factual basis upon which such concerns are based; the right to express views in relation to such legal concerns; and burden of proof on government authorities or plaintiffs) (ICC 2002).

CUTS (2002b), considers the provisions on hardcore cartels, and argues that domestic law provisions should

"ideally contain certain basic provisions which include: a clear prohibition on hard-core cartels; a definition of what constitutes hard-core cartels; and deterrence measures whether in the form of administrative fines and/or criminal sanctions."

Modalities for voluntary cooperation

Compared to some of the other negotiating issues, there is stronger support for the need of developing countries to enter into some form of international agreement requiring inter-state cooperation, as opposed to standards or legislative obligations which "would not reflect the diversity of economic situations encountered in the developing world and would have a negative effect", attention should be focussed on "surveillance and scrutiny of national policies and the augmenting of domestic institutional capacity would better deploy multilateral involvement". (Rachagan 2001).

CUTS (2002b) has proposed that any multilateral agreement on cooperation of competition authorities should include the following: exchange of information and evidence; exchange of information and files among competition authorities of relevant information and cases affecting the important interest of another country; and the application of appropriate comity principles. However, the impact of greater cooperation is limited, noting that, based on the failure of the WTO Agreements to open market access, greater cooperation will not end anti-competitive activities with transboundary effects (CUTS 2002b).

In operationalising cooperation, there is some concern turned towards the protection of confidential information (ICC 2002, CEFIC 1999). CUTS (2002b) responds to this need for caution by referring to certain studies showing the

"type of information needed for investigating hard-core cartels is not strictly business secrets or proprietary and sensitive business information. The information sought normally constitutes evidence of collusion in the form of meetings between cartel members and the like." (CUTS 2002b).

Other issues thought to be pertinent to a discussion of potential multilateral disciplines on competition policy and to international competition policy more generally

Some members of civil society have raised that do not appear to be within the ambit of what is being discussed in the Working Group on the Interaction Between Trade and Competition Policy. These include:

1. The relative merits of creating of oligopolies for designated products (South Centre 1996).
2. Mergers and acquisitions (South Centre 1998, Consumers International, Friends of the Earth 2000).
3. Other restraints on competition from governmental trade measures such as anti-dumping duties, import control measures, voluntary export restraints, safeguard measures (South Centre 1998, Consumers International 2001).
4. Lack of direct obligations on firms or on home governments regarding the conduct of foreign firms (Consumers International 2001).
5. No mention of a general "public interest" exception, which is needed to "provide balance between both the economic interests (market access and merger issues) and the social interests of developing nations such as low levels of income, skewed distribution of wealth, low levels of education and asymmetry of information" (IWOGDA 2003).
6. Given the current weaknesses or absence of competition enforcement authorities in developing countries, the question arises as to whether a supranational enforcement authority should be established to tackle the anti-competitive practices of transnational corporations (see Singh 2002, pages 25-27 for a proposal to establish an "International Competition Authority.")

Another issue of concern is the applicability of binding dispute resolution in the field of competition law and policy. The WTO is perceived not to have the institutional experience in the antitrust area and therefore competition issues should be decided in other fora such as the OECD (Consumers International 2002). According to the International Business Research Group, a WTO "panel or a body comparable to it may be able to adjudicate whether national governments and their competition authorities are acting appropriately, but such a body seems inadequate for passing judgement on individual competition policy offences" (International Business Research Group 2002, page 7). Specific issues of concern are raised concerning how binding dispute settlement will fetter the exercise of prosecutorial discretion and other decisions of national competition authorities and courts (Consumers International 2001) as well as the protection of confidential and proprietary information (International Business Research Group 2002). Moreover, the dispute settlement mechanism currently exists to resolve disputes between states and therefore it would need to be reoriented to impose appropriate punishments on individual firms (International Business Research Group 2002).

Capacity building

Some focus is drawn towards the absence of effective, let alone existing, competition laws and policies in developing countries (Consumers International 2002). In addition, some countries lack any competition advocacy and culture (Consumers International 2002), which reinforces the need

"to raise awareness and appreciation of competition policy among groups that influence policymaking: politicians, legislators, trade unionists, civil society and professional associations" (IWOGDA 2003).

As a result, global uniformity on competition law and policy is not achievable in the short term (Consumers International 2002).

Negotiating capacity is one area where capacity building is needed. The ability of developing countries to effectively participate in the Working Group on the Interaction Between Trade and Competition Policy is limited in the absence of

"adequate human, technical, and institutional capacity at the national level in the area of competition law" (Friends of the Earth International 2002).

As a result,

"sufficient resources must be provided to conduct a comprehensive "mapping" or assessment exercise of: (i) the extent to which developing countries have autonomously put in place and implemented national competition legislation; and (ii) the capacity-building needs of developing countries in this area" (Friends of the Earth International 2002).

The imbalance in terms of experience as well as capacity with respect to competition legislation and institutions between developed and developing countries suggests that negotiations should not go further than the study process mandated under the Singapore Ministerial Declaration (Friends of the Earth International 2002).

One point that is consistently raised is that a "one size fits all" type of legislation is not workable for developing countries. A more specific law and policy is needed to tailor to the local economic conditions and developmental objectives (South Centre 1998). This would reflect the "bottom up" approach advocated by CUTS (IWOGDA 2003). Without the freedom of countries to prescribe the most suitable competition policy, this

"will amount to subjugation of the long-term benefit of the developing world to the short-term benefit of western corporations" (Rachagan 2001).

The size of the market (Consumers International 2001) or the country's stage in economic development (Singh and Dhumale 1999) should reflect the competition policy that is adopted. Competition laws and policies must be

"integrated into national development strategies and be coherent with national industrial policy" (ActionAid 2001).

More research and analysis is needed to assess the impacts of introducing different types of competition policy on economic development (ActionAid 2001). Governments should not lose their ability to

"foster concentration of local enterprises, or provide discriminatory support to infant industries" (ActionAid 2001).

The ICFTU expressed similar concern noting the
"risk of jeopardizing developing countries' prospects for building their own enterprises, while bringing no benefit to the workers employed by the multinational concerned (ICFTU 2002a).

By restricting local firm activity, it can impede economic development as local firms are seen to be unable to compete with foreign firms (South Centre 1998). As a result, there is a need to ensure that flexibility in implementation and regulation is present in order
"to safeguard the interests of domestic producers and also, importantly, of their consumers" (South Centre 1996).

Flexibility can also be applied so that countries can base their implementation on development status and need (IWOGDA 2003).

There is some recognition of the UNCTAD Model Law however this has been seen as not universally appropriate for developing countries, since it fails to "take into account the specific political and economic issues faced by the country" (Consumers International 2001) (this comment was made with specific reference to the Zimbabwean competition regime).

A reflected concern is that there is a need to curb transnational anti-competitive practices. Multilateral action is perceived to be necessary in light of the weak domestic capacity to enforce competition rules and procedures (South Centre 1998). However, there is some reservation expressed about whether a multilateral competition agreement at the WTO will actually

"deal with the anti-competitive behaviour and restrictive practices of their TNCs at international level" (Khor 1998, page 1.)

There is also some support for an agreement that will forge cooperation between States in combating transnational anti-competitive practices. This will have capacity building offsets. Developing countries would benefit from a multilateral framework for competition policy by allowing developing countries to learn by experience (Stewart 2002). Stewart (2002) adds that cooperation must include the sharing of information showing the harmful effects on developing economies, alerting those countries as well as the non-application of the effects doctrine to investigations of hardcore cartel cases that are being investigated in industrialised countries. However, some scepticism surfaces indicating that any agreement would not oblige industrialised countries to control the anti-competitive actions of their firms (ActionAid 2002). As a result, there is a need to ensure that any proposed framework guarantees coordinated assistance in regard to capacity building in drafting competition policies and establishing effective institutions for enforcement (Consumers International 2002).

3. IMPACT ASSESSMENT ANALYSIS AND FINDINGS

3.1 Evidence

Drawing upon publicly available data sources and existing studies, this section presents evidence that may be pertinent to an assessment of the potential lines of causation associated with the further liberalisation scenario. This section is broken down into five substantive parts, each considering a separate set of evidence about the potential effects of adopting a multilateral framework on competition policy that includes provisions on core principles, hardcore cartels, voluntary cooperation, and capacity building.

- **Effects on macroeconomic performance**

One of the consequences of adopting such a multilateral framework is that, with the appropriate financial and political support, national competition laws are likely to enhance the tempo of inter-firm rivalry. It is of interest, therefore, that a growing body of research supports the proposition that well-enforced competition laws enhance macroeconomic performance in industrial and developing economies.

Such research has drawn upon recent collections of large cross-country datasets of the factors which impede or facilitate competition in national markets, including measures of the strength of national competition or antitrust policy. The *Global Competitiveness Report 2001-2002*[17], for example, reports the average responses of business leaders in over 70 economies to two important competition-related questions. Each business leader was asked to grade on a seven point scale their responses to the following statements:

1. "Anti-monopoly policy in your country is (1=lax and not effective at promoting competition, 7=effectively promotes competition)."
2. "In most industries, competition in local markets is (1=limited and price cutting is rare, 7=intense and market leadership changes over time)."

The first statement refers to the effectiveness of one form of competition policy and the second to the extent of competition in a nation's market. Figure 2 plots the values of these two measures for all of the countries together. Table 6 presents summary statistics on these two measures in three of the four country groupings considered in this SIA. It is clear that both measures are substantially higher in the industrialised countries than in the developing economies, suggesting that the degree of intensity of competition and the vigour of anti-monopoly policy is weaker in the latter. However, in all three groupings the measure of the strength of anti-monopoly policy is strongly and positively correlated with the intensity of competition in national markets and is suggestive of—but does not prove—a causal link between the former and the latter.[18] If there is such a link, then to the extent that implementing the further liberalisation scenario strengthens national anti-monopoly policies, then the benefits of greater inter-firm rivalry should follow in the three country groupings found in table 6.

[17] This report is published annually by the World Economic Forum and is listed in the references as World Economic Forum (2002).

[18] In principle, there could be some (as yet unidentified) third variable that determines both of the measures reported in the text.

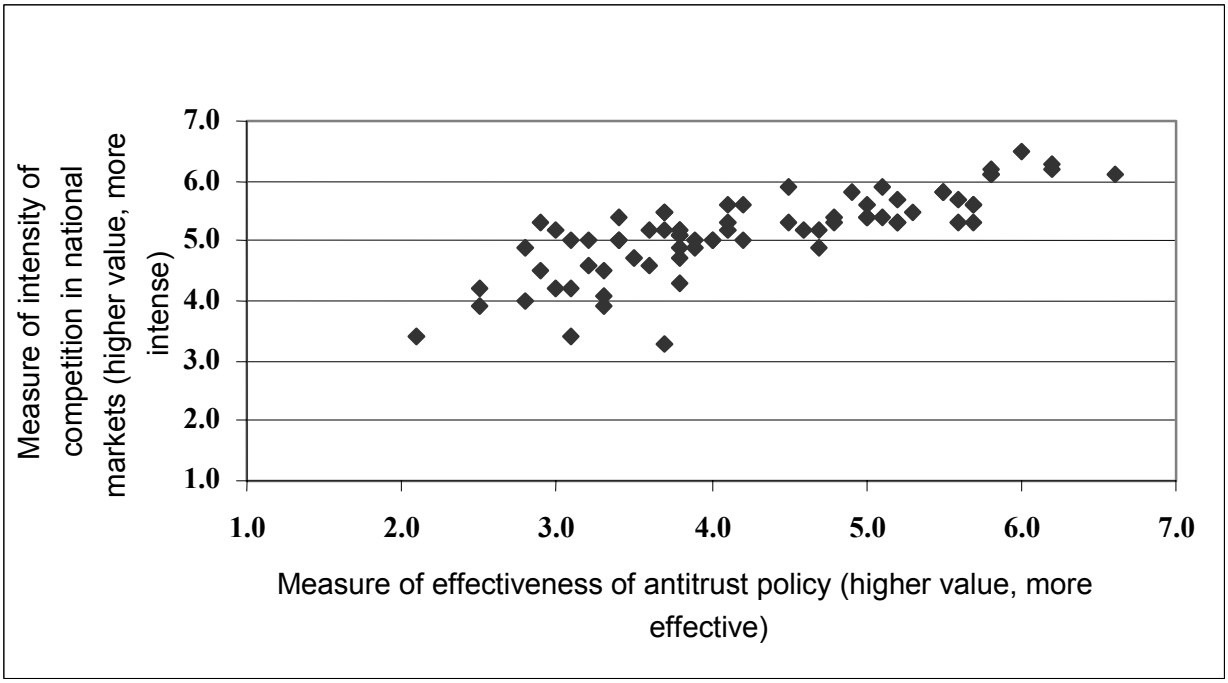
Table 6: Summary indicators of the rigour of competition in national markets and of competition policy, by country groupings

Grouping of countries	Intensity of Local Competition	Effectiveness of Anti-Trust Policy	Correlation coefficient	Number of countries
	In most industries, competition in the local market is (1=limited and price-cutting is rare, 7=intense and market leadership changes over time)	Anti-monopoly policy in your country (1=is lax and not effective at promoting competition, 7=effectively promotes competition)		
EU member states	5.79	5.46	0.79	14
Non-EU developed countries	5.65	5.46	0.72	8
Developing countries	4.87	3.68	0.63	50

Source: Global Competitiveness Report 2001-2.

Note: Data for only one least developed nation (Bangladesh) is reported in the *Global Competitiveness Report 2001-2*. For Bangladesh the reported value of the "intensity of local competition" measure is 4.5 and the reported value of the measure of "effectiveness of anti-trust policy" is 2.9.

Figure 2: Intensity of competition and antitrust policy



Other studies have examined the impact of competition law and policy on different measures of national economic performance. These studies invariably employ econometric techniques to strip out—or to "control for" in language of researchers—the variation caused by other

pertinent factors, so enabling the analyst to isolate the impact of competition law and policy on the measure of economic performance being studied. Dutz and Hayri (1999) found that, after controlling for the many determinants of economic growth, national output grew faster in economies that took more strenuous steps to promote competition and to attack market power.

More ambiguous results on the effectiveness of competition law can be found in Hoekman and Lee (2003). Using data from 28 industries in 42 countries for the years 1981 to 1998, they first estimate the price-cost mark up in each industry in each country. They then show that these estimated mark ups tend to be smaller in economies with greater import penetration and lower domestic barriers to entry. They further show, using a dichotomous indicator of whether a country has a competition law or not, that such laws have no direct independent and statistically significant impact on the estimated price-cost margins. However, once they take account of the fact that nations choose whether to enact a competition law, they find that:

> "…industries that operate under a competition law tend to have a larger number of domestic firms, suggesting that in the long run, competition laws may have an indirect effect on domestic industry markups by promoting entry" (Hoekman and Lee 2003, page 4).

Although these authors would prefer to stress the importance of barriers to entry, this latter finding is also consistent with the view that the enforcement of competition law discourages incumbent firms from taking steps to frustrate the entry of new firms.

On the basis of these findings Hoekman and Lee (2003) conclude:

> "While competition law is potentially an important component of a pro-active competition policy, the analysis in this paper suggests that dealing with trade barriers and government regulations that restrict domestic competition by impeding entry and exit by firms may generate a higher rate of return" (page 23).

This carefully crafted conclusion should be interpreted with caution. Hoekman and Lee (2003) do not calculate the rates of return on trade reform, investment liberalisation, and measures to reduce barriers to entry, as one might expect given the strength of their conclusion. The costs of relevant reforms—which in the case of tariff reductions would include the potential loss of tariff revenues—are not considered in their paper, even though they ought to be part of any cost-benefit analysis of this issue. Although tariff reductions would normally be considered welfare-enhancing, in developing or least developed countries it may be difficult to make up any resulting revenue loss. At best, this paper has illuminated one set of factors that are central to any such analysis (the effects of different policy instruments on price-cost margins).

The effects of competitive policies have also been traced through to firm behaviour. In a study of Eastern European and other transitional economies, Dutz and Vagliasindi (2000) found that enhanced enforcement (not merely enactment) of competition policies facilitates the growth of higher productivity firms in an industry—that is, inefficient firms cannot be cushioned by the profits acquired through the exercise of market power.[19]

Carlin *et al.* (2001) used survey data on 3,300 firms in 25 countries to examine whether the degree of competition that a firm's manager perceives he or she is up against has a positive effect on a number of dimensions of performance. They found that the more rivals a firm perceives itself as having and the more sensitive to price a manager perceives the demand for its products to be, the better was the firm's record at improving productivity, cutting costs, and the greater the rate at which it developed new products and improved existing products.

[19] This paper was also circulated at the OECD's Global Forum on Competition in February 2002.

Given the positive correlation between the intensity of competition in national markets and the strength of anti-trust policy discussed earlier (recall figure 2) and the findings of the Carlin *et al.* (2001) survey, the evidence suggests that by attacking anti-competitive practices, stronger antitrust policies stimulate competition in domestic markets. Moreover, as was reported earlier, greater inter-firm rivalry triggers a number of improvements in firm performance over time—such as innovation and increases in productivity—some of which may get passed on to their customers. These firm-level effects are in addition to the effects on economic growth identified earlier by Dutz and Hayri (1999).

To summarise, there is a nascent but growing empirical literature which has identified positive effects on macroeconomic performance of stronger enforcement of national competition laws in developing economies. This research complements the large body of evidence on the beneficial impact on the long term performance of firms and customers of greater rivalry, which can be enhanced by the appropriate enforcement of competition law. These findings point to the value of stronger competition laws *in general* and not just stronger cartel laws—two effects of which are discussed in sections 5.2 and 5.3 below.

- **Effects on government budgets**

As discussed in section 4, the effect of enforcing a cartel law on a government's budget is, in principle, ambiguous. However, in many developing countries the size of government purchases are now so large that only small reductions in the amount of bid rigging on state contracts would more than cover the likely costs of cartel enforcement.

Table 7: Estimated savings to governments through a reduction in bid rigging on just one percent of government contracts

Country	Conservative estimate of reduction in government spending in 2000, millions of US dollars		Budget of competition authority in 2000, millions of US dollars	Ratio of estimated savings to cost of competition agency	
	15 percent price reduction	20 percent price reduction		15 percent price reduction	20 percent price reduction
India	121.96	162.61	0.72	169.39	225.85
Kenya	4.85	6.46	0.24	20.19	26.92
Pakistan	20.34	27.12	0.33	61.64	82.18
South Africa	34.91	46.54	7.74	4.51	6.01
Sri Lanka	5.09	6.79	0.10	50.93	67.90
Tanzania	1.52	2.02	0.16	9.47	12.63
Zambia	0.51	0.68	0.19	2.68	3.58

Source: Data on central government spending and on the budget of the competition enforcement agency taken from CUTS (2003).

Table 7 provides some evidence of the magnitudes involved. The table reports data for seven developing economies that have competition enforcement agencies. Assuming either a 15 or 20 percent price increase caused by bid rigging, the table reports the savings to each respective national government if stronger cartel enforcement deterred bid rigging in just one percent of the value of state contracts. Those savings (reported in the second and third columns of table 7) are compared to the current outlays on the national competition enforcement agency (see the last two columns of table 7).

For countries with large government expenditures, such as India, a one percent reduction in bid rigging on state contracts would save the national treasury a sum equivalent to at least 16939 percent of the cost of its competition enforcement agency! This means that India could increase the expenditures on this agency by a hundred fold and still come out ahead—so long as the additional expenditures ensured that bid rigging on state contracts fell by at least one percent. Even for countries, such as Zambia, that have lower levels of government spending a one percent reduction in the extent of bid rigging would yield savings between 268 and 358 percent of the annual cost of running the competition enforcement agency in 2000. In short, the size of government expenditures in most developing countries are large

enough that the savings on government purchases which result from less bid rigging is likely to easily offset any additional outlays needed to rigorously enforcing national cartel laws.

- **Effects on customers more generally**

More rigorous cartel enforcement will not just benefit state purchasers; all customers can in principle benefit. To highlight this point, consider a recent analysis of the overcharges imposed on customers by the decade-long international vitamins cartel. Clarke and Evenett (2003) showed that in Latin America (and Asia and Western Europe for that matter) those jurisdictions that did not enforce their cartel laws (or did not enforce such laws once enacted) suffered greater overcharges than those nations that actively enforced their cartel laws. In Table 8 the overcharges paid by each economy in Latin America that did not have an active cartel enforcement regime is reported along with the estimated reduction in those overcharges had active cartel enforcement occurred. On this one international cartel alone, Honduras would have paid US $5million less in overcharges throughout the duration of the cartel (that is, from 1990 to 1999) had it actively enforced a cartel law. This table, therefore, provides an indicator of the savings to customers in Latin America that would have flowed from national investments in cartel enforcement measures; investments that that implementation of a multilateral framework on competition policy would probably necessitate in most developing countries and least developed economies.

Table 8: More vigorous cartel enforcement in Latin America in the 1990s would have reduced the amount of overcharges paid on vitamins imports

Economy	Overcharges (millions of US dollars)	
	Paid during the vitamins cartel (1990-1999)	Estimated reduction in overcharges had their been vigorous cartel enforcement in this jurisdiction
Developing countries		
Argentina	73.83	15.09
Colombia	54.95	11.23
Venezuela	45.32	9.26
Honduras	25.87	5.29
Ecuador	14.82	3.03
Guatemala	10.41	2.13
Paraguay	4.57	0.93
Costa Rica	3.82	0.78
Bolivia	3.45	0.71
Dominican Republic	3.07	0.63
El Salvador	2.70	0.55
Jamaica	2.11	0.43
Nicaragua	1.20	0.25
Trinidad Tobago	0.81	0.16
Panama	0.68	0.14
Least developed country		
Haiti	0.11	0.02

Source: Derived from estimates in Clark and Evenett (2003).

More generally, data on the magnitude of national imports and government consumption expenditures can be employed to gauge the likelihood that investing in cartel enforcement will be beneficial for developing countries and for the least developed countries. Table 9 includes data on 26 developing countries for which we could find no record in OECD documentation of active cartel enforcement in the 1990s. The purpose of Table 9 is to estimate the minimum percentage reduction in cartelisation on different purchases that

would have to follow from a US $10 million investment in cartel enforcement for this outlay to pay for itself or to more than pay for itself.[20] In the case of a nation's imports, and assuming very conservatively that cartels raise prices by 15 percent, this amounts to asking what reduction in the percentage of imports that are cartelised is needed to generate savings of US$10 million? For these 26 countries, the mean reduction in cartelisation on imports necessary to justify an investment of this magnitude was 1.25 percent. For 12 of these countries, the reduction of cartelisation needed on imports was less than 1 percent.

Table 9: Very little of a developing country's imports and government spending need to be affected by cartelisation to justify substantial outlays on the enforcement on competition law

Developing country where there is no record to date of active cartel enforcement	Given a 15 percent price increase on cartelised products, what percentage of a nation's [see column headings below]….would have to be cartelised to justify spending US$10 million on the enforcement of competition law?		
	Imports in 2001	Government consumption expenditure in 2001	Imports plus government consumption expenditure in 2001
Algeria	0.58	0.95	0.36
Cameroon	3.06	7.98	2.21
Costa Rica	1.06	3.28	0.80
Cote D'Ivoire	2.28	8.12	1.78
Ecuador	1.25	4.27	0.97
Egypt	0.35	0.77	0.24
Ghana	2.05	9.30	1.68
Guatemala	1.34	7.16	1.13
India	0.10	0.15	0.06
Indonesia	0.16	0.71	0.13
Iran	0.23	0.42	0.15
Jordan	1.24	3.61	0.92
Kenya	2.05	6.92	1.58
Lebanon	1.09	2.50	0.76
Malaysia	0.09	0.72	0.08
Mauritius	2.71	13.09	2.25
Morocco	0.63	1.25	0.42
Pakistan	0.61	1.13	0.40
Philippines	0.20	0.76	0.16
Senegal	4.41	16.50	3.48
Syria	1.38	3.32	0.98
Thailand	0.11	0.71	0.09
Tunisia	0.80	2.80	0.62

[20] The US$10 million figure is almost certainly larger than the outlays necessary to implement a cartel law in a small or middle sized developing economy. It is worth noting in this regard that South Africa—whose competition enforcement agencies and practices are well regarded—currently spends less than US$8 million of taxpayers' money.

Turkey	0.16	0.39	0.12
Venezuela	0.35	0.77	0.24
Zimbabwe	4.09	4.40	2.12
Mean	**1.25**	**3.92**	**0.91**
Minimum	**0.09**	**0.15**	**0.06**
Maximum	**4.41**	**16.50**	**3.48**

Notes:
1. The assumptions underlying these calculations are very conservative. For instance, the assumption of a 15 percent price increase due to cartelisation is at the lower end of estimates of the price impact of cartels (see, for example, the case studies in Levenstein and Suslow 2001).
2. Moreover, the US$10 million price tag for the enforcement of national competition law is in excess of what the South African government spends each year on the enforcement of all of its competition laws, not just cartel law. The South African experience is pertinent as it is widely regarded as having an effectively enforced set of competition laws.
3. The underlying data on imports and government consumption expenditures were taken from the World Development Indicators Online.

The third column of Table 9 reports the comparable percentage reduction in state contracts needed to generate US$10 million in savings to the national treasury. These percentages are larger than those for imports and reflect the fact that government consumption expenditures are smaller than the value of imports. Even so, the mean reduction in state contracts affected by bid rigging needed to generate US$10 million in savings In these 26 countries is less than four percent.

Table 10: For the least developed countries more of their nation's imports and government spending would need to be affected by cartelisation to justify substantial outlays on the enforcement on competition law

Least developed country where there is no record to date of active cartel enforcement	**Given a 15 percent price increase on cartelised products, what percentage of a nation's [see column headings below]….would have to be cartelised to justify spending US$10 million on the enforcement of competition law?**		
	Imports in 2001	**Government consumption expenditure in 2001**	**Imports plus government consumption expenditure in 2001**
Bangladesh	0.73	3.64	0.61
Benin	11.62	27.11	8.13
Burkina Faso	11.02	21.17	7.25
Chad	8.41	56.76	7.33
Congo	5.81	23.55	4.66
Ethiopia	3.84	7.25	2.51
Guinea	7.46	43.89	6.38
Madagascar	4.96	24.88	4.14
Malawi	10.08	24.84	7.17
Mali	6.98	22.48	5.33
Mozambique	4.47	17.62	3.56
Nepal	4.37	13.63	3.31

Niger	16.33	30.83	10.67
Rwanda	17.81	33.13	11.58
Tanzania	3.26	8.62	2.36
Togo	12.17	65.04	10.25
Uganda	4.48	10.81	3.17
Yemen	2.26	5.87	1.63
Mean	**7.56**	**24.51**	**5.56**
Minimum	**0.73**	**3.64**	**0.61**
Maximum	**17.81**	**65.04**	**11.58**

Notes:
1. The assumptions underlying these calculations are very conservative. For instance, the assumption of a 15 percent price increase due to cartelisation is at the lower end of estimates of the price impact of cartels (see, for example, the case studies in Levenstein and Suslow 2001).
2. Moreover, the US$10 million price tag for the enforcement of national competition law is in excess of what the South African government spends each year on the enforcement of all of its competition laws, not just cartel law. The South African experience is pertinent as it is widely regarded as having an effectively enforced set of competition laws.
3. The underlying data on imports and government consumption expenditures were taken from the World Development Indicators Online.

Turning to the least developed countries, the comparable percentages to those calculated in Table 9 for developing economies are reported in Table 10. Taken at face value, the percentages reported in Table 10 suggest that recovering US$10 million in savings would be less likely in the poorest nations than in developing countries more generally. Having said that, the least developed countries would probably need to spend less than US$10 million to properly enforce any cartel laws. Moreover, nothing in the current proposals for a multilateral framework for competition policy prevents these nations from creating a regional competition enforcement agency; which may help spread some of the costs across a number of regional partners. Even so, these calculations may well suggest that the least developed countries are in greater need of budgetary support (as well as other forms of capacity building) than the less poor group of developing countries.

- **Effects on the poor and the environment**

Recalling the discussion in section 4 above, the effect of more rigorous cartel enforcement is likely to have a number of beneficial effects for the poor and possibly for the environment also. As cartels are almost always secret conspiracies, researchers, experts, and other commentators cannot observe the entire set of currently cartelised markets and so comprehensive estimates of the likely social and environmental consequences of breaking up those cartels cannot be generated. However, past enforcement actions can provide a guide to the types of non-economic effects that are likely to follow from the implementation of a multilateral framework on competition policy and the anticipated increase in cartel enforcement actions. Table 11 summarises a number of those effects from recent cases in developing economies, which include direct effects of cartels on the price of foodstuffs consumed by the poor (the case of poultry in Peru) and on the price and access to medicines (the case of pharmacists in Romania).

Table 11: Selected prosecuted cartels with effects on sustainable development in developing countries

Country in which cartel operated	Details of cartel	Effects on the poor, the environment, inequality, development
Egypt	Bid rigging on USAID projects to build sewage facilities in Cairo, 1989-1995	Fewer of the poor served by resulting more costly projects; making the reduction in disease and environmental degradation fall below levels that would have been achieved in the absence of the cartel.
China	Bid rigging on school building contracts, 1998	Fewer schools build or built over a longer time horizon; retards development of human and social capital of children. Absence of school opportunities may also contribute to higher levels of child labour, especially in rural areas.
Estonia	Price fixing of milk products, 2000.	Milk is a staple food product for the poor.
Peru	Poultry market, 1995-1996	Chicken is the staple source of protein for poor Peruvians. Price of live chickens (the preferred way in which Peruvians buy this meat) rose 50 percent during the cartel. Cartel has clear distributional consequences, reducing the standard of living of the poor.
Romania	Members of the Pharmacists Association were involved in practices to restrict entry, 1997-2000	Detrimental impact on access to medicines with attendant implications for health over the three to four years of the cartel.
South Africa	Distribution of citric fruits, 1999	Reduced access to a key source of vitamins, necessary for warding off disease.

- **Effects of voluntary cooperation on the enforcement of national competition laws**

The effect of potential multilateral provisions on voluntary cooperation will depend in part on whether those provisions are subsequently used. Here it is important to recognise that jurisdictions with a track record for active cartel enforcement are much more likely to be asked to provide assistance to or to cooperate with another jurisdiction. (For example, a nation is unlikely to receive a request for cooperation in discussing the so-called theory of a case if it has not been active in enforcing similar cases in the past.) Given that most enforcement actions against international anti-competitive practices have been undertaken by the industrialised countries, then developing countries and the least developed countries are unlikely to bear the brunt of most requests for cooperation should multilateral provisions on voluntary cooperation be agreed. In fact, the opposite is more likely with competition officials from the developing world seeking assistance from their more experienced counterparts in the industrialised countries.

The recent experience of Brazil (see box 3 below) is instructive in this regard. It would seem, therefore, that if anything the implementation of multilateral provisions for voluntary cooperation would initially intensify such cooperation among industrial countries and less wealthy nations would probably be net demanders for such cooperation in the near term. As the latter gain more experience with enforcing competition laws, then requests for voluntary cooperation will increasingly flow in both directions.

Box 3: Brazilian investigations into the lysine and vitamins cartels were triggered by public announcements from abroad and benefited from informal cooperation with US agencies

In a submission to the 2002 OECD Global Forum on Competition, Brazil stated that:

"Despite the signature of the international agreement between Brazilian and North American Antitrust authorities [in 1999], the most valuable source of international cooperation continues being informal. Particularly in three important recent cartel cases, this type of technical assistance proved to be essential.

"The first one is the Lysine International Cartel. Two months before the signature of the above mentioned agreement, in September 1999, in the International Cartel Workshop in Washington DC, the US Department of Justice presented in detail their work in the Lysine International Cartel Case. After the case went to trial, the available material became public, [which] allowed the disclosure of relevant information to Brazilian antitrust officials.

Transcripts of the Lysine Cartel meetings sent to Brazilian authorities showed that Latin America and Brazil were included in the world market division set by the international cartel."

On the vitamins cartel, the Brazilian submission states:

"The second case, the Vitamins International Cartel Case, was also discovered by the US Department of Justice. Seae [the Brazilian Secretariat for Economic Monitoring] decided to initiate its own investigations after press releases announced the prosecution of this cartel in the United States. Notwithstanding, Seae's lack of expertise in hardcore cartel investigations hindered further developments in the case."

Concerning issues of confidentiality and informal cooperation with the US authorities, the submission states:

"…the fact that the case ha[d] not gone to trial in the United States unabled [prevented] the shar[ing] of documents because of confidentiality restraints. Hence, all the cooperation remained informal.

"Nevertheless, some important hints provided by North American authorities were essential for the analysis of Brazilian officials. One important [piece of] information received by Seae was that the Vitamins Cartel operated very similarly to the Lysine Cartel…

"The second important hint was provided by an oral statement of a former director of a large vitamin producer. The director revealed that Latin American operations of the major vitamins companies were centralised in Brazil and helped Brazilian authorities to detect the whereabouts of former Latin American regional managers."

The submission goes onto describe how these two hints enabled the Brazilian authorities to assemble a case against the cartel members.

Source: Brazil (2002).

- **Summary**

This section has presented the available quantitative and qualitative evidence of the likely consequences of adopting the full liberalisation scenario for various economic, social, and environmental indicators. When considering the following remarks it is important to bear in mind that, compared to studies of trade and investment reform, there are far fewer studies of the effects of competition law and policy. Nevertheless, what follows is our best assessment of the available evidence.

Adopting a multilateral framework on competition policy is likely to strengthen national enforcement of competition laws more generally, to strengthen national anti-cartel enforcement in particular, to promote voluntary cooperation between national antitrust authorities (in all their investigations and not just in cartel cases) and will have consequences for social and environmental indicators.

It is, therefore, noteworthy that in this section, evidence was presented that implies that national macroeconomic performance is improved by stronger enforcement of national competition law. Moreover, for each country grouping the reduction in cartelisation and overcharges needed to justify increased outlays on cartel enforcement is very small, with the possible exception of some of the least developed countries. Moreover, recent enforcement actions in developing countries suggest that there are also important social and environmental benefits from greater enforcement of national competition laws.

3.2 Summary of Sustainability Impacts

- **Introduction**

In this SIA the effects of adopting the proposed multilateral framework on competition policy has been analysed for four groups of countries and the findings are summarised in the charts at the end of this section. The four groupings of countries are EU member states, non-EU industrialised economies, developing countries, and the least developed nations. The identified effects have been classified in both economic and non-economic terms. Where possible, any differences in the likely magnitude of those effects in the short and long run are pointed out.

To the extent that overall assessments by groupings of countries are legitimate, the likely effects of adopting a multilateral framework on competition policy in the EU member states and the non-EU industrialised economies are likely to be of a similar nature and order of magnitude. Potentially significant differences can, however, be expected between the effects on industrialised economies and the effects in the developing and the least developed countries. In the longer term, the net effect in all four groups of nations is likely to be positive, although variation across nations is likely to occur. In the near to medium term developing countries and the least developed nations are likely to incur expenditures as they strengthen their enforcement of cartel laws and the like.

EU member states and Non-EU industrialised economies

The impacts of the adoption of a multilateral framework for competition policy is likely to be same for EU member states and for non-EU industrialised economies. It is for that reason that the two country categories are discussed here under the same heading. No negative effects associated with the adoption of a multilateral competition framework were identified for these industrialised economies, however, in some instances, the effects of the adoption of the multilateral framework on competition are difficult to determine with any precision; especially in the assessment of social and environmental impacts.

Developing and Least Developed Countries

Over the longer term, developing economies and least developed countries are likely to benefit more from adoption of a multilateral framework than their counterparts in richer economies. This potential outcome is tempered, however, by the exigencies of their weak political and judicial systems, as well as by their tight government budgets. The institutional deficiencies of many developing nations in terms of the independence of officials from the political and corporate pressures and the enforcement of the rule of law place could constrain their ability to benefit from the reforms that would follow from the adoption of a multilateral framework on competition policy.

Additionally, the least developed economies and developing countries are likely to incur proportionally greater increases in their state outlays on implementing and enforcing national cartel laws. These expenses include the costs of training and human resources, although externally offered technical assistance and capacity building will go some way to redress this.

- **Economic impacts**

Real income

There are two effects associated with real income. First, consumer prices fall. The disincentive to cartelisation imposed by the new multilateral framework should help to keep prices down as actual or potential cartel members are discouraged from attempts to distort market outcomes. The traditional methods employed by cartels of hiding documents in different jurisdictions and or operating their cartel from a country with lax competition laws - practices which allow the conspirators to evade easy detection and prosecution - are much riskier once a multilateral framework has been agreed upon and voluntary cooperation between enforcement actions becomes the norm in more parts of the world. The net effect will be that fewer cartels will operate, inter-firm rivalry is greater and prices are lower.

The second effect associated with real income is that exports are likely to rise. The disincentives to cartelisation that will prevail under a multilateral framework ensure that the price of inputs required for the production are likely to fall. Lower input prices do result in lower production costs and possibly also in lower prices for final goods. In the case of those final goods that compete on international markets, the lower input prices can create opportunities for undercutting rivals and for export growth. The mechanism by which a multilateral competition framework ensures lower input prices—by reducing the incentive towards cartelisation that lowers all prices in the production process—may result in higher exports.

Employment

Restrictions on output are a characteristic of many cartels. This, in turn, often results in reduced demand for labour and lower levels of employment. To the extent that the adoption of a multilateral framework strengthens national cartel enforcement efforts, and firms are discouraged from reducing output, employment levels will rise.

Net fixed capital formation

Markets that are not fully competitive tend to stunt investment. By restricting access to new innovations, by dampening rivalry, restricting output and restricting entry to the industry, entrepreneurs are dissuaded from entering the market and direct their resources elsewhere. Given that the multilateral framework promotes competition in markets, entrepreneurs may be attracted to invest if only to try to stay ahead of rivals. A knock-on effect of the increase in capital formation is a boost to wages and incomes, as production processes become more capital intensive.

- **Social impacts**

Poverty

Those in poverty are susceptible to changes in the prices of necessities and basic subsistence goods. To appreciate the link between poverty and cartel enforcement (and the enforcement of competition law more generally), one might recall that anticompetitive practices, such as cartelisation, raise prices in markets and tend to reduce the amount of goods that the poor can buy, or require the sacrifice of other purchases to maintain a minimum level of consumption of necessities. Effective implementation of cartel laws discourages firms from price-fixing in the first place.

Health and education

Government budgets are limited. Evidence from the 1990's shows that governments were the victims of bid-rigging and, like consumers, paid artificially higher prices. This in turn reduces the amount of resources available for the government to finance other state

programmes, including health and education services. Effective implementation of the multilateral framework will help break this causal chain, freeing up state resources for other societal needs. Given their stage of development, the social and economic effects of such changes will be greater in the developing and least developed nations.

- **Environmental impacts**

Environmental quality and natural resource stocks

The effects on the environment are ambiguous. The implementation of the multilateral framework on competition policy will increase the efficiency of production and reduce slack. Offsetting these benefits, however, are the negative environmental impacts brought about by increased output including greater resource use and pollution. Moreover, increased trade and transport commensurate with the expansion of output could likewise have a deleterious effect on the environment. In all four groups of countries considered here it is difficult to assess, therefore, whether the overall environmental impacts will be positive or negative.

- **Process impacts**

Capacity building and technical assistance

Developing nations are likely to benefit considerably from greater commitments for technical assistance and capacity building that are implemented over the longer term in a predictable international framework. Developing and least developed nations will also benefit from the ability to frame their requests for assistance around clear mandates set by the international agreement. Both developed and developing nations will benefit from the flow of information stimulated by the adoption of a multilateral framework, possibly through notification requirements, and regular meetings to share best practices.

The potential impacts of the adoption and implementation of a multilateral framework on competition policy are shown in table 12, for the four country groups. The impacts are given in terms of the core sustainability indicators, and the second-tier measures which describe the impact. The causal factors linking the adoption of a multilateral competition policy to the core sustainability indicators are also shown in the table.

Table 12: Impact summary – (a) EU member states

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Economic							
Real income	Consumer prices fall	Greater deterrence to cartelisation				△	▲
	Net exports rise	Countries ties into supply chains and production networks				△	△
Employment	Output rises in formerly cartelised industries	Less incentive to engage in anticompetitive practices				△	△
Net fixed capital formation	Greater inter-firm rivalry	Reduced barriers to entry Less incentive to engage in anticompetitive practices				△	△
	Higher wages/incomes	Increase in economic activity				△	△
Social							
Poverty	Lower price of necessities	Greater deterrence to cartelisation					△
Health and education	Lower bids for state health and education infrastructure projects	Less bid rigging				△	▲
Equity	Reduced cost of infrastructure projects frees state funds for social spending	Less bid rigging				△	▲
Environment							
Biodiversity							

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Environmental quality	Air quality	Increased trade/transport More efficient transport Increased production More efficient production					▽△
Natural resource stocks	Resource Usage	Increased trade/transport More efficient transport Increased production More efficient production					▽△
Process							
Capacity Building	Increased assistance	Enhanced state outlays Development of formal channels of support				△	▲
Voluntary Cooperation	Increased cooperation	Enhanced state outlays Development of formal channels of support				△	▲

Impact summary – (b) non-EU industrialised countries

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Economic							
Real income	Consumer prices fall	Greater deterrence to cartelisation				△	▲
	Net exports rise	Countries ties into supply chains and production networks				△	△
Employment	Output rises in formerly cartelised industries	Less incentive to engage in anticompetitive practices				△	△
Net fixed capital formation	Greater inter-firm rivalry	Reduced barriers to entry Less incentive to engage in anticompetitive practices				△	△
	Higher wages/incomes	Increase in economic activity				△	△
Social							
Poverty	Lower price of necessities	Greater deterrence to cartelisation					△
Health and education	Lower bids for state health and education infrastructure projects	Less bid rigging				△	▲
Equity	Reduced cost of infrastructure projects frees state funds for social spending	Less bid rigging				△	▲
Environment							
Biodiversity							

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Environmental quality	Air quality	Increased trade/transport More efficient transport Increased production More efficient production					▽△
Natural resource stocks	Resource Usage	Increased trade/transport More efficient transport Increased production More efficient production					▽△
Process							
Capacity Building	Increased assistance	Enhanced state outlays Development of formal channels of support				△	▲
Voluntary Cooperation	Increased cooperation	Enhanced state outlays Development of formal channels of support				△	▲

Impact summary – (c) Developing countries

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Economic							
Real income	Consumer prices fall	Greater deterrence to cartelisation		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
	Net exports rise	Countries ties into supply chains and production networks		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
Cost of Establishing Cartel Enforcement	Government outlay	Compliance with proposed multilateral framework on competition		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	▽	
Employment	Output rises in formerly cartelised industries	Less incentive to engage in anticompetitive practices		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
Net fixed capital formation	Greater inter-firm rivalry	Reduced barriers to entry Less incentive to engage in anticompetitive practices		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
	Higher wages/incomes	Increase in economic activity		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
Social							

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Poverty	Lower price of necessities	Greater deterrence to cartelisation		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
Health and education	Lower bids for state health and education infrastructure projects	Less bid rigging		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
Equity	Reduced cost of infrastructure projects frees state funds for social spending	Less bid rigging		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
Environment							
Biodiversity							
Environmental quality	Air quality	Increased trade/transport More efficient transport Increased production More efficient production		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process		▽△
Natural resource stocks	Resource Usage	Increased trade/transport More efficient transport Increased production More efficient production		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process		▽△
Process							
Capacity Building	In kind Direct budgetary contributions	Receipt of aid Exchange programs for officials		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Voluntary Cooperation	Increased cooperation	Enhanced state outlays Development of formal channels of support		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲

Impact summary – (d) Least developed countries

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Economic							
Real income	Consumer prices fall	Greater deterrence to cartelisation		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
	Net exports rise	Countries ties into supply chains and production networks		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
Cost of Establishing Cartel Enforcement	Government outlay	Compliance with proposed multilateral framework on competition		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	▽	
Employment	Output rises in formerly cartelised industries	Less incentive to engage in anticompetitive practices		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
Net fixed capital formation	Greater inter-firm rivalry	Reduced barriers to entry Less incentive to engage in anticompetitive practices		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
	Higher wages/incomes	Increase in economic activity		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	△
Social							

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Poverty	Lower price of necessities	Greater deterrence to cartelisation		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
Health and education	Lower bids for state health and education infrastructure projects	Less bid rigging		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
Equity	Reduced cost of infrastructure projects frees state funds for social spending	Less bid rigging		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲
Environment							
Biodiversity							
Environmental quality	Air quality	Increased trade/transport More efficient transport Increased production More efficient production		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process		▽△
Natural resource stocks	Resource Usage	Increased trade/transport More efficient transport Increased production More efficient production		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process		▽△
Process							
Capacity Building	In kind Direct budgetary contributions	Receipt of aid Exchange programs for officials		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process	△	▲

Indicator (first tier)	Description of impact (second tier measure)	Causal factors	Factors affecting significance			Impact significance[1]	
			Type of country affected	Institutional factors[2]	Susceptibility to stress or irreversibility[3]	adjustment impact	long term impact
Voluntary Cooperation	Increased cooperation	Enhanced state outlays Development of formal channels of support		Strong rule of law Strong investigative powers of enforcing agency	Independence of enforcers from political process		▲

Notes

[1] institutional factors include the effectiveness of policy and regulatory frameworks, where relevant, and the capacity to implement mitigation and enhancement measures

[2] likelihood of existing economic, social and environmental stress in affected areas, and/or irreversibility of impact

[3] impact significance is assessed according to likely magnitude compared with the base situation, geographic extent and numbers of people affected, taking account of stress and irreversibility

Symbols used to show impact significance

blank impact has been evaluated as non-significant compared with the base situation
△ positive lesser significant impact
▽ negative lesser significant impact
▲ positive greater significant impact
▼ negative greater significant impact
△▽ positive and negative impacts likely to be experienced according to context (may be lesser or greater as above)
? effects are uncertain

4. MITIGATING AND ENHANCING MEASURES

The proposed multilateral framework on competition policy includes a commitment to support the introduction and strengthening of competition laws and related institutions, in a framework agreed at the WTO but in cooperation with other interested organisations and national governments. Support from the international community for institutional strengthening and capacity building, particularly in developing and least developed countries, is necessary to ensure that the potential gains from a national cartel law and set of core principles, are realised in practice.

The discussion in section 1 made clear that the proposals for a multilateral framework on competition policy only refer to selected aspects of national competition law and enforcement. This observation has a number of implications especially in regard to the complementary measures that can be taken to optimise the benefits of implementing a multilateral framework.

The first observation to be made in this regard is that the benefits of adopting and enforcing a national cartel law are likely to be attenuated if firms can take other steps which have similar anti-competitive consequences as a cartel. Any attempt to cartelise a market by a group of firms could be replicated by a decision of those firms to merge and to set the same price that they would have done under the cartel. This implies that stronger enforcement of cartel law without an active merger enforcement regime may end up encouraging firms to merge rather than to engage in price fixing and the like. Such considerations further imply that nations keen on optimising the benefits of the proposed multilateral framework on competition policy might also give consideration to adopting and appropriately enforcing a national merger review law. (This is not to suggest that the factors described above are the only ones that matter in determining whether to adopt a national merger review law.)

The second pertinent observation is that the creation of powers to investigate cartels (which is part of a credible enforcement strategy) can open up the private sector to corruption, extortion, and intimidation by unscrupulous state officials. Measures to reduce corruption, self-dealing, and the like would help to ameliorate this specific problem.

A third factor, which is receiving growing attention in policy discourse and in the writings of experts, is that the enforcement of competition laws—including cartel laws—does not take place in a political vacuum. There are constituencies, whose legitimate interests are served by the appropriate enforcement of competition laws, that can be mobilised to support the implementation of such laws. Consumer organisations and groups are an obvious example, as are associations of importers. More generally, members of the press and experts on competition policy-related matters can help to ensure that the voices of competition enforcement officials are not drowned out inside and outside government. Thus, the implementation of a multilateral framework on competition policy might well profit from mobilising and engaging in a dialogue with those members of civil society that have an interest in competition law and its enforcement.

Educational institutions can play a important role in realising the goals of national competition enforcement (Kovacic 2001). In addition to offering advice to enforcement officials and to commenting on decisions made by those officials, academics can train future enforcement officials, helping to ease expertise-related constraints. This implies that the implementation of a multilateral framework may well be best served by parallel investments in institutions of higher education—by foreign donors as well as by national governments—in policy-relevant teaching and research on competition law-related matters. Nothing prevents these investments being made on a regional basis.

A fourth flanking measure will be to reinforce and to expand existing bilateral, regional, and international mechanisms for the sharing of best practices by enforcement officials and for the informal review or evaluation of national competition policy regimes and enforcement

actions. These mechanisms currently take a number of forms—for example, peer review at the OECD—and further thought may be warranted in developing such mechanisms on a more systematic basis. The principal advantage of so doing is that the voices of sympathetic outside observers can reinforce the position of national enforcement officials as well as openly discussing the different means for enforcing competition laws.

In sum, there are tangible steps that national policymakers and the international community can take that go beyond the proposed provisions of a multilateral framework on competition policy and that help to optimise the benefits of adopting such a framework.

5. KEY FINDINGS FOR POLICYMAKERS AND STAKEHOLDERS

The goal of this study is to identify and, where possible, present evidence on a number of factors that are pertinent to assessing the effects on economic, social, and environmental indicators of adopting current proposals for a multilateral framework on competition policy. Such proposals have been advanced at and are the subject of extensive discussions in international fora—discussions which are likely to intensify in the run up to the WTO Ministerial Conference in Cancun in September 2003. At that meeting, ministers are supposed to decide upon the modalities by which negotiations on competition policy-related matters are to be subsequently undertaken in the WTO.

The current proposals *do not* envisage the harmonisation of competition laws. Moreover, these proposals explicitly recognise the diversity of national policy objectives—including national developmental goals—and the different means by which nations can or might enforce their national competition laws.

This study assesses the implications of a multilateral framework on competition policy on sustainable development. To make the analysis more manageable, countries were separated into four groups: EU member states, non-EU industrialised economies, developing economies, and the least developed countries. (Standard United Nations classifications were used to place each economy in the correct grouping.) Although our findings are presented group-by-group, we recognise that there is likely to be some variation across members in given country grouping.

Our assessment of the effects of adopting a multilateral framework on competition policy is necessarily conditioned by the existing proposals for such a framework. Should the latter change, then the weight given to different outcomes, findings, and conclusions presented here might well change. Moreover, our assessment is based upon the existing body of empirical and qualitative evidence and, to the extent that new findings emerge, then this may qualify—or indeed reinforce—the findings presented here.

Another important matter to bear in mind is that the available empirical and qualitative evidence on the effects of national competition law is much smaller than for reforms of traditional trade policy instruments such as tariffs and quotas. Evidence on environmental and social impacts is entirely case-specific, and quantitative analysis of these matters is limited. Even so, we have endeavoured to present what evidence is available and a picture of the likely effects of adopting a multilateral framework on competition policy does emerge. That picture is summarised below.

As far as the industrialised countries are concerned (both EU member states and non-EU members), since most of these countries have already enacted competition laws, an important effect will be to strengthen existing enforcement activities—not least because greater voluntary cooperation between enforcement agencies will help detect and prosecute anti-competitive corporate practices. This, is turn, will quicken the pace of inter-firm rivalry and somewhat improve macroeconomic performance. Another significant economic effect of adopting a multilateral framework will come from strengthening the deterrents to cartelisation in the first place. Stronger deterrents are likely to result in lower prices for customers, be they the poor, other firms, importers, or governments. The likely employment-related and poverty-related effects are positive as opportunities for employment expand and prices paid by the poor fall. The likely impact on the environment is mixed and will depend on a number of cross-cutting factors.

For developing economies one of the principal consequences of adopting a multilateral framework on competition policy is that investments in enacting and enforcing national cartel laws will have to be made in a number of countries. This will require additional commitment of scarce resources. However, the evidence presented here indicates that those expenditures will be recouped in the form of lower prices paid on state contracts (which, in

turn, is due to stronger deterrents to bid rigging.) The net effect on national treasuries in developing countries of adopting the proposed multilateral disciplines on hardcore cartels is, if prudently implemented, likely to be positive. Consequently, state resources may well be freed up for social programmes, expenditures on health, education, and environmental protection. Other benefits will flow from a more transparent and predictable business environment created by competition enforcement that conforms to the core principles of non-discrimination, transparency, and procedural fairness.

The effect of adopting a multilateral framework on competition policy in the least developed countries differs somewhat in magnitude from that in developing countries. This is because the former tend to have smaller overall levels of government expenditures and the reduction in bid rigging needed to generate a given amount of savings will be higher. Even so, the current proposals for a multilateral framework do envisage alternatives to national enforcement, such as regional enforcement bodies, which may be less expensive to implement. The social and environmental consequences of adopting a multilateral framework in the least developed countries are likely to be similar to those of developing countries.

This study also identifies a number of flanking measures that can alter the likely benefits and costs of adopting a multilateral framework on competition policy. Furthermore, the study describes the ways in which our understanding of national competition law and enforcement could be improved upon over the medium term, permitting a fuller evaluation of the potential costs and benefits of adopting a multilateral framework on competition policy.

Developing and least developed countries are likely to face significant constraints in terms of human resources, and long-term programmes of technical assistance and capacity building will be needed if the full potential of a multilateral framework is to be realised. The terms and time frame for such support have yet to be specified. Other complementary flanking measures, including, support for bilateral, regional and international mechanisms for the sharing of best practice and for the informal review or evaluation of national competition policy regimes and enforcement actions, would help to ensure that the potential benefits of a multilateral competition framework are realised.

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