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MULTILATERAL INSTITUTION-BUILDING IN A NEO-LIBERAL ERA

The Case of Competition Policy

1. INTRODUCTION

After years of discussion in working groups, competition policy became an official agenda item for world trade negotiations in November 2001 when the Doha Round of World Trade Organization (WTO) was launched. Less than two years later, competition policy was dropped from the negotiating table at the September 2003 Cancun WTO Ministerial. While most of the attention on the Cancun Ministerial had to do with North–South divisions on agriculture, the collapse of the ministerial had as much to do with the rejection by Southern countries of new disciplines in four areas (the Singapore issues), of which competition policy was one. For many trade observers, it may seem unusual for Southern countries to reject competition policy, an area of negotiations that would appear to be in their interest. Competition policy has historically been concerned with reining in the excessive market power of large corporations as manifested in cartels, restrictive business practices, and abuses of market power. Whereas international trade agreements to date have focused on restricting the capabilities of governments, competition policy could be seen as an important means of regulating the private sector at the international level. This is of particular interest given a wave of cross-border mergers and acquisitions in the 1990s.

This chapter looks at competition policy as a case study of multilateral institution-building. Competition (or anti-trust) policies are well-established as part of the institutional apparatus of the nation-state, at least in advanced industrial economies. As trade and investment expand the realm of commerce beyond national borders, and trans-national corporations become more powerful players in the global economy, many analysts suggest that competition policies are also needed at the international level. Yet, while competition policy appears to be an uncontroversial contribution to good governance, this is not the case. Transported to the international level, competition policy takes on a different character that is more consistent with the neo-liberal underpinnings of modern

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international trade agreements. Far from subordinating the activities of large trans-national companies, proposed competition provisions in the WTO would have deepened the market access privileges already embodied in the General Agreement on Trade in Services, the Agreement on Trade-Related Investment Measures, and other parts of the WTO Agreements. Shaped by the geopolitical interests of the North, competition policy negotiations became yet another means to pry open markets – whether the markets of developing countries, activities provided by the public sector or state enterprises, or specific industries given special treatment for public policy reasons.

Competition policy negotiations failed to address meaningfully the concerns of Southern countries about the market power of large trans-national corporations. As such, it was a *neo-liberal* competition policy that was rejected by Southern countries in the Doha Round. The position of the South is more accurately described as a rejection of a broader push by the North to shape (and constrict) domestic policy-making space, of which competition policy is a part. In this context, this chapter considers why competition policy negotiations became less about reining in abuses of market power (progressive competition policy), as in the case of national competition policies, and more about the territorial expansion of that market power (neo-liberal competition policy).The next section reviews the historical context of competition policy and comments on its limitations. In Section 3, the transition from national competition regimes to the international level with a neo-liberal twist is addressed. Section 4 assesses the consequences of neo-liberal competition policy for the South. Section 5 describes the rejection of competition policy in the WTO's Doha Round. The final section adds some concluding remarks on the prospects for a progressive competition policy at the international level.

2. COMPETITION AND COMPETITION POLICY

The first competition laws (or anti-trust laws) were pioneered by Canada (1889) and the United States (1890) in response to concerns about the excessive market power (and the resulting economic and political influence) obtained by a few exceedingly large conglomerates. These laws emerged during a period of unprecedented corporate merger and acquisition activity and the formation of trusts (a nineteenth century term for cartels). They were deemed necessary to protect a growing capitalism from its own worst excesses. Today, many national governments, through their competition authorities, enforce laws and administrative rules to maintain fair competition in the marketplace. These provisions apply to the private sector, relating to three broad areas. First, competition authorities investigate and discipline collusive agreements between companies (including cartels) that involve anti-competitive practices such as big-rigging, raising prices by limiting production, and splitting up markets. Second, competition authorities address abuses of dominant market position, where a leading company uses its