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Chapter 1 : A Multilateral Call for Procedural Norms - Diplomatic Courier

formal recognition of the case for a multilateral competition framework to enhance the contribution of competition policy to international trade and development.

Definitions[edit] Multilateralism was defined by Miles Kahler as "international governance" or global governance of the "many," and its central principle was "opposition [to] bilateral discriminatory arrangements that were believed to enhance the leverage of the powerful over the weak and to increase international conflict. It is a policy which flowed from our recent history and from our national movement and its development and from various ideals we have proclaimed. For a small power to influence a great power, the Lilliputian strategy of small countries banding together to collectively bind a larger one can be effective. Similarly, multilateralism may allow one great power to influence another great power. For a great power to seek control through bilateral ties could be costly; it may require bargaining and compromise with the other great power. Embedding the target state in a multilateral alliance reduces the costs borne by the power seeking control, but it also offers the same binding benefits of the Lilliputian strategy. Furthermore, if a small power seeks control over another small power, multilateralism may be the only choice, because small powers rarely have the resources to exert control on their own. As such, power disparities are accommodated to the weaker states by having more predictable bigger states and means to achieve control through collective action. Powerful states also buy into multilateral agreements by writing the rules and having privileges such as veto power and special status. The main proponents of multilateralism have traditionally been the middle powers , such as Canada , Australia , Switzerland , the Benelux countries and the Nordic countries. Larger states often act unilaterally , while smaller ones may have little direct power in international affairs aside from participation in the United Nations by consolidating their UN vote in a voting bloc with other nations, for example. Multilateralism may involve several nations acting together, as in the UN, or may involve regional or military alliances, pacts, or groupings, such as NATO. These multilateral institutions are not imposed on states, but are created and accepted by them in order to increase their ability to seek their own interests through the coordination of their policies. Moreover, they serve as frameworks that constrain opportunistic behavior and encourage coordination by facilitating the exchange of information about the actual behavior of states with reference to the standards to which they have consented. The Concert of Europe , as it became known, was a group of great and lesser powers that would meet to resolve issues peacefully. The concert system was utterly destroyed by the First World War. After that conflict, world leaders created the League of Nations which became the precursor of the United Nations in an attempt to prevent a similar conflict. Since then, the "breadth and diversity" of multilateral arrangements have escalated. Formation of these subsequent bodies under the United Nations made it more powerful than the League. The multilateral framework played an important role in maintaining world peace in the Cold War. Challenges[edit] The multilateral system has encountered mounting challenges since the end of the Cold War. Concurrently, a perception developed among internationalists such as former UN Secretary-General Kofi Annan , that the United States is more inclined to act unilaterally in situations with international implications. This trend began [9] when the U. Under President George W. Bush the United States rejected such multilateral agreements as the Kyoto Protocol , the International Criminal Court , the Ottawa Treaty banning anti-personnel land mines and a draft protocol to ensure compliance by States with the Biological Weapons Convention. Also under the George W. These challenges presented by the U. S could be explained by a strong belief in bilateral alliances as instruments of control. Liberal institutionalists would argue, though, that great powers might still opt for a multilateral alliance. But great powers can amplify their capabilities to control small powers and maximize their leverage by forging a series of bilateral arrangements with allies, rather than see that leverage diluted in a multilateral forum. Arguably, the Bush administration favored bilateralism over multilateralism, or even unilateralism, for similar reasons. Rather than going it alone or going it with others, the administration opted for intensive

one-on-one relationships with handpicked countries that maximized the U. The original sponsor of post-war multilateralism in economic regimes, the United States, turned towards unilateral action and in trade and other negotiations as a result of dissatisfaction with the outcomes of multilateral fora. As the most powerful nation, the United States had the least to lose from abandoning multilateralism; the weakest nations have the most to lose, but the cost for all would be high. Bilateralism means coordination with another single country. Multilateralism has attempted to find common ground based on generalized principles of conduct, in addition to details associated with a particular agreement. Victor Cha argued that: If small powers try to control a larger one, then multilateralism is effective. But if great powers seek control over smaller ones, bilateral alliances are more effective. Bilateral versus Multilateral Control. Take the example of Foreign Policy of the United States. Many references discuss how the United States interacts with other nations. S planners had to contend with a region uniquely constituted of potential rogue allies, through their aggressive behavior, could potentially entrap the United States in an unwanted wider war in Asia. To avoid this outcome, the United States created a series of tight, deep bilateral alliances with Taiwan, South Korea, and Japan through which it could exercise maximum control and prevent unilateral aggression. Furthermore, it did not seek to make these bilateral alliances multilateral, because it wanted to amplify U.

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Chapter 2 : US: Justice Department sets goal for Global Antitrust Framework | Competition Policy Internati

Paris and Washington, D.C. June 27, - The global business community has applauded the launch of a new Multilateral Framework on Procedures in Competition Law Investigation and Enforcement (MFP), as announced recently by the U.S. Department of Justice.

Study of issues relating to a multilateral framework on competition policy Item Type Monograph Work Report Abstract 1. This study examines three issues relevant to the work of the Working Group on the Interaction between Trade and Competition Policy. A key focus here is on whether and in what circumstances the application of competition policy is likely to facilitate or impede the realization of dynamic efficiency gains; - possible resource implications of adopting and effectively implementing a multilateral framework on competition policy. This includes, but is not limited to, consideration of the resource implications of: The study is based entirely on existing economic, legal and developmental literature and empirical information that is available from public sources. Where appropriate, the study has attempted to set out the different perspectives that have been advanced in discussions among and between policymakers, practitioners, and scholars. Considerations of space have required a rigid focus on the issues set out in the terms of reference. Consequently, many not directly-related matters-that are often the subject of vigorous debates among, in particular, scholars-have been omitted. With regard to the first issue referred to in paragraph 1, Part I of the study identifies and discusses four arguments that have been put forward in the relevant economic and developmental literature as to how the attainment of dynamic efficiencies might be compromised by the adoption or enforcement of competition law. Analysis of these arguments reveals that one is sector-specific and not of general application, another does not really constitute a case for restricting rivalry between firms, and the remaining arguments have substantial shortcomings. The study goes on to identify five sources of complementarity between competition policy and dynamic efficiency gains that have been advanced in the literature. At least three of these have been shown to have a solid empirical basis. With some potentially important exceptions of a sectoral nature, then, the weight of the evidence suggests that measures to stimulate competition between firms tend to promote rather than impede dynamic efficiency gains and economic growth. Part I of the study also includes an examination of historical experience relating to the interaction between competition and industrial policy in several Asian economies. This reflects the prominence given to the experience of these economies in relevant economic literature and policy debates. An important finding in this regard is that, even when measures to restrict the degree of inter-firm rivalry were employed by some of these economies, subsequent research and policy analyses have found that, in many cases, these measures were unimportant or worse, counterproductive. Reflecting this, recently, the economies examined in this part of the paper have reduced their reliance on policy tools that may limit competition and placed greater weight on the promotion of competition as a means of ensuring satisfactory long run performance. Even though these conceptual, empirical, and historical observations cast doubt on the wisdom of constraining competition between firms as means of improving long-term economic performance, it is recognized that, from time to time, most governments will choose to limit competition at least in some sectors as a means of pursuing their diverse economic, social, and developmental goals. In this regard, the study describes five distinct means by which any perceived tensions between these goals and the enforcement of competition law have been managed in jurisdictions with active competition regimes. The study then goes on to examine whether these five means can be reconciled with current proposals for a multilateral framework on competition policy. It concludes that, by and large, they can be - implying that a multilateral framework on competition policy of the type that is currently being contemplated, while facilitating the effective application of competition policy by WTO Members in various ways, is unlikely to prevent governments from pursuing other policy goals or even from implementing policies that may sometimes limit competition in ways that they have traditionally done so. With regard to the resource costs of adopting and effectively implementing a multilateral framework on

competition policy, Part II of the study identifies, for each of the main elements of a multilateral framework that are described in the current proposals, the types of resource implications that might arise. Empirical data on this subject is sparse; nevertheless, the study sets out what is available, particularly regarding the costs of operating a national competition authority, and offers a number of cautions as to how this data should be interpreted. An important premise of this part of the study is that the costs of the current proposals need to be assessed in light of the benefits foreseen. For example, although measures to promote voluntary cooperation between the competition agencies of WTO Members, including developing country Members, would undoubtedly entail some probably modest resource costs, the purpose of such measures is indeed to save resources by enabling countries to obtain necessary information and to take appropriate enforcement actions at a lower cost than would otherwise be the case. More generally, the nature and magnitude of many of the benefits of a potential multilateral framework are likely to depend critically on the magnitude of the resource costs that a WTO Member is willing to bear. With regard to the third major set of issues included in the terms of reference, namely the impact of competition law in tackling anti-competitive practices in developing countries, Part III of the study examines recent records and other publicly available information regarding the enforcement of competition law in such countries. Perhaps surprisingly, extensive information of both a qualitative and quantitative nature is available with regard to the enforcement activities of an increasing number of developing and transition countries with active enforcement regimes. One of the striking findings in this regard is the number of cartel enforcement actions and, in particular, the number of bid rigging cases where the state has been the target of a conspiracy. This part of the study goes on to describe recent empirical economic research on the impact of competition law enforcement on macroeconomic performance and price-cost margins. This literature is very much in its infancy but it does point to the beneficial effects of tackling anti-competitive practices in developing economies. The remainder of Part III of the study is devoted first to describing the extent of international cartel enforcement efforts in the s and then to assessing the likely effects of enhanced enforcement against cross-border hardcore cartels operating in developing economies. Based on publicly available information, estimates are presented of the value of developing country imports affected by private international cartels in the s as well as of the overcharges paid by customers in these countries. The evidence is overwhelming that the latter run into the billions of United States dollars per annum. In the case of one ten year-long cartel with global reach the international vitamins cartel , the evidence also shows that countries without active cartel enforcement regimes paid considerably more in overcharges than countries with such regimes. This reinforces the view that there are likely to be substantial net benefits, particularly to developing countries, from strengthening national anti-cartel enforcement efforts and international cooperation in this area - which of course are two of the principal goals of a multilateral framework.

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Chapter 3 : Multilateral Framework on Procedures in Competition Law Investigation and Enforcement

It is commonly known that competition law is normally national or regional in scope, and no binding international treaties are currently in place. This is true for both substantial and procedural rules and is a major difference from other fields of law such as IP law.

Thank you very much for that introduction and for the opportunity to speak with you today at the Council on Foreign Relations. I personally find invaluable the work that you do and the debates that you promote here, at CFR, which contribute immensely towards a more collegial mutual understanding of international economic and diplomatic relationships. Today, I will discuss an important topic related to international economic relations, which has been a focus of mine since I commenced my previous service at the Department of Justice, when I was the so-called International Deputy for the Antitrust Division. Specifically, I would like to offer some fresh thinking on how to promote greater procedural norms and due process in antitrust, or competition, enforcement. Given the nature of our duties, we tend to focus on economic freedom. Just as important, however, is how we uphold the rule of law in the pursuit of that freedom. During my Senate confirmation hearing last year, I emphasized that the rule of law, and its promotion internationally, would be one of my top priorities. My first public speech as Assistant Attorney General focused on international antitrust policy, including new approaches to international cooperation with close partners that would focus specifically on principles of non-discrimination, procedural fairness, and transparency. I appointed a highly-respected international law professor from Notre Dame Law School, Professor Roger Alford, as my International Deputy and immediately challenged him and our very capable attorneys in the International Section of the Antitrust Division to think creatively about how we can promote fundamental due process in antitrust enforcement. The proliferation of competition authorities around the world underscores the importance of agreeing on a core set of procedural norms. With more than competition agencies, and increased international commerce, including digital commerce, it is more and more critical that we share a common set of principles that affords due process to individuals and businesses in investigation and enforcement. Fortunately, the competition community has long embraced this issue as a matter of common concern, and recognized that pursuing the common good of procedural fairness means acting according to a core set of common rules. There is now a groundswell of support for fundamental due process in competition enforcement, and many believe that the time is right to propose some fresh thinking on how to accomplish this shared objective. Today, I would like to share with you our recent efforts towards a new approach for an improved system of competition enforcement. The goal of this approach is to garner increased confidence and respect for antitrust enforcement globally. Specifically, we intend to achieve agreement among competition agencies around the world on fundamental procedural norms. Toward that end, I am pleased to announce that next week, the United States, in partnership with leading antitrust agencies around the world, will introduce and invite the global antitrust enforcement community to help finalize and join the Multilateral Framework on Procedures in Competition Law Investigation and Enforcement. For the past several months we at the Department of Justice, have been drafting proposals and meeting with our counterparts from around the world to develop a draft text to serve as the basis for the MFP. We have worked closely with our colleagues at the Federal Trade Commission and, of course, the Department of State, and appreciate very much their input. We are committed to including in the agreement those procedural commitments that reflect fundamental due process. We are also committed to bridging the differences between civil and common law countries, between administrative and prosecutorial approaches, and between young and old agencies in small and large markets. The goal is to identify procedural norms that are truly universal. What we have proposed are norms that are accepted across the globe and indeed, that almost every agency already has recognized in some form or another. We also examined the practices of competition authorities around the world. As a result of this effort, we identified approximately a dozen core values. The MFP includes important due process commitments

regarding: We also have given extensive and considered thought to the appropriate compliance mechanisms. The MFP strives to ensure meaningful compliance among competition agencies toward advancing the culture of free-market competition we share. Suggestions, guidelines, and recommendations were critical first steps in this process, but now is the time for us to go further. Rather than simply encourage good behavior, the time is now for us to embrace meaningful mechanisms that encourage compliance. We have now canvassed every type of treaty one can imagine, and we have presented to our competition enforcement partners proposals that we think are meaningful and achievable. The compliance mechanisms built into the current draft of the MFP, we are convinced, will be key to its success. We have proposed a variety of ways to ensure the greatest compliance by competition authorities. We expect nothing less from subjects of our enforcement, and should expect nothing less from ourselves. The compliance mechanisms do not envision establishing a formal and binding dispute settlement mechanism, but do help to ensure that we all have sufficient incentives to comply with the common commitments. Generally speaking, governments comply with international commitments because of threats of retaliation, promises of reciprocity, or potential harm to reputation. Given the context and the nature of our competition enforcement functions and the proposed commitments, our focus is on the last of these mechanisms: In my year experience with the increasing network of international competition authorities, I have found a common and positive characteristic. We all share a commitment to shared objectives and each invest heavily in building relationships through frequent interactions towards advancing our shared values for free markets through competition law enforcement. Thanks to a vibrant press and active bar, we are subject to careful and constant scrutiny, increasing the transparency and information that is available on agency behavior. The rich network of relationships ensures that reputation matters, and that the promise to abide by an obligation becomes a potent means of enhancing compliance. Guidelines, as we all know, are valuable. Promises are different, because they create the opportunity for reflecting on decisions that may help enhance reputational standings among peers. This is true for both hard-law commitments such as treaties, and soft-law commitments such as MOUs. Even the choice of whether to join a multilateral arrangement that is open to all and reflects fundamental norms is an important statement in international economic relations. Accordingly, our goal has been to design a respectful agency-to-agency arrangement that is not a treaty in the formal sense, but nonetheless uniquely suited for the specific functions of market competition enforcement competition authorities engage in. Given the broad consensus on fundamental due process, the main purpose of the upcoming discussions towards building a consensus around the MFP next week will not be to compromise on the norms, but to contextualize the language to reflect the different legal systems and agency approaches. Many agencies have likely already internalized these norms as part of their own legal systems. We have been pleased, but not surprised, by the incredibly warm reception the draft MFP proposal has received around the world thus far. The vast majority of agencies with whom we have had the opportunity to discuss the MFP have welcomed the initiative and have agreed to help negotiate toward its conclusion. And, of course, it is our goal and design to ensure that every antitrust enforcement agency around the world joins it and finds its norms consistent with their approaches on process. To date, we have asked our partner agencies to consider the need for a multilateral framework on procedure with core procedural norms and meaningful compliance mechanisms, and that they agree to negotiate in good faith toward its conclusion. We have used opportunities at various international meetings to discuss informally the concepts of the MFP, including recently in Delhi, Brussels, Mexico City, Washington, D. We intend for the MFP to be an open rather than a closed instrument. That means that it will be open to every competition authority around the world. That is a model of negotiation that is common in other contexts, and one that we are confident will be successful here. This approach allows for the negotiation to proceed toward a strong document at a brisk pace, but also allows for inclusive input from others. I expect that this approach will generate momentum toward core commitments with widespread adherence in the coming months. In proposing the MFP, we have borrowed liberally from other sources. The draft is an amalgamation of other competition initiatives already in place, combined with ideas derived from other contexts. This new model of cooperation builds upon and is fully consistent with previous efforts to

promote procedural fairness. It is a logical, incremental and yet significant step toward promoting procedural fairness. I truly believe that explains why it has been warmly received by so many other competition agencies. Let me speak briefly about the building blocks that have informed the current initiative. First, the cornerstone of the MFP is the network of cooperation agreements between competition agencies. For decades competition authorities have entered into cooperation agreements to reflect a commitment to close collaboration. The United States has over a dozen such cooperation agreements, and there are almost such agreements around the world. These cooperation agreements are the principal expression for coordinating competition enforcement, and the MFP reflects and builds on that tradition. The second building block for the MFP is the procedural principles promulgated by international organizations. The work the competition community has done, and continues to do, through these organizations helps make an agreement such as the MFP possible. These organizations have routinely promulgated best practices, guidelines, and recommendations, and they will continue to do so. We welcome those efforts and have played a major role in promoting them. It is important to note that both the OECD and the ICN encourage competition agencies to implement the suggested guidelines and recommendations in a variety of ways, including through international agreements. The provisions in modern competition chapters vary in their scope and detail, but they all include core commitments such as transparency, non-discrimination, and procedural fairness. Notable examples include the Korea-U. I should note that the MFP is fully consistent with these FTA chapters, and seeks to build upon and extend the due process commitments beyond just our closest trading partners. We welcome and support competition chapters in FTAs, and have spent countless hours negotiating them. They are particularly useful as examples of instruments that reflect binding commitments on procedural norms. But we also recognize their limits. Competition chapters are a small part of free trade agreements, and the agenda of every trade negotiation encompasses issues that extend far beyond the core concerns of antitrust laws. A multilateral arrangement between competition authorities on procedural fairness is far more likely to generate both broad and deep commitments. These three building blocks taken together form the basis for the Multilateral Framework on Procedures in Competition Law Investigation and Enforcement. Our shared vision is a multilateral framework that is open to all competition authorities, reflects fundamental due process recognized by almost every competition authority, enhances and extends the work of international organizations, and incorporates meaningful mechanisms to secure compliance. With those goals in mind, we will proceed with discussions next week in Paris, and thereafter, and invite all antitrust enforcement agencies to join us in the pursuit of providing due process as we achieve our goal of liberty through the proper enforcement of competition laws.

Chapter 4 : Study of issues relating to a multilateral framework on competition policy - Alexandria

enterprises how competition policy can be used as a tool to analyze any marketplace conduct by such enterprises that may exclude competitors from their markets or otherwise interfere with competition.

Chapter 5 : Multilateralism - Wikipedia

multilateral framework on competition policy and overcome concerns that a binding agreement might impose a particular (and inappropriate) framework of national competition policy on developing economies.