

1. Introduction¹

In a speech at the 1992 World Economic Forum, the EC Vice-President for Competition Policy argued that it was time to develop a more explicit set of principles in the GATT covering competition policy.

Interestingly, previous efforts at the multilateral level to establish rights, obligations, and disciplines regarding the regulation of conspiracies, trade practices and mergers (which are the concern of competition policy) have not borne fruit. The 1947 Havana Charter establishing an International Trade Organisation contained a Chapter IV on Trade Policy and a Chapter V on Restrictive Business Practices. The United States did not ratify the Charter, however, and competition policy obligations were not incorporated into the GATT, although discussions have been carried out at various times.

Work at UNCTAD led to the adoption by the United Nations in 1980 of a non-binding "Set of Multilateral Agreed Principles and Rules for the Control of Restrictive Business Practices". Under the Code, governments are morally obligated - but no more - to adopt competition laws and ensure that their private or public enterprises respect the Code's provisions.

On the face of it, one of the reasons for the lack of multilateral disciplines concerning competition is that, while countries cannot unilaterally overcome other countries' trade barriers, they can seek to independently regulate private business practices. However, the very success of the current multilateral trading system in increasing world trade, coupled with the liberalization of capital flows and investment, has heightened interest in how and whether to regulate conspiracies, trade practices and mergers at the international level. Indeed, concerns have arisen, inter alia, over the extraterritorial application of domestic competition laws.

Moreover, even as countries have adopted competition laws, the impact of differences in their substantive provisions and enforcement on trade and investment flows has come under increased scrutiny. Successive GATT Rounds and other agreements have swept away much of the overlay of trade restrictions, and domestic price, entry and other regulatory controls impeding international trade such that the marginal effect of competition policy on the composition of economic activity in developed countries may now be discernable.

¹ This paper is part of a work program established by the Policy Planning Staff of External Affairs and International Trade Canada to explore various aspects of globalization. See Keith H. Christie, "Globalization and Public Policy in Canada: In Search of a Paradigm", Policy Planning Staff Paper No. 93/01, EA/ITC, January, 1993.