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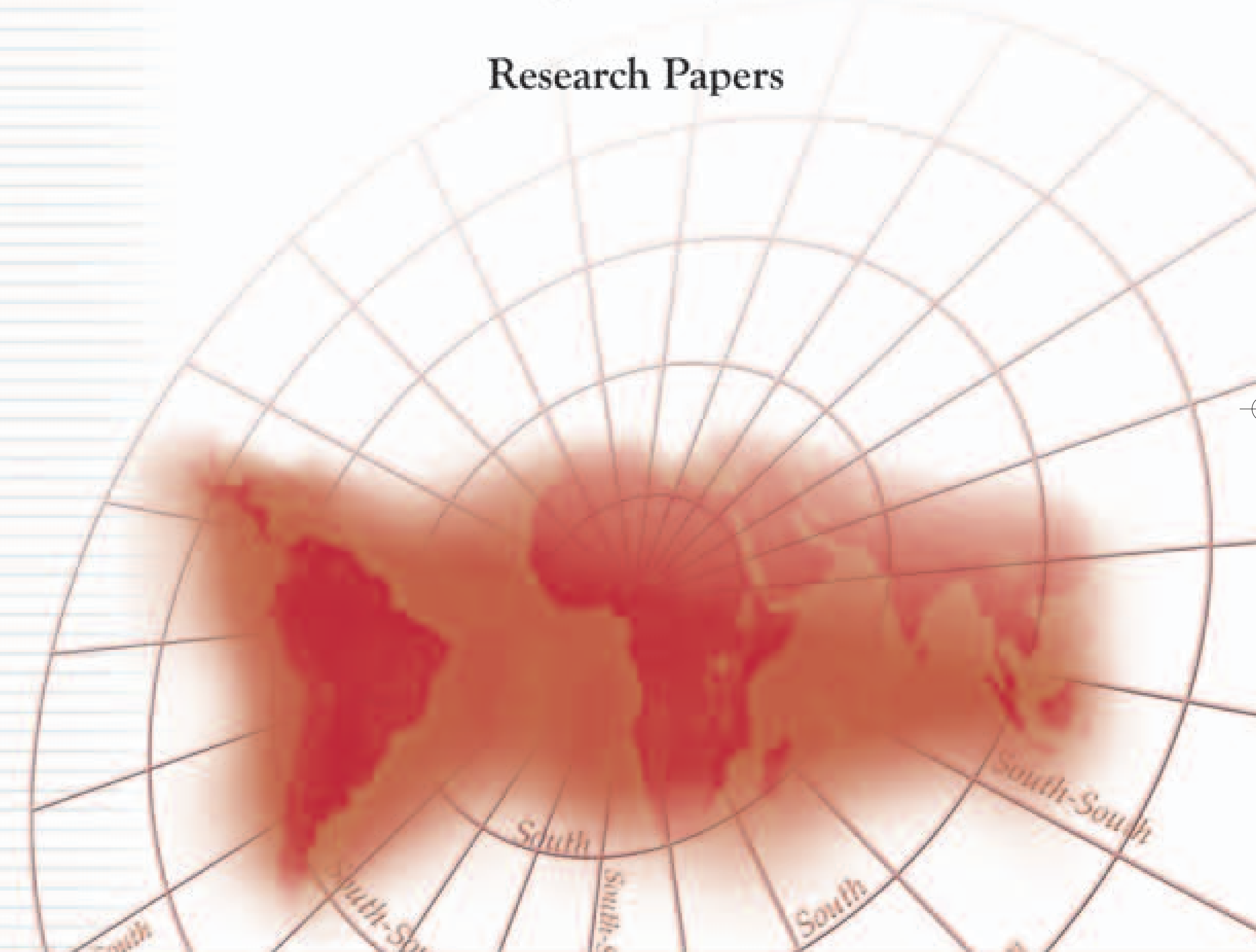

Remunerating Commodity Producers in Developing Countries: Regulating Concentration in Commodity Markets

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REMUNERATING COMMODITY PRODUCERS IN DEVELOPING COUNTRIES: REGULATING CONCENTRATION IN COMMODITY MARKETS

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SOUTH CENTRE

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ACRONYMS

COMESA	Common Market for Eastern and Southern Africa
DOJ	Department of Justice (USA)
FTC	Federal Trade Commission (USA)
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
ICA	International Commodity Agreement
LDCs	Least Developed Countries
MNCs	Multinational Corporations
NEPAD	New Partnership for Africa's Development
NGOs	Non-Governmental Organizations
R&D	research and development
RTAs	Regional Trade Agreements
SAPs	Structural Adjustment Programmes
STEs	State Trading Enterprises
TRIPS	Trade-Related Aspects of Intellectual Property
WPA	Webb-Pomerene Export Trade Act (USA)

Organizations

IMF	International Monetary Fund
OECD	Organization for Economic Cooperation and Development
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

Executive Summary

The past few decades have seen a huge surge in international trade that has affected developing countries as well as the world's largest economies. However, while some countries have seen an associated increase in wealth, others seem to have been left behind. One of the key reasons for this seems to be that least developed countries have specialized in those parts of the production chain that do not generate large profits. Resource constraints have prevented developing country producers from participating in activities that require a large amount of investment. In commodity markets, these activities (such as processing and marketing) tend to be undertaken by large multinational companies based in developed countries. Due to their size, such companies have considerable market power as buyers, and can ensure that input prices remain low. This, coupled with the low responsiveness of demand to changes in income and price, has led to a long-term decline in the price of primary commodities. Hence, concerted measures must be taken to improve the welfare of rural farmers in the poorest countries in the world.

Policy measures may help to improve this situation by: (a) attempting to address the asymmetry in bargaining power between producers and their large vertically-integrated customers; and (b) assisting developing countries in diversifying into sectors where larger profits may be made.

At the national level, solutions might include: (a) implementing competition law according to the needs of developing countries (i.e. the protection of all powerless groups, including producers in commodity markets) so that claims related to buyer power can be addressed; (b) redesigning and improving the operation of producer groups (perhaps involving a role for State Trading Enterprises) in order to organize production and ensure compliance with quality and safety standards; (c) developing a comprehensive strategy such that the competition component in each type of government policy (industrial, trade, macroeconomic, etc) is focused towards overcoming the problems arising from concentration.

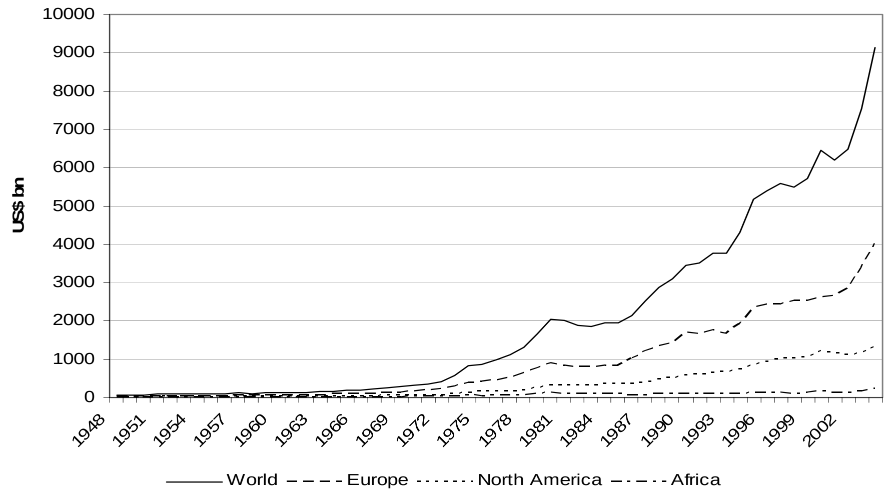
At the multilateral level, there are further possibilities: (a) any discussion of competition law at the international level should be framed according to the needs of developing countries and the development agenda and not in terms of market access; (b) international commodity agreements could be an alternative to the problem of asymmetry. However, it would be necessary to restructure their design and operation such that some of the shortcomings observed in the past are overcome; (c) there is an urgent need to keep pressing for a fair trade of the use of subsidies and tariff escalation in agricultural markets; (d) developing countries may find important support at the multilateral level to help them overcome problems of scarce resources and expertise.

At the regional level, suggestions include: (a) coordination of competition policy among smaller groups of countries; (b) cooperation to allow synergies which could contribute to solving the problem of the lack of resources faced by certain countries; (c) developing a regional competition law in order to increase developing countries' leverage in negotiating cooperation agreements with antitrust authorities from large countries.

I. INTRODUCTION

Since the 1960s, there has been a huge increase in the volume of international trade. Although developed economies account for the largest share of international trade, developing and least developed countries have also been involved in this trend. *Figure 1* shows how rapidly the value of exports has been growing since 1948 for various regional groups.

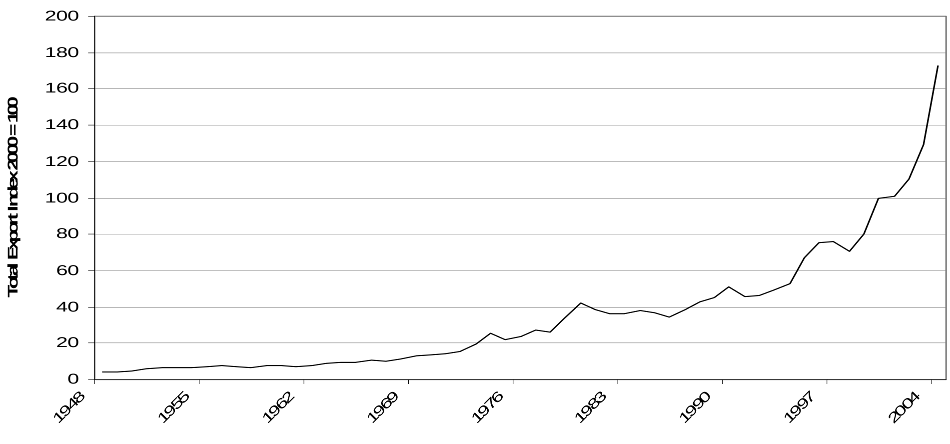
Figure 1: World Exports since 1948



Source: WTO

Figure 2 below shows that even for least developed countries, trade has increased rapidly in the recent past. However, although it has risen in comparison to pre-existing levels, the LDC's trade has not kept pace with that of Europe and North America, and it accounts for an ever-falling share in world trade. This is obvious from *Figure 1*, and is illustrated more clearly in *Figure 3*.

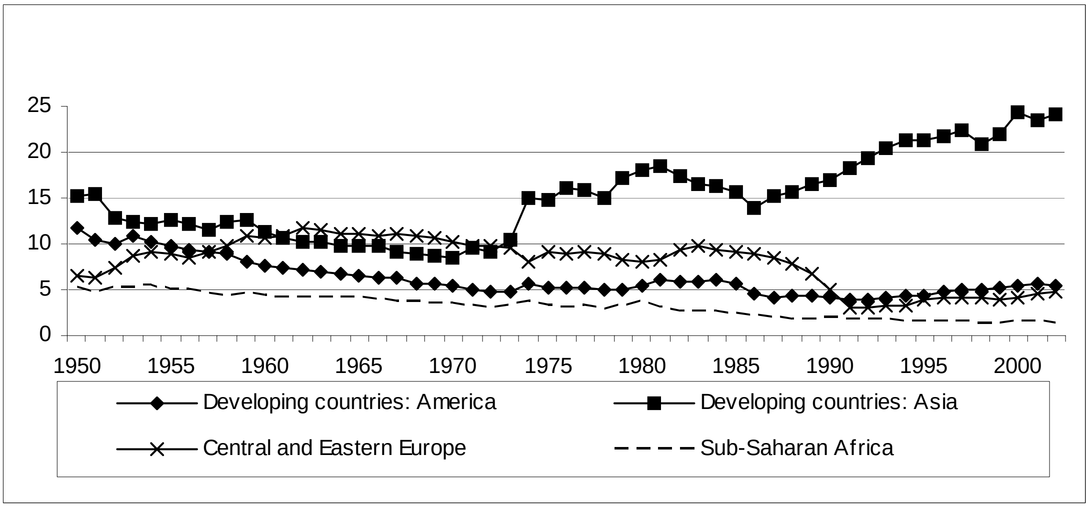
Figure 2: Least-Developed-Country Exports to Rest of World



Source: WTO

Figure 3 below shows that the export shares of developing countries, except those from Asia, in total world exports have been steadily declining for over half a century. Africa is the most affected. Its share of world exports has been low since the beginning of the 1950s, falling from 5 percent in 1950 to 1.4 percent in 2002, indicating the continuous marginalization of Africa in world trade. This falling trade share mirrors Africa's falling share of world GDP.

Figure 3: Percentage share of world exports for developing countries (1950-2002)



Source: South Centre (2005).[1]

Neoclassical economic trade theory predicts that reductions in trade barriers benefit all participating countries. When countries open up to international trade, they are able to specialize in the production of goods which best suit their resources and skill patterns, and at the same time they benefit from the possibility of consuming goods in patterns that they would not have been able to, had they relied on domestic production. Consumers also benefit from the increase in the variety of products which are available to them as markets open to imports from around the world.

However, the experience of the last three decades appears to be inconsistent with theoretical predictions of mutual gains from increased trade. A large number of developing countries have become worse off as they opened up their economies. Sub-Saharan Africa saw its per capita GDP falling by 0.5 per cent between 1980 and 2003, despite the fact that exports grew by nearly 50 per cent over the same period. As a result, there has been, and remains, significant opposition to globalization because of the concern that unbalanced rules of international trade, in its existing model, favour powerful countries, leading to the perpetuation of the North-South technological and development gap.

The reluctance of developed countries to liberalize access to their markets in the agriculture sectors has been identified as one of the major reasons for the lack of gains from trade to most developing countries. The maintenance of high tariffs, tariff escalations and other market access restrictions, together with subsidies in sectors where developing countries have a perceived comparative advantage,

[1] South Centre. (2005). Selected challenges facing agricultural export commodities of developing countries. Analytical Note, *forthcoming*.

have perpetuated developing countries' dependence on primary commodities and depressed international commodity prices.

It is often argued that the elimination, or substantial reduction, of trade protectionism in developed countries would increase welfare in developing countries. For this reason, the liberalization of agricultural trade, specifically the phasing out of export subsidies and trade distorting domestic supports and increased market access have been the central issues advocated by developing countries in the current round of negotiations, the Doha Round, at the World Trade Organization (WTO). But increased market opportunities do not automatically translate into increased welfare gains. The achievement of such gains is dependent on the ability to actually enter into and effectively compete in such markets (i.e. the actual conduct of trade). Such entry, in turn, is largely determined by supply-side capacities and competitiveness. Compared to those of developed countries, most developing countries' supply-side capacities and competitiveness are relatively meagre.

Examining the markets in which developing countries have become specialized leads to a more nuanced interpretation of the situation. The North's reluctance to liberalize sectors of export interest to developing countries certainly plays a role in depressing the producer prices of "competing commodities" (commodities that are produced in both tropical and Mediterranean zones, and where developed and developing country producers compete for final consumers). However, in the case of tropical commodities such as coffee and cocoa, oversupply and the weak bargaining power of producers are the main reasons for low farm-gate prices.

The elimination of market-access barriers on tropical commodities, such as tariff escalation and stringent standard requirements in developed countries, do not necessarily improve farm-gate prices that producers receive. This is because of the existence of dramatic asymmetries in the power of different players in the production chains of tropical commodities, where farm-gate prices result from the interaction between many small producers and powerful international buyers. The majority of the benefits from market access liberalization accrue to large, often vertically-integrated companies operating in downstream stages of the value chains.[2]

This is better understood when it is realized that globalization has not been limited to increased trade in finished goods. Many goods are composed of raw materials extracted in one part of the world which may be processed somewhere else, assembled in yet another country, before being marketed elsewhere. The production of commodities is the first in a chain of processes which leads to a finished product only after considerable extra value has been added to the original output. The interaction between participants at different stages of this chain has a great deal of effect on the prices confronted by producers.

This paper analyses how market concentration in the value chains of tropical commodity markets causes low farm-gate prices; and what policy options are available to ameliorate the effects of market concentration. The rest of the paper is divided into three parts. Section 2 describes the tropical commodity markets and identifies the major causes and mechanisms which lead to low producer prices. Section 3 explores national, regional and international policy options for ameliorating the effects of market concentration in the value chains of tropical commodities. Finally, Section 4 provides a conclusion and recommendations.

[2] Sexton et al (2003) have shown that in models of successive oligopoly and oligopsony, the outcome of tariff liberalization will be very different to those where perfect competition is assumed.

II. THE NATURE OF TROPICAL AGRICULTURAL COMMODITIES

The term commodity is used to describe a particular type of goods. The main distinguishing feature of these goods is that they tend to be homogeneous. In other words there are only very small differences in goods from different producers, even if the farms where they are grown are half the world away from each other. For example, coffee produced in Venezuela is essentially the same as coffee produced in Vietnam, or sugar produced in Brazil would be essentially the same as that produced in the Philippines.

Because commodities are highly substitutable, when they are traded among countries the market for them is a global one. This means that producers from around the world compete with one another; and are forced to sell at more or less the same price on the international market. As a result, competition tends to be strong, thereby pushing prices downward.

The global nature of these markets has another important repercussion for producers. It means that shocks in conditions of supply or demand will strongly affect prices for all sellers. For example, the entry of Vietnam as the second largest coffee producer in the early 1990s has led to a positive supply-side shock, ultimately depressing coffee prices to a record low level. Similarly, changes in demand conditions affect commodity producers. Hence, demand and supply shocks cause volatile commodity prices. The low price and low income elasticity of commodity demand intensify the effects of commodity price volatility, subjecting producers to high income risk. The excessive volatility of commodity prices poses severe difficulties for small farmers as they lack the capacity to reduce risks through risk-hedging financial derivatives such as options and futures.

Several studies show that the prices of agricultural commodities are generally volatile and have a declining long-term trend. Low and volatile commodity prices have been sources of social and macroeconomic instability in many commodity-dependent developing countries. The causes of falling prices vary from one commodity to another. For competing commodities,[3] Northern subsidies and market access limitations are the major causes of depressed international prices; while the oversupply of commodities and asymmetric bargaining power are the causes of low farm-gate prices for tropical commodities.

II.1 Market Concentration in Tropical Commodity Markets

A useful tool that has been employed to demonstrate how profits are distributed through chains of production is a ‘value chain’ analysis. The analysis involves looking at how information flows and differences in bargaining power affect the distribution of profits among different actors at every stage of the production process.

Despite certain differences among individual products, a similar pattern is evident in the value chains of tropical commodities. While raw agricultural products are supplied by large numbers of small-scale producers, there is a high market concentration at the processing and distribution stages – e.g. these stages are often globally dominated by few vertically-integrated multinational corporations. This has led to enormous asymmetry in bargaining power between producers, processors and distributors.

[3] Competing commodities refer to commodities that are produced in Tropical and Mediterranean or Temperate zones; and compete with each other.

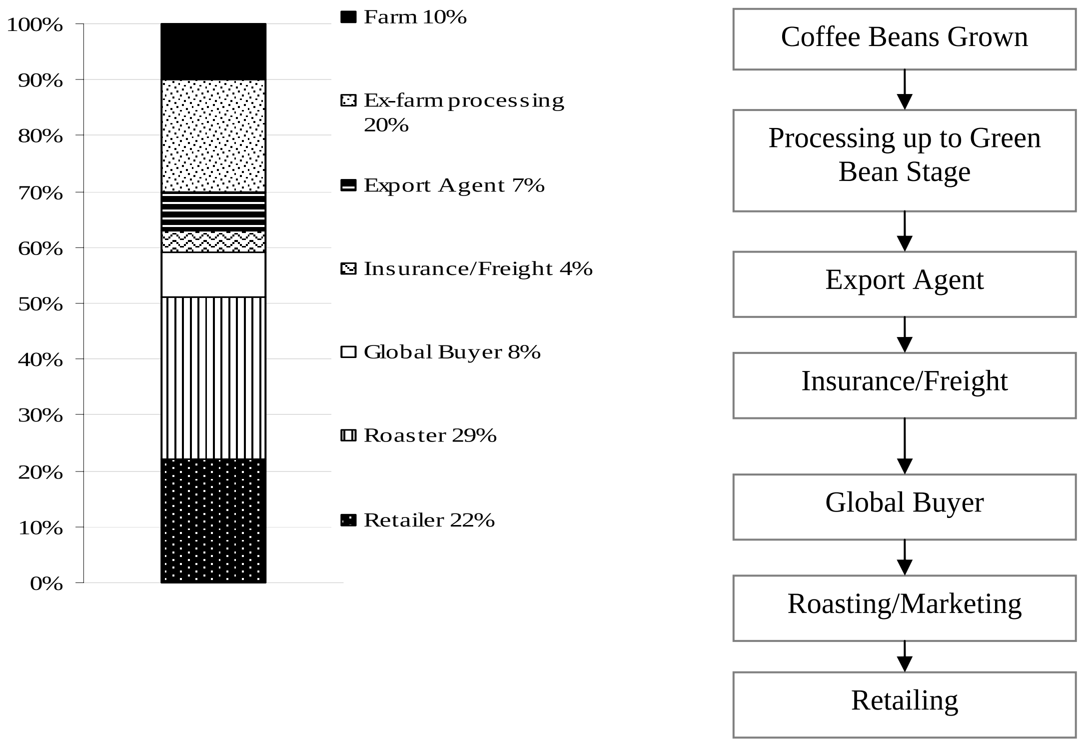
There is evidence that while all, or a large share of, falls in retail prices of tropical commodities are translated into low farm-gate prices, higher retail prices do not seem to lead to higher farm-gate prices. This results a downward bias in the price trend. Morisset (1998) showed that the elasticity of transmission (a measure of how closely producer price follows price in retail markets) was higher in periods of falling prices than when prices were rising. He found that this effect has led to increasing margins between farm-gate and retail prices. In short, from the producers' perspective, tropical commodity prices tend to be slippery downwards and sticky upwards.

On the other hand, little or none of the share of a fall in farm-gate prices is passed on to consumers in the form of retail price reductions. Instead a large part of any drop in a farm-gate price is absorbed as profit by intermediaries in the value chains of tropical commodities. Hence, from the perspective of the retail consumers, tropical commodity prices tend to be sticky downwards and slippery upwards.

Thus farmers and consumers benefit little from increases in retail prices and decreases in farm-gate prices respectively. Instead powerful intermediaries benefit disproportionately both from low farm-gate prices and high retail prices, because of their ability to transfer all or a substantial part of a fall in retail prices to producers in the form of low farm-gate prices, and high farm-gate prices to consumers in the form of high retail prices. While the intermediaries transfer high farm-gate prices and low retail prices to consumers and producers respectively, they retain all or a substantial share of profits from low farm-gate and high retail prices.

II.1.1 Structure of Coffee Markets

Figure 4: Distribution of Profits



Source: Adapted from Fitter and Kaplinsky 2001.

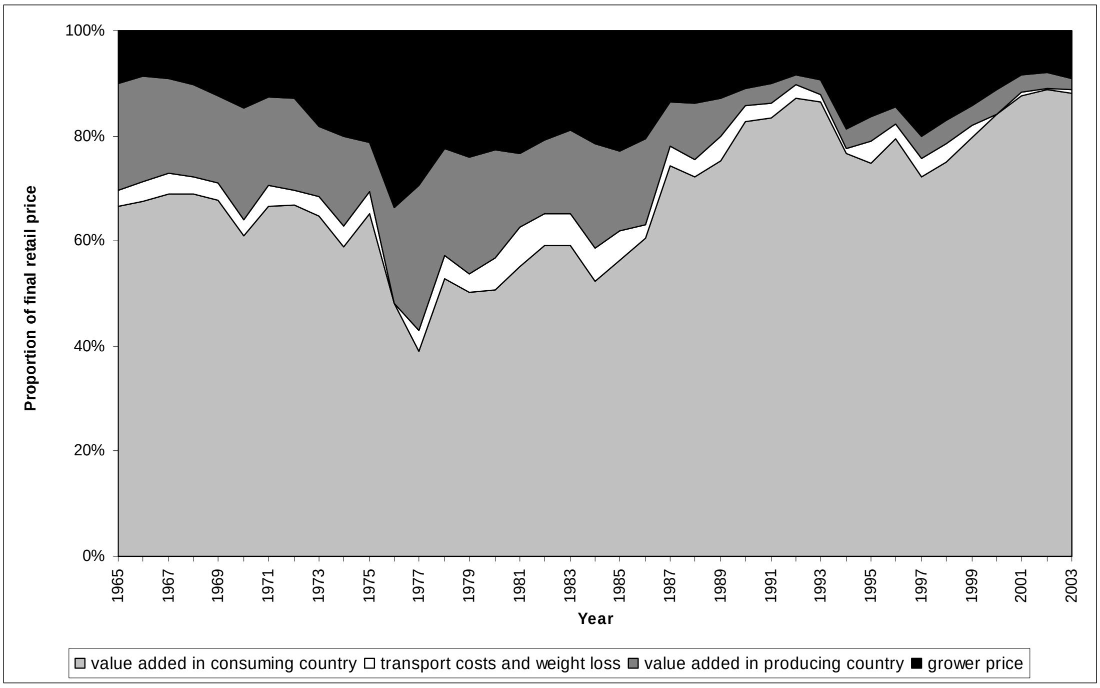
The distribution of profits among the different actors in commodity value chains is better understood by looking at the structure and dynamics of the value chains for tropical commodities. In doing so, we use the coffee market as an example for two reasons: firstly, the vertical structure of the coffee value chain is simpler to comprehend than most other tropical commodities and there are a number of useful studies about the coffee value chain; and secondly, the nature of market concentration in the downstream levels of the coffee value chain (trading, processing and retail) is similar in structure and dynamics to that of other tropical commodities.

However, there are important differences among the value chains of coffee and other tropical commodities. For example, as outlined in Kaplinski (2004a), the cocoa market is different from the coffee market in both the structure and distribution of profits. Unlike coffee, where production is dispersed among a large number of countries, the production of cocoa is concentrated in a few countries, with the three largest cocoa producers (Ivory Coast, Ghana and Indonesia) accounting for 75 per cent of world output.[4] Nonetheless, the coffee value chain is adequate to demonstrate the dynamics and the effect of market concentration in tropical commodities.

II.1.2 Distribution of Profits in the Coffee Value Chain

Figure 5 below presents the distribution of the share of the final retail price of coffee between producing and consuming countries during the period 1965-2003.

Figure 5: Distribution of final retail price in the coffee value chain 1965-2003



Source: Kaplinsky, 2004a.[5]

[4] Kaplinsky, R. (2004a). Op. cit.

[5] We are very grateful to Raphie Kaplinsky for supplying this figure, taken from Kaplinsky (2004a) (originally adapted from Talbot, J (2002), “Tropical commodity chains, forward integration strategies and international inequality: coffee, cocoa and tea”, Review of International Political Economy, 9:4 November 2002, pp 701-734).

Since the late 1970s, there has been a big drop in the proportion of the final price that goes to the producing country (shown by the two upper parts of the diagram). Despite some short term spikes, the share of the final retail price that accrues to producers and value-added activities in the producing countries has been continuously falling since the mid-1970s, where it peaked. The share of the final retail price that accrued to growers fell from a peak of 35 per cent in 1976 to around 10 per cent in 2003. Similarly, the share of the retail price to other value-added activities in producing countries fell from a 20 per cent peak in 1977 to less than 5 per cent in 2003. In contrast, the share of the final retail price accrued to value-added activities in consuming countries rose from a low of 40 per cent in 1977 to slightly less than 90 per cent in 2003. This, in line with other studies such as those by Talbot (1997)[6] and Pelupessy (1999)[7], shows that value added has moved to the North.

According to the value-chain literature, profits are distributed in accordance with the barriers to entry at each stage of the value chain. Generally, profits are higher at stages in the value chain where entry barriers are higher. Broadly speaking, entry barriers can be categorized into (i) government or regulatory barriers; (ii) structural barriers due to specific features of a market; and (iii) strategic entry barriers due to incumbent firms' activities. Regulatory barriers are administrative barriers that are a consequence, deliberate or otherwise, of government policies. Entry barriers due to market structure include such barriers as economies of scale and large sunk cost investments. Strategic barriers created by incumbent firms include branding and vertical arrangements with parties at other stages of the value chain.

Entry barriers are high in the roasting and marketing stages of the coffee value chain because of large sunk costs in marketing such as those for warehouse facilities and branding activities. These barriers pose significant challenges to developing countries that have capacity constraints to investing in and marketing their own brands to compete with established roasters. Regulatory barriers, such as tariff escalation on imports to developed countries, reduce the competitiveness of developing countries' processed coffee products. In turn, this reduces the incentive to enter the downstream (processing) stages of the coffee value chain. The combined effects of high regulatory, structural and strategic barriers in the roasting and processing stages of the coffee value chain allow roasters to capture the largest share of profits.

A few global marketers and distributors of coffee hold a privileged position with respect to the final consumer. A small number of recognized brands are able to extract a premium for their products at the retail level, due to the lack of intense competition (oligopoly power), and the intensive marketing designed to persuade consumers that they offer a superior brand. Hence product differentiation through advertising and "brandification" are key barriers to entry that incumbent firms use.[8] In addition, research and development (R&D), patents and control over technology pose severe limitations to new entrants.[9]

The global marketers and distributors have immense power in their dealings with producers (oligopsony power) – this means that they can influence the price at which they buy inputs from developing country producers – and with consumers (oligopoly power). The fact that such firms have market power at both ends of their operations allows them to cushion their own profits with an asymmetric passing on of retail and farm-gate prices. As mentioned earlier, a fall in retail price is passed on as low farm-gate prices, but consumers hardly see any price reduction when farm-gate prices drop. Similarly, higher retail prices are not passed upstream to developing country producers.

By the same token, because barriers to entry are low at the growing and early processing stages of commodities, low profits accrue to producers. Coffee is produced by millions of small-scale producers through labour-intensive activity. Entry into this activity requires neither a large sunk cost nor are there

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[6] Talbot, J. M. (1997). Where does your coffee dollar go?: the division of income and surplus along the coffee commodity chain. Studies in International Development, Spring 1997, Vol. 32, No 1, pp. 56-91.

[7] Pelupessy, W. (1999). Coffee in Cote d'Ivoire and Cost Rica: national and global aspects of competitiveness: contributions from the Netherlands. Leiden, African Studies Research Series 15/1999. Ashgate: Aldershot.

[8] Calfat, G. and Flôres, R. G. (2002). Op. cit.

[9] Ibid.

economies of scale that would deter the entry of smaller producers. This lack of entry barriers leads to greater competition, leading to a smallshare of profits.

Competition is a dynamic process and any market with low barriers to entry will face a continuous erosion of profits as new firms enter the market. This poses a serious problem for developing countries that depend heavily on the production of primary commodities with low structural market-entry barriers. There is, thus, a need to diversify the economy of developing countries to high value-added activities. However, limited supply-side capacity and high entry barriers have undermined the ability of developing countries to enter the market for high value-added activities, where greater profits can be obtained. The developed countries' domination of high value-added activities with high market-entry barriers may thus perpetuate the North-South development gap.

Not all entry barriers are structural or exogenous to the behaviour of market participants. Rather some barriers are raised by the activities of incumbent firms. Research and development activities, for example, are often undertaken by companies in order to develop new brands and capture the associated monopoly profits, at least for a brief period of time. In some cases the monopoly positions are consolidated by controlling innovative processing technologies such as, for example, the freeze-dried method and vacuum packing.[10]
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Diversification from dependence on primary commodities to higher value-added economic activities has rightly been advanced as the long-term solution to the commodities crisis. This diversification could be either horizontal or vertical. However, as outlined, many obstacles, ranging from supply-side constraints to regulatory, structural and strategic market barriers, limit developing countries' ability to diversify their economies vertically into high value-added activities.

Regulatory market-entry barriers set by governments in developed countries should be addressed through negotiations in the multilateral trading system. However, structural and strategic barriers may be better dealt with by a range of policy measures at the national, regional, and international levels. If such policies are to be effective in the medium term, they should increase the bargaining power of producers in developing countries, relative to the powerful intermediaries.

The next section examines various policy options at national, regional and international levels that might mitigate the effects of market concentration in the value chains for tropical commodities.

[10] Calfat, G. and Flôres, R. G. (2002). Op. cit.

III. Policy Responses to the Problems of Market Concentration

The previous section outlined the main causes of the problems facing developing-country commodity producers:[11] (i) that they have low bargaining power with respect to their buyers; and (ii) that they specialize in the segments of the value chain with lower barriers to entry. These two factors combine to lead to low producer prices, and can be addressed separately through different policy measures. In the long run, it would be sensible to aim to diversify out of low-rent activities altogether, but the issue of bargaining power should be addressed in the short to medium term. In the rest of this paper we explore possible policy measures at the national, multilateral and regional levels, distinguishing between policies addressing each of these two issues.

In general, market concentration is a difficult issue that requires an active policy intervention to correct structural problems emanating from market failures and to redress situations caused by erroneous policies implemented by developing countries, as part of the conditionalities of SAP. Factors leading to the weakening of the bargaining power of developing countries and those leading to the strong market power of MNCs are the causes of the increased asymmetry of market power in the commodities market. The demise of state intervention in commodity markets, as part of the market deregulation and trade liberalization requirements of the Washington Consensus policy package, is one of the reasons for the weakening of the developing countries' bargaining power. Deregulation of domestic markets in developing countries left small, dispersed and powerless producers vulnerable to abuse by monopsonist MNCs. Hence, to redress the problem of market concentration, domestic and regional policy approaches should support active government intervention to promote industrialization and vertical diversification into high value-added stages of the commodities value chains. This active industrialization process should be supported by other supply-side measures, including supply management programmes and through the regulation of intermediaries such as exporters and processors that operate in developing countries.

Competition policy, whenever it can be implemented effectively in developing countries, could be a useful complement to (but not a substitute for) active government intervention in developing countries. Most existing competition policies are focused on the protection of consumers. An important part of this role consists in dealing with cases where market power, or the formation of a cartel, allows producers to sell goods to consumers at prices which are significantly above competitive prices. In such situations, not only is there a net welfare loss to society (this is an inefficiency known as deadweight loss), but there is also a significant transfer of profits from the consumer to the producer. Therefore the motivation for competition policy derives from both market efficiency and distribution concerns. In cases of monopsony power, the results are very similar, but the transfer of welfare occurs in the opposite direction, from seller to buyer. However, to date such situations have been largely ignored by competition authorities.

Much of the following discussion deals with the possibility that commodity farmers could benefit from a reorientation of competition policy away from simple consumer protection, in order to encompass situations where market power is exerted by a customer on its suppliers. In addition, the role of other supply-side measures such as industrial policy, trade policy and policies for empowering producers to provide the policy parameters for regulating and/or ameliorating the effect of market concentration are discussed.

[11] With respect to competition-related issues.

III.1 Policy Measures at the National Level

At the national level there is broad scope for addressing the problems mentioned above. The core concern of domestic policies in dealing with the problems of market concentration should focus on strengthening domestic bargaining power through: (i) implementing an active industrialization policy aimed at bolstering competitiveness and the ability to enter high value-added stages of the commodities value chain; (ii) ensuing fair and remunerative prices for the export of primary commodities through regulation of the supply of commodities, individually and collectively, with other commodity-exporting developing countries; and (iii) regulating the operations of intermediaries operating in the developing countries.

III.1.1 Strengthening the Bargaining Position of Developing Countries

Diversification out of dependence on primary commodities is the only viable long-term solution to the commodities question, including to the problems posed by market concentration. Diversification into high value-added stages of the commodities chain is the best option for increasing the share of developing countries' income from trade in commodities. However, it is almost impossible to achieve entry into the high value-added stages of the commodities chain under neo-liberal doctrines where market forces operate in an unfettered fashion.

Theoretically, the objective of competition policy is to promote the efficiency of markets in order to avoid the problems of efficiency mentioned in the introduction to this chapter. In practice, competition policy is usually focused on the protection of consumers, who are seen as the group with the lowest bargaining power, and most susceptible to harm due to the exercise of market power. However, the supply side could also be affected, and if there is consensus about the need to protect consumers from practices aimed at extracting profits from them, then the same rationale could be applied to the protection of other powerless groups affected by the concentration of the market of processed goods. In other words, if antitrust law is concerned with the rights of consumers to buy products from competitive and efficient markets, there is no reason why it should not also concern itself with the rights of sellers to sell their products in a similar competitive environment.

This concern is particularly important for developing-country farmers and competition policy in developing countries could be designed more in accordance with their needs, adopting an approach that takes into account the interests of this powerless group. This would also serve to protect the interests of rural communities.

III.1.2 Abuse of Buyers' Dominance:

One direct way to address the problem of asymmetric bargaining power would be to challenge the monopsony power held by MNCs operating in commodity markets through a claim of abuse of buyer dominance.

In order to understand the implications of such a claim two concepts need to be defined: firstly, what "buyer dominance" is understood to be; and secondly, what could constitute its abuse. In addition, it is worth mentioning that having a dominant position is not *per se* illegal, even in the case of firms with monopoly power. The object of sanctions is to control the abuse of a dominant position, which in most cases is analysed under the *rule of reason*[12] on a case-by-case basis.

In general, a dominant position is defined in terms of the ability of a firm to set prices or to behave independently from its competitors. In the case of monopsony power, buyer dominance refers to the ability to

[12] The rule of reason is referred to the analysis of an action by balancing its pro- and anticompetitive effects in order to determine whether it is illegal and/or sanctionable or not. Carlton, D., Perloff, J. Modern Industrial Organization. Harper Collins College Publishers. 2nd edition. 1994.

reduce prices below the competitive market outcome. [13] Buyer dominance has been addressed by competition authorities in terms of *buying* groups[14]. Typically, the question of whether a buyer group's position is dominant is assessed initially in terms of market share. In American and European competition law, some "safe harbours" are mentioned below, according to which a buying arrangement is not considered to be a source of concern. According to Statement No. 7 evaluated by the United States Federal Trade Commission (FTC) and the Department of Justice (DOJ), joint purchasing arrangements that account for less than 35 per cent of purchases of the total sales of a product or service in a given geographic market are unlikely to result in the exercise of market power.[15] By contrast, the European Commission's regulations for buying groups consider that a joint buying arrangement is not likely to create competition problems if the combined market share of buyers is below 15 per cent .[16]

In the case of commodities, even considering the MNCs involved separately (not a *joint* buying group), their shares in the buyer market are above these limits. This means that their positions could be considered as dominant, which might raise concerns about their potential anti-competitive effects. For example, as discussed earlier, in the case of roasted and instant coffee, concentration is very high: the sales of the top five groups accounting for 69 per cent of the market.

However, the existence of high buyer concentration is not sufficient to argue that significant buyer power is being exercised. Actual abuse of dominance might take the form of exclusionary practices aimed at impeding the entry of actual or potential competitors to the market. It could also involve exploitative behaviour (excessive pricing or pricing below competitive levels).[17] In any case, it is not possible to make an *a priori* assessment about whether or not MNCs are abusing their dominant position. From a competition policy enforcement point of view, this analysis must be conducted on a case-by-case basis and all the different factors influencing the market and its potential results must be taken into account (i.e. market structure in the commodity markets and its elasticity of supply, price-cost margins in the processed good markets)[18].

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[13] Organization for Economic Cooperation and Development OECD. Buying power of multi-product retailers. July 1999. Document DAFFFE/CLP(99)21 p 40

[14] In particular, buying groups have been defined in terms of joint buying arrangements. A joint buying arrangement is one negotiated by a buying group, formed by small and medium businesses, to purchase larger volumes all together, achieving discounts similar to those ones obtained by large competitors. In: http://www.freehills.com.au/publications/publications_1439.asp

[15] Statement of the United States Department of Justice and Federal Trade Commission enforcement policy on joint purchasing arrangements among health care providers. In: http://www.usdoj.gov/atr/public/guidelines/0000.htm In addition, in the United States, the market efficiencies brought to the market by joint buying arrangements are taken into account; joint purchasing arrangements may be permitted when there are economies of scale and they achieve cost savings and efficiencies. Bloch, R., Perlman, S., Brown, J. An analysis of Group Purchasing Organizations' contracting practices under the antitrust laws: myth and reality.

In: http://www.ftc.gov/ogc/healthcarehearings/docs/030926bloch.pdf

[16] Freehills. Assessing joint buying groups under the Trade Practices Act. In: http://www.freehills.com.au/publications/publications_1439.asp

Joint buying arrangements outside these thresholds are not automatically considered illegal, but will be evaluated by the relevant regulatory authority to determine whether they are anti-competitive. In general, comparing the trend in the US and the EU, it is worth mentioning that the EU makes a more explicit recognition of buyer power in its guidelines for mergers. Also, it has been more active in its antitrust policies in this regard than the US. Lande, R. Beware buyer power. The Legal Times. July 2004. p. 6

[17] UNCTAD. Market entry conditions affecting competitiveness and exports of goods and services of developing countries: large distribution networks, taking into account the special needs of LDCs. August 2003. Document TD/B/COM.1/EM.23/2. p 15

[18] EU Commission. DG Competition. Buyer power and its impact on competition in the food retail distribution sector of the European Union. October, 1999. In: http://europa.eu.int/comm/competition/publications/studies/bpifrs/. p 25

According to the Price Discrimination Enforcement Guidelines of the Canadian Competition Bureau,[19] the justification for the existence of buying groups relies on the fact that consumers would benefit from lower prices resulting from price concessions to large buyers and from improved efficiencies. In the case of commodity markets, this passing on of lower prices to consumers has not been observed, so even under a pro-consumer approach to competition law, in the case of commodity markets, the monopsony power of large processors does not seem justified.[20]

Nonetheless, despite these arguments, there are some shortcomings to the idea of proceeding with a claim of abuse of buyer dominance:

- Firstly, raising such a claim, and in general developing a competition framework, which adopts a "producer protection" approach and sanctions certain buyer behaviour, would require designing and enforcing an appropriate competition law. The costs of this would not be negligible, including the allocation of considerable resources to the development of the expertise required to conduct this type of analysis. This would be particularly problematic since the analysis of buyer power is still at an early stage even in developed countries[21]. The debate over how buyer power should be dealt with in developed countries is ongoing, motivated largely by the increasing concentration in retail markets.[22] Furthermore, even once such competition law became operative, the costs of antitrust procedures (in terms of resources and time) would also be high, especially considering that the likely targets would be MNCs, with vast resources at their disposal. As will be discussed later, cooperation at the international level may be a useful channel to bypass resource problems faced by individual countries.

- Secondly, as mentioned earlier, the abuse of a dominant position must be proved, and in many cases this will be hard to do. There are a number of problems with this type of analysis: it is usually necessary not only to investigate the market structures concerned but also the anticompetitive behaviour/intention of the agents in the market (assessing price-cost margins, etc). In addition, it is worth noticing that the jurisprudence on the analysis of buyer dominance is not extensive. This lack of jurisprudence on the subject results from the traditional focus of competition law on consumer protection and also, in some cases, the fact that suppliers are reluctant to complain for fear of reprisals.[23] In any case, the lack of jurisprudence raises questions with regard to the effectiveness of antitrust arguments to address problems of buyer dominance.[24]

- Thirdly, another limitation is that even if developing countries affected by the problem of unfair distribution of profits have the proper framework and expertise required to address the problem, the majority of the companies with monopsony power (MNCs) are based outside the jurisdiction of the countries affected. This raises the issue of extraterritoriality in the application of competition law. In principle, according to the *Effects doctrine*[25] in competition, domestic competition

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[19] Competition Bureau. Canada. Price Discrimination Enforcement Guidelines. In: http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1810&lg=e

[20] In commodity markets buyer power derives not from arrangements between firms, but from the size of the firms themselves. In this case there may be other issues such as economies of scale in production that need to be balanced against market efficiency.

[21] There has been considerable debate in developed countries over the design of appropriate competition law and policy towards buyer power and this remains a contentious area. UNCTAD. Op. cit. p 15

[22] EU Commission. Op. cit. p 34

[23] UNCTAD. Ibid.

[24] South Centre. Trade-related agenda, development and Equity. Market power in agricultural markets: some issues for developing countries. Working Paper 6. November, 1999.

[25] According to the effects doctrine the location where anticompetitive conduct occurs is irrelevant for the purposes of antitrust enforcement and this doctrine covers all firms irrespective of their nationality. The "effects doctrine" was embraced by the Court of First Instance in Gencor when stating that the application of the Merger Regulation to a merger

laws could be applied to foreign firms as long as their behaviour causes a negative effect in the domestic market. However, the unilateral application of domestic laws to foreign firms has been subject of much debate[26]. So far this principle has been applied by the United States since 1945 and other big players like the European Union.[27] Although acceptance by the EU and the U.S. of concepts of extraterritoriality in antitrust is extending,[28] its application could still be subject of controversy. It could be expected that smaller countries could face problems in its application and the likelihood of a successful prosecution of anticompetitive practices by the MNCs involved in commodity markets is not certain.

To sum up, in order to address the problem of concentration in commodity markets, it is necessary to develop a framework and expertise on competition focused towards developing countries' needs, in other words, the protection of small rural producers. However, for the various reasons discussed above, most developing countries lack the capacity to make a real challenge to monopsonist MNCs and to redress, through the development and enforcement of national competition law, the detrimental effects that the monopsonist MNCs have had on their development. Therefore, the main focus of national competition policies in developing countries should rather be on regulating intermediaries such as exporting agencies. This should be supplemented by national policies that encourage the mobilization of national bargaining power and the promotion of vertical diversification through industrialization.

III.1.3 Formation of Producer Groups

Another way to solve the problem of asymmetry in commodity markets and increase the bargaining power of producers would be to promote and assist them with the establishment of associations in order to increase their market power and thereby to obtain higher prices for their products. Attempts to use this strategy are not new and have been tried in the past with some success. Indeed, any future developments of this sort must take into account the lessons learnt from past experiences.

In the past, state marketing boards were actively involved in market operations (export and import) in commodity markets in order to influence supply and distribution. Their operations were criticised because of problems associated with lack of transparency, the development of price pooling that allowed more discre-

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between companies located outside EU territory "is justified under public international law when it is foreseeable that a proposed concentration will have an immediate and substantial effect in the Community." EU Competition Glossary.

More information on the evolution of the "Effects doctrine" and its incorporation into various competition policy regimes: Swaine, E. The Local Law of Global Antitrust, 43 William & Mary L. Rev. 627, 641-46, 2001. In : http://europa.eu.int/comm/competition/general_info/e_en.html

[26] Calvani, Terry. Conflict, cooperation and convergence in international competition. FTC 90th Anniversary Symposium. September, 2004. In: http://www.ftc.gov/ftc/history/0409calvani.pdf p. 4

In general, the application of extraterritoriality in antitrust has been resisted by countries to the extent that it is seen as a violation of the national sovereignty of States. In: http://www.global-trade-law.com/Global per cent 20Antitrust per cent 20(Fall per cent 202004).ppt

Also, see: Balzarotti, Nora. Política de competencia internacional: cooperación, armonización y experiencia. Boletín Latinoamericano de Competencia. Nro. 10. Parte 1. Junio 2000. In: http://europa.eu.int/comm/competition/international/others/latin_america/boletin/boletin_10_1_es.pdf

[27] In the case of mergers, EU cases are: MCI/WorldCom merger (1998); MCI-World Com- Sprint merger (2000); AOL – Time Warner (2000); Microsoft practices (Windows 2004) Oracle-People Soft (2004). For information on prosecution of international cartels by the U.S. and the EU, see Clarke, J. and Evenett, S. The Deterrent Effect of National Anti-Cartel Laws: Evidence from the International Vitamins Cartel. In: http://www.evenett.com/articles/publishedversion.pdf

[28] Kovacic, W. Extraterritoriality, institutions and convergence in international competition policy. In: http://www.ftc.gov/speeches/other/031210kovacic.pdf

tionary pricing in international markets, and the public underwriting of their costs.[29] STEs in developing countries were dismantled, to great extent due to the pressure exercised by Bretton Woods institutions and other multilateral agencies in the early 1990's, in order to liberalize markets. In general, STEs in most developing countries are now completely dismantled. Currently, proposals for the regulation at the multilateral level (WTO) of the few remaining STEs include the elimination of the export subsidies they provide, and their preservation only for the purposes of securing consumer price stability and food security.[30]

The demise of national marketing boards and international commodity arrangements has resulted in an institutional vacuum that in turn has made producers vulnerable to market vagaries, including abuses by monopsonist MNCs. National and international commodity arrangements have had some success in mobilizing producers' bargaining power and in stabilizing prices at a remunerative level. It thus important to promote producer groups in developing countries, in order to mobilize producers' bargaining power and thereby reducing the power asymmetry existing in the commodity markets.

In addition to mobilizing bargaining power, producers groups would provide additional benefits. Firstly, they would increase cooperation among producers and facilitate the exchange of information among them about production methods and market conditions such as price, demand, quality and standard requirements and so on. Secondly, the establishment of producers groups would allow for quick and easy dissemination of production and market information from governmental and non-governmental agencies. Thirdly, they would enable producers to have better access to credit, for example, for building warehouses for the storage of excess supplies. Fourthly, they would allow producers to mobilize managerial resources and resources for market development and research. Fifth, they would empower producers to influence national policies in favour of their interests.

To the extent that producer associations lead to commodity price-fixing, they could be regarded as cartels. However, even if when these associations are dubbed as cartels, it should be noted for various reasons that they do not imply non-competitive behaviours. Some of the reasons are: first, the best price objective that these associations often achieve, if any, is a remunerative price as opposed to other cartels that opt for monopoly profit. Secondly, in contrary to most cartels, producer associations are self-mobilization of the least empowered groups to protect interests affecting their livelihood against powerful monopsonists. In industrialized countries, the state protects the interests of the less powerful groups. For example, the main objective of competition authorities in developed countries is to protect consumers from abuses by producers, because consumers lack the power and the initiative to protect themselves from producers with market power. It is also common in most developed countries to see active consumer associations that work for the protection of consumers in cases where competition laws are insufficient or when their enforcement is weak. Therefore, producer associations are similar to consumer associations because they are both intended to protect the powerless from abuse by those who have market power.

The legality of producer associations engaging in price-fixing behaviours becomes apparent when considering that industrialized countries implicitly or explicitly grant antitrust exemptions to export cartels when the impact of the cartels on the domestic economy is minimal, regardless of their effect on international markets.[31] For example, the United States, under its Webb-Pomerene Export Trade Act ("WPA") of 1918 (which remains in effect today), provides "export exemptions" to its antitrust law. Moreover, the U.S. Congress unanimously passed the Export Trading Company Act of 1982 in order to expand the scope of "export exemption" to increase United States competitiveness in global markets.[32]

[29] South Centre. Trade-Related Agenda, Development and Equity. Market power in agricultural markets: some issues for developing countries. Working Paper 6. November, 1999. p 8

[30] South Centre. Trade and development program. The status of State Trading Enterprises (STEs) under the July Framework and the role of exporting STEs in developing countries. November, 2004.

[31] This is a case of a 'beggar thy neighbour' competition policy.

[32] Levenstein and Suslow, 2004.

In terms of achieving higher farm-gate prices, the formation of producer associations would be effective only in cases where the supply of a commodity in the international market was concentrated, so that buyers could not obtain supplies of similar products elsewhere. In other words, coordinating producers locally to set prices would be effective only in cases where the country or local community group had enough power to influence farm-gate prices. In some commodity markets this would be easier than others. For example, while the cocoa market is relatively concentrated, and producers in Cote d'Ivoire would certainly have some combined market power, any individual country producing coffee would be unlikely to achieve a price increase without buyers going elsewhere. This would undermine the effectiveness of a local or national producers association and points to the need for cooperation of producers at the regional and/or international level. However, even in such cases, new competitors might emerge in the medium term from countries which had not previously been producing because of the relative ease of entry in commodity production.

However, producer groups, in spite of their important role in mobilizing producers' bargaining power and their potential effect to ameliorate the problems of asymmetry of power along the value chains of commodities, are not easy to coordinate. This has been clearly documented following past experiences of such organizations. Hence, governments in developing countries should create a conducive policy environment, assist the institutionalization of producer groups and increase their capacity through technical assistance, marketing training and financial support.

III.1.4 National Policies to Promote Diversification

The distribution of profits in commodity value chains, which favours large vertically-integrated processors at the expense of producers upstream, is reinforced by the fact that farmers operate in the segment of the chain with the lowest barriers to entry (in other words, with the highest level of competition).

A sustainable solution to this problem would be to promote the diversification of production either vertically (to another value-added stage in the chain of production) or horizontally (to the production of another good). This would allow farmers in developing countries to participate in higher value-added segments of the market and therefore, to obtain a higher share in the distribution of profits. This solution would be optimal because it would have a permanent effect on farmers' welfare. However, there are obstacles at both the national and international levels. At the national level, there are resource and capacity constraints, and at the international level, farmers are faced with tariff escalation, subsidies to farmers in rich countries, technical barriers to trade, structural trade barriers due to downstream oligopsonist market structure and so on. In this section, the national dimension of diversification will be dealt with.

The contribution of competition policy to achieving diversification could be enhanced if countries were to consider it as having a broader scope than is more usually considered relevant. Many different policy areas contain aspects of competition policy. For example, even in macroeconomic, trade, industrial, and investment policies, some components may be designed with a view to facilitating or promoting competition.[33] Taking this perspective, competition policy can be considered as the combination of all government actions that protect and promote efficiency and thus, competition in the market. In this sense, competition policy would include a *"well-motivated articulation of competition issues in industrial policy, trade policy, investment policy, service policy and consumer policy as well as enactment of competition law*".[34] The objective of this "integrated" competition policy, in combination with a conducive macroeconomic environment, should be to promote the flourishing of new processing industries through regulating the behaviours of domestic ligopsonist processors and exporters which, in most cases, are vertically integrated with MNCs.

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[33] To be more specific, the subsidisation of agricultural inputs, which is part of an industrial policy aimed at increasing the competitiveness of farmers, finally also improves the bargaining position of farmers and counterbalances the excessive power of buyers in final markets. Therefore, this subsidy, although primarily a component of industrial policy, could also be thought of as a policy with an ultimate competition policy goal.

[34] Adhikari, R. Competition policy in small economies. South Asia Watch on Trade, Economics and Environment (SAWTEE) and CUTS Centre for International Trade, Economics and Environment (CUTS-CITEE). Discussion Paper. 2002. p. 57

Therefore, the design of a comprehensive strategy that includes not only the enforcement of a competition law to deal with anti-competitive conduct, but also the development of a supportive macroeconomic environment and the active enforcement of industrial and even trade policies aimed at overcoming the problems arising from the concentration in the food chain, is crucial for developing countries in their attempt to diversify. Indeed, successful experiences of diversification show that these efforts required a sound macroeconomic environment to reduce the risk of trading with other regions, the mobilization of resources to subsidize agricultural inputs (to promote vertical diversification through selective industrial policy), promotion of diversification into non-traditional agricultural exports through the support to R&D activities, and improving the flow of information to producers about technical requirements for certification,[35] among other things.

However, achieving diversification is not easy, and there are important factors to take into account:

- <u>Buyer-driven nature of the value chain:</u> Retailers and downstream processing/branding companies are becoming more important in the organization of global trade. They take the key decisions about who is in and out of the chain, what products will be produced, and how the supply chain and the logistics will be organized.[36] In other words, they are the ones deciding about the quantity and quality offered of the product.[37] This pattern benefits large farmers (either in developed or developing countries) because they are more able to meet the type of requirements imposed: they can produce large quantities and so take advantage of economies of scale and have better capacity to comply with the technical standards required (in some cases the MNCs are vertically integrated with some of these large farmers, so the latter have access to more information and resources to comply with standards). In any case, the main problem arising from this pattern is that the small farmers are left out.

  Therefore, and in connection with the recommendations made earlier, the formation of producers groups should go beyond the single purpose of increasing the bargaining power of farmers in the short run, and should encompass the objective of organizing production and increasing attractiveness to large buyers. More specifically, it will be necessary to increase farmers' access to information, and facilitate compliance with quality and safety standards so that buyers do not source only from large suppliers with greater capacity to fulfil such criteria. This could be achieved through the development of policies that promote the organization of the farmers and their production, developing quality controls, facilitating investment in the sector and promoting technological advancement in general. In this way, fewer farmers would be disadvantaged due to technical difficulties. The redesign of the role of STEs discussed in the previous section should also take into account these issues.

- <u>Protection from future potential anti-competitive practices</u>: Mechanisms to achieve diversification in the commodity market have been analyzed so far in terms of addressing the structural problems in the market. While diversification is achieved, there will be a role for competition law in terms of protecting the market from future potential anti-competitive conduct.

  Indeed, once diversification in developing countries starts to take place, the agents already operating in higher added-value segments of the chain (MNCs) may have an incentive to engage in anti-competitive practices in order to raise barriers to the entry of newcomers (producers from developing countries). The incentive comes from the fact that MNCs have monopolized a market that allows them to raise prices or not to pass on price reductions to consumers; therefore they are interested in protecting the profits they derive from this situation.

[35] Titapiwatanakun, B. Lesson learned from commodity-base diversification with particular emphasis on small producers and exports and on poverty reduction. UNCTAD Regional workshop on commodity export diversification and poverty reduction in south and south-east Asia. April, 2001. In: http://r0.unctad.org/infocomm/Diversification/bangkok/povreduc.pdf

[36] UNCTAD. Strategies for diversification and adding value to food exports: a value chain perspective. November 2000. p 9

[37] Quality concerns come from the fact that retailers have some liability with respect to the products they sell. This makes them more conscious of the need to trace the origin of these products and to control their quality.

Therefore, there is a crucial role for competition law in preventing the development of future potential predatory practices, when producers in developing countries attempt to enter the higher stages of the value chain. This emphasizes the need to design and implement an appropriate and development-friendly competition law at the multilateral level so as to address potential competition problems.

III.2 Policy Measures at the Multilateral Level

The existence of market concentration in the higher value-added stages of the food chain creates a problem with a global character to the extent that it is affecting the life of individuals (producers and consumers) from different parts of the globe. It constitutes a global problem that requires a global solution.

In this section, we explore the mechanisms that can be employed at the multilateral level in order to address the problems of asymmetric bargaining power and diversification.

III.2.1 Policies to Address Bargaining Power

Following discussion at the national level on how to deal with the asymmetry in bargaining power, one aspect that requires attention at the international level concerns the fact that, even if small economies enforce appropriate competition laws domestically, they may not be able to effectively discipline large MNCs individually because of the power asymmetry.[38] Moreover, the fact that MNCs' practices may sometimes be outside the jurisdiction of the domestic laws of developing countries raises the question of whether the latter can effectively address the problems arising from the former. Sometimes the proof of infringement is outside the national territory. This fact leaves developing countries in an unfortunate situation because they do not have sufficient tools to defend themselves from potential abuses. As stated earlier, although there is some acceptance of the extraterritorial application of competition law, MNCs may be difficult to challenge especially, because in some cases, the anti-competitive practices are actively supported by developed country governments. Therefore, anti-competitive practices with effects in international markets must somehow be addressed at the multilateral level.As we will see below, international cooperation has an important role to play in order to remedy this situation.

III.2.2 Abuse of Buyers' Dominance

The possibility of claiming the existence of an abuse of buyer dominance at a global level, raises the issue of the ideal mechanism to deal with this practice multilaterally.

On one hand, the main tools existing to deal with anti-competitive practices in the multilateral system are:

- GATS: Article VIII states that each member country will ensure that acts by monopolistic suppliers are not in a manner inconsistent with the member's obligations relating to MFN treatment and specific commitments. Article VIII:3 allows the Council of Trade in Services to request information to a member country should there be a complaint against a monopoly supplier of a service in its jurisdiction. Article IX recognizes that anti-competitive business practices of service suppliers may restrain competition and thus affect trade in services.

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[38] In many cases, the GDP of the country is a fraction of the annual global turnover of the MNC. Adhikari, R. Op. cit. p. 55

- TRIPS: Article 8:2 deals with anti-competitive practices and abuses of dominant position in the case of right holders. Likewise, Article 40 has similar dispositions in the case of licensing practices.

- In telecommunication services, the Reference Paper on Regulatory Principles contains specific references to anti-competitive practices by major suppliers that should be prevented in telecommunications.

Although these provisions tackle anti-competitive practices, they are applicable only to specific sectors of which commodities markets are not part. This fact raises the question on the extent to which they constitute an adequate framework to deal with the problems arising from high concentration. In fact, they do not constitute a coherent and comprehensive set of provisions to deal with all the different anticompetitive practices that may arise from conducts in different sectors.

Likewise, there have been proposals suggesting that member countries could use the experience with the Reference Paper on telecommunications as a reference on how to deal with anti-competitive practices. The idea is that members could choose to incorporate a similar binding document addressing anticompetitive practices as part of their additional commitments[39]. Although this is an interesting approach, its limitation rests on the fact that in order to address the problems arising from market concentration effectively, it is required that the countries with jurisdiction over MNCs (developed countries) accept to be bound by these regulations. This outcome would be difficult to achieve and in this sense, makes the effectiveness of this approach highly questionable.

However, developing countries have viewed attempts in the WTO to initiate negotiations on a multilateral framework on competition with skepticism, which led to their refusal to agree to launch such negotiations. In particular, one of the main points that developing countries raised was that the different needs and objectives of the different countries (needs of small versus large economies) would have made it impossible to have a “one-size-fits-all” approach to competition policy for all countries.

These considerations are valid: developing countries’ needs are different from those of developed countries. On one hand, while the considerations mostly accepted on competition in developed countries have been related to achieving efficient outcomes and defending consumers as the only powerless group in need of protection; on the other, developing countries’ considerations are more related to development needs, which require taking full account of their levels of economic development and local particularities or social problems.

In other words, from a developing country perspective a different approach to competition policy at the multilateral level is required, such that the discussion is not only focused on issues of market access aiming at achieving efficient outcomes but rather in terms of taking into account development considerations, so that the protection of the powerless groups at any stage and on any side in the “market chain” is preserved.

In particular, the ideas that developing countries should promote strongly, if they want to extract more from production markets, are:

- Countries should be able to sanction any potential anti-competitive behaviour by MNCs so that the benefits of globalization and liberalization are not undermined by these practices. It is important to increase awareness of the fact that existing market structures will continue to prevent developing countries from extracting the gains from trade that would otherwise result from tariff reductions in the agriculture sector.[40]

[39] See Japan’s submission, WT/WGTCP/W/217, p. 2.

[40] Sexton, R., Sheldon, I., McCorriston, S. and Wang, H. Analyzing vertical market structure and its implications for trade liberalization and market access. Paper prepared for the International Agricultural Trade Research Consortium Theme Day, “Market structure, competition and international trade”. December, 2003. p. 40

- The right of developing countries to adopt competition laws and policies (whether at the national, regional or multilateral level) that promote the public interest and development should be recognized and respected. For example, South Africa includes public interest criteria in its competition law (this includes a public interest test in the case of mergers)[41]. In general, any discussion on competition policy, especially as applied to a regional or multilateral context, should be framed in terms of allowing certain flexibility to developing countries in the design and implementation of their competition policy regimes.

Competition policy should be able to effectively address and promote the economic development needs and aspirations of developing countries, including increasing and facilitating market access in developed countries for the products of export interest to developing countries. The principles of flexibility and progressivity in the development of competition policy at the national, regional, or multilateral levels – especially with respect to developing countries – should be made operational.

Flexibility in developing a competition regime refers to the substance of the competition law that a country embraces. It implies the ability of a country to choose, from the menu of prohibitions contained in competition law, those aspects that are relevant for the particular economy, given its market structure, level of development, the types of anti-competitive conduct that are prevalent and special characteristics. This means that some aspects of competition law may either not be relevant for that economy, or may have to be tempered to complement the government's development (industrial) policy, through the use of exemptions and exclusions. This is very important for small economies whose market structure and nature of economic development are very different from industrialized countries, where competition law emerged.

Progressivity refers to the approach or methodology in developing and implementing a competition regime. It allows for the gradual and selective introduction of instruments to control anti-competitive behaviour. This allows the national competition authority, other government departments and stakeholders, the time to accommodate and adjust to the changes that are required. Further, as economies develop, and competition regimes mature, the instruments could be strengthened. Progressivity is particularly important in small economies because of the lack of sufficient human and financial resources to establish a competition regime for the first time. It allows a country time to build a firm foundation for the competition regime, by fully assimilating one aspect of competition rules before progressing to the next.

III.2.3 Formation of Producer Groups

As explained above, if the formation of producer groups in order to raise producer prices is to be considered, some international element would need to be included, particularly in cases where the structure of production is not concentrated.

Such agreements have existed in the past. After World War II, International Commodity Agreements (ICA) were formed with the objective of improving welfare through the stabilization of revenue for farmers.[42] There were five agreements formed for sugar, tin, coffee, cocoa and natural rubber. Two of the agreements were buffer stock ICAs,[43] whereas the agreements for coffee and sugar used export controls as their stabilization instruments. This latter type of agreement was more concerned with the revenue of the producers, whereas with the former type of agreements, what mattered more was the stabilization of prices itself. The agreement for tin was a combination of both instruments.

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[41] Article 2 of South African Competition Act 89 of 1998. In: http://www.compcom.co.za/thelaw/thelaw_act_competition_acts.asp?level=1&child=1

[42] South Centre Analytical Note. Commodity market stabilization and commodity risk management: could the demise of the former justify the latter? Document SC/TADP/AN/COM/1. November 2004.

[43] Their stabilization instrument was based on buffer stock operations whereby target prices or price ranges were identified and based on that, commodities were purchased (sold) when the market prices of the commodities were below (above) the trigger price targets or range. South Centre. Op. cit. p 5

These agreements demised due to problems in their operation: (a) poor financing (depletion of the cash reserves of the buffer stock); (b) persistence of commodity shocks (which were long-lived in general, contributing to the financial weakness of the ICAs); (c) lack of flexibility in the price range (which implied a need to purchase large amounts of buffer stocks in order to keep the price within the range established); (d) free riding (especially by non-member countries); (e) lack of compliance (mainly due to existing conflicts of interest between producer and consumer countries); (f) design problems (quotas estimated after taking account of the preferential exports to developed country markets, stabilization band narrowly designed, single currency denomination of prices, etc.); and (g) profit-seeking activities among others (quota-derived profits promoted oligopsony and oligopoly power within the domestic exporters quota holders).

Therefore, if producers groups are to be considered as a solution to the asymmetry in bargaining power and ICA-like agreements are re-established, it is crucial to learn from the previous experiences of their implementation. Their design and operation would have to be restructured, so that some of the shortcomings observed in the past were overcome.[44] For example, it would be necessary to add flexibility in the operation of price ranges, to rethink the estimation of quotas, and to deal more effectively with issues surrounding the currency denomination of prices. In the short run, in the absence of better alternatives they could be a choice.[45] However, this would require a stronger political will from all the countries party to the agreements.

III.2.4 Disclosure Requirement on Oligopsonist Buyers in Commodity Value Chain

Market bargaining is a two-way interactive process. In the context of this paper, bargaining refers to the interaction between producers who are large in number and with little power to influence prices and oligopsonist buyers with the ability to influence prices. Addressing the bargaining asymmetry between the two parties requires raising the bargain power of producers or regulating the oligopsonist powers to prevent them from abusing their power to impose their economic interests unfairly.

As discussed earlier, the former option requires empowering producers through, among other things, mobilizing their power by establishing associations that carry out collective bargaining on their behalf. Similarly, supporting producers to move into a higher value-added segment of the commodity value chain, where profits are higher, is discussed as a complementary strategic avenue. Regulation of oligopsonist buyers could theoretically be addressed through national and international competition policies. However, given the limited capacity of developing countries and the issue of extraterritoriality as discussed earlier, the use of national competition policy to address the bargain imbalance is questionable. Similarly, developing countries are also skeptical of international competition policy; hence the scope for it is limited in the short to medium term.

Although, hard rules of international competition are treated skeptically by developing countries, binding soft rules of international competition, specifically transparency requirements on the oligopsonist commodity buyers, would be of vital importance to developing countries. The basis for this argument emanates from Article XVII of the General Agreement on Tariff and Trade (GATT) which, among other things, imposes a transparency requirement on STEs. As a result, WTO member countries are required periodically to notify the WTO about the operations of their STEs, in accordance with procedures specified Article XVII of GATT 1994. This WTO transparency requirement on STEs, however, is not extended to the oligopolist buyers of commodities, which often include large commodity traders, processors and distributors.

The empowering of existing producers associations and establishing new ones; and/or maintaining existing and establishing new STEs are important but not sufficient to redress the bargaining power imbalances between producers and their oligopsonist buyers. Redressing this imbalance would require extending

[44] The shortcomings referred to in this statement are those basically related to design problems: lack of flexibility in the price range, poor financing, estimation of the quotas, etc.

[45] After the demise of the ICAs, with liberalization of commodity markets, they were replaced by market-based risk management instruments. These were designed to manage risk but did not solve the structural problems in the market: over-supply and concentration. Also, they did not control for the real sources of price instability.

the WTO transparency requirement on STEs to major processing and distributing companies so as to bring the oligopsonist buyers in successive stages of the value chains under "public scrutiny".[46]

Thus, commodity-dependent developing countries may find it vital to negotiate in the WTO with a view to obligating developed country Members, in which registered headquarters of the major trading, processing and distribution (wholesalers and retailers) companies operate periodically to notify the WTO of the business practices of each of their subsidiary companies. The notification should include the price mark up,[47] the amount of raw, semi-processed and/or processed commodities purchased and sold, and, whenever possible, the stages of processing of commodities at the time of purchase and sale by each of their subsidiary companies. Criteria for determining whether a processor or distributor is "major" should be established during the negotiation on the basis of market power.

III.2.4 International Actions to Promote Diversification

The multilateral level could constitute an important space to address some of the current barriers existing on the entry into higher added-value markets. As mentioned above, the distortions that result from the high concentration in the food chain undermine the benefits that could arise from tariff reduction and liberalization in general.

(a) Eliminating subsidies

So far, work at the multilateral level has focused on increasing the benefits that arise from trade liberalization. However, from a developing country perspective, these benefits are not so tangible to the extent that subsidies from developed countries keep pushing prices down in commodity markets (e.g. the cotton market). In general, subsidies in developed countries put farmers in these countries in an advantageous situation (they can afford to expand production at low prices) in comparison to farmers from developing countries that have to compete under these unfair circumstances.

The obvious recommendation would be to keep fighting for the elimination of these subsidies in the current and subsequent rounds of negotiations, or in any case to push the discussion towards assuming stricter commitments from developed countries such that the criteria and the different categories of subsidies allowed are restricted.

(b) Eliminating tariff escalation

In the literature on commodity markets, the need to eliminate tariff escalation in the processed commodity segment has been widely discussed. This would reduce the barriers to the entry of developing country producers into higher value-added segments of the value chain. The multilateral level would be the appropriate place to address this problem.

The possibilities for diversifying production vertically (moving to another stage in the value chain) may vary across and within sectors depending on the barriers operating in each segment. The existence of tariff escalation basically allows higher tariffs for higher value-added or processed exports from developing countries than those imposed on exported raw agricultural products.[48] This distorts the comparative advantage of developing countries.

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[46] Gibbon, p., 2005. Market power, monopsony and the commodity question. Paper presented in a meeting organised by the International Institute for Environment and Development (IIED) and the International Centre for Trade and Sustainable Development (ITCSD) on "Strategic Dialogue on Commodities, Trade and Development", Barcelona, 13-15 June.

[47] "Price mark up" in this context refers to the difference in price paid by intermediary companies or corporations (i.e. processors and distributors) for the purchase of raw, semi processed and/or processed commodities and the price they sell the commodities with or without further value-added.

[48] Sexton et al (2003). Op. cit. p. 3

Table 1
Tariff escalation in coffee, sugar and cocoa markets:
average tariff European Union, United States and Japan

Tariff in:	**Coffee**	**Sugar**	**Cocoa**
Raw commodity	4.5 per cent	15.57 per cent	0.16 per cent
Proc. Product	13.6	28.25 per cent	22.5 per cent

Source: Sexton et all (2003)

Table 1 illustrates the fact that in the European Union, the United States and Japan (the three large markets for developing countries), tariff barriers are much higher for processed than raw commodities. The escalation is greatest for cocoa. In this sense, as in the case of subsidies, it is crucial to keep pushing the agenda towards the elimination of this type of barrier that creates obstacles to market access. It must be emphasized that because of the existence of these barriers, the benefits arising from free trade are undermined.

It is important to underline that while these actions would improve the market access of farmers to foreign markets, they are not sufficient for the development of export markets. Efforts at the multilateral level must be complemented by efforts at the national level, aimed at improving the competitiveness of farmers and facilitating their entry to higher added-value markets.

III.2.6 International Cooperation

As mentioned previously, international cooperation has an important role to play, to the extent that there is a serious asymmetry of power between the MNCs and governments of developing countries, should the latter try to prove anti-competitive behaviour by the former.

In fact, many developing countries are aware of the negative impact of cartel activity and of abusive business practices on their economies. However, they have no margin for action as they are powerless to investigate and successfully prosecute firms outside their jurisdiction. Therefore, it is imperative that developing countries receive the cooperation of other jurisdictions (especially developed countries) to obtain information located outside their national territory in a case affecting their market. In particular, assistance in gathering information and conducting successful prosecutions is required; without it, the benefits of trade liberalization may be undermined by the existence of anti-competitive practices.

In addition,, international cooperation is also required to overcome the shortcomings arising from the limitation in resources faced by developing countries. In particular, two further aspects of international cooperation are considered:

- Cooperation in the enforcement of competition policy: International bodies (whether international organizations formed by governments, or private initiatives such as NGOs, the donor community, or international associations) have a crucial role to play in supporting developing countries in their efforts to build a framework on competition (for those countries that do not yet have one) and to encourage the implementation of domestic competition laws in developing countries. The main challenges faced by developing countries in this regard are related to problems of developing a "culture of competition", as well as their weak enforcement capabilities and court systems.[49] Successful implementation of competition policy requires a large amount of resources that small countries lack. Resources are necessary not only to cover the administrative costs of having a competition authority, but also to develop the expertise required to handle cases of varying levels of sophistication.

International cooperation is necessary in order to alleviate this burden on developing countries. It can also contribute towards promoting a greater understanding of competition issues and an awareness of the negative consequences of the problem of market concentration in commodity markets. This has been done to some extent already with initiatives at the multilateral level that are already in process, in terms of capacity-building and technical assistance on competition law and policy.[50]

The modalities for effective and substantive long-term technical assistance and capacity-building for developing countries in competition policy should include firm, operational commitments, with appropriate flexibility for developing countries, for the following:

- ♦ prior conduct of a mapping and needs assessment study of the extent and status of autonomous developing country adoption and implementation of national competition legislation, complemented by analytical work relating to the trade and competition concepts relevant to developing countries;
- ♦ capacity-building and assistance in competition legislation formulation;
- ♦ support for the creation of a national human-resource base for competition policy in developing countries;
- ♦ technical and financial support for the establishment of national competition institutions; and
- ♦ technical cooperation, advice, and assistance *vis-à-vis* specific procedural and conceptual areas of competition policy.

- Cooperation to overcome the limits in resources for diversification: Another problem faced by farmers in developing countries in their attempts to diversify production is that they operate with obsolete technology, poor infrastructure and high transport costs, and they do not have access to funding sources, etc. These supply-side constraints limit their access to new markets. Here again, international bodies have a role in cooperating with developing country governments, in providing funding with reasonable and relaxed conditionality.

- In general, international cooperation should feature several elements: (a) developing countries should be the main agents responsible for supervision and implementation, with other actors – developed countries, international organizations, NGOs and the like – mainly playing supportive roles as e.g. donors, advisors and facilitators; (b) there should be one unit to act as coordinator at least of the larger bodies and initiatives; (c) the processes should be transparent and accountable throughout. Although conditions to ensure accountability and transparency in the management of the funds may be desirable, conditionality should not be used as a means to force the implementation of specific policy decisions that do not necessarily reflect developing country needs. In the case of severely indebted countries, the use of grants rather than loans could be considered; (d) the different bodies should agree on common goals (e.g. building of sectoral competitiveness, enforcement of competition policy) and also on measurable targets (such as "an increase in at least 50 per cent in the value of processed fruit exports", as suggested by the Commission for Africa)*; (e) it is paramount that the private sector in general and the producers in particular are heavily in-

[49] OECD's paper, COM/TD/DAFFE/CLP(2001)21, para. 29.

[50] For instance, UNCTAD has been conducting technical assistance including the preparation, adoption, revision or implementation of national competition and consumer protection policies and legislation. Other measures that should continue to be developed at the multilateral level are the different capacity-building and information dissemination activities (for example, branding etc).

> volved in the programmes and initiatives. After all, in the end they should evolve to become the main drivers in boosting the developing countries' competitiveness.[51]

In addition, international cooperation should also be oriented towards diffusing information and capacity-building in order to improve compliance with the technical standards required by buyers. In this way, this could contribute to the differentiation of products and an improvement in their quality. Albeit still relatively small in financial terms, organic and fair-trade foods have grown dramatically in the past decade and offer another avenue for farmers to diversify and improve their produce. International cooperation (among producer groups, NGOs, governments and regional and multilateral institutions) has a role to play in building supply-side capacity on the one hand and influencing demand on the other, for example through raising awareness and putting pressure on distributors.

III.3 Policy Measures at the Regional Level

Regional trade agreements (RTAs) are becoming more important because of their increased number and coverage (over 40 per cent of world trade utilises RTAs of some sort). They could provide an alternative space for rapid action when it comes to addressing the problem of asymmetry in bargaining power in commodity markets. Indeed, since negotiating a multilateral agreement on competition does not seem feasible in the short term, the regional option could provide an alternative with more immediate solutions to the problems faced by developing countries in terms of the lack of resources to implement competition policy and lack of jurisdiction to prosecute MNCs.

In particular, by applying a more uniform competition law to a region, the regional level could offer a more rapid solution to the problem of enforcement of competition law in countries with insufficient resources to develop and enforce such law on their own. In addition, synergies arise from this mechanism, to the extent that some countries that are members of the RTA may already have experience and have developed a framework, so that smaller countries that do not have competition law could benefit from the expertise of their neighbours and also from sharing information with them. In the case of the Sub-Saharan countries, countries without competition law, like Swaziland, could benefit from cooperation with countries that have a competition framework developed, like South Africa, Zambia, and Zimbabwe. As a practical example, it is worth mentioning the efforts by the Common Market for Eastern and Southern Africa (COMESA) to develop rules on competition that address anti-competitive practices not only by firms within the region, but also by foreign firms, which affect the region.[52]

Stronger empirical evidence of this last point is constituted by the increasing number of RTAs that include competition provisions observed in recent years. In most cases, these provisions contain cooperation clauses aiming at reinforcing the implementation of competition law and policy within the trading-partner countries signing the agreement. In particular, the modalities of cooperation have taken the form of technical assistance: exchange of information and training activities for staff (seminars and workshops). This increase in the number of RTAs containing competition provisions is increasing the pressure to enact competition legislation in the case of countries which have not yet done so.

As far as the issue of extraterritoriality is concerned, this problem could be solved through the development of cooperation agreements between antitrust authorities, such that the authority from one country could ask the authority from another to initiate an investigation on the anti-competitive practices carried out by the firms under its jurisdiction. However, although there are successful experiences of cooperation between antitrust authorities of developed and developing countries, it is difficult to imagine that antitrust au-

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[51] Commission for Africa Report. Chapter 8. In: http://www.number-10.gov.uk/output/Page7310.asp p 276

[52] Common Market for Eastern and Southern Africa (COMESA). COMESA Competition Regulations. Draft. February 2003. p 7.

thorities in large countries (where MNCs tend to be based) would be keen to engage in commitments to this level with antitrust authorities from smaller countries. They may consider that: (a) the negative effects would concern consumers or agents operating in other markets, and in particular, in countries with low individual bargaining power at the multilateral level; (b) in some cases, antitrust investigations would imply high costs in terms of resources and time that would have to be assumed by the authority investigating the anti-competitive practices; and, (c) firms under the jurisdiction of the authority that had been asked to investigate would become more vulnerable. Probably, these factors contribute to explaining why this type of agreement between antitrust authorities has not been widely developed.[53]

Notwithstanding this fact, by developing a competition law at a regional level, developing countries could increase their leverage in negotiating cooperation agreements with antitrust authorities from large countries. This might be especially useful if there is an attempt to sanction a large company operating under a different jurisdiction. The attractiveness of negotiating a cooperation agreement with competition authorities from other regions would be greater if it involved a group of countries, rather than a single country.

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[53] Balzarotti, N. Op. cit. p 3 In general, the United States has been the most active country in engaging in cooperation agreements on competition. However, the cooperation is framed in terms of reciprocal assistance in obtaining and sharing evidence in processes involving international cartels.

IV. Conclusions and Recommendations

The concentration problem in commodity markets represents an important source of inefficiency, and results in a distribution of profits that is extremely unfavourable for developing country farmers. The asymmetry in bargaining power among the actors in the different segments of the food chain is reinforced by the fact that farmers in developing countries are specialized in the segment with the lowest barriers to entry.

Two main channels to address the problem of low commodity prices have been discussed: (a) the possibility of increasing the bargaining power of the sellers in the upstream part of the value chain; and (b) promotion of the diversification of production to other segments of the value chain or other sectors where there is more value added.

Effective ways to address this problem through these two channels have been discussed at the national, multilateral and regional level. Some of the potential shortcomings of the solutions have also been pointed out.

At the national level, there seems to be a broader scope for action, at least in the short to medium term:

(1) Competition policy should be implemented in accordance with the needs of developing countries. In particular it is necessary to recognize that imbalances in market power often lead to situations where producers, as well as consumers, need protecting. However, there is a possibility that developing countries lack the resources to develop and implement a new approach to competition policy.

(2) The formation of producer groups is a possible mechanism to increase the bargaining power of farmers. New generation producer groups should be formed to play a role in achieving remunerative prices to producers.

(3) Competition policy should be accompanied by a comprehensive strategy such as active industrial policies in order to promote the diversification of production away from primary commodities to higher value-added segments of the value chains of commodities.

(4) It is also important to develop national competition policy and law in order to be able to sanction potential future anticompetitive practices of domestic incumbents in the higher value-added segments of the chain.

The multilateral level also offers some mechanisms to address the problems of asymmetric bargaining power and diversification. However the results are more likely to be seen in the longer term than those discussed at the national level:

(1) The abuse of a dominant position by MNCs acting across borders should be taken into account and sanctioned at the multilateral level, outside the WTO, pursuant to a set of commonly-agreed rules that, at the same time, recognize the development needs of developing countries. It should also be emphasized that it is not possible to have a clear understanding of the benefits of liberalization and globalization if the problem caused by market concentration in sensitive markets, affecting millions of supposed beneficiaries of the system is not solved. The right of developing countries to choose whether and when to have a competition law and the kind of competition policy to adopt in support of their industrial policies should be recognized and implemented. This includes their right to adopt policies and measures to preserve and strengthen the national and inter-

national competitiveness of their enterprises and to modify them whenever necessary. They also have the right to base their decisions on whether to adopt, and to determine the extent of applicability of some or all disciplines relating to competition policy that are the subject of negotiations, on their assessment of costs and benefits in light of their respective development needs and priorities.

(2) Extension of the WTO transparency requirement on STEs to oligopsonist commodity traders, processors and distributors. This requires developing countries to table proposals and to start negotiations in the WTO with a view to obliging developed country Members - in which registered head quarters of the major trading, processing, and distribution companies operate - periodically to notify the WTO of the business practices of each of their major commodity buyers and sellers. The notification should include the price mark up;[54] the amount of raw, semi-processed and/or processed commodities purchased and sold; and, whenever possible, the stages of processing of commodities at the time of purchase and sale by each of their major commodity buyers and sellers. Criteria for determining whether a processor or distributor is "major" should be established during the negotiations on the basis of market power

(3) If ICA-like agreements are re-established as a solution to balance the asymmetry in bargaining power, it is crucial to learn from earlier experiences with their implementation. Their design and operation should be restructured, in such a way that some of the shortcomings observed in the past are overcome.

(4) There is an urgent need to keep fighting for the elimination of barriers to higher value-added segments of the value chain in international markets: in other words continuing strong pressure for the elimination of subsidies and tariff escalations in agriculture or at least, restricting the criteria and the different categories of subsidies allowed within the WTO.

(5) The provision of technical assistance and capacity-building support for developing countries to enable them to put in place domestic competition policy or to undertake economic diversification is crucial and should reflect principles of flexibility and progressivity. Capacity-building for developing countries should be seen as a long-term, gradual, and non-time-bound exercise focused on creating sufficient knowledge, skills, experiential, and institutional foundation to enable developing countries to determine their own development path and priorities. It should take account of the different needs of developing countries and must be supportive of their developmental priorities. Although conditions to ensure accountability and transparency in the management of technical assistance or capacity-building funds may be desirable, conditionalities should not be used as a means to force the implementation of specific policy decisions that do not necessarily reflect developing country needs. In the case of severely indebted countries, the use of grants rather than loans should be considered.

It is possible that the regional level might offer a better forum for shorter-term solutions to the problem of bargaining power asymmetries than the multilateral level. In principle it is easier to coordinate and implement policies among a smaller group of countries, in particular those which are geographically closer to each other and share common interests. Synergies are created that could contribute to solving the problem of the lack of resources faced by certain countries. In addition, by developing competition law at a regional level, developing countries may increase their leverage in negotiating cooperation agreements with antitrust authorities from large countries (those with jurisdiction over MNCs). This might assist them to deal with large companies operating in an international context.

[54] "Price mark up" in this context refers to the difference in price paid by intermediary companies or corporations (i.e. processors and distributors) for the purchase of raw, semi-processed and/or processed commodities and the price at which they sell the commodities with or without further value-added.

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