FLORIDA INTERNATIONAL UNIVERSITY

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THE WORLD TRADE ORGANIZATION, COMPETITION POLICY, AND DEVELOPING COUNTRIES: A CROSS-COUNTRY EXAMINATION OF DOMESTIC POLICY ACTIONS

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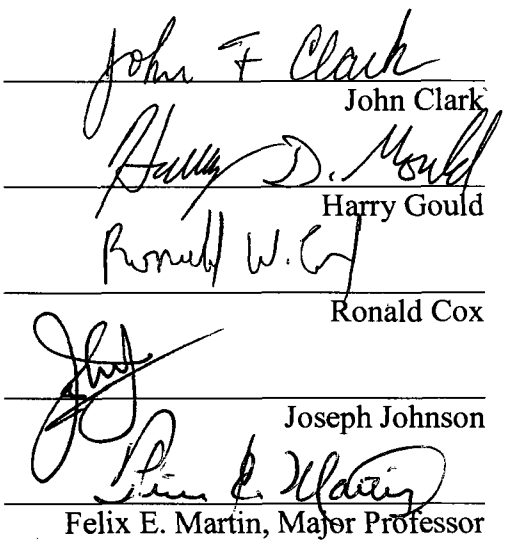
We have read this dissertation and recommend that it be approved.



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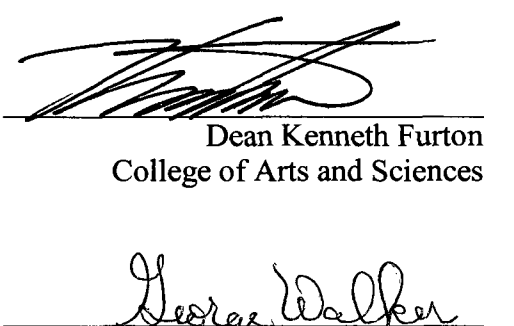

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DEDICATION

To God Almighty and to my beloved parents

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The completion of a dissertation is not only the culmination of a major research project but also a time for thoughtful reflection on the years passed and the people and faces who mattered in this wonderful journey. In expressing my acknowledgments here, I wish to thank everyone who assisted me directly and indirectly in reaching this stage of my academic career. In all modesty, I thank God Almighty for helping me successfully complete my dissertation. Without Your constant presence and support, I could never have achieved this or any other accomplishments in my career.

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ABSTRACT OF THE DISSERTATION

THE WORLD TRADE ORGANIZATION, COMPETITION POLICY, AND DEVELOPING COUNTRIES: A CROSS-COUNTRY EXAMINATION OF DOMESTIC POLICY ACTIONS

by

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Professor Felix E. Martin, Major Professor

This dissertation addresses the following research question: in a particular policy area, why do countries that display unanimity in their international policy behavior diverge from each other in their domestic policy actions? I address this question in the context of the divergent domestic competition policy actions undertaken by developing countries during the period 1996-2007, after these countries had quite conspicuously displayed near-unanimity in opposing this policy measure at the World Trade Organization (WTO). This divergence is puzzling because (a) it does not align with their near-unanimous behavior at the WTO over competition policy and (b) it is at variance with the objectives of their international opposition to this policy at the WTO. Using an interdisciplinary approach, this dissertation examines the factors responsible for this divergence in the domestic competition policy actions of developing countries.

The theoretical structure employed in this study is the classic second-image-reversed framework in international relations theory that focuses on the domestic developments in various countries following an international development.

Methodologically, I employ both quantitative and qualitative methods of analysis to ascertain the nature of the relationship between the dependent variable and the eight explanatory variables that were identified from existing literature. The data on some of the key variables used in this dissertation was uniquely created over a multi-year period through extensive online research and represents the most comprehensive and updated dataset currently available.

The quantitative results obtained from logistic regression using data on 131 countries point toward the significant role played by international organizations in engineering change in this policy area in developing countries. The qualitative analysis consisting of three country case studies illuminate the channels of influence of the explanatory variables and highlight the role of domestic-level factors in these three carefully selected countries. After integrating the findings from the quantitative and qualitative analyses, I conclude that a mix of international- and domestic-level variables explains the divergence in domestic competition policy actions among developing countries. My findings also confirm the argument of the second-image-reversed framework that, given an international development or situation, the policy choices that states make can differ from each other and are mediated by domestic-level factors.

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ADB	Asian Development Bank
AML	Anti-Monopoly Law
ASEAN	Association of Southeast Asian Nations
AUSAid	Australian Agency for International Development
BJP	Bharatiya Janata Party
CCI	Competition Commission of India
CLA	Commission for Legislative Affairs
CUTS	Consumer Unity and Trust Society
EC	European Commission
EU	European Union
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
GoM	Group of Ministers
ICN	International Competition Network
ICPO	International Criminal Police Organization
IMF	International Monetary Fund
IO	International Organization
IR	International Relations
ISI	Import Substitution Industrialization

LDC	Least Developed Country
M&A	Mergers and Acquisitions
MOFCOM	Ministry of Commerce
MRTP	Monopolies and Restrictive Trade Practices
NAFTA	North American Free Trade Agreement
NGO	Non-Government Organization
NPC	National People's Congress
OECD	Organization for Economic Cooperation and Development
SAIC	State Administration for Industry and Commerce
SETC	State Economic and Trade Commission
SOE	State Owned Enterprise
SPSS	Statistical Package for the Social Sciences
TRIPS	Trade Related Aspects of Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WEF	World Economic Forum
WGTCP	Working Group on the Interaction Between Trade and Competition Policy
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

INTRODUCTION

The Ministerial Conference of the World Trade Organization (WTO) held in Singapore in 1996 witnessed the creation of the Working Group on the Interaction between Trade and Competition Policy (WGTCP).[1] The formation of this working group resulted from the efforts of the European Union (EU) and Japan to bring competition policy under the WTO framework. Competition policy addresses competition-related issues like market-entry barriers, abuse of dominant position by firms, and corporate mergers and acquisitions. The interest to bring this policy area under the WTO stems from the complementary relationship that competition policy shares with both international trade and free trade policies as advocated by the WTO.

The mandate of the WGTCP was to study and deliberate on the interaction between competition policy and international trade, given the complementary nature of their relationship.[2] Broadly, the Checklist of Issues contained the following work areas for the WGTCP (WTO 1997b): highlight the complementarities that existed between competition policy and trade reforms, analyze existing national competition laws, draw attention to the role of competition legislation in the economic development of developing countries, and suggest further areas of focus for the working group in this policy area.[3] Given these objectives, the WGTCP served as a forum for member-nations

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[1] http://www.wto.org/english/tratop_e/comp_e/comp_e.htm

[2] The complementary relationship between trade policy and competition policy is explained in a separate sub-section in chapter 1.

[3] The difference between competition policy and competition law is explained later in this introductory chapter.

to discuss competition issues and to exchange communications over competition policy. The expectation was that the activities of the WGTCP would lead to greater clarity of the WTO competition policy proposal and to the possible inclusion of competition policy as one of the subjects in a future round of WTO trade negotiations.

However, developing countries raised concern at the outset over the efforts to include competition policy under the WTO's work program (Deardorff and Stern 2004, Singh 2002). The main concern stemmed from their lack of a history of competition legislation and the relative inexperience that most developing countries had in this policy area. Concerns were also raised with regard to the development dimension of competition policy and how a multilateral framework in this policy area would interact with domestic industrial policy and political economy. Even many years after the WTO's meeting in Singapore in 1996, developing countries were expressing their reservations on beginning negotiations in the WTO on competition policy (WTO 2001b). By 2004, developing countries managed to put on hold further discussions on competition policy in the WTO.[4]

The near-unanimous opposition from the group of developing countries led to the suspension of the WGTCP in 2004.[5] It was further decided that competition policy would

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[4] China's communication to the WGTCP at a meeting of this working group in February 2003 provides a fitting example of the continued concern that developing countries had with including competition policy in the WTO: "For many developing countries, they simply do not have a single legislation or regulation on competition. It is a basic and fundamental element to be fully taken into account and accommodated when we talk about and start to negotiate on a set of multilateral rules on trade and competition policy" (WTO 2003a: 1-2).

[5] I use the term "near-unanimous" to accord representation to the few developing countries that supported a multilateral competition policy arrangement at the WTO (ECLAC 1999). However, the opposition by the vast majority was more visible and proved more decisive compared to the support by the minority.

be excluded from the Doha Round of negotiations that began back in 2001.[6] However, the proposal in 1996 in Singapore to initiate a dialogue on competition policy under the WTO framework brought renewed international attention to this policy area, particularly to the status of *domestic* or *national* competition laws in developing countries and to the possibility "that sooner or later developing countries will need to be ready to enter into discussions or negotiations with advanced countries with respect to competition policy at the WTO as well as other multilateral, regional or bilateral fora" (Singh 2002: 3).

Though often used interchangeably, differences exist between "competition policy" and "competition law" (Singh 2002). Competition policy is a general and broad policy framework while competition law refers to a *single* legislation containing a specific set of legal provisions pertaining to competition-related issues. A competition law, or antitrust law, as it is called in the United States, is not a requirement for having a competition policy, though oftentimes the former is considered to be the cornerstone of the latter because it brings all the different pieces of competition legislation in a country under a single legislation, and thus, provides clarity with respect to its relevance and application. In this dissertation, I follow convention, and use "competition policy" to mean competition legislation, in general, and "competition law" to refer to particular country-level national or domestic competition legislation, with the terms "national" and "domestic" being used interchangeably in this specific context. I also use the terms "competition policymaking process" and "competition lawmaking process"

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[6] Negotiations in the WTO are conducted through "trade rounds" that last many years. The ongoing round is the Doha Round which began in November 2001 in Doha, Qatar. A decision was taken in July 2004 to drop competition policy from the Doha Round. See http://www.wto.org/english/tratop_e/comp_e/comp_e.htm.

interchangeably to mean the process by which a country drafts and enacts its national competition law.

Quite interestingly, and highly relevant to this dissertation, is the fact that the post-1996 period witnessed varying degrees of activity in the area of domestic competition legislation in developing countries who are members or observers of the WTO: while some countries proceeded to either enact new national competition laws or to revamp their existing competition laws, others undertook some preliminary efforts to draft a national competition legislation. A third group has neither enacted new national competition laws nor revamped any existing ones. This situation is reflected in figure 1.

Figure 1: Break-up of Domestic Competition Policy Actions

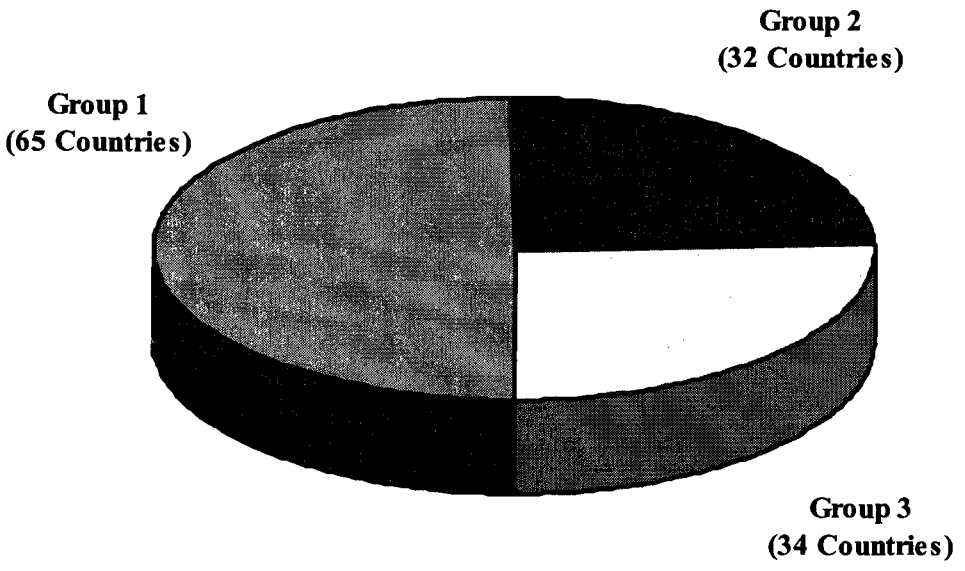

Figure 1 shows the break-up of domestic competition policy actions taken in developing countries during the period 1996-July 2007, with Group1 representing 65

countries that enacted competition laws or revamped existing ones, Group 2 standing for 32 countries that drafted a competition law and are debating its adoption, and Group 3 consisting of 34 countries that have not drafted a national competition law.[7] Within the framework of traditional international relations theory and using an interdisciplinary approach, this dissertation analyses the very divergent domestic policy actions taken by this group of countries in the area of competition policy.

This dissertation is organized as follows. Chapter 1 describes the research problem and presents the research question. In this chapter, I introduce the variables and the associated hypotheses. In chapter 2, I describe the sample, the data, and the operationalization of the variables in the study. I also undertake the statistical analyses and report the results and findings in this chapter. Together, chapters 1 and 2 form the quantitative part of this dissertation. Chapter 3 situates the findings from chapter 2 in the context of the strategic behavior of international organizations (like the WTO), and thus, fills a gap in this literature. Chapter 4 discusses the comparative case study methodology in preparation for the qualitative study that follows. Chapters 5, 6, and 7 each undertake detailed case studies that illuminate the channels through which the explanatory variables impacted (or not) the competition policy actions of developing countries during the period under study. Chapter 8 combines the findings from the quantitative study and the qualitative case studies and concludes this dissertation by offering an integrated understanding of the role of the identified explanatory variables in the competition policy processes in developing countries.

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[7] The information contained in this figure was collected from various sources over a multi-year period. This process and the relevant sources are explained in a separate section in chapter 2.

CHAPTER I

A "Second Image Reversed" Analysis of Competition Policy Developments: Theory and Variables

Research Question and Theoretical Framework

Existing literature demonstrates how developments in the international policy environment impact domestic policy (Weatherford 1988). And, from a comparative political economy perspective it is interesting to note how different developing countries have acted differently in the area of domestic competition policy, within the context of the proposal to erect a multilateral competition policy framework under the WTO. The thrust of the international opposition from developing countries was on the fact that they had relatively little or no experience with competition policy and its effective implementation. Contrary to some of the economically advanced countries that have had competition laws for over 100 years, most developing countries had limited or no experience and expertise in this policy area (Singh 2003). Hence, developing countries contended that the WTO competition policy agenda should not be rushed through and that the WTO's focus should be limited to international trade alone.

However, this *unified international response* by developing countries to the competition policy proposal at the WTO stands in stark contrast to the *non-uniform domestic policy actions* taken in these countries in this policy area. As mentioned in the introduction, since the 1996 Singapore meeting, some countries have enacted new national competition laws or modified their existing ones. A few others have drafted competition bills and are still discussing the desirability of enacting a competition law. A

third group consists of countries that have not reached even the drafting stage of their competition lawmaking process.

Such clear differences in *domestic policy actions* in the context of an international policy development are puzzling, especially considering the fact that these countries projected a unified *international response* based on *similar concerns* regarding the domestic repercussions of the competition policy proposal at the WTO (Deardorff and Stern 2004, Singh 2002). As such, these domestic policy actions by various developing countries raise the following question that I address in this dissertation: *in a particular policy area, why do countries that display unanimity in their international policy behavior diverge from each other in their domestic policy actions?* In this dissertation, I focus on the issue area of competition policy, and through this study, I expect to identify the significant factors—both internal and external to these countries—that have contributed to these differences in domestic competition policy actions taken by developing countries.

This research question has both a horizontal dimension and an implicit vertical dimension. That is, apart from focusing on the divergent domestic competition policy actions of a large cross-section of developing countries (the horizontal dimension), this research question also touches upon the question of why states differ in their international and domestic policy actions in the same policy area (the vertical dimension). Given that my focus is on the divergent domestic competition policy actions by developing countries following their near-unanimous international behavior, I examine only the horizontal dimension as part of this dissertation. In other words, my primary focus is on the "diverge from each other" part of the question, which conforms to the horizontal dimension rather

than the vertical one. The vertical dimension of this question is a separate line of inquiry and is not a focus of this dissertation.

To address the research question, I use the classic *second-image-reversed* theoretical framework that was originally advanced and employed by Gourevitch (1978, 1986). The second-image reversed framework posits that the sources of many domestic developments can be found in international factors. The comparative case analyses in Gourevitch (1986) use this theoretical framework to focus on the divergent reactions of five different nations to international crises during three different time periods.[8, 9]

Gourevitch (1978) argues that scholars in the field of international relations (IR) have traditionally analyzed the interaction between the international system and the domestic structure by focusing on the directional flow from the latter to the former.[10] But a cross-country comparativist approach that analyzes the international-domestic interaction might be well served by reversing this directional flow and concentrating on the influence that the international system has on the domestic planes of the countries under study. This is the understanding that underpins the second-image-reversed approach.

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[8] The five different countries were United States, France, Britain, Germany, and Sweden. The three crisis periods were 1873-96, 1929-40, and 1971-present.

[9] Another early work that focused on the divergent policy reactions of countries following a common international scenario is Frieden, J. A. (1991) *Debt, Development, and Democracy: Modern Political Economy and Latin America, 1965-1985*. Princeton: Princeton University Press. In this book, the author examines the different ways in which Latin American countries handled their international debt problems in the 1970s and 1980s.

[10] The classic text is Kenneth Waltz's *Man, the State, and War* ([1954], 2001) where Waltz developed the theories of international relations as consisting of three categories or images: the nature of man, the type of state regime, and the systemic factors/international anarchy. Gourevitch refers to Waltz's second image when he states that IR scholars have traditionally focused on the causal flows from domestic structure to the international system.

It is important and relevant to note that this understanding does not attribute all the causality for domestic developments to international factors because "[R]arely is international situation so perfectly clear, so totally unambiguous, as to be so completely constraining, rarely is there no range of alternative responses" (Gourevitch 1986: 64). The fact that the international system is rarely "completely constraining" and countries do have a choice of "alternative responses" means that while the international system does influence domestic politics and policy choices, countries in the system do diverge in their domestic policy actions. So, Gourevitch (1986: 65) says that the important question "is not whether the international system shapes domestic politics but how and through what mechanism." The fact that countries can and do make choices—given the international situation—means that "[T]he international economy affects national policies by acting upon domestic actors" (Gourevitch 1986: 65). The final selection that a country makes from the available choices "depends on domestic politics, on the distribution of power within countries and the various factors that influence it—societal forces, intermediate institutions, state structure, ideology" (Gourevitch 1986: 65).

Therefore, in the backdrop of a particular international situation or development, the divergent domestic policy actions that countries take can be explained by causal variables that lie in the domestic realm of each country. I employ this fundamental understanding of the second-image-reversed theoretical framework to identify the variables that played significant roles in influencing the domestic competition policy choices of the various developing countries subsequent to the competition policy proposal at the 1996 Singapore Ministerial Meeting of the WTO. However, similar to Gourevitch (1986), I do not attach any singular or direct causality to the relationship

between the WTO competition policy proposal and the domestic policy actions taken by developing countries. I use the second-image-reversed framework to *situate* the different domestic policy actions *within the context* of this international policy development because it was the competition policy proposal at the WTO that brought greater attention to this policy area in developing countries.

However, the second-image-reversed framework—revered as it is in international relations literature—has recently been criticized with respect to its robustness in explaining the international sources of domestic politics. Dobreva (2006) reports serious methodological shortcomings from her examination of the various historical cases and arguments that Gourevitch (1978) used to validate his second-image-reversed theoretical proposition. The specific charge that emanated from this evaluation was that many of the cases suffered from selection bias and omitted critical explanatory factors at the domestic level. This criticism, however, does not diminish the utility or the explanatory power of the second-image-reversed framework. It only cautions users from not overlooking possible explanatory variables at different levels. This criticism, therefore, does not affect my usage of this theoretical framework, and on the contrary, it supports my research design where I use both international- and domestic-level variables to explain the divergent competition policy actions in developing countries. Also, by using a large sample of over 100 countries as part of this dissertation, I avoid the problem of selection bias that Dobreva (2006) highlighted in her work.

Within the second-image-reversed theoretical framework, I conduct two kinds of studies: a quantitative study and a qualitative study. The quantitative study is a large-sample analysis that includes 131 developing countries that are members or observers of

the WTO. It is a systematic study yielding results that can be generalized across the full sample of developing countries. I also undertake a qualitative study consisting of case analyses of three countries by picking one country from each of the three groups shown in figure 1. The country-focused case studies provide the depth and richness that a large-sample, systematic study may not provide. The process of selection that I used for identifying the countries for the case studies is explained in chapter 4.

Before proceeding further, I wish to clarify that this dissertation does not evaluate the outcome or the implementation of competition laws in different countries. Also, I do not debate the applicability or desirability of a national competition law in small economies *vis-à-vis* large, advanced economies. Those concerns lie outside the scope of this study. This dissertation attempts to identify—through a large-sample study and three country-focused case studies—the variables that played a significant role in the various domestic competition policy actions taken during the period 1996-July 2007 by developing countries that are part of the WTO since these domestic policy actions are found to be at variance with the international behavior of these countries in this policy area.

Therefore, this dissertation analyzes global developments in the area of competition policy from the perspective of international relations theory rather than from that of economic or legal theories. However, given that this is an interdisciplinary work, I draw from literature in international relations, political science, economics, law, business, and history, while keeping my overall loyalty to the discipline of international relations.

Motivations

The motivations for the choice of the research questions, the adoption of the second-image-reversed framework, the focus on the WTO, and the selection of competition policy are discussed in the following pages.

The wide disparity in how developing countries acted in the area of domestic competition legislation since the 1996 WTO Ministerial Meeting motivates this study where I seek to identify the significant factors that influenced such varied domestic policy actions. This divergence in policy actions is analyzed within the context of the near-unanimous opposition by developing countries to the proposal to include discussions on competition policy at the WTO. That is, there was unanimity among developing countries in their international response but divergence in their domestic policy measures in this policy area. The goal is to explore whether the differences in domestic actions reflect the heterogeneity inherent in the domestic economy and polity of the developing countries or whether these actions stem largely from external forces that have impacted the domestic political economy of these countries.

The second-image-reversed approach focuses on the domestic developments in countries following international developments or constraints. More pertinent is the fact that the application of this framework enables the researcher to hold the international development constant while examining the differences in national policy actions and the reasons thereof. Hence, the choice of this framework connects well with the motivations underlying the design of the research questions.

The WTO is a major international institution that boasts membership from 151 countries.[11] Moreover, major international intergovernmental organizations are granted observer status to take part in discussions that take place in the various councils, committees, and bodies within the WTO.[12] Hence, policy developments at the WTO have far-reaching political, economic, and social consequences, both temporally and spatially. These features and influences of the WTO complement the nature of the research question and the usage of the second-image-reversed framework. Moreover, its membership size affords a large-sample study.

The choice of competition policy to better understand the internal dynamics in developing countries is motivated by the following factors: (a) in the form of a competition law, domestic competition policies form a distinct set of policies that can be analyzed both in isolation and in relation to other policies (like trade and investment policies); (b) although the idea of including competition policy under the WTO framework is not new, the first steps for initiating any serious discussions over it at the WTO are recent and gained currency only after the Singapore Ministerial Conference in 1996.[13] This characteristic of competition policy contrasts with the long and varied

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[11] The WTO membership reached 151 when Tonga joined on July 27, 2007. The WTO also has around 30 observer governments who are required to start accession negotiations within five years of obtaining observer status.

[12] The list of international intergovernmental organizations that have observer status at the WTO is very long. The ones that are included in the General Council include the Food and Agriculture Organization, International Monetary Fund (IMF), International Trade Center, Organization for Economic Cooperation and Development (OECD), United Nations (UN), United Nations Conference on Trade and Development (UNCTAD), World Bank, and World Intellectual Property Organization.

[13] See Robert D. Anderson, "Competition Policy in the WTO: What's it all about?" (May 2004), http://www.ifc.org/ifcext/fias.nsf/AttachmentsByTitle/Conferences_CompetitionPolicy_Robert+Anderson.prn.pdf/$FILE/Conferences_CompetitionPolicy_Robert+Anderson.prn.pdf.

history of multilateral trade policy arrangements through the General Agreement on Tariffs and Trade (GATT), and later the WTO, and therefore, makes the issue of competition policy at the WTO amenable to a focused study; (c) barring a few, developing countries as a bloc have not reacted positively to the WTO proposal concerning competition policy though they have branched out differently in their domestic policy actions in this policy area; (d) compared to other economic policies like trade policy and investment policy which have sector- or industry-specific effects, a competition policy—both domestic and multilateral—has economy-wide effects and hence, elicit nation-wide responses. These impacts further politicize the policy process and dovetail well with the political economy nature of the investigation; and (e) the degree of market competition in the major developing countries is no less than that found in advanced countries; however, the implementation of competition regulations in most of the developing countries has a checkered history (Singh 2002). Hence, the case exists that a domestic competition law may not necessarily matter for market competition, or might even be detrimental to it. As such, the new-found enthusiasm among some developing countries toward a domestic competition policy is puzzling since the objective of a domestic competition law, as stated by most of these countries, is to increase market competition. Hence, it warrants a closer examination and was a major factor that motivated the choice of competition policies across the developing world as a topic of research.

Literature Review

This dissertation is a work in comparative political economy that explores the "international-national connection" (Almond 1989). As such, this dissertation lies at the intersection of politics, economics, and history, and is in the historical tradition of comparative political economy works that have attempted to simultaneously incorporate both the domestic and the international levels of analysis. Other than the works of Gourevitch (1978, 1986) that were mentioned earlier in this dissertation, there exist many other scholarly works that have examined the impact of international developments on policymaking at the national level. This class of literature has focused on both domestic and foreign policies and has attempted to understand why nations have responded differently to the same external shock. I survey a few of the more prominent ones here.

While examining the different national responses to the oil crisis of the 1970s, Katzenstein (1978) notes that the state is a key intervening variable between international events and domestic policy, and a proper understanding of international political economy warrants a systematic analysis of domestic structures. Skocpol (1979) argues that—given specific agrarian and elite structures—international pressures, namely the intrusion of capitalist markets on domestic economic organization, serve as a catalyst to revolution.

Weatherford (1988) explores how international economic conditions played a constraining role in the formulation of American domestic economic policy at four instances between the late 1950s and the mid-1970s. The edited volume by Berger and Dore (1996) provides a collective understanding that in a world of increasing economic

globalization there still exists room for national differences since domestic institutions and cultural, political, and historical divisions matter.

The effect of international trade and capital mobility on domestic political alignments and coalitions has been expertly analyzed by Rogowski (1989) and Frieden (1991). Following in the tradition of Rogowski and Frieden, the case studies in Keohane and Milner (1996) explore the impact of economic internationalization on domestic politics. The relationship between global economic cycles and the economic and political instability witnessed in the various Central American states since the 1930s is the focus of study in Lindenberg (1990).

Traditionally, democratization was understood as the result of a purely domestic political process. Although many recent works have appeared from the comparativist camp demonstrating the role of external forces in the democratization process, they have largely been case studies restricted to the particularities of a specific region. To fill this gap, Pevehouse (2002) conducts a statistical analysis using a large sample of countries with specific reference to the second-image-reversed framework. Informed by the logic contained in the second-image-reversed approach, some authors have also tried to understand how international norms influence domestic outcomes (Cortell and Davis 2000 and Sandholtz and Gray 2003).

Contributions

I provide a brief account of the contribution that my dissertation makes to the discipline of international relations, in general, and to the field of international political economy, in particular. The present study relies on theoretical insights and empirical evidence to

motivate the analysis and to report its findings. While some of the results support some of the hypotheses and hence, do confirm existing theoretical understanding, some fail to do so. The results do not, however, provide any support for refuting any existing theoretical arguments. Overall, my dissertation advances existing theoretical insights in the field of international relations. These contributions are discussed in the following paragraph.

Relative to existing literature, my research makes the following contributions: (a) the quantitative findings fill the gap that existed in the empirical application of the *model of strategic choice* developed by Barnett and Coleman (2005) that explains the actions of international organizations—like the WTO—when they are faced with international pressure or opposition to their mandate—such as in the case of competition policy; (b) my dissertation fills the gap that exists in the international relations literature with regard to the application of the second-image-reversed framework to examine the differences in domestic policy developments in member nations following an international policy development in an international organization; (c) prior works that have employed the second-image-reversed framework have largely been case studies. I conduct a systematic study using a large sample of 131 developing countries that are either members or observers of the WTO. This large-sample study will produce results that can be generalized across the group of developing countries; (d) by employing both domestic and external variables, and thereby, addressing the concerns that recent literature has raised with the second-image reversed framework with respect to omitting causal factors, I augment this classic theoretical framework; (e) while competition policy developments in specific countries have been analyzed by various scholars in related disciplines, no published work exists that has focused exclusively on developing countries and attempted

to understand why they behaved differently with regard to their domestic competition legislation[14]; and (f) I create the most updated dataset of domestic competition policy actions taken in developing countries in the last decade. The dataset can be used for future research in competition policy or areas related to competition policy.

A Primer on Competition Policy and Law

Competition policy is about influencing economic behavior through the use of law (Owen 2003). Traditionally, such a policy framework was expected to foster contestable markets, that is, markets that do not inhibit the entry of new firms and that possess characteristics that encourage competition and efficiency among its participants. The theoretical motivations for competition legislation stem from the economic theory of competition, which posits that the closer an economy gets to a perfectly competitive market situation, the greater would be the welfare benefits.[15]

A competition or antitrust law, which is a more specific set of regulations, typically addresses the three pillars of competition-related issues: market-entry barriers/anti-competitive monopoly agreements, abuse by firms of their dominant positions in the market, and mergers and acquisitions among large firms (Sheng and Bin 2007). It is generally argued that by limiting concentration of economic power, a

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[14] For case studies concerning competition legislation in over 100 countries, see Mehta, P. (2006, ed.) *Competition Regimes in the World: A Civil Society Report.* Jaipur, India: Consumer Unity and Trust Society.

[15] It is a widely held misconception that "perfect competition" means intense competition among firms. Perfect competition is a market structure that is characterized by the presence of a large number of sellers (and buyers) who are price-takers, such that no one firm can influence the market price. Pertinent to this dissertation is the following observation by McNulty (1968: 641, emphasis in original): "it is one of the great paradoxes of economic science that every *act* of competition on the part of the businessman is evidence, in economic theory, of some degree of monopoly power..."

competition law would keep markets competitive. It is also argued that from an economic development perspective, domestic competition laws are essential for market reforms to produce the desired economic success. Interestingly, the number of countries that had domestic competition laws increased from 35 in 1995—the year that the WTO came into being—to almost 100 by the turn of the century, with another 40 countries in line to draft and enact national competition laws (CUTS 2003).

However, the traditional view of competition law as promoting competition has been challenged by some recent works that demonstrate that such regulations only impede the working of market forces by allowing government bureaucrats and the judiciary to adjudicate arbitrarily on such competition-related issues like corporate mergers. Armentano (1972, [1986] 1999) points to the lack of any theoretical or empirical evidence to support competition or antitrust laws, and hence, calls for their repeal. Rockefeller (2007) undertakes an incisive examination of the administering of antitrust laws in the United States and makes a strong case that—contrary to popular belief and expectations—antitrust laws in the United States have only served to punish successful companies, and has limited—and not promoted—market competition.

My dissertation takes cognizance of the latest findings from research on competition laws that show that such regulations might, in fact, be antithetical to protecting competition in the marketplace. Therefore, while developing the hypotheses I include both the traditional competition-promoting and the recently-reported competition-limiting understanding of competition laws.

In the following sections I present the theoretical arguments that are commonly advanced for a national competition law and for a multilateral competition policy

arrangement. The presentation of the theoretical arguments is only intended to better understand competition policies and laws and should not be construed as recommendations for their adoption and implementation.

Theoretical Arguments for a National Competition Law

Economic theory posits that the efficient allocation of resources and distribution of goods and services that result from a market being perfectly competitive would be *Pareto* efficient in that no one can be made better off without making someone else worse off (OECD 1994). However, since perfect competition is a theoretical construct that is seldom achieved in the real world, the objective is to institute a competition law that will generate economic behavior on the part of firms that would collectively approximate to a perfectly competitive market.

The theoretical argument for a national competition law stems from the strong premise that these laws would promote competition in the marketplace and encourage firms to choose optimal allocation decisions that serve to further the ideal of economic growth and development. Toward this end, a competition law targets mainly three efficiency concerns: allocative efficiency, productive efficiency, and dynamic efficiency.

Allocative efficiency is a major benefit that is expected to flow from increased competition. It is presumed that a profit-maximizing, rational producer would produce only to the point where his marginal or incremental per unit cost of production equals his marginal per unit revenue. In a perfectly competitive market where firms are price-takers and where a single producer's output level does not influence the market price, the resources would be allocated in an efficient manner to attain parity between marginal cost

and marginal revenue. Hence, wasteful use of resources is theoretically ruled out since consumers' wishes as reflected by the prices that they are willing to pay dictate resource allocation (Whish 2003).

Closely connected to allocative efficiency is *productive efficiency* that arises when firms in a perfectly competitive market, devoid of the ability to influence the market price to their benefit, concentrate on reducing costs and producing the marketable level of output by using up as little of society's resources as possible. Competitive forces are expected to ensure that firms produce at the optimal level whilst keeping costs to the minimum.

A third benefit of competition is *dynamic efficiency*, perhaps the most motivating factor for putting in place a competition law. Dynamic efficiency is directly concerned with the effect that competition has on the incentive for innovation on the part of business firms. Though the scientific evidence on this link is far from satisfactory, it is fairly intuitive that the impetus to innovate, and in turn attract and retain customers, would be higher under competitive conditions than otherwise.

However, there are instances when increased competition might not yield the most efficient outcomes, either for the customer or for the firms. Whish (2003) presents the most widely discussed of these situations. In a market that is characterized by sizeable economies of scale and scope, and where a large, natural monopoly[16] can provide efficient outcomes compared to having many small firms, competition might not be a desirable property. Common examples are the rail and electricity sectors, where a

[16] Natural monopoly should be distinguished from statutory monopoly; the former results when the most efficient firm attains monopoly status by driving out the inefficient ones from a particular market while the latter results from government law that confers monopoly status on a single firm in a particular market.

regulated private firm is what is commonly observed in practice. Another oft-cited instance when a small number of large companies would be desirable in a market to produce efficient outcomes for buyers and sellers is when the market is characterized by what are commonly referred to as "network effects." Network effects occur when the value to the customer of a service increases when more people join that particular service. A fitting example here is the telecommunications industry where the value of the telephone service to a customer goes up as the customer base of a particular network expands. Other sectors where network effects are observed are airline, computer operating systems, and credit card payment systems.

The two instances cited above pertain largely to exceptions to the benefits of competition that stem from economic considerations. Arguments that competition might not be a desirable property also arise based on value judgments and ethical considerations. A value judgment that is based on socio-political considerations concerns competition in the agricultural sector. It is variously contended that this sector possesses certain characteristics that entitle it to protection from the forces of competition. Similarly, ethical motivations question the very desirability of competition and its inevitable harmful consequences of cut-throat rivalry and price-cutting.

Complementary Relationship between Competition Policy and Trade Policy

A major reason for the EU and Japan to seek inclusion of competition policy under the WTO framework is that it shares a complementary relationship with freer trade policy, which is the principal domain of the WTO. In theory and in practice, both liberalized trade policy and competition policy seek to encourage the efficient allocation of scarce

resources. While a liberal trade policy seeks efficient allocation across countries competition policy does so across firms (OECD 1994). The concern over allocation efficiency is the principal source of the complementary nature of their relationship, which is adequately summed up by this quote from the Asian Development Bank's Asian Development Outlook 2005 document (ADB 2005: 260): "the intended benefits of trade reform may not be realized without active enforcement of competition law."

To explain further, it is understood that in emerging markets a liberal trade policy will permit foreign market access to domestic producers who experience global competence that results from their being efficient due to increased competition in their home markets. Poddar (2004) documents such an experience in the case of Indian firms during the period of liberalization of the Indian economy in the 1990s. In turn, the fact that export markets are more competitive due to the presence of more number of firms will exert further competitive pressure on these producers who would then undertake efficient business decisions, both domestically and globally. On the import side, it is expected that a liberal trade policy that has few import tariffs and non-tariff barriers would invite foreign competition to domestic markets which would spur domestic competition and ensure efficient outcomes.

However, there are also differences between trade policy and competition policy, both in principle and in practice (OECD 1994). Theoretically, there are two differences: first, trade policy is characterized by larger economic objectives, and second, the countervailing effect of trade policy on the trade policies of other nations is greater than that of competition policy. In practice, it is the case that competition policy is more codified in a legal sense, and foreign firms have greater recourse to national courts for

settling competition-related cases than for resolving trade-related issues. On the other hand, there exists no multilateral framework for competition-related complaints on the lines of the disputes settlement mechanism for trade-related issues under the WTO. An important difference in practice is the difference in the rights of defendants, these rights being more pronounced in the case of competition policy. The burden of proof is overwhelmingly on the foreign firms who have to prove their innocence when charged with practices like international dumping. The fact that trade proceedings are less transparent than competition proceedings is another procedure that distinguishes the two policies (OECD 1994).

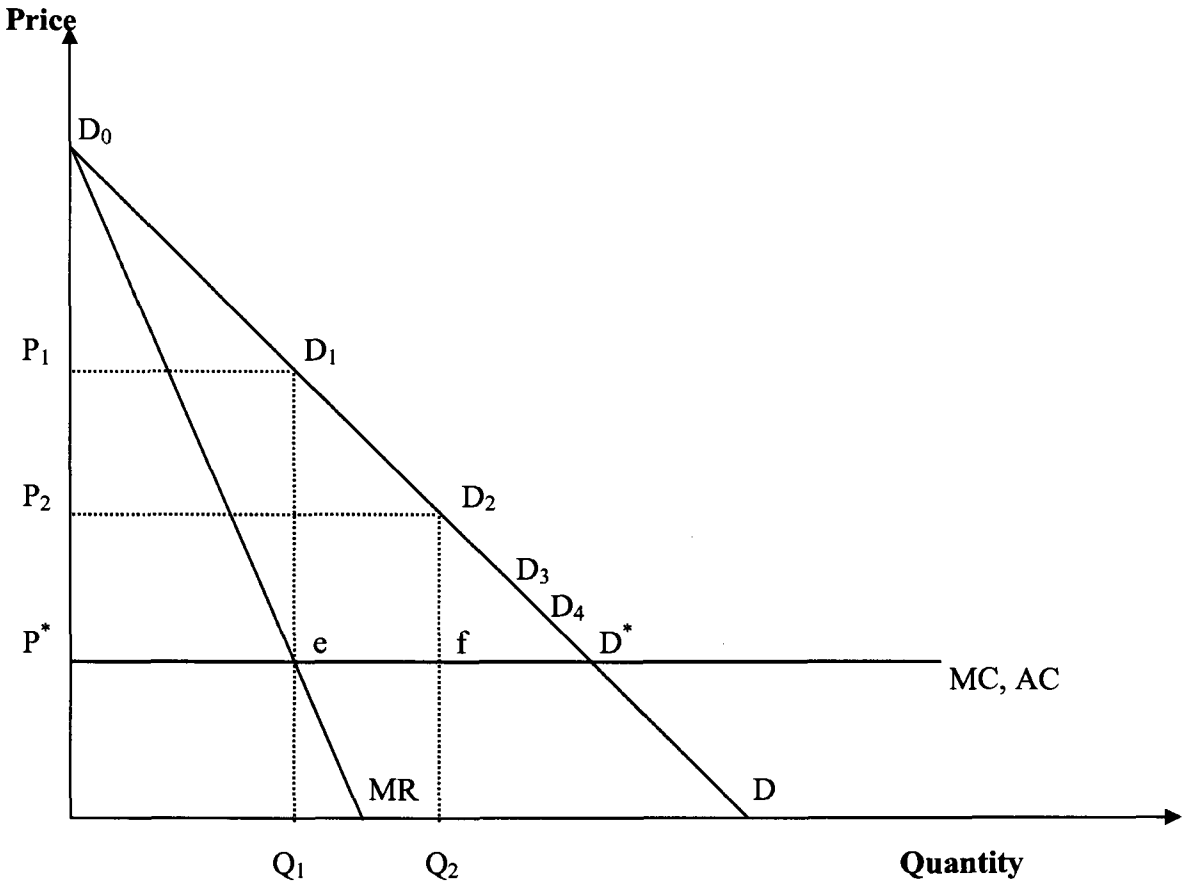
Theoretical Arguments for a Multilateral Competition Policy

The theoretical support for a multilateral competition policy is based on the asymmetric changes in national economic welfare that arise from countries following different and uncoordinated competition policies. In other words, countries that favor domestic players and deter foreign participants in their domestic markets gain at the expense of those countries that keep their domestic markets open and contestable. Given such an understanding, I undertake a graphical representation and discussion of a stylized global economy as detailed in Graham and Richardson (1997).

Figure 2 depicts a market structure that is characterized by a single seller (monopolist) of a particular product where the market is not contestable, and hence, is not open to competition. The demand curve (D) facing the seller represents the total market demand for that product while the MR curve is the associated marginal revenue curve of

the seller. The marginal cost, average cost curve (MC, AC) is drawn as a straight horizontal line to simplify the presentation.[17]

Figure 2: Competition Policy Dynamics



Firms are assumed to have identical cost curves. The simplified model allows the presentation of the efficiency gains from competition, the fair distribution of the economic surplus between buyers and sellers, and the argument for a multilateral competition policy. While the assumptions might seem strong, they are resorted to solely

[17] Notice that the marginal cost equals the average cost for the typical firm in this simplified market structure. Hence by assumption, fixed costs are zero and variable costs constitute all of the total costs (since total cost equals the sum of fixed cost and variable cost).

to facilitate a simplified presentation. Relaxing them will not affect the insights that are gained from this exercise. In other words, the conclusions are robust to changes in the assumptions.

Before explaining the dynamics involved in the graph in figure 2, it is pertinent to explain the key areas contained therein. Areas in triangles $D_0P_1D_1$, $D_0P_2D_2$, and $D_0P^*D^*$ represent the regular consumer surplus associated with price levels P_1, P_2, and P^*, respectively. Consumer surplus is the consumers' share in the overall efficiency gains, that is, the free reward that the market system confers on buyers (Graham and Richardson, 1997). Prices P_1 and P_2 represent monopolistic (single seller) and duopolistic (two sellers) pricing levels, respectively, and D_1 and D_2 are the associated imperfectly competitive equilibriums. The monopolistic and duopolistic market structures deviate from the perfectly competitive price (P^*) and equilibrium (D^*), and therefore produce the two inefficient areas of triangles D_1eD^* and D_2fD^*, corresponding respectively to equilibriums D_1 and D_2. These two inefficient areas represent the deadweight loss from the markets being imperfectly competitive. Points D_3, D_4, and D^* on the demand curve denote market equilibriums when more than two sellers supply the market, with D^* being the perfectly competitive equilibrium associated with a large number of sellers. Finally, the areas contained in $P_1P^*eD_1$ and $P_2P^*fD_2$ represent the producer surplus that accrue to the seller due to the imperfect nature of these two markets. These two areas constitute the surpluses that would have gone to the buyers if the market price and equilibrium were P^* and D^*, respectively.

On the basis of figure 2 and the explanation of the key areas in the preceding paragraph, the following conclusions can be drawn. One, monopoly is a greater threat to

efficiency than oligopoly since the deadweight loss or inefficiency associated with the monopoly price P_1 (area D_1eD^*) is substantially bigger than that corresponding to the oligopoly price P_2 (area D_2fD^*). Two, consumer surplus is higher (producer surplus lower) as we move from a monopolistic market structure to a duopolistic one since the area $D_0P_1D_1$ is smaller than the area $D_0P_2D_2$. The largest consumer surplus is when price equals P* and the consumer surplus is the area $D_0P^*D^*$. Three, the excess or supernormal profits earned by the sellers progressively disappear as the market situation moves from monopoly to perfect competition. The excess profits get distributed to the consumers, thus leading to a progressively enlarging consumer surplus as we move from monopoly to duopoly and then finally to perfect competition. Four, as markets are made contestable by allowing both domestic and foreign competitors to enter, some of the producer surplus that used to accrue to domestic/national firms would now flow to foreign firms.

In figure 2, the entry of foreign firms would signify a share to these non-domestic/non-national firms in the areas of the boxes $P_1P^*eD_1$ and $P_2P^*fD_2$. This flow of profits to foreign firms represents a loss of national income for the country concerned. It is especially harmful if the country has unilaterally decided to open up its markets and allow unfettered entry for firms, regardless of whether they are domestic or foreign. However, this loss of national income can be expected to be reasonably compensated through cross-penetration of markets if all countries adopt similar policies to maintain open markets. This would also negate the need for countries to threaten retaliatory actions on countries that protect their domestic industries by keeping their markets closed while benefiting from contestable markets elsewhere. Herein lies the argument for adopting a common multilateral competition policy. Such a policy would enable countries to reap

efficiency benefits while simultaneously being provided an opportunity to stem national income losses (or even increase their national incomes). In the absence of a common competition policy, an entry-promoting policy might create efficiency gains but shift profits to foreign firms, thus ending in a zero-sum game. Creating a common multilateral policy would enhance efficiency and limit losses, thus creating possibilities of a positive-sum game. Graham and Richardson (1997) cite the case of the members of the EU jointly deciding to open their monopolized domestic telecommunications markets to fellow EU members from January 1 1998. This decision is an example of the EU's efforts at averting the possibility of a zero-sum game for EU member nations that unilaterally open their markets to foreign competitors.

While the graph in figure 2 was a simplified presentation with many restrictive assumptions, it has nonetheless demonstrated the market dynamics that accompany the implementation of a domestic competition policy and the arguments advanced by the proponents of a common multilateral competition policy. Noticeably, the underlying reasons closely mirror the ones commonly advanced for adopting a global trade policy.

Candidate Hypotheses

In the present section, I introduce and explain the hypotheses that underpin the quantitative study. To identify the international- and domestic-level factors that have significantly contributed to the varied domestic competition policy measures in more than a hundred developing countries that are members or observers of the WTO, I develop testable hypotheses by relying on prior theoretical and empirical literature. I particularly draw from policy studies that have examined the factors that impact trade policy and

foreign investment policy, since the factors that impact these policies are likely to influence the formulation of a competition law due to their common liberal nature.[18] I first explain the dependent variable and then describe the explanatory variables.

Dependent Variable

The dependent variable is the domestic policy action taken by each developing country in the area of competition legislation. As presented in Figure 1, there have been three kinds of domestic competition law-related developments in developing countries, since the 1996 WTO Singapore Ministerial Conference: the group of countries that have enacted competition laws or revamped existing ones (Group 1), the group of countries that have drafted a competition bill and are in the process of enacting a competition law (Group 2), and the group of countries that have not reached the drafting stage (Group 3). At this point, I merge the countries that have either enacted or drafted a competition law—that is, countries in Groups 1 and 2, respectively—into a single group. I merge them because these are countries that have undertaken some competition policy action (compared to countries in Group 3). I label these countries collectively as the Action Group. The countries in Group 3 are now collectively called the Non-Action Group.

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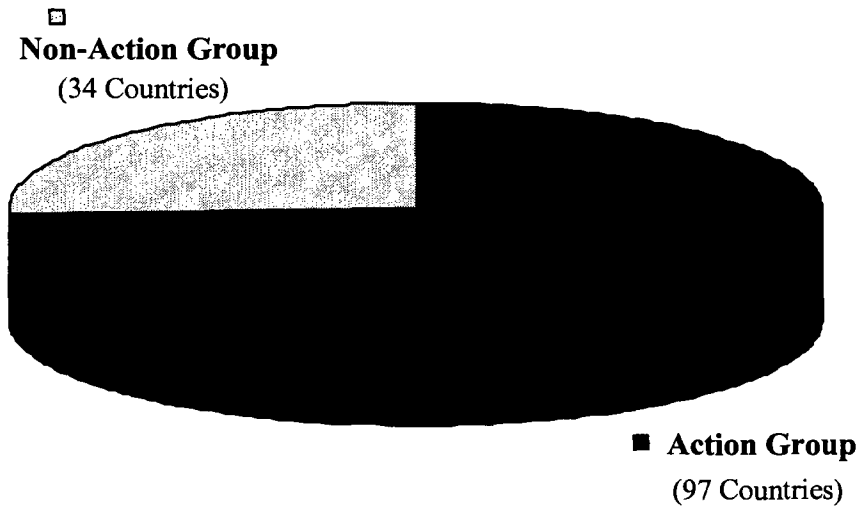
[18] For a recent survey of the theoretical and empirical literature on the political economy of trade policymaking, see Gawande, K. and P. Krishna (2003) "The Political Economy of Trade Policy: Empirical Approaches." In *Handbook of International Trade*, edited by E. Kwan Choi and James Harrigan. Malden, MA: Blackwell. The authors identify six hypotheses or models that are generally advanced in the literature as the political-economic determinants of trade policy: Interest Group, Adding Machine, Status Quo, Social Change, Comparative Cost, and Foreign Policy. For a recent study on the determinants of liberalization of foreign direct investment (FDI) policies, see Kobrin, S. J. (2005) "The Determinants of Liberalization of FDI Policy in Developing Countries: A Cross-Sectional Analysis, 1992-2001" *Transnational Corporations* 14: 67-104.

Figure 3: Break-up of Developing Countries Based on Domestic Competition Policy Actions Taken During 1996-2007



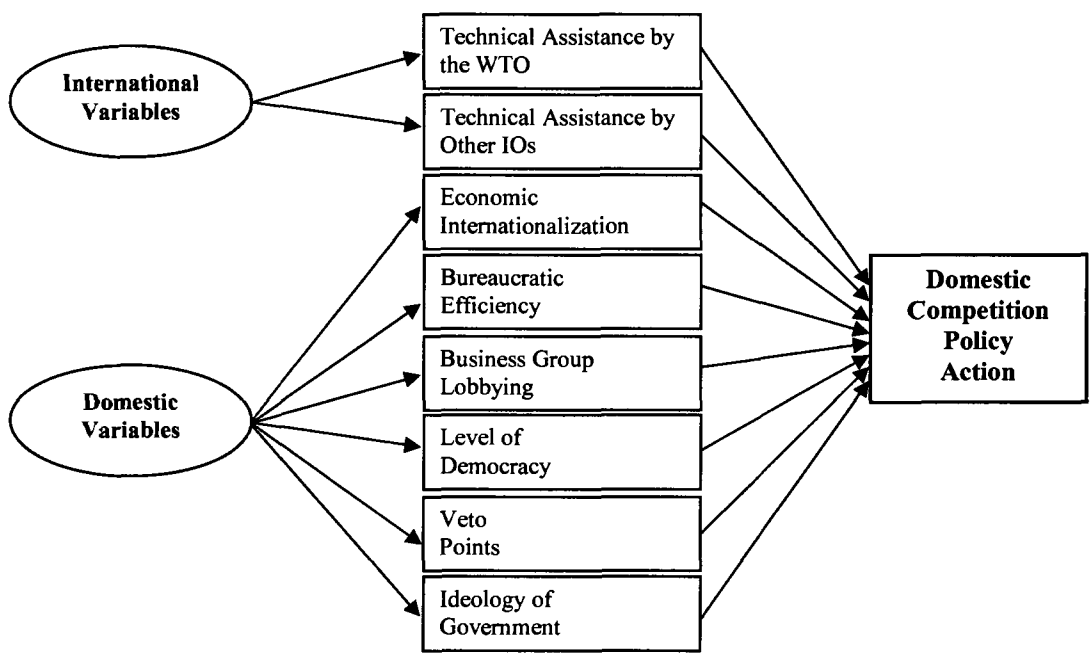
Therefore, my dependent variable—which is the domestic competition policy action undertaken by each of the countries in the sample—takes a binary form: countries that have undertaken a domestic competition policy action (the Action Group) and countries that have not undertaken any domestic competition policy action (the Non-Action Group). Figure 3 reflects the break-up of these countries, with the Action Group1 containing 97 countries and the Non-Action Group 2 consisting of 34 countries.

Independent Variables

The independent variables for this analysis consist of eight explanatory variables and two control variables. The explanatory variables include (1) Technical Assistance by the WTO, (2) Technical Assistance by Other International Organizations (IOs), (3) Economic Internationalization, (4) Bureaucratic Efficiency, (5) Business Interest Lobbying, (6) Level of Democracy, (7) Veto Points, and (8) Ideology of Government. In the following

pages, I explain the theory and the empirical evidence supporting the identification and choice of these variables. The conceptual framework that captures the relationship between the explanatory variables and the competition policy action is presented in figure 4. In addition to the explanatory variables, I include the following control variables in my analysis: (1) The Level of Political Stability in a Country and (2) The Level of Economic Development of a Country.

Figure 4: Conceptual Framework of Dependent and Explanatory Variables



(1) **Technical Assistance by the WTO** – Many developing countries lack the technical expertise and the institutional capacity required to undertake the preliminary competition advocacy measures and the drafting of an economy-wide national competition law. These

internal deficiencies formed the core of the opposition by developing countries to the idea of a multilateral competition policy arrangement at the WTO. However, one avenue available to the WTO and the other IOs was to provide technical assistance and capacity-building measures that would change the status of competition legislation and culture in developing countries, and thereby, assist them in being more equipped to participate in any multilateral competition policy arrangement.

Following the concerns raised by developing countries over the competition policy proposal and their lack of institutional capacity, "the WTO Secretariat undertook a comprehensive annual programme of technical co-operation activities to assist developing and least-developed countries in participating effectively in the WTO's work in the area of trade and competition policy."[19] The 2001 Doha Ministerial Declaration of the WTO emphasized the importance of increased support for providing technical assistance and capacity building in developing countries to enable these countries to better understand the interaction between trade and competition policy so that "developing and least-developed countries may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development" (WTO 2003: 1).

Recent empirical research documents the positive impact of technical assistance on capacity building in competition policy in a small group of countries (Evenett 2006, ICN 2005, 2007). Therefore, in light of the evidence from prior research and based on the

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[19] http://www.wto.org/english/tratop_e/comp_e/ta_e.htm

fact that the WTO offered its technical assistance activities to the entire developing world, I offer the following hypothesis.

H_1: *Countries that received technical assistance from the WTO in the area of competition legislation are more likely to institute a domestic competition law.*[20]

(2) Technical Assistance by Other International Organizations (IOs) – Compared to the WTO, which came into being in 1995, there are other international organizations (IOs) that operate in the area of competition policy advocacy and that have a longer history of offering technical assistance and capacity-building measures in various policy areas. The prominent IOs that undertake competition advocacy and offer technical assistance in competition policy are UNCTAD, OECD, and World Bank (OECD 2002). For the extent of competition advocacy and the vast assistance programs conducted—especially in Central and Eastern Europe—it would be appropriate to add the European Union and its executive arm, the European Commission (EC), to this list of IOs.

The nature of the activities of the these four IOs in competition advocacy and assistance since the 1996 Singapore Ministerial Meeting ranged from seminars and conferences to country visits by competition policy experts (OECD 2002, UNCTAD 2002). Given the observer status of these four IOs in the WTO, the expression in the WTO by developing countries of their lack of technical expertise in competition issues was not lost on the other IOs.

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[20] The word "institute" in these and later hypotheses is used in a collective sense to denote actions taken to draft and/or enact a national competition law. The word "adopt" is also used in the same sense in this dissertation.

The developments over competition policy in the WTO further emphasized the importance of technical assistance and capacity-building measures in the area of competition policy for developing and least-developed countries. I, therefore, propose the following hypothesis.

H_2: *Countries that received technical assistance from international organizations other than the WTO in the area of competition legislation are more likely to institute a domestic competition law.*

(3) <u>Economic Internationalization</u> – The consistent integration of a national economy into the global economy—that is, economic internationalization, as it is referred to in the international political economy literature—has been shown to impact domestic politics and policy outcomes (Frieden 1991, Gourevitch 1986, Keohane and Milner 1996, Rogowski 1989). A large section of the literature on economic internationalization contend that greater international integration—especially after the 1970s—has led to increased convergence of national economic policies, with a greater role accorded to the forces of free markets (Andrews 1994, Garrett 1995, Goodman and Pauly 1993, Kurzer 1991, Notermans 1993, Scharpf 1991). The collective argument was that with the global product and capital markets becoming more competitive, the requirement was felt for governments to play a less interfering role in the economy. With regard to the liberalizing nature of a competition law, a positive association can then be hypothesized between economic internationalization of developing countries and the setting up of a domestic competition policy. However, a separate group of literature has shown that economic

internationalization has led to a larger public economy, which is a step away from free market policies (Cameron 1978 and Katzenstein 1985). The reasoning is that small, open economies that faced stiff export competition and had high levels of industrial concentration were fertile grounds for labor unionization and collective bargaining for social welfare programs from the government. Given these contradictory findings, I propose the following main and alternate hypotheses.

$\mathbf{H_3}$: *Countries that are more globally integrated are more likely to institute a domestic competition law.*

$\mathbf{H_{3A}}$: *Countries that are more globally integrated are less likely to institute a domestic competition law.*

(4) <u>Bureaucratic Efficiency</u> – Right from the works of Adam Smith in the latter half of the eighteenth century, the importance of institutions and institutional quality for economic performance has been emphasized in the political economy literature (IMF 2003, Rodrik, Subramanian, and Trebbi 2002). In the last decade and half, the role of institutions in economic activity has received renewed focus owing to the works by North (1990, 1991).[21]

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[21] North defined institutions as setting the "rules of the game" for a society: "Institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)" (North 1991: 97). Since North, authors have defined institutions to include the bureaucracy, government corruption, rule of law, expropriation risk, red tape, judicial efficiency, political instability (Knack and Keefer 1995, 1997a, and Mauro 1995), and trust, civic norms (Knack and Keefer 1997b and La Porta, Lopez-de-Silanes, Shleifer, and Vishny 1997).

Both economic and political institutions are understood to facilitate free flow of information and ensure credibility of contract enforcement, which together lead to a reduction in transaction costs and spur economic activity. Though different authors have defined and conceptualized institutions and governance differently, my focus here is on one particular strand of political institution: the bureaucracy. Specifically, I focus on bureaucratic efficiency as a key determinant of the ability of a national government to institute a domestic competition law.

The role of political institutions in shaping economic policy has been documented in recent political economy literature (Inman and Rubinfeld 1997, Lijphart 1999, Persson 2002, and Poterba and von Hagen 1999). Collectively, these works have looked at how electoral rules, political regimes, budgetary institutions, and fiscal federalism have impacted the design and choice of economic policy. Of particular interest to this study is the finding of a negative association between bureaucratic corruption and liberal economic policies (Ades and Di Tella 1999, Gatti 2004, and Treisman 2006).[22]

Even more important is the finding that a less corrupt and more efficient bureaucracy will have the ability and the incentives to institute more open and liberal economic policies (Bai and Wei 2001).[23] The reasoning is that, as a country's bureaucracy improves its operational quality and efficiency, it gains the expertise and the

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[22] Given the high positive correlation observed between corruption and the various other dimensions of bureaucratic quality, the literature on institutions and governance generally uses corruption as a proxy for bureaucratic efficiency.

[23] Bai and Wei looked specifically at bureaucratic efficiency and capital controls for countries around the world.

confidence to adopt and implement policies that open up its economy to higher levels of competition.

With regard to domestic competition legislation—given its liberal character and the requirements of an efficient bureaucracy for its formulation—one can expect a national competition law to be instituted in a country that possesses an efficient (or, less corrupt) bureaucracy. Therefore, I formulate the following hypothesis.

H_4: *Countries that possess an efficient bureaucracy are more likely to institute a domestic competition law.*

(5) <u>Business Group Lobbying</u> – A major interest group that gets impacted through the enactment and implementation of a domestic competition law is the business group. A business firm operating in a particular industry would prefer fewer firms and lower degrees of competition in that industry since this situation would be favorable to its operations and profits.[24] Moreover, a competition law typically contains restrictions on corporate mergers and also endows government bureaucrats and the judiciary with the authority to decide on some of the contentious corporate mergers and acquisitions. For all of these reasons, incumbent business firms may not view a national competition law favorably and can be expected to lobby against it.

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[24] For an early development and evidence of the hypothesis that monopoly power (as represented by market concentration ratios) is favorable to an *existing* firm's profits, see Bain, J. S. (1951) "Relation of Profit Rates to Industry Concentration: American Manufacturing, 1936-1940."*Quarterly Journal of Economics* 65: 293-324; Fuchs, V. R. (1961) "Integration, Concentration, and Profits in Manufacturing," *Quarterly Journal of Economics* 75: 278-291; Mann, H. M. (1966) "Seller Concentration, Barriers to Entry, and Rates of Return in Thirty Industries, 1950-1960." *Review of Economics and Statistics* 48: 296-307; Kilpatrick, R. W. (1968) "Stigler on the Relationship Between Industry Profit Rates and Market Concentration," *The Journal of Political Economy* 76: 479-488.

The notion that organized interest groups—such as business groups—impact economic policies is demonstrated adequately in the "New Political Economy" literature (Mitra 1999).[25] The political science and international political economy literature too highlights the role of interest-group bargaining in the economic policymaking process (Ikenberry, Lake, and Mastanduno 1988).[26] In societies that are characterized by patron-client relations between the government (patron) and businesses (clients), business groups can influence the adoption of laws that matter to these groups (Shambayati 1994).[27]

As far as a domestic competition law is concerned, the works mentioned in the previous paragraph lead me to conclude that business groups in a country would lobby to block the instituting of a national competition law. Further, the more that these business groups can actually influence policymaking, the less would be the likelihood that a competition law would be enacted in a country. However, contrary to the understanding

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[25] Prominent works in this literature include Becker, G. (1983) "A Theory of Competition Among Pressure Groups for Political Influence," *Quarterly Journal of Economics* 98: 371-400; Findlay, R. and S. Wellisz (1982) "Endogenous Tariffs, the Political Economy of Trade Restrictions and Welfare." In *Import Competition and Response*, edited by Jagdish Bhagwati. Chicago: University of Chicago Press; Findlay, R. (1991) "The New Political Economy: Its Explanatory Power for LDCs." In *Political Economy and Policy Making in Developing Countries*, edited by Gerald Meier. San Francisco, CA: ICS Press; Grossman, G. M. and E. Helpman (1994) "Protection for Sale." *The American Economic Review* 84: 833-850; Peltzman, S. (1976) "Toward a More General Theory of Regulation," *Journal of Law and Economics* 19: 211-240; and Stigler, G. (1971) "The Theory of Economic Regulation," *Bell Journal of Economic Management and Science* 2: 3-21.

[26] The classics in this class of literature are Gourevitch (1986); McKeown, T. (1984) "Firms and Tariff Regime Change: Explaining the Demand for Protection." *World Politics* 36: 215-33; Pincus, J. J. (1977) *Pressure Groups and Politics in Antebellum Tariffs.* New York: Columbia University Press; and Schattschneider, E. E. (1935) *Politics, Pressures and the Tariff.* New York: Prentice-Hall.

[27] On patron-client relations and its relevance for political and policy change, see Bienen, H. and J. Herbst (1996) "The Relationship between Political and Economic Reform in Africa." *Comparative Politics* 29: 23-42; Kaufman, R. R. (1974) "The Patron-Client Concept and Macro-Politics: Prospects and Problems." *Comparative Studies in Society and History* 16: 284-308; and Scott, J. C. (1972) "Patron-Client Politics and Political Change in Southeast Asia." *American Political Science Review* 66: 91-113.

that businesses will lobby to block the adoption of a national competition law, it has been pointed out that powerful multinational corporations can influence economic policies in developing countries and lobby for instituting laws—such as competition laws—that would open up the economies of developing countries to foreign competition (Cox 2008). Since the focus of this variable is on domestic business groups lobbying their national governments, I proceed with the original understanding that business groups would lobby to prevent the adoption of a national competition law. Therefore, I propose:

H_5: *Countries where business groups have greater influence over economic policymaking will be less likely to institute a national competition law.*

(6) <u>Level of Democracy</u> – The word "democracy" is a highly slippery term and has been defined differently by different authors. Two of the more famous definitions are the ones advanced by Schumpeter (1950) and Dahl (1971). Schumpeter defined democracy as an institutional arrangement in which individuals acquire the power to decide by means of a competitive struggle for the people's vote. Dahl's definition of democracy—or polyarchy, as he called it—included the two dimensions of contestation and participation in the political arena. A modern understanding of democracy that also includes the idea of democracy as conveyed by Schumpeter and Dahl is given by Mainwaring (1989): a democracy is a political system that is characterized by competitive elections, broad adult citizenship and suffrage, and civil liberties and minority rights.

The idea of democracy as it is used in this dissertation approximates to the one outlined by Mainwaring since it adequately demonstrates a competitive, less-restrictive,

and highly contestable political system. Therefore, democracy is essentially understood as the political counterpart of a competitive and contestable economic system. And, such an economic system is what a national competition law seeks to create.

With respect to the relationship between democracy and a competitive free-market, it is argued that classical liberal thought is represented in the political sphere through the system of democracy just as it is represented in the economic sphere through capitalist free markets (diZerega 2001).[28] Democracy and free-market economics are thought of as fellow travelers (Fukuyama 1992: 48) and are connected through—what the seventeenth century philosopher, John Locke, argued—the principles of political liberty and rule of law in the case of the former and the notion of private property rights and free enterprise in the case of the latter (Wolf 2003).[29] Since one of the stated objectives of a competition law is to encourage free enterprise and competition, the interest here is to ascertain whether the level of democracy in a country has played a determining role in the formulation of a domestic competition law.[30]

Theoretically, democracy can impact economic policy to produce two diametrically opposite outcomes (Przeworski and Limongi 1993): first, by being more accountable to their citizens, political leaders in a democratic regime will adopt liberal policies so long as it is beneficial to the country as a whole (Garrett 2000). Second, since

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[28] While there are various types of democracies, the particular type of democracy considered here and in line with the associated literature is a liberal or representative democracy and one that is understood as essentially not autocratic.

[29] Though some scholars have also argued from a purely theoretical perspective that democracy and capitalism can not co-exist, the most famous being Karl Marx.

[30] Here I am going with the traditional understanding of a competition law as promoting competition.

democracies permit interest group lobbying, pressure groups could influence the government to adopt protectionist, anti-free market policies (Olson 1993).

Even though the theoretical literature is ambiguous about the exact effect of democracy on economic policy, the empirical literature makes a strong case that democracy and free-markets are positively associated. Barring a few studies that produced inconclusive evidence of any strong association between democracy and liberal economic policy (Garrett 2000, O'Rourke and Taylor 2006), the bulk of the empirical literature finds a robust positive association between democracy and liberal economic policies, specifically trade and financial policies (De Haan and Sturm 2003, Eichengreen and Leblang 2006, Fidrmuc 2001, Mansfield et al. 2000, 2002, Milner and Kubota 2005). In light of the evidence presented above, I formulate the following hypothesis.

H_6: *Countries that possess greater degrees of democracy are more likely to institute a domestic competition law.*

(7) <u>Veto Points</u> – One of the most important institutional elements of policymaking is veto players or veto points, as represented by the number of actors in the various branches of the government whose concurrence is required for policymaking (Tsebelis 1995). In his influential theoretical works, Tsebelis (1995, 2002) categorizes veto players into institutional and partisan. "Institutional veto players (president, chambers) exist in presidential systems while partisan veto players (parties) exist at least in parliamentary systems. Westminster systems, dominant party systems and single-party minority governments have only one veto player, while coalitions in parliamentary systems,

presidential or federal systems have multiple veto players. The potential for policy change decreases with the number of veto players, the lack of congruence (dissimilarity of policy positions among veto players) and the cohesion (similarity of policy positions among the constituent units of each veto player) of these players." (Tsebelis 1995: 289).

Political theorists have long noted that veto points play a major role in determining whether a policy change can be effected easily or not (McCubbins et al. 1987 and Weingast and Moran 1983). The empirical literature too reports veto points as a major determinant of economic policy change, with more veto points being less conducive to a policy change (Hallerberg and Basinger 1998, Henisz 2000, 2004, Jensen 2006, and Treisman 2000). Therefore, with regard to instituting a domestic competition law in developing countries, I formulate the following hypothesis.

$\mathbf{H_7}$: *Countries with fewer veto points are more likely to institute a domestic competition law.*

(8) <u>Ideology of Government</u> – Economic policy making can be an outcome of not just material factors but also of qualitative aspects like the ideology of the political leader and/or of the party in power. The fact that there exists no clear consensus among scholars on the definition of political ideology has not deterred political scientists and economists from attempting to ascertain the impact of ideology on policy.[31] In one of the early empirical studies of this kind, Gibbs (1977) reports from his study of 12 West European

[31] For a recent discussion of the various definitions of political ideology, see Gerring, J. (1997) "Ideology: A Definitional Analysis." *Political Research Quarterly* 50: 957-994.

and North American nations that parties on the left of the political spectrum undertook policies beneficial to the welfare of workers while parties on the right cared more for the economic interests of capitalists. With particular reference to trade policy, Dutt and Mitra (2002) also document the special concern of left parties for labor: in labor-rich countries (that is, mostly developing countries), pro-trade policies were adopted more by left-wing governments than by right-wing governments.[32] The very interesting work by Kahane (1996) on Congressional voting in the United States on the North American Free Trade Agreement (NAFTA) finds that, compared to Republicans (right-leaning), more Democrats (left-leaning) voted against the free trade agreement and thus expressed a desire for more trade protectionism to help labor. Some of the other works in the political science-economics literature that have demonstrated the impact of ideology in the voting behavior and/or policy preferences of political leaders include Kalt and Zupan (1984) and Kau and Rubin (1982).

In their article on the connection between ideology and its impact on foreign policy in the American context, Cronin and Fordham (1999) find that even though liberal and conservative U.S. Senators voted according to their party affiliations and ideologies, this relationship changed over time. These authors go on to discuss that international relations scholars who treat ideology as an underlying set of ideas or world views that guide foreign policy have typically found ideology as a major explanatory factor in foreign policy (Goldstein and Keohane 1993, Krasner 1978, and Nau 1990).

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[32] The theoretical support for such a result emerges from the Stolper-Samuelson theorem of international trade which states that international trade is beneficial to abundant factors of production (in this case, labor) while being detrimental to the scarce factors of production.

Prior literature, thus, documents the influence of the ideology of the political leader or party on policy outcomes, be it foreign policy or economic policy. With regard to competition policy and its free-market objectives, one can thus hypothesize that left-leaning parties and leaders would be opposed to such a measure while right-leaning governments will institute such a policy. However, in the American context, antitrust laws have been reported as anti-free market because of the restraints these regulations place on businesses, especially the successful ones (Armentano 1972, 1999, Rockefeller 2007). Hence, I offer the following main and alternate hypotheses.

H_8: *Countries governed by leaders/parties with a right-leaning political ideology are more likely to institute a domestic competition law.*

H_{8A}: *Countries governed by leaders/parties with a left-leaning political ideology are more likely to institute a domestic competition law.*

Apart from the above mentioned eight explanatory variables, the set of independent variables also contains the following two control variables: (1) the level of political stability in a country and (2) the level of economic development of a country. These variables are used to control for the fact that developing countries are heterogeneous with regard to their political stability and economic size. For example, three countries that were part of the former Republic of Yugoslavia—Bosnia and Herzegovina, Croatia, and Serbia—are in Group 1, together with two other countries from the same Balkan region, Bulgaria and Romania. However, while the first set of countries went through political unrest and civil war during the 1990s, the latter two

countries experienced no major political instability during this period. Similarly, there exist countries in Group 1 with some of the largest economies in the world like Brazil, India, and Russia together with countries like Armenia, Fiji, and Guyana that have much smaller economies. Controlling for these country-level characteristics is undertaken to impart greater robustness and reliability to the results.

CHAPTER II

A "Second Image Reversed" Analysis of Competition Policy Developments: Analysis and Evidence

Analysis

The quantitative analysis in the present chapter consists of identifying the variables that played a statistically significant role in producing the divergent domestic competition policy outcomes in our sample of developing countries.[33] For this purpose, I merged countries in Groups 1 and 2 into a single group titled, the Action Group. The Action Group contains countries that undertook the action of either enacting or drafting a competition law since these measures represent significant policy actions in this issue area. Countries in Group 3 represent countries that have neither drafted nor enacted a national competition law and I call this group of countries the Non-Action Group.

The dependent variable takes a binary form with countries in the Action Group receiving a score of 1 and countries in the non-Action Group receiving a score of 0. Given the binary nature of the dependent variable, I employ logistic regression to estimate the parameters of the models and to identify the variables that are statistically significant. A brief description of the logistic regression technique and its appropriateness for this analysis is provided under the methodology section in this chapter.

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[33] Statistical significance means that a relationship found between an explanatory variable and the dependent variable has not occurred by mere chance and is a reliable result.

Measures and Data

In this section, I explain the data sources and the measures I employed to operationalize my dependent and independent variables. Except for the two external variables that take a binary form—Technical Assistance by the WTO and Technical Assistance by Other IOs—the data on each of the six domestic variables for a country is the arithmetic average of the available annual data for the period 1996 to July 2007.[34] I use average values of these variables to account for their general nature during the period under study. I use 1996 as the cut-off year to begin the analysis given the fact that the WTO Ministerial Meeting in Singapore that launched the WGTCP was held in 1996. Within the data period from 1996 to July 2007, the last year for which data is available varies across the variables. Also, for some variables, data was not available for every year. These issues, however, should not pose any problems since I use average values for each variable for the period under study.

Domestic Competition Policy Action (Dependent Variable) – The dependent variable is the domestic policy action undertaken in the area of competition legislation since the 1996 Singapore meeting and by July 2007 by each developing country that is a member or observer of the WTO. On the basis of their domestic competition policy action, I classified the countries into Action Group and Non-Action Group, as depicted in figure 3. The Action Group constitutes countries that—regardless of whether they had a national competition law prior to 1996—enacted new competition laws, upgraded their existing

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[34] The end date of July 2007 is used to keep the data period close-ended.

competition laws, or drafted a competition bill to be passed into law later. All of these actions since 1996 represented clear evidence of a change in the domestic competition law scenario as far this analysis is concerned. The Non-Action Group contains countries where no policy action was undertaken in this policy area. A few countries like Kenya and Senegal that had competition laws prior to 1996 but which made no changes to their competition legislation during the period 1996-July 2007 were not included in the sample because it was impossible to ascertain whether these countries did not effect any changes because their competition legislation was sufficiently modern or because of one or more of the explanatory variables used in my study.

The primary source for data on the competition policy action taken in each of the 131 developing countries in the sample was the online Database on Competition Law Enactment in Developing Countries maintained by the Halle Institute for Economic Research.[35] This database covers national competition laws of close to 160 developing countries and represents one of the most comprehensive databases currently available on national competition policy actions undertaken in developing countries. However, this database covers competition policy developments only up to 2005. Moreover, a few countries included in the sample were not included in this database. Therefore, this primary source was supplemented through information gathered from the following five sources: national government and competition authority websites, the Global Competition Forum website of the International Bar Association,[36] the legal website Lexadin,[37] the

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[35] http://www.iwh-halle.de/projects/competition_policy/Competition.htm

[36] http://www.globalcompetitionforum.org

documents database of the WGTCP,[38] and the edited volume by Pradeep S. Mehta of Consumer Unity and Trust Society (CUTS) titled *Competition Regimes in the World – A Civil Society Report.*[39] Therefore, the database used in my study represents the most updated database currently available on national competition laws of developing countries.

Technical Assistance by the WTO and Technical Assistance by the Other IOs – The two technical assistance explanatory variables enter the analysis as dummy or binary variables. A country is assigned a value of 1 if it received external technical assistance in the area of competition policy from the WTO and 0 if it did not. The same coding methodology was followed in operationalizing the technical assistance received from the four other IOs (UNCTAD, OECD, World Bank, and EU). A country received a score of 1 only if the technical assistance was received by that country *prior* to making any changes to its national competition legislation. The common forms of technical assistance were seminars and workshops, assistance in drafting and reviewing competition laws, help with institution-building, training of officials, and organizing regional cooperation activities on competition policy (UNCTAD 2004). Moreover, countries typically received technical assistance from more than one IO.

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[37] http://www.lexadin.nl

[38] http://www.wto.org/english/tratop_e/comp_e/wgtcp_docs_e.htm

[39] CUTS is a policy research and advocacy organization that is based in India and has done extensive work in the area of competition policy in developing countries. The companion website for the document is http://www.competitionregimes.com.

It must be noted that apart from the WTO and the four other IOs, technical assistance in competition policy is provided by competition agencies of advanced countries like the Department of Justice and the Federal Trade Commission of the United States, the Japanese Fair Trade Commission, national competition agencies of Canada and Australia, and most of the national competition authorities of countries in Western Europe. Oftentimes, technical assistance is provided by these national competition authorities in coordination with the other IOs. However, in the sample a country received a score of 1 only if there was any involvement of one of the four IOs.

The list of countries that received technical assistance from the WTO was obtained from the WTO website.[40] Data on countries that received technical assistance from the other IOs was sourced from documents pertaining to technical assistance available from the websites of these IOs.[41] In a few cases, for increased accuracy, this information was supplemented and/or confirmed through documents sourced from the website of the competition authority of the respective country.

Economic Internationalization - Following Keohane and Milner (1996), I operationalized economic internationalization as the ratio of the external sector to the total economy. Because of difficulties in obtaining foreign investment data for the large sample of developing countries, I included only international trade (exports and imports)

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[40] http://www.wto.org/english/tratop_e/comp_e/ta_e.htm

[41] The following documents provided most of the evidence on technical assistance activities undertaken by the four Other IOs: OECD (2000, 2001, 2002) and UNCTAD (2000, 2002, 2003, 2004, 2006, 2007). Also consulted were Fernandez (2004) and ICN (2003).

in the external sector. The total economy is represented by the gross domestic product (GDP) of each country. Therefore, economic internationalization was operationalized as the share of international trade in the GDP of a country. The higher this share, the greater would be the level of economic internationalization. Data on merchandise trade as a percentage of GDP was obtained from the World Development Indicators database of the World Bank.[42]

Bureaucratic Efficiency - Bureaucratic efficiency was operationalized by using data from the Governance Matters project of the World Bank.[43] Of the six aggregate indicators of governance used by the staff at the World Bank to construct a broad governance index, I used the indicator that best reflects bureaucratic efficiency: government effectiveness. The indicator collectively measures the quality of public service provision, the quality of the bureaucracy, the competence of civil servants, the independence of the civil service from political pressures, and the credibility of the government's commitment to policies.

Business Group Lobbying – This variable is the degree of business lobbying of government in a country. To operationalize the business lobbying variable, the current study used data available from the Global Competitiveness Report 2003-2004 of the World Economic Forum (WEF 2004). The report contains data on the "focus of trade and industry associations." That is, whether these associations lobby the government for financial support and lenient regulation or whether they organize collective action to

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[42] http://go.worldbank.org/6HAYAHG8H0

[43] http://go.worldbank.org/YF9OD4ZV00

improve member firms' productivity levels. The original data from the report scored countries on a decreasing scale of business lobbying from 1 to 7. To align with the direction hypothesized for this variable, I reverse-coded the original business lobbying scores.

Level of Democracy – The data on the level of democracy was sourced from the Polity IV dataset developed by the School of Public Policy at George Mason University.[44] For the study, I used the variable "DEMOC" from this dataset, where DEMOC for each country is scored on an increasing scale of democracy from 0 to 10. The Polity IV dataset defines democracy as follows, which is in line with the understanding of democracy used in my dissertation: "Democracy is conceived as three essential, interdependent elements. One is the presence of institutions and procedures through which citizens can express effective preferences about alternative policies and leaders. Second is the existence of institutionalized constraints on the exercise of power by the executive. Third is the guarantee of civil liberties to all citizens in their daily lives and in acts of political participation" (Marshall and Jaggers 2005: 13).

Veto Points – The Political Constraints Index (POLCON) Database developed and maintained by Prof. Witold Henisz at the University of Pennsylvania provides data on veto points for most countries.[45] For my study, I used the 2005 POLCON Release and the POLCON III data variable. The veto point for each country for each year is scored on an

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[44] http://www.systemicpeace.org/polity/polity4.htm

[45] http://www-management.wharton.upenn.edu/henisz/POLCON/ContactInfo.html

increasing scale of 0 to 1. Specifically, the POLCON III data variable is measured by first identifying the number of independent branches of government (executive and legislature) that possess veto power over policy change. This basic measure is then revised to account for the extent of alignment and preference heterogeneity prevalent among the various branches of the government of a country in any given year. This final measure is then used to operationalize the Veto Points variable.

Ideology of Government – The data on the ideological leaning of the ruling party was obtained from the Database of Political Institutions 2006 developed by researchers at the World Bank (Beck, Clarke, Groff, Keefer, and Walsh 2001).[46] This database codes ideological leanings as follows: parties that were defined in various secondary sources as conservative, Christian democratic, or right-wing were classified as right-leaning. Parties that were defined as communist, socialist, social democratic, or left-wing were considered left-leaning. Finally, center-leaning parties were ones that were identified as being at the center of the political spectrum or ones that combined elements of socialism and free enterprise. The original database coded a left-leaning government as 1, center-leaning government as 2, and right-leaning government as 3. The average values for the countries range from 1 to 3, with higher values signifying an ideological slant toward the right.

Political Stability – The data on political stability was obtained from the Governance Matters database of the World Bank, the same database that provided the data on

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[46] http://go.worldbank.org/2EAGGLRZ40

bureaucratic efficiency. The political stability dataset measures the extent of domestic violence that renders the political system unstable and contributes to uncertainty in the continuance of governance and public policy. Similar to the data on bureaucratic efficiency, the data on political stability is also coded from -2.5 to +2.5, with higher values signifying higher levels of political stability and lower levels of domestic violence.

Level of Economic Development – The extent of the economic development of a country is measured using gross domestic product (GDP) data obtained from the World Development Indicators database of the World Bank. For the analysis, I use the logarithms (to the base 10) of the GDP for each country. Using logarithms compresses the very large values that are typical of GDP data.

Sample

My study includes all the developing countries that are either members or observers of the WTO. With Tonga becoming a member of the WTO on July 27, 2007, the total membership in the WTO stands at 151 as of that date. There are an additional 30 observer governments at the WTO, bringing the total of members and observers to 181.[47] However, a problem arises with the term "developing countries" because the WTO does not maintain an official list of "developing" or "developed" countries, as it does for the least developed countries (LDCs).[48] To arrive at the list of developing countries, I excluded those countries that were members of the Organization for Economic

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[47] http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

[48] http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm

Cooperation and Development (OECD) from the countries that were either members or observers of the WTO. Since the OECD includes economically advanced countries, excluding this group of countries served as an objective method for identifying developing countries within the WTO. The final sample size is 131 developing countries that are either members or observers of the WTO, which is the total number of countries shown in figures 1 and 3. Appendix A lists these countries according to the three groups in which they fall.

Table 1: Data Availability for the Explanatory and Control Variables

Independent Variable	**Data Availability (Number of Countries)**
Technical Assistance by the WTO	131
Technical Assistance by Other IOs	130
Economic Internationalization	126
Bureaucratic Efficiency	131
Business Group Lobbying	64
Level of Democracy	113
Veto Points	127
Ideology of Government	75
Political Stability	131
Level of Economic Development	128

Moreover, data was not available for all the independent variables for all of the countries. Table 1 lists the independent variables and the number of countries for which data was available for each variable. From table 1, it is clear that the inclusion of the variables Business Group Lobbying and Ideology of Government will drastically reduce

the sample size. So, in some of the models, my study has omitted these two variables so that there are enough number of observations to impart statistical validity to the results.

Methodology: Logistic Regression Technique [49]

I employed the logistic regression technique to conduct the analysis and to identify which of the eight explanatory variables contributed significantly to the domestic competition policy action. Logistic regression is the most commonly employed technique when the dependent variable takes a binary form, as is the case with the dependent variable in this study. For the remainder of this section, I document the appropriateness of the use of this technique for this study.

Researchers often use ordinary least squares (OLS)—that is, *linear* regression—when the dependent variable in their analysis is continuous and quantitative in nature (that is, not binary). For example, OLS is employed when a researcher seeks to understand the impact of income (independent variable) on consumption (dependent variable) since consumption is a quantitative variable and takes a continuous form. Using OLS, the researcher can estimate the parameter values for the independent variables. These parameter values can be used to predict future values of the dependent variable, conditional on the values of the independent variable. Therefore, "the linear regression line can extend upward toward positive infinity as the values of the independent variables increase indefinitely, and extend downward toward negative infinity as the values of the independent variables decrease indefinitely" (Pampel 2000: 3).

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[49] This section draws heavily on Gujarati (2004). Other references are duly cited.

However, OLS is inappropriate in instances where the dependent variable is qualitative or discrete, rather than quantitative or continuous. This is best illustrated with an example from U.S. presidential elections where a researcher might seek to understand the impact of income levels (independent variable) on the choice of the candidate (dependent variable). This is an example of a study where the dependent variable is qualitative since the choice of a particular candidate is a qualitative response and not a quantitative one. Assuming that there are only two political parties, Democratic and Republican, the dependent variable takes a binary form—that is, vote either Democratic or Republican. If a vote for the Democratic candidate is denoted as 1 and a vote for the Republican candidate is marked as 0 (as is normally done with binary dependent variables), then the values (or probabilities) that the dependent variable can take are essentially restricted between 0 and 1. This restriction goes against the assumption of OLS, as mentioned in the preceding paragraph, where the dependent variable can potentially take values from negative infinity to positive infinity. Hence, using OLS to estimate parameter values when the dependent variable is binary produces results that "make no sense..." (Pampel 2000: 3).

Therefore, in instances where the dependent variable is binary or categorical,[50] there exist other regression techniques that enable a researcher to correctly estimate the parameter values and identify the explanatory variables that are statistically significant. Two of the most commonly used techniques are discriminant analysis and logistic regression. However, logistic regression has generally been found to be more robust and

[50] The dependent variable can sometimes take more than 2 categorical forms. For example, if there are three presidential candidates—Democratic, Republican, and Independent. Logistic regression can be used in these cases too.

less restrictive in its assumptions than discriminant analysis since it is appropriate for any distribution of the set of independent variables (Lo 1986). Given these properties, I employ the logistic regression technique to conduct my statistical analysis.

I use the SPSS statistical software to run the logistic regression. SPSS, or Statistical Package for the Social Sciences, is a widely used statistical software that helps the researcher to undertake statistical analysis using the computer. Among other techniques, SPSS enables a researcher to use the logistic regression technique for statistical analysis.

Models

I used various model specifications, partly because data was not available for all the ten independent variables for all the 131 countries in the sample. The model with the maximum number of independent variables is given below and is designated as the full model. This model excludes the Business Group Lobbying and Ideology of Government variables since inclusion of these variables would reduce the sample size to the point where it would violate the assumptions of logistic regression.

Apart from running the full model, I also used simple models with only one explanatory variable. Finally, I used various reduced models containing various combinations of the explanatory variables. All the simple and reduced models contained the two control variables.

Except for the two dummy variables—Technical Assistance by WTO and Technical Assistance by Other IOs, which enter as either 1 or 0 for each country—all the remaining variables enter all the models as regular numerical values.

The Full Model

$$\begin{aligned} \textit{Policy Action}_i = {} & \beta_0 + \beta_1 \textit{ Technical Assistance by WTO}_i + \\ & \beta_2 \textit{ Technical Assistance by Other IOs}_i + \\ & \beta_3 \textit{ Economic Internationalization}_i + \\ & \beta_4 \textit{ Bureaucratic Efficiency}_i + \\ & \beta_5 \textit{ Level of Democracy}_i + \\ & \beta_6 \textit{ Veto Points}_i + \beta_7 \textit{ Political Stability}_i + \\ & \beta_8 \textit{ Level of Economic Development}_i + e_i \end{aligned}$$

Results and Findings

Table 2 presents the simple estimates as well as the results for the full model. Table 3 contains the results for reduced models that have various combinations of external and domestic variables. The detailed SPSS output for all the logistic regressions are presented in Appendix C.

In table 2, the model underlying the simple estimate for each explanatory variable contains only that variable and the two control variables. For the reason of data sufficiency mentioned in the previous section, the full model in table 2 does not include the two explanatory variables, Business Group Lobbying and Ideology of Government. Table 3 reports the results for reduced models, with model 1 consisting of only domestic variables, models 2 and 3 containing all the domestic variables and one international variable each, and model 4 including only international variables.

Among the two external variables, only the Technical Assistance by Other IOs is both positive and statistically significant in both tables 2 and 3. The Technical Assistance by WTO takes the opposite sign and is not statistically significant. So, even though the WTO undertook various technical assistance programs to address the institutional deficiency in competition policy in developing countries, it was the technical assistance and capacity-building activities of the other IOs that proved decisive in influencing the domestic competition policy actions in developing countries during this time period. Even though the variable is not statistically significant, the negative sign taken by the Technical Assistance by WTO reflects the fact that the seminars and courses offered by the WTO were attended by many countries that did not undertake any domestic competition policy measures during this period.

When compared with the positive and significant result observed on the Technical Assistance by Other IOs variable, the insignificant WTO variable points to the fact that the nature of technical assistance matters for its effectiveness. Prior research shows that there exist qualitative differences between the various kinds of technical assistance programs and their outcomes (Evenett 2006, Nicholson, Sokol, and Stiegert 2006). For example, having an international expert spend a few months in a developing country and help local officials design the draft of a competition law is much more effective than having developing country officials attend regional or international seminars and courses on competition policy. The other IOs engaged more in the former and hence, the results display a significant positive impact of their actions on the competition policy process in developing countries. In contrast, the technical assistance activities of the WTO primarily consisted of seminars, workshops, and courses.

Moreover, when it comes to conducting large and sustained technical assistance programs, the WTO is a relatively young organization because it remained just a treaty (GATT) for too long and only become an institutional body in 1995. On the contrary, the other IOs have a long history of undertaking technical assistance activities in various policy areas and have utilized that experience and expertise in imparting technical assistance and undertaking capacity-building measures in developing countries in the area of competition policy. When understood in this sense, the results should not be surprising: even though the WTO attempted to effect changes in the domestic competition regimes of developing countries, in hindsight, the task was too demanding for such a young and inexperienced organization.

Apart from H_2 (Technical Assistance by Other IOs), the results indicate directional support for hypotheses H_3 (Economic Internationalization), H_5 (Business Group Lobbying), H_6 (Level of Democracy), and H_8 (Ideology of Government), with statistical significance only for H_6. Except for reduced model 1, which contains only domestic variables, all the other models return chi-square values that are statistically significant, denoting that the set of independent variables does share a strong relationship with the dependent variable. More importantly, the additional inference that can be made is that domestic factors by themselves do not explain the policy actions and that the inclusion of either one or both of the two international variables—Technical Assistance by WTO and Technical Assistance by Other IOs—is crucial to explaining the variation in the dependent variable.

Though statistically insignificant, Economic Internationalization takes a positive sign meaning that countries that were more open to the global economy were the ones

that undertook domestic competition policy actions. This result is intuitive since the concern to be efficient and to be globally competitive would be higher for a more open economy, and the results lend support to this understanding.

Bureaucratic Efficiency is found to be statistically insignificant, and for the most part, negatively associated with the competition policy process, pointing to the possibility that the external technical assistance activities of IOs might have compensated, in part, for the lack of bureaucratic quality in developing countries. This understanding is, however, qualified by the fact that the results associated with this variable are statistically insignificant throughout.

Because of limited data, Business Group Lobbying could be included only in simple estimation, where it is statistically insignificant but takes the expected negative sign. The result indicates that firms view a competition law as anti-business friendly and would lobby against it.

The only domestic variable that is both significant and takes the expected positive sign is the Level of Democracy. The significance of the degree of democracy for undertaking competition policy measures can be understood as the liberal character of a democratic polity spilling into the economic realm, where a competition law is expected to keep markets open, increase competition levels, and impart a liberal nature to the domestic economic system. Specifically, the positive link between democracy and a competition law can be explained through the following two channels of influence: first, a democracy represents a political system where parties vie with one another for electoral votes. Therefore, this political system is similar to that of the marketplace where firms compete among them to attract buyers. Therefore, it is quite natural that countries that

possess a competitive political system should choose to have a competitive economic system.

Second, the higher that a country is on the scale of democracy the greater is the possibility that this country is characterized by the presence of strong political institutions, especially the institution of private property rights. The establishment and maintenance of the institution of private property rights would be virtually impossible without the presence of well laid-out rules and regulations concerning the right to hold private property, and more importantly, punishments for any violations of others' rights to hold private property. This is precisely the structure that a competition law hopes to achieve in the economic sphere: allow firms to enter various markets and hold market shares but carry with it the caveat that any abuse of this position to hurt other firms and/or consumers would be met with severe punishments by the state. Therefore, one can understand why a democratic country would be more likely to institute a competition law that clearly specifies the rules governing market competition and the enjoyment of market shares.

Except in the simple estimate, Veto Points takes the expected negative sign, though it is statistically insignificant all-through. The negative sign signifies that, like every other policy, competition policy is also affected by the number of officials that need to approve a policy change. With regard to the connection between ideology and competition policy, the results on the Ideology of Government—though statistically insignificant—indicate that right-leaning governments that wished to promote free markets have carried out more competition-related legislation in the case of developing countries.

Table 2: Logit Results for Simple and Full Models

Variable	Hypothesis	Simple Estimates	Full Model Estimates
WTO Technical Assistance	H_1	-0.483 (0.725)	-0.517 (0.913)
Other IO Technical Assistance	H_2	1.964*** (0.545)	1.694** (0.650)
Economic Internationalization	H_3, H_{3A}	0.018 (0.010)	0.018 (0.012)
Bureaucratic Efficiency	H_4	-0.024 (0.615)	-0.069 (0.851)
Business Group Lobbying	H_5	-2.187 (1.576)	
Level of Democracy	H_6	0.188* (0.093)	0.260 (0.142)
Veto Points	H_7	1.449 (1.310)	-2.249 (2.241)
Ideology of Government	H_8, H_{8A}	0.014 (0.414)	
Political Stability			0.281 (0.598)
Level of Economic Development			0.694 (0.526)
Constant			-7.350 (5.396)
-2LL			77.237
Chi-square (χ^2)			23.623**
N			109

Note: Figures in parentheses are the standard errors; *p< .05 level, **p< .01 level, ***p< .001 level

Table 3: Logit Results for Reduced Models

Variable	Hypothesis	1	2	3	4
WTO Technical Assistance	H_1		-0.342 (0.894)		-0.622 (0.766)
Other IO Technical Assistance	H_2			1.659* (0.642)	1.990*** (0.548)
Economic Internationalization	H_3, H_{3A}	0.012 (0.019)	0.016 (0.011)	0.018 (0.012)	
Bureaucratic Efficiency	H_4	3.650 (1.950)	-0.042 (0.822)	-0.037 (0.832)	
Business Group Lobbying	H_5				
Level of Democracy	H_6	-0.052 (0.349)	0.323* (0.139)	0.261 (0.142)	
Veto Points	H_7	-0.646 (5.630)	-2.552 (2.134)	-2.276 (2.231)	
Ideology of Government	H_8, H_{8A}	0.632 (0.669)			
Political Stability		-0.787 (1.123)	0.150 (0.570)	0.250 (0.584)	0.378 (0.311)
Level of Economic Development		0.218 (0.933)	0.963 (0.509)	0.670 (0.520)	0.906* (0.401)
Constant		0.675 (10.287)	-9.069 (5.224)	-7.571 (5.343)	-8.248 (3.792)
-2LL		29.875	84.242	77.577	105.169
Chi-square (χ^2)		10.526	16.617*	23.282**	35.992***
N		67	109	109	127

Note: Figures in parentheses are the standard errors; *p< .05 level, **p< .01 level, ***p< .001 level

CHAPTER III

Global Competition Policy Developments: International Organizations as Agents of Change

The analysis and results from the previous two chapters inform us of the impact of international organizations in effecting domestic competition policy changes in developing countries during the period 1996 to July 2007. In the present chapter, I examine this relationship within the context of existing international relations literature that is specific to international organizations and situate my findings within this particular class of literature. Specifically, I focus on how international organizations react to challenges to their attempts to enhance their policy mandates, as in this case where the attempt by the WTO to include competition policy as part of its policy mandate was met with a stiff challenge by developing countries.

Prior Literature

Research on international organizations (IOs) has a long tradition in the discipline of international relations, and scholars have variously argued about the reasons for the creation of IOs, their design and maintenance, and their autonomy.[51] Realist arguments typically characterize IOs as products of the strategic interests of powerful states, with their design and content being dictated by these same interests (Grieco 1988, Mearsheimer 1994). Neoliberal institutionalism views IOs as institutionalized forms of regimes that facilitate cooperation and agreement among states on global issues (Axelrod

[51] See Keohane (1988), Koremenos, Lipson, and Snidal (2001), and Martin and Simmons (1998) for detailed accounts. For critiques to the rational design of international institutions, see Wendt (2001) and Duffield (2003, 2007).

1984, Keohane 1983, 1984, Keohane and Martin 1995, Krasner 1983). Constructivists emphasize the ideational angle and the role of norms to the creation and maintenance of IOs (Finnemore and Sikkink 1998, Kratochwil and Ruggie 1986, Wendt 2001). Therefore, there exist well-developed ontological and epistemological lenses through which the creation and design of IOs have been understood and explained.

However, as rightly pointed out by Barnett and Coleman (2005), scholarship on the issue of change in the context of IOs is relatively sparse.[52] Even scarcer is empirical work that demonstrates how IOs engineer change, which is particularly relevant to this dissertation. As was demonstrated in the preceding chapters, the WTO and the Other IOs engaged with developing countries with the objective of either installing new competition laws or improving the competition regimes in the developing countries. Therefore, through a discussion of the activities of these IOs in this policy area, I contribute to the empirical literature in the international relations discipline that focuses on the role of IOs as agents of change.

The Model of Strategic Choice

In their work, Barnett and Coleman construct a model of strategic choice in which IOs are understood as strategic actors who respond to environmental pressures or challenges,

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[52] Some of the exceptions noted by Barnett and Coleman (2005) include Barnett, M. and M. Finnemore (2004) *Rules for the World: International Organizations in Global Politics*. Ithaca: Cornell University Press; Cox, R. and H. Jacobson (1974) "The Framework for Inquiry." In *Anatomy of Influence: Decision Making in International Organization*, edited by Robert Cox and Harold Jacobson. New Haven: Yale University Press; Farley, L. (1981) *Change Processes in International Organizations*. Cambridge: Schenkman Publishing Company; Hage, J. (1999) "Organizational Innovation and Organizational Change." *Annual Review of Sociology* 25: 597–622; Haas, E. (1964) *Beyond the Nation-State: Functionalism and International Organization*. Stanford: Stanford University Press; Kapur, D. (2000) *Processes of Change in International Organizations*. Weatherhead Center Paper Working Series, No. 00-02, Harvard University. http://www.wcfia.harvard.edu/sites/default/files/164__Helsinki3.wcfia.pdf.

and hence, become agents of change. Therefore, in this model, IOs are not just assumed to be autonomous but given *agency*. The model combines this constructivist understanding of IOs with a realist approach by attributing a *strategic* dimension to the actions of IOs in effecting change.[53]

The fundamental idea that underpins the model developed by Barnett and Coleman is that "IOs, concerned about their professionally defined goals, survival, and autonomy, can adapt to the environment or have the environment adapt to them" (Barnett and Coleman 2005: 602). The authors define the "environment" as "all events, processes, and structures in the world that surround the IO and affect its activities" (Barnett and Coleman 2005: 598). They note that though the dominant view concerning the environment is that it is dictated by the actions of "states, either singularly powerful states, coalitions of states, or competing blocs and alliances," their model not only incorporates "the centrality of states, but emphasizes how states...matter to the extent that they affect the IO's *mandate*, resource base, and security" (Barnett and Coleman 2005: 598; emphasis added). As far as my dissertation is concerned, the interest is to note the impact of the actions of states on the IO's mandate since it was the actions of developing countries that impacted the WTO's attempt to further widen its policy mandate by including competition policy.

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[53] An early and noted work in international relations that uses a game-theoretic analytical framework to address strategy and the role of bargaining in conflictual situations is Schelling, T. C. (1963) *The Strategy of Conflict*. New York: Oxford University Press. Schelling (1963: 5) treats "conflict behavior as a bargaining process" and uses the term "strategy" to mean the "exploitation of potential force" rather than "the efficient application of force" in situations where adversaries have "a common interest in reaching outcomes that are mutually advantageous."

At the core of the model advanced by Barnett and Coleman is a set of six strategies or responses that IOs can employ when they are faced with international pressures or challenges: acquiescence, compromise, avoidance, defiance, manipulation, and strategic social construction. Of these, the first four are instances where the IO *adapts to the environment* and the last two are examples of the IO *attempting to change the environment* to suit its instrumental and normative goals. The choice of the particular strategy by an IO will be "dependent on its level of organizational security and the congruence between the organizational culture and the content of these pressures" (Barnett and Coleman 2005: 600). The authors apply their model to the case of the International Criminal Police Organization (ICPO), or Interpol, and discuss how this IO constantly adapted internally to environmental pressures by choosing from the first four strategies. Therefore, Barnett and Coleman focused only on the case where the IO adapts from within and left out an examination of IOs attempting to change the external environment that created the challenge.

In the present chapter, I focus on the aforementioned unexplored aspect in the model of strategic choice: the situation where, instead of adapting from within, IOs strategically attempt to change the environment in which they operate so that they remain relevant and critical in their mandated policy area. I adopt the understanding contained in the model that IOs are agents of change that react to environmental pressures by changing the environment and not necessarily themselves. Therefore, I treat IOs as possessing agency, and also acknowledge their strategic imperatives. With the understanding of IOs as strategic actors that are capable of functioning as agents of change, I apply the model

of strategic choice to the global developments in the area of competition policy as discussed and examined in the previous chapters.

Together with filling this gap in the empirical application of the model of strategic choice, in this chapter I also examine how *successful* an IO would be when it attempts to change the environment rather than adapt from within when faced with a challenge. For, changing the external environment which consists of multiple actors with various interests and preferences is arguably more difficult than changing from within. I use insights from the results of the statistical analysis in chapter 2 to conduct this discussion.

The WTO and the Model of Strategic Choice

As explained in chapter 1, right from the beginning, developing countries were opposed to the competition policy proposal at the WTO (Singh 2002). As Singh (2003: 5) observed: "it is perfectly legitimate and reasonable for developing countries to argue that they do not have sufficient experience with these laws to be able to participate meaningfully in a treaty concerning multilateral competition policy." The group of developing countries argued that the WTO competition policy agenda should not be rushed through and managed to put on hold any negotiations on competition policy in the WTO. The WGTCP was suspended in 2004 and it was further decided that competition policy would not be included in the Doha Round of trade negotiations that began in 2001.

These events at the WTO were not conducive to the immediate formulation of a multilateral understanding on competition policy, a development that was desired by the WTO to enhance its policy mandate. The institutional weakness of developing and transition countries in this policy area was too strong a reason for the WTO to ignore.

Given this scenario, and in the language of the model of strategic choice, the WTO had two options: either accept the pressure from developing countries and adapt from within, which included permanently shelving the idea of bringing competition policy under the WTO framework. Or, change the external environment that generated the challenge so that conditions are improved in developing countries for the inclusion of competition policy in the WTO. The specific condition that needed to be changed was the lack of technical expertise and the absence of institutional capacity in competition policy among the vast majority of developing countries since this was the reason for the opposition.

In the present chapter, I argue that the evidence from the analysis in chapter 2 point to an attempt by the WTO to change the competition policy environment in developing countries by offering technical assistance and training such that developing countries would have the necessary technical and institutional capacity to take part in any future multilateral arrangement over competition policy. Therefore, the strategic initiative on the part of the WTO was to serve as an "agent of change" that would effectively place developing countries on a path that would facilitate the inclusion of competition policy within the WTO sometime in the future. Once developing countries acquired some level of experience with competition laws—which first begins with equipping local officials with the necessary expertise in national competition legislation—then it would be easier for the WTO to hold discussions among all member-states over competition policy.

The WTO as an "Agent of Change"

The basic proposition of the model of strategic choice is that "IOs want to further their mandate as defined by their professional training and expert knowledge, protect their

autonomy, and minimize organizational insecurity" (Barnett and Coleman 2005: 595). In the current study, the challenge or opposition by developing countries was to the efforts by the WTO to initiate discussions on competition policy and to bring this policy area within its framework. In the language of the model, this constitutes a challenge to the WTO as an international organization: competition policy is a key policy measure that shares a complementary relationship with trade policy and was one of the newest policy measures that the WTO had identified for inclusion under its framework with the objective of furthering its overall mandate.[54] Therefore, the opposition by developing countries posed a serious challenge to the ability of the WTO to expand its mandate to include policies like competition policy that are complementary to trade policy. This challenge was indicative of the environment in which the WTO operated and the pressures it had to face to augment its policy mandate and operational relevance.

Table 4: Choice of Strategy Based on Cultural Incongruity and Organizational Security

Cultural Incongruity	**Organizational Security**	
	Low	***High***
Low	(1) Acquiescence	(1) Compromise
High	(1) Avoidance, (2) Manipulation, or (3) Strategic Social Construction	(1) Defiance, (2) Manipulation, or (3) Strategic Social Construction

As per the model, the choice of the particular strategy—from among the six—would depend on the level of organizational security and the threat from the challenge to

[54] http://www.wto.org/english/tratop_e/comp_e/comp_e.htm

the IO's identity, interests, and principles. Quite importantly, the model posits that *regardless of the level of organizational security*, an IO would attempt to change the environment *only* if the external challenge is high with respect to the incongruity of this threat *vis-à-vis* the IO's principles and policy interests (see table 4). If this incongruity is low, the IO would tend more toward adapting from within since the damage to its identity would be minimal in relation to the benefits that would accrue from compliance. For the WTO, the opposition by developing countries to the competition policy proposal was highly incongruous with the WTO's identity as an IO that was charged with the task of promoting world trade. Since this task consisted of ensuring liberal trade policies and also required multilateral coordination over complementary national policies like competition policy, the external challenge constituted a high level of incongruity with the WTO's interests and principles. Therefore, I argue that, sensing this threat to its ability to expand its policy mandate, the best course of action for the WTO was to attempt to change the environment.

The two strategies that formed part of the model that attempted to change the environment were *manipulation* and *strategic social construction*. Manipulation consisted of "attempting to 'turn the tables' on clients or competitors through cooptation, lobbying, and influencing formal reviews of organizational practice" (Barnett and Coleman 2005: 602). Strategic social construction involved "the active effort by the IO to change the normative or cultural environment so that it becomes consistent with the values and goals of the organization" (Barnett and Coleman 2005: 602). Of the two, the WTO adopted the second strategy which consisted of competition advocacy measures and technical assistance programs that aimed at inculcating among developing countries a

culture of competition, an appreciation for competition laws and their administration, and most importantly, the ability and the willingness in the future to participate in a multilateral competition policy arrangement. This understanding is underpinned by the WTO's expectations from its competition policy seminars that were "aimed at promoting awareness of the role and significance of the interaction between trade and competition policy at the domestic and international levels, enhancing participants' awareness of key concepts, principles and practices in this area, and exchanging information and sharing experiences on the implications of different bilateral, regional and multilateral disciplines."[55] Therefore, as part of strategic social construction, the WTO attempted to improve the institutional capacity and competition culture in competition policy among developing countries by offering technical assistance and capacity-building activities in competition legislation. This attempt by the WTO is in line with the definition of strategic social construction given by Barnett and Coleman (2005) where the IO seeks to change the cultural environment so that values and goals are in alignment between the IO and the constituents of its external environment. In the case of competition policy and the opposition from developing countries, such an outcome is exactly what the WTO attempted to achieve.

Following the concerns raised by developing countries over the competition policy proposal and their lack of institutional capacity, "the WTO Secretariat undertook a comprehensive annual programme of technical co-operation activities to assist developing and least-developed countries in participating effectively in the WTO's work

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[55] http://www.wto.org/english/tratop_e/comp_e/ta_e.htm

in the area of trade and competition policy."[56] The 2001 Doha Ministerial Declaration of the WTO emphasized the importance of increased support for providing technical assistance and capacity building in developing countries to enable these countries to better understand the interaction between trade and competition policy so that "developing and least-developed countries may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development" (WTO 2003: 1).

Most of the WTO's technical assistance activities consisted of workshops and courses on competition policy. These meetings were held either in Geneva, where the WTO is headquartered, or in regional and national locations. A majority of these activities were undertaken during the period prior to 2004. With the exception of two symposia held in Geneva in 2002 and 2003, the rest of the workshops were held in Asia, Africa, and Central and South America. The regional workshops and courses attracted attendance from the representatives and officials of dozens of developing and least-developing countries. With the suspension of the WGTCP in 2004, the technical assistance activities of the WTO were limited to responding to requests for technical assistance by member-states and observer-countries.

The national and regional workshops typically ran for two to three days (WTO 2003). For the most part, the first day was assigned to explaining the contents of competition policy, discussing the relevance of competition policy to developing countries, and presenting any competition-related developments in the region or country

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[56] Ibid.

where the workshop was organized. The remaining days were spent on discussions over more specific issues like the Doha mandate concerning trade and competition policy and in deliberating over how a multilateral competition policy framework at the WTO would impact developing countries.

The workshops were characterized by an interactive format where formal presentations by competition policy experts were followed by question-and-answer and general discussion sessions. To facilitate greater exchange of ideas and resolution of specific concerns among the participants, discussions were also facilitated in small groups that were typically formed during the two "breakout sessions" at each workshop. For all the workshops and symposia, the WTO enlisted the services of competition policy experts from across the world. To better understand a particular region's competition policy issues, around 50 percent of the speakers at regional workshops were from that region. Even though the WTO undertook the technical assistance and capacity building activities in all earnestness, its initial work was hampered by the lack of staff strength in this policy area at the Secretariat. However, the addition of extra staff in mid-2002 enabled it to increase both the level and scope of its technical assistance activities in later years.

Additionally, the WGTCP provided a forum for developing and developed countries to exchange communications related to the status of national competition laws, activities undertaken in this legislative area in their respective countries, the obstacles faced, and most importantly for developing countries, the need for further discussions on the interaction between trade and competition policy. On the last of these topics, the WGTCP produced numerous documents that dealt at length with cross-border mergers

and acquisitions and the issues that affected the formulation of a multilateral competition policy framework.

Was the WTO a "Successful" Agent of Change?

The preceding account demonstrates how the WTO engaged with developing countries to improve the institutional capacity of these countries in the area of competition policy. The concomitant and larger aim was to impart and cement a 'competition culture' in these countries that would facilitate the establishment of a multilateral competition policy arrangement sometime in the future. Though competition policy is still outside the purview of the WTO, the actions of the WTO provide strong evidence that when faced with the opposition from developing countries, it attempted to change the competition policy scenario in these countries rather than make changes within itself. This response by the WTO reflects the idea contained in the model of strategic choice where IOs—when faced with a challenge or pressure—attempt to change the environment surrounding that particular challenge. To explain in terms of the model, the WTO preferred this path to a strategy of compliance because the opposition by developing countries to the competition policy proposal represented a high level of incongruity with its larger identity and policy interests. For the WTO, attempting to make the external environment adapt to its policy proposal through strategic social construction constituted a better strategic approach than undertaking internal changes that might not have helped its role as the world trade body.

However, "attempting" to change the environment to meet a challenge explains only one part of the role of IOs as "agents of change." The equally important part is their

role in actually engineering the desired change, which requires a closer examination of the outcomes. So, the significant question is whether the WTO was "successful" in changing the competition policy scenario in developing countries that are members and/or observers of the WTO. However, as the results of the analysis from chapter 2 indicate, the WTO's technical assistance activities were found to have a statistically insignificant effect on the domestic competition policy actions taken in developing countries. Therefore, it can be safely concluded that even though the WTO attempted to change the environment that posed the challenge, its activities were unsuccessful.

Nonetheless, the overall results of the analysis in chapter 2 indicate that the external environment can be changed and that IOs can be successful if there are other IOs that can work in concert toward this objective. As the results indicate, the most crucial variable that influenced developing countries to undertake the numerous competition policy actions was the technical assistance and capacity-building measures provided by the other IOs. So, the answer to the question of whether IOs would attempt to change the environment when posed with a challenge is a clear "yes," as can be gleaned from the activities of the WTO. However, whether an IO would be successful in this attempt can not be answered in the affirmative since the WTO did not succeed by itself in this task: the results point toward the overwhelming significance of the activities undertaken by the other IOs to help developing countries tackle their institutional deficiencies in the area of competition policy.

Conclusion

The finding mentioned at the end of the previous section is an interesting one for research on international organizations. The fact that IOs constantly adapt when faced with challenges is well understood. But the manner in which they adapt needs a closer analysis, which this study provides. In that respect, this study not only provides an empirical application of the "unused" part of the model of strategic choice as developed by Barnett and Coleman (2005) but also adds to that model by providing room and relevance for the concerted actions of other IOs that share a similar policy and paradigmatic disposition. That is, although the challenge was posed to the WTO, it was the actions of other IOs operating within the same normative paradigm that helped to successfully address this challenge. Therefore, the findings of my study and the discussion in this chapter provide a broader understanding of how IOs interact with their environment since this understanding incorporates elements outside of the IO that is being directly challenged. And, as Barnett and Coleman (2005: 594) rightly note, "(A)ll theories of IO contain a conceptualization of the relationship between the organization and the environment."

CHAPTER IV

Comparative Case Study: Introduction

The comparative case study is undertaken with the objective of gaining further insight into the policy processes that occurred (or not) in a few of the countries in the full sample of 131 countries. As part of the comparative case study, I focus on three countries by picking one country from each of the three groups. These case studies are thick descriptions where I attempt to understand and explain the roles played (or not) by the eight explanatory variables that were indentified during the quantitative study in chapters 1 and 2.

The quantitative analysis provided breadth to the research and was an exercise in producing a result that can be generalized across the full sample. The comparative case study is a qualitative analysis that is expected to impart greater depth to the research that was not provided by the quantitative analysis. Together with obtaining a deeper insight into the political economy of the three countries and how that played a role in their competition policy actions, the case studies will compare the results obtained from these studies with the ones from the quantitative study. I will also discuss the similarities and reconcile any differences observed between the two sets of results. In the following section, I discuss the research methodology that I adopt to undertake the case studies.

The Comparative Case Study Methodology

In terms of research methodology, the comparative case study undertaken in this dissertation is a combination of the comparative method and the case study method. This

is evident, since I undertake three individual case studies and then compare the results from these studies to provide an integrated and deeper understanding of the competition policy processes in the selected developing countries. This research methodology, where case studies form explicit parts of the comparative method, is both accepted and common (Lijphart 1971). In the following paragraphs, I briefly discuss these two methods and explain their relevance to and application in this dissertation.

The comparative method has a long history of use in most disciplines in the social sciences.[57] Valenzuela (1997) notes that even before the method received its formal status, it was implicitly used by such heavyweights as Durkheim, Gramsci, Montesquieu, Smith, Tocqueville, Weber, and others to compare and contrast the similarities and differences that they observed among political, social, and economic institutions in various settings. In modern times, it is considered to be one of the basic methods of "establishing general empirical propositions" (Lijphart 1971: 682).[58, 59] With respect to the scientific status of the comparative method, both Almond (1966) and Lasswell (1968) contend that the very fact that it is "comparative" makes this method intrinsically scientific since science involves comparisons.

Perhaps, no one exemplifies the optimism surrounding the use of the comparative method than one of its earliest and most vocal proponents, Edward Freeman (1873: 1):

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[57] For a detailed list of surveys and assessments of the comparative method in the social sciences, see Segal R. A. (2001) "In Defense of the Comparative Method." *Numen* 48: 339-373.

[58] The other methods that Lijphart mentions are the experimental, statistical, and the case study methods. Note that, with the exclusion of the experimental method, I have employed all of these methods in this dissertation.

[59] For a critical assessment of Lijphart's statement and for a discussion of some methodological problems with the comparative method, see Faure, A. M. (1994) "Some Methodological Problems in Comparative Politics." *Journal of Theoretical Politics* 6: 307-322.

"The establishment of the Comparative Method of study has been the greatest intellectual achievement of our time. It has carried light and order into whole branches of human knowledge which before were shrouded in darkness and confusion. It has brought a line of argument which reaches moral certainty into a region which before was given over to random guess-work." Almost 100 hundred years later, Lijphart (1971: 687) offers a more tempered note that is in line with reality: "The field of comparative politics has not yet achieved—and may never achieve—the goals that Freeman set for it with such optimism. But his words can remind us of the frequent utility of extending comparative analyses both geographically and historically." In other words, the comparative method has great relevance in the social sciences, though, like any other methodological approach, it has its weaknesses.

But, what exactly is the comparative method? Ragin (1994: 105) provides one of the best explanations of this methodological approach: "[C]omparative researchers examine patterns of similarities and differences across a moderate number of cases. The typical comparative study has anywhere from a handful to fifty or more cases. The number of cases is limited because one of the concerns of comparative research is to establish familiarity with each case included in a study...knowledge of cases is considered an important goal of comparative research, independent of any other goal." Ragin (1994) continues to add that the goal of comparative research is to explore diversity, interpret cultural or historical significance, and advance theory.

Therefore, the comparative method consists of examining and comparing a few carefully chosen cases for purposes of understanding diversity of outcomes that will facilitate theoretical advancement. It is thus evident that for the social scientist who

wishes to analyze only a handful of cases to understand and explain a puzzling phenomenon, the comparative method is most appealing.

However, the comparative method is not without its limitations. It is beset by the problem of a small number of observations (small-*N*) and the presence of many explanatory variables. This limitation casts a shadow over its potential to produce generalizable results. That is, "[I]t provides a weaker basis than the experimental or statistical method for evaluating hypotheses, specifically because of the many variables, small-*N* problem" (Collier 1991: 10). This is quite ironical because the very reason why most researchers employ this method—the availability of very few cases—is also cited as its weakness.

Despite having more explanatory variables than cases, a comparative method permits systematic comparison that can help in the assessment of alternative explanations (Collier 1991). This strength of the comparative method is quite relevant for this dissertation since one set of alternative explanations that I already have and that can be assessed are the large-sample results from chapter 2. Hence, undertaking a comparative case study is quite appropriate and is expected to be extremely rewarding in terms of imparting clarity to the findings of my study.

For its part, the case study method has been widely used in the social and physical sciences, including in the disciplines of political science and international relations.[60] According to one of the doyens of this methodological approach, a case study is "an

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[60] For a recent discussion of the case study method and a short list of prominent works in political science that have used this technique, see Gerring, J. (2004) "What is a Case Study and What is it Good For?" *American Political Science Review* 98: 341-354. For an excellent account of case studies in international political economy, see Odell, J. S. (2001) "Case Study Methods in International Political Economy." *International Studies Perspectives* 2: 161-176.

empirical inquiry that (1) investigates a contemporary phenomenon within its real-life context; when (2) the boundaries between phenomenon and context are not clearly evident; and in which (3) multiple sources of evidence are used" (Yin 1984: 23). This is one of the most frequently cited technical definitions of a case study.

However, for methodological purposes, a case study can be defined as "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units" (Gerring 2004: 342). A unit is understood as a spatially bounded phenomenon (e.g., a nation-state) that is observed over a certain period of time. This definition of the case study approach together with its delineation of the unit of study and the time dimension fits perfectly well with the overall design of this comparative case study and the manner in which I plan to undertake these studies. That is, each of the three case studies in this part of the dissertation focuses intensively on the competition policy process in one country (that is, the spatially-bounded phenomenon) and during the years 1996 to July 2007 (that is, a certain period of time).

With regard to the exact nature of case studies and how I plan to conduct them in this dissertation, it is pertinent to discuss the broad classes of case studies that are commonly observed in the literature. Odell (2001) gives a fairly exhaustive typology of case studies that are typically found in the field of international political economy, a class of literature within international relations to which this dissertation belongs. The typology includes the descriptive case study, the preliminary illustration of a theory, the disciplined interpretive case study, the hypothesis-generating case study, the least-likely (theory-confirming) case study, the most-likely (theory-infirming) case study, and the deviant

case study. This is very similar to a classification of case studies given previously by Lijphart (1971).

Based on their structure and objectives, the case studies in this dissertation can be classified as *disciplined interpretive case studies*. The hallmark of a disciplined interpretive case study is that it "interprets or explains an event by applying a known theory to the new terrain. The more explicit and systematic the use of theoretical concepts, the more powerful the application. Although this method may not test *a theory*, the case study shows that *one or more known theories* can be extended to account for a *new event*" Odell (2001: 163; emphasis added). This is precisely the structure of the case studies in this dissertation where I explicitly and systematically use numerous variables—identified from prior literature for their theoretical (and empirical) properties—to examine whether they can account for a new event (that is, domestic competition policy action in developing countries).

The key point to note is that under this class of interpretive case studies the motivation for the study stems from an interest in the case (in this context, the competition policy actions in selected developing countries) rather than from an interest in formulating general theories (Lijphart 1971).[61] The interpretive case studies "make explicit use of established theoretical propositions. In these studies, a generalization is applied to a specific case with the aim of throwing light on the case rather than of improving the generalization in any way. Hence they are studies in "applied science""

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[61] While this might appear as an atheoretical approach, Odell (2001: 163) contends that "[T]his type of research will interest critics as well as defenders of the theories, even those who care little about the particular event. This type of case study cannot fairly be called atheoretical not its broader contributions nil."

(Lijphart 1971: 692). As mentioned in the previous paragraph, this description of interpretive case studies adequately sums up the approach adopted for the case studies in my dissertation.

I follow the same structure for each of the three country case studies. I begin each case study by discussing the recent economic history of that country. I rely on existing literature to conduct this discussion. This discussion is intended to provide the economic backdrop leading up to the competition policy processes in these countries in the 1990s. However, I wish to point out that the discussion of the economic histories of these three countries will serve to provide only a general overview and not an incisive and critical analysis of their economic histories. The presentation of the economic history of each country will be followed by a report on the current state of competition legislation in that country. The next section will explain the actual competition policy process that occurred in that country. The following section will analyze the policy process and examine the events for any causal connections between the policy outcome and the explanatory variables. In undertaking this examination, I will accord significance to variables only if they are found to be unambiguously relevant to the policy process. Finally, I compare the findings from the case study to the results from the quantitative study.

Before I conclude the present section, I pause to address the commonly cited weaknesses of both the comparative method and the case study method. Even though this was mentioned during the discussion of the comparative method earlier in this section, I take the opportunity to engage with this problem closely to highlight the fact that the weaknesses of these two methods do not, in any way, impair the quality of my findings and conclusions from the case analyses. In other words, given the design and objectives

of my case studies, these weaknesses are inconsequential. The reason for my assertion is presented in the following paragraph.

The major weaknesses of both the comparative method and the case study method stem from the small-*N* and the use of a large number of variables to analyze the few cases (Lijphart 1971). Though this may not always be the case—with some comparative studies using only a few variables—the fact remains that comparative case studies still suffer from the small-*N* problem. In particular, this can create problems in formulating theoretical propositions since the number of observed cases is very few. In this regard, it has been pointed out that the comparative method using case studies is valid for making only empirical propositions but not *general* empirical propositions (Faure 1994). That is, these techniques are not controversial when used to explain the specifics of a particular case but would be found wanting if the objective is to derive universal or general theories. In that respect, the usage of these methods in this dissertation portends no cause for methodological concerns since my objective—as explained earlier in this section—is not to obtain generalizable and universally applicable results but to flesh out the intricacies that are inherent in policy processes of this nature. In other words, the objective here is to simply examine each case for any causal connections between the dependent variable (competition policy action) and my set of explanatory variables as they pertain specifically to competition policy actions during the specified time period and in the selected countries. I, therefore, do not foresee my case analyses utilizing either the comparative method or the case study method for purposes that they are not meant or fit to serve.

I wish to conclude this section with a quotation that not only signifies recent developments in comparative case study methods but also partly reflects my motivation to incorporate the case studies in this dissertation to supplement my quantitative study. "A central theme which emerges is that the small-*N* comparativist is pulled in two directions. On the one hand, in important respects the value of quantitative and statistical approaches in addressing the substantive problems of comparative politics is more in doubt today than it was two decades ago, and the growing interest in "interpretive social science" reflects the conviction that the close, qualitative analysis of few cases is the most fruitful approach. On the other hand, innovations in the research designs and statistic techniques available for small-*N* analysis have created new opportunities for doing quantitative research with relatively few cases. *The lesson drawn from these contrasting trends is that the most fruitful approach to the field of comparative politics is eclectic, one in which scholars are willing and able to build upon both sets of developments*" (Collier 1991: 8; emphasis added). I believe that the overall research methodology that I have adopted in this dissertation, and especially in the case studies that follow, lend justice to this observation.

Having engaged in a discussion of the methodology employed in this part of the dissertation and the objectives of this exercise, I now proceed to explain the process by which I selected the three countries for the comparative case study. This selection was undertaken in a systematic and methodical manner and in line with the overall structure and design of this dissertation.

Selecting Countries for Comparative Case Studies

In qualitative research, the selection of cases for comparative case studies is done either by selecting on the independent variable(s) or on the dependent variable (King, Keohane, and Verba (1994)[62]. Moreover, the selection of cases for qualitative research "must be done in an *intentional* fashion, consistent with our research objectives and strategy (emphasis in original)" (King, Keohane, and Verba: 139). As far as my dissertation is concerned, I classify the developing countries in my sample into three groups based on the three categorical forms that the dependent variable (domestic competition policy action) takes. So, within a particular group there is no variance in the dependent variable. The objective is to pick one country from each of the three groups for conducting focused comparative case studies. Hence, I pick one country from each of the three groups by selecting on the independent variables, which is made up of eight explanatory variables and two control variables.

However, under the strategy of selecting on the independent variable(s), there exist two different selection methods: the *most similar systems* method and the *most different systems* method. The former picks countries based on the differences in the explanatory variable(s), after ensuring that the selected countries are similar with respect to their control variables. Contrary to the former, the latter picks countries based on how different the *full* set of independent variables are. The former is more appropriate for this dissertation and is the research design recommended by King, Keohane, and Verba

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[62] Selecting on the independent variable(s) is the less controversial and the more recommended technique in the social sciences.

(1994). Hence, I employed the *most similar systems* method. Moreover, the *most different systems* method is primarily used for disproving a hypothesis, which is not the stated objective of this dissertation or of the comparative case studies.

Since my dissertation had undertaken a pilot study of competition policy developments in *India*, I decided to retain that country as the choice from Group 1. To choose from the other two groups, I resorted to the aforementioned *most similar systems* method. However, a mechanical application of this method to choose the two countries may not be feasible for this dissertation because of problems with the availability of secondary information. Moreover, I modified this technique to ensure that the countries chosen represented—on average—the characteristics of that particular group. Hence, I identified ten countries each from Groups 2 and 3 that were very similar with respect to their control variables to India and were adequately representative of their respective groups. The final selection of one country from each group was made after an initial data search to ensure that sufficient secondary evidence and information was publicly available to conduct in-depth case studies. A detailed and more technical explanation of the selection process is given in appendix B.

The ten countries identified from Group 2 were Gabon, China, Malaysia, Trinidad and Tobago, the United Arab Emirates, Uruguay, Botswana, Ghana, and the Dominican Republic. From these ten countries, I chose *China* to conduct the case study since a preliminary search revealed that sufficient documents—books, articles, and newspaper reports—exist to undertake an incisive analysis of the competition policy process in this country.

The ten countries identified from Group 3 were Libya, Iran, Qatar, Oman, the Philippines, Kuwait, Bahamas, Brunei, Saint Lucia, and Saint Kitts and Nevis. I chose *the Philippines* due to the availability of data and information to undertake the case study.

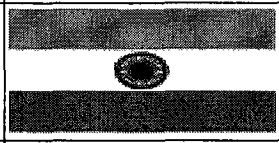
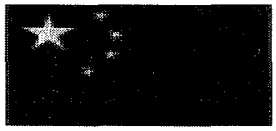
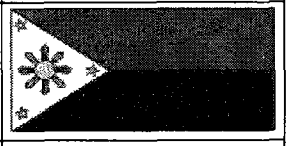
Description of the Case Study Countries

Before embarking on the detailed case analyses, I provide a brief description of the three countries and how they compare against each other and the rest of the countries in the sample with respect to the eight explanatory variables. Table 5 summarizes information regarding the geography, political structures, demographics, and economy of each of the three countries.

A quick look at the statistics in table 5 reveals that compared to the Philippines, India and China are two large countries in terms of population, geographical area, and size of the economy. However, with respect to the structure of government, there exist some similarities between India and the Philippines, with China being the odd one in this regard. On social statistics like life expectancy and literacy, China and the Philippines report numbers that approximate to each other.

Therefore, in terms of the general country characteristics, there exist enough similarities and differences among these three countries to undertake a comparative case analysis of their domestic competition policy actions (even though the three countries were chosen not based on country characteristics but on the values of the explanatory variables through a systematic process as explained in Appendix B).

Table 5: Characteristics of the Case Study Countries

	INDIA	CHINA	THE PHILIPPINES
			
Official Name	Republic of India	People's Republic of China	Republic of the Philippines
Geography			
Geographical Area	3,287,590 sq. km	9,596,960 sq. km	300000 sq. km
People			
Population	1,166,079,217	1,338,612,968	97,976,603
Median Age	25.3 years	34.1 years	22.5
Life Expectancy	68.89 years	73.47 years	71.09
Literacy	61%	90.9%	92.6%
Education Expenditure	3.2% of GDP	1.9% of GDP	2.5 % of GDP
Government			
Government Type	Federal Republic	Communist State	Republic
Chief of State	President	President	President
Executive Head of Government	Prime Minister	Premier	President
Legislature	Bicameral Parliament	Unicameral Congress	Bicameral Congress
Judiciary	Supreme Court	Supreme People's Court	Supreme Court
Economy			
GDP (PPP)	US$ 3.319 trillion	US$ 7.8 trillion	US$ 327.2 billion
GDP per capita (PPP)	US$ 2,900	US$ 6,100	US$ 3400
Unemployment	6.8%	4% (Urban)	7.4%
Income Inequality (GINI Index)	36.8	47	45.8
Foreign Exchange Reserves	US$ 250 billion	US$ 2.033 trillion	US$ 36.15 billion
Stock of FDI	US$ 142.9 billion	US$ 758.9 billion	US$ 20.78 billion
Military			
Military Expenditure	2.5% of GDP	4.3% of GDP	0.9% of GDP

Source: The CIA World Factbook 2008

Scatter plots for each of the explanatory variables showing the values taken by India, China, and the Philippines relative to each other for each variable are presented in figure 5. In each scatter plot, the horizontal X-axis measures the values of the explanatory variable while the vertical Y-axis measures the values of the dependent variable.[63] In my study, the dependent variable is categorical, and hence, the vertical axis reflects the classification of each of the three countries into each of the three groups. Even though the two technical assistance variables are binary variables, the scatter plots for these are also given in figure 5 to indicate whether or not these three countries received technical assistance from international organizations. As the two technical assistance scatter plots indicate, all the three countries received technical assistance for competition policy from the WTO and the other international organizations.

For the variable Economic Internationalization, I find that all the three countries have very dispersed values, with China and India having values closer to each other. The Philippines, however, has a very high economic internationalization score. China and India have large domestic economies and hence, their external sectors tend to be smaller percentages of their total economies. Since the Philippines has a relatively smaller economy, the share of its external economy in its total economy shows a much larger figure than that of China and India. Between China and India, the former's economic internationalization score is twice that of the latter, which also reflects China's overall share in world trade. With regard to Bureaucratic Efficiency, I find that the three countries have similar scores, with the Philippines leading the pack and India bringing up

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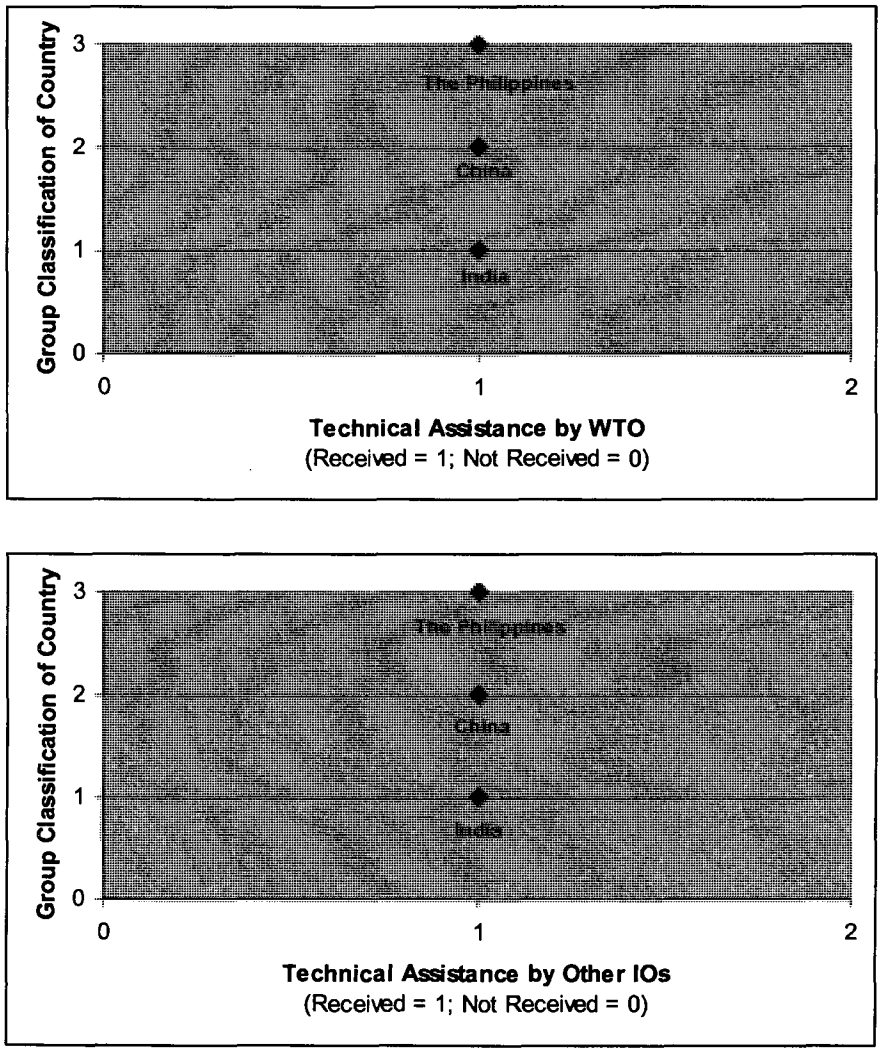
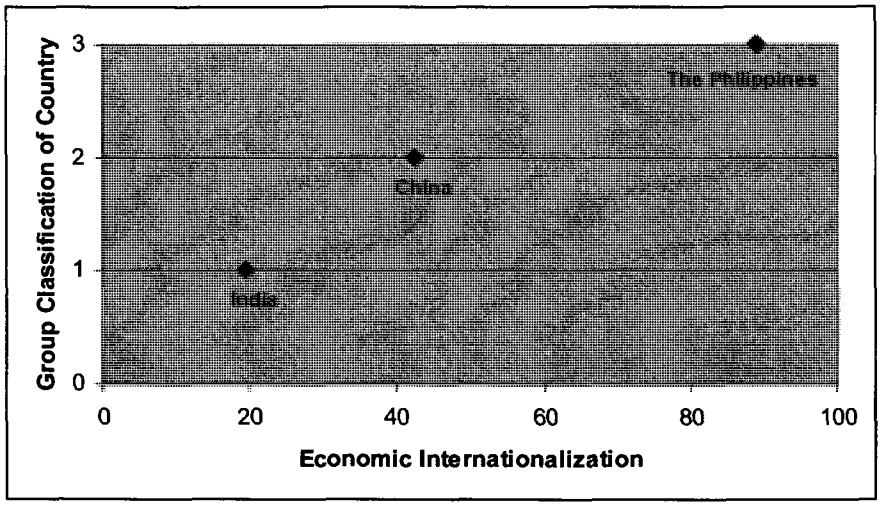
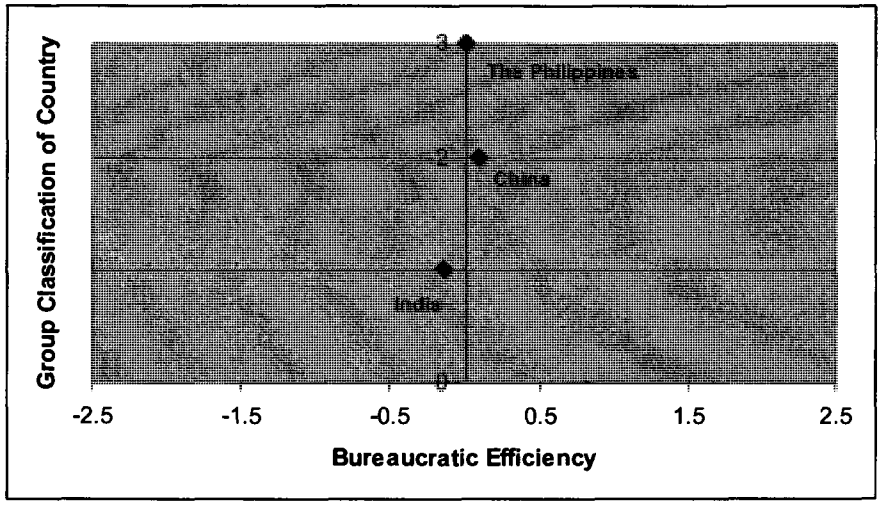
[63] In constructing the scatter diagrams, I follow the standard procedure of measuring the independent (explanatory) variable on the horizontal X-axis and the dependent variable on the vertical Y-axis.

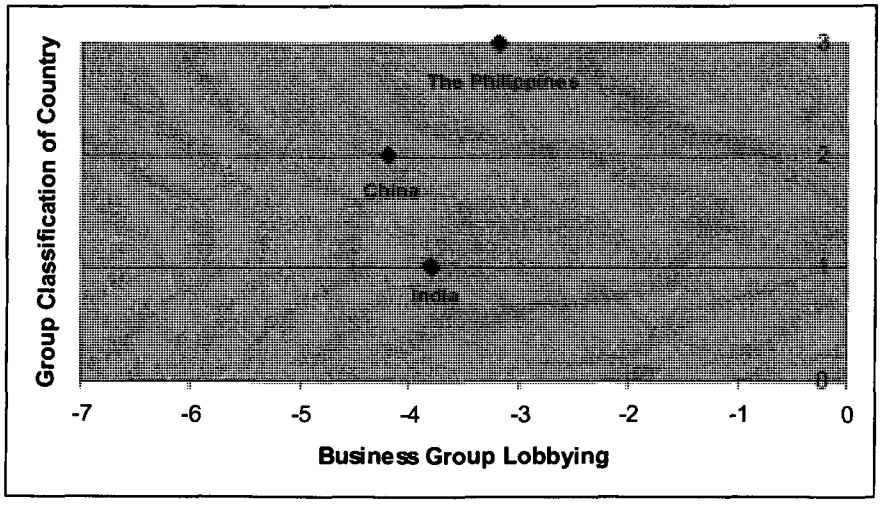
the rear. This observation is interesting since the policy outcomes in these countries run counter to the hypothesis for this variable, with India enacting a competition law while the Philippines has not.

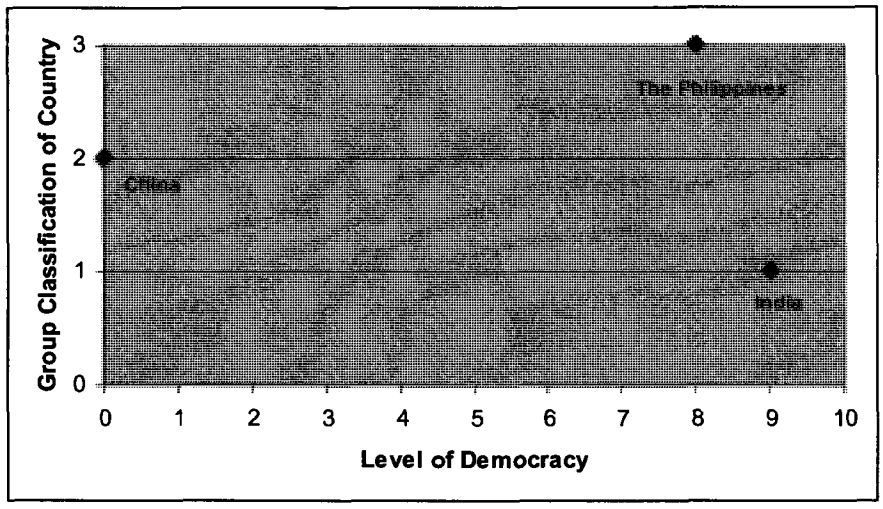
Figure 5: Scatter Plots for the Three Case Study Countries

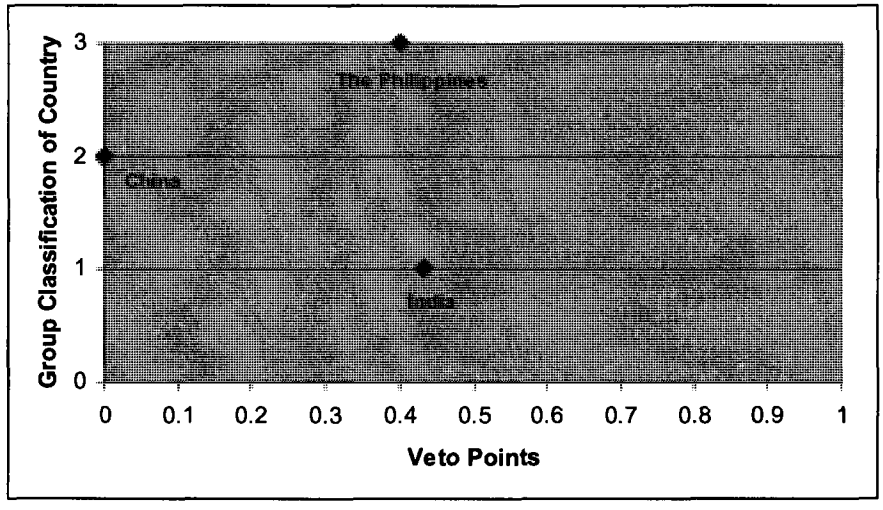


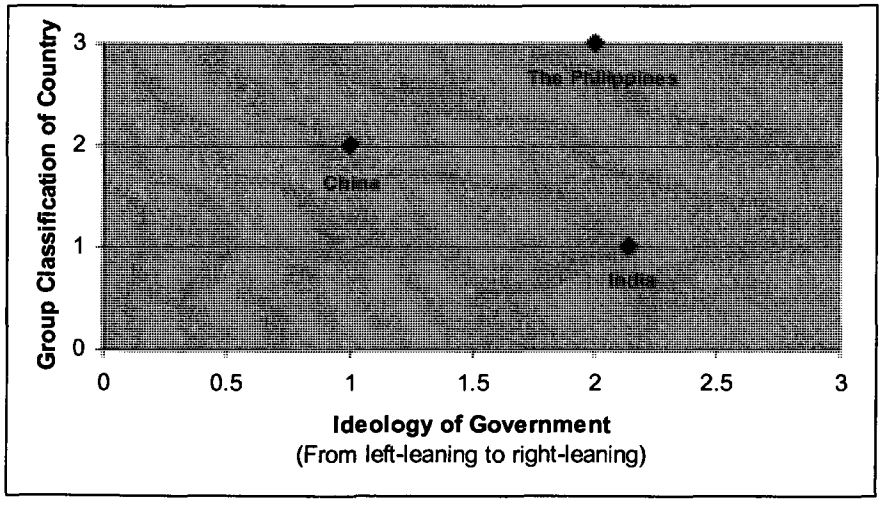

Group Classification of Country
3
2
1
0
The Philippines
China
India
0
20
40
60
80
100
Economic Internationalization


Group Classification of Country
3
2
1
0
The Philippines
China
India
-2.5
-1.5
-0.5
0.5
1.5
2.5
Bureaucratic Efficiency


Group Classification of Country
3
2
1
0
The Philippines
China
India
-7
-6
-5
-4
-3
-2
-1
0
Business Group Lobbying


Group Classification of Country
3
2
1
0
The Philippines
China
India
0 1 2 3 4 5 6 7 8 9 10
Level of Democracy


Group Classification of Country
3
2
1
0
The Philippines
China
India
0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 0.8 0.9 1
Veto Points


Group Classification of Country
3
2
1
0
The Philippines
China
India
0 0.5 1 1.5 2 2.5 3
Ideology of Government
(From left-leaning to right-leaning)

For the remaining four variables, the scatter diagrams in figure 5 indicate that China's political structure (that is, communist/authoritarian) renders it dissimilar to India and the Philippines, with these two latter countries reporting similar scores. Among the three countries, Business Group Lobbying is highest in the Philippines, with lobbying levels in China being one of the lowest for the full sample. Similarly, China separates itself from India and the Philippines when it comes to its score on the Level of Democracy variable. Since China has a communist government, China's score on this variable is 0 while India and the Philippines register scores of 9 and 8, respectively.

The values for Veto Points mirror that for the Level of Democracy, with China once again being an exception with a score of 0. This, again, results from the authoritarian nature of its government which limits the presence of veto players in the system. India and the Philippines have very similar levels of veto points, 0.43 and 0.40, respectively. Finally, on the Ideology of Government, India and the Philippines again find themselves with similar ideological leanings of center-right while China, given its communist government, is left-leaning.

Having undertaken a quick comparison of the three countries *vis-à-vis* their scores on the explanatory variables, I now turn to the first of the three case studies. I begin with the identified country from Group 1, India. The India case study will be followed by case analyses of the competition policy processes for the identified countries from Groups 2 and 3, China and the Philippines, respectively.

CHAPTER V

Case Study One: India

Indian Economy: A Sleeping Giant or a Roaring Tiger?

India achieved independence from British rule in 1947, bringing an end to this colonial rule that formally began in 1858 (Roy 2002). As Roy (2002) discusses, scholars of Indian history have two views on the impact of colonialism on India's development. A first group of scholars contend that the British Empire introduced modernity to India while a second, and a later, group of writers argue that colonialism only contributed to India's underdevelopment. After all, before the British colonized India, its (India's) share of world income was 22.6 percent in 1700, which was roughly equal at that time to the share of world income of all of Europe at 23.3 percent; by the time the British left, India's share of world income had whittled down to 3.8 percent (Singh 2005). In fact, at the beginning of the twentieth century, the country considered to be "the brightest jewel in the British Crown" was also the world's poorest country in terms of per capita income (Singh 2005; quotes in original).

While arguments raged—and still do—over the nature of the impact of British colonialism on the Indian economy, Jawaharlal Nehru, independent India's first Prime Minister, was among those who believed that Indian poverty around the time of India's independence "was a product of "laissez-faire," exploitation by foreign capital and the noninterventionist stance of the Indian government under the British raj" (Roy 2002: 109). Moreover, Nehru was impressed by the early success of state planning in the Soviet

Union and was not prepared to depend on the private sector for India's economic development, especially given the fact that the Great Depression was a recent experience and India still had its pockets of influential industrialists and royalty who could seize most of the economic gains (DeLong 2003).

Given his beliefs and concerns, Nehru orchestrated an economic policy for the nation that relied on economic nationalism and state planning (Roy 2002). Two characteristics came to be strongly identified with Indian economic policy for the few decades after independence—statism and distrust of foreign trade and investment. Economic growth averaged 3.5 percent from 1950 to 1980, which was much better than the 0.8 percent growth that the economy recorded under British rule from 1900 to 1950 (Das 2006). However, in both instances, population grew either proportionately (during 1900-1950) or more than proportionately (during 1950-1980) to nullify most of these economic gains on a per capita basis. The net effect on Indian per capita income was a meager average annual increase of 1.3 percent, which came to be (in)famously called "the Hindu rate of growth" (Das 2006).

But Das (2006) argues that the Hindu rate of growth "had nothing to do with Hinduism and everything to do with the Fabian socialist policies of Prime Minister Jawaharlal Nehru and his imperious daughter, Prime Minister Indira Gandhi, who oversaw India's darkest economic decades. Father and daughter shackled the energies of the Indian people under a mixed economy that combined the worst features of capitalism and socialism. Their model was inward-looking and import-substituting rather than outward-looking and export-promoting, and it denied India a share in the prosperity that a massive expansion in global trade brought in the post-World War II era" (Das 2006: 4).

Das' analysis of India's economic performance during the decades immediately after independence constitutes the dominant narrative of India's economic history during this period and is echoed, among others, by Ahluwalia (2002: 67)[64]: "India was a latecomer to economic reforms, embarking on the process in earnest only in 1991, in the wake of an exceptionally severe balance of payments crisis. The need for a policy shift had become evident much earlier, as many countries in East Asia achieved high growth and poverty reduction through policies that emphasized greater export orientation and encouragement of the private sector. India took some steps in this direction in the 1980s, but it was not until 1991 that the government signaled a systemic shift to a more open economy with greater reliance upon market forces, a larger role for the private sector including foreign investment, and a restructuring of the role of government."

DeLong (2003: 184) observes the following about the conventional narrative that characterizes India's post-independence economic history and Nehru's role in it: "India's post-World War II economic history begins with a disastrous wrong turn by India's first prime minister, Jawaharlal Nehru, toward Fabian socialism, central planning, and an unbelievable quantity of bureaucratic red tape. This "license raj" strangled the private sector and led to rampant corruption and massive inefficiency."

However, DeLong also points out that even though Indian economic performance between independence and 1990 was not comparable to the stellar performance of the East Asian economies, "it was not Africa either" (DeLong 2003: 185). DeLong concludes

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[64] Montek Singh Ahluwalia is currently the Deputy Chairman of the Planning Commission, India. Prior to this he served as Finance Secretary in the Ministry of Finance, India and then as the first Director of the Independent Evaluation Office, International Monetary Fund, Washington, D.C.

that India's rate of economic growth appeared only "average" and not abysmally low, as was the case with Africa.

Regardless of one's view of India's economic performance during the period since independence, it must be emphasized that for long periods of time India was the archetypal "poor" country and an example of underdevelopment in the global economy (Subramanian 2008). In a paper written as recently as 1988, Nobel Prize-winning economist, Robert Lucas, used India as an example to illustrate the levels of extreme poverty that existed in the world, relative to rich countries.[65]

However, the "Hindu Growth" was not to stay for ever and positive changes started taking place in the economic realm in the 1980s (Subramanian 2008). The period from 1980 marked a break with the past for the Indian economy, with the economy moving "away from controls and repression of the domestic private sector" (Subramanian 2008: 68). Between 1980 and 2002, the Indian economy grew at a respectable 6 percent per year, and then at 7.5 percent a year from 2002 to 2006, registering some of the best economic growth rates for any country in the last quarter century (Das 2006). More importantly, the contribution of productivity growth to the overall economic growth of India in the post-1980 period has also been one of the highest in the world (Subramanian 2008).

An exceptional feature of India's economic growth has been the bypassing of the manufacturing sector in its growth process: "between 1980 and 2002, India's share of services in value added exploded from 37 percent to 49 percent. Its share of

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[65] Interestingly, in this famous article, Lucas uses India and Haiti as examples of some of the poorest countries in the world, with India's per capita income being $240 and Haiti's being higher at $270.

manufacturing in value added remained broadly unchanged at 16 percent, while the decline in agriculture mirrored the performance of services" (Subramanian 2008: 69). India's economic development in the recent decades has belied the traditional understanding regarding economic growth which predicts a sharp fall in the share of agriculture, a substantial increase in manufacturing, and a marginal, positive impact on services as an economy proceeds on the path of economic development. The Indian economy was unique in its jump from being an agriculture-based economy to a largely services-based economy, without ever being an industrial success during its process of development.

Surely, India's economy has changed drastically since the economic reforms were introduced in the mid-1980s and substantially thereafter in the early 1990s. From a "sleeping giant" that conjured up visions of poverty-stricken children and that served as the quintessential "poor" country of the world, the country has come a long way to be considered a "roaring tiger" with its new class of dynamic entrepreneurs and highly-educated working class (Singh 2008). To achieve further and drastic reductions in its levels of poverty, India needs to maintain its current levels of impressive economic growth so that it does not slip back into being an "elephant," which some observers have started to point out (*The Economist* 2008b). The greater task for the country would be to make this growth process more broad-based so that it becomes all-encompassing rather than partial and segmented.

In the next section, I take a look at the history and the current status of competition legislation in India. Of the three countries included in the set of case studies, India is the only one that enacted a new national competition law during the period from

1996 to July 2007. I begin by briefly discussing the history of competition legislation in India. In later sections, I explain and analyze the policy process that accompanied the enactment of India's competition law.

The State of India's Competition Law

The Monopolies and Restrictive Trade Practices (MRTP) Act has served as India's law to combat antitrust and restrictive business practices since its enactment in 1969, though it had far fewer provisions and objectives compared to what a modern competition law is generally understood to have (Bhattacharjea 2008). Contrary to competition laws in the economically advanced countries, the MRTP Act was found to be lacking in encouraging competition in the marketplace and in ensuring the reduction of restrictive business practices in international and domestic trade and commerce (Chakravarthy 2004).

The primary reason for passing this legislation was the growing concern, in the early decades after independence, over the concentration of economic power in the hands of India's large family-controlled business groups. Moreover, from a constitutional point of view, Articles 38 and 39 of the Constitution of India and that form part of the Directive Principles of State Policy "mandate, *inter alia*, that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice – social, economic and political – shall inform all the institutions of the national life, and the State shall, in particular, direct its policy toward securing (1) that the ownership and control of material resources of the community are so distributed as best to subserve the common good; and (2) that the operation of the economic system does not

result in the concentration of wealth and means of production to the common detriment" Chakravarthy (2004: 1).

These constitutional provisions and the evidence of high levels of industrial concentration, rampant restrictive business practices, and large business houses restricting entry of new firms were enough reasons for the Indian government in the 1960s to pass the MRTP Act into law in 1969 and to bring it into effect in 1970. The contents of the MRTP Act were heavily influenced by competition and antitrust laws of economically advanced countries, namely the Sherman Act and the Clayton Act of the United States and the Monopolies and Restrictive Trade Practices (Inquiry and Control) Act, 1948, the Resale Prices Act, 1964 and the Restrictive Trade Practices Act, 1964 of the United Kingdom (Chakravarthy 2004).

Inter alia, the Act required industrial behemoths to register with the central government and for these "MRTP companies" to seek government approval for any significant expansion, starting new ventures, undertaking mergers, and appointment of their directors in other firms. Naturally, this command-and-control system of economic governance came to be called the "license-permit raj" (Bhattacharjea 2008). This situation continued until the onset of early reforms in the mid-1980s.

Since the primary target of the MRTP Act was to prevent firm-level concentration of economic power and was enacted during the period of strict state control over private economic activity in a relatively closed economy, the need was felt for a law that was specifically aimed at encouraging competition and addressing competition-related issues in a changed economic environment, especially in the 1990s (Ramappa, 2006). After several years of discussion and drafting, the Indian parliament enacted the new

Competition Act 2002, though it still awaits implementation (Bhattacharjea 2008). It was subsequently amended in September 2007. In the interim, the MRTP Act of 1969 still continues to serve as the *de facto* competition law for India though certain provisions of the new Act have come into force (Chakravarthy 2004). The MRTP Act will be repealed once the Competition Act 2002 is put into full effect. The following section discusses the activities that surrounded the enactment of India's new Competition Act 2002.

India's Competition Act 2002: The Saga

The 1990s truly represented a sea-change in the functioning and the orientation of the Indian economy. From being one of the most regulated economies in the world that officially professed a general aversion to engaging with global economic players, the country progressively proceeded toward a paradigm that encouraged private participation and foreign involvement in economic development. The economic reforms that were initiated in the early 1990s slowly set in motion the working of economic forces rather than government fiat in the various spheres of the economy. The early positive experience with economic liberalization and the consequent earnestness in involving the private sector to a greater measure in national economic activity highlighted the need for a policy framework that encouraged the development of contestable markets while ensuring good corporate governance.

Ramappa (2006) explains how it dawned on the Indian authorities, in the wake of the formation of the WTO and the signing of the various WTO Agreements,[66] that

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[66] The reference here is to the General Agreement on Trade in Services (GATS) and the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

legislation to foster competition was crucial to the success of Indian firms in the changed economic environment characterized by the significant presence of large multinational corporations. The result was the constituting of a High Level Committee on Competition Policy and Law in October 1999 by the Department of Law, Justice and Company Affairs of the Government of India. The committee was entrusted with the task "to advise a modern competition law for the country in line with international developments and to suggest a legislative framework which may entail a new law or appropriate amendments to the MRTP Act" Chakravarthy (2004: 11). Popularly known as the Raghavan Committee after its Chairman, Mr. S.V.S. Raghavan, a former Union Commerce Secretary (non-elected position), the High Level Committee on Competition Policy and Law and the task that it was entrusted with represented a major break from the history of dirigisme in the nation.

After six months of deliberations, the Raghavan Committee submitted its report to the Union Government in May 2000 (Chakravarthy 2006).[67] The important recommendations were the following (paraphrased):

(a) The MRTP Act, 1969 should be scrapped and the MRTP Commission wound up.

(b) A new law called the Indian Competition Act should be enacted based on the recommendations contained in the report.

(c) A new authority called Competition Commission of India (CCI) should be set up to implement the Indian Competition Act. This body should also be charged

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[67] The full report is available on the Global Competition Policy Forum website: http://www.globalcompetitionforum.org/regions/asia/India/Report_of_High_Level_Committee_on_Competition_Policy_Law_SVS_Raghavan_Committee29102007.pdf

with the task of handling competition-related cases and with conducting competition advocacy.

(d) The new competition law must also be made applicable to state monopolies, government procurement, public enterprises, foreign companies, and all consumers of goods and services irrespective of the purpose of the purchases.

(e) The Industrial Disputes Act, 1947 needs to be amended to allow for easier exit of non-viable, ill-managed, and inefficient firms (subject to fulfilling their legal obligations with regard to their liabilities).

(f) The overall economic liberalization, deregulation, and privatization program that is in place should be strengthened and earnestly implemented so that it complements the objectives of the new competition law.

(g) Mergers need to be monitored and discouraged only if it adversely affects competition and consumer interests; otherwise, the committee recommends a hands-off approach to be adopted by the competition authorities toward corporate mergers.

(h) The reservation of products for the small scale industrial and handloom sectors must be gradually reduced and finally eliminated.

(i) Save for defense services and other sovereign functions, the government should progressively divest its shares and assets in state monopolies and public enterprises, and ensure that public monopolies do not turn into private monopolies.

The report makes it clear that all its recommendations apply to all public and private industrial and professional firms. The comprehensive nature of the report is an aspect that merits attention. In particular, points (e), (f), and (h) highlight the fact that a competition law that enjoys statutory status would still require support from legislation in other areas to ensure the development of competitive markets. Point (e) calls for amending an act that indirectly restricts firms from entering markets because it restricts

them from leaving a market in case they fail to achieve their investment objectives. In other words, the fact that companies can not easily exit a market acts as a barrier to their entry to that market, and the committee's recommendation addresses this important issue.

Point (f) makes it very evident that the success of a competition law is predicated on complementary actions involving the continued overall liberalization of the economy. A few examples of liberalization in the 1990s in the Indian context have been the granting of increased and easier access to domestic and foreign funds to companies operating in India and the switch from a fixed exchange rate mechanism to a managed-float exchange rate regime.

Point (h) focuses on a policy directive that has impeded the growth of many promising industries in India since the nation's independence. Das (2006) considers this policy the chief among the many restrictive economic policies enacted by the state. He claims that reserving around 800 industries for the small scale sector only resulted in the creation of inefficient and ill-equipped units that simply could not stand up to competition from their South East Asian counterparts, depriving millions of Indians of the very same jobs that the policy intended to create and sustain. The committee recommended the gradual abolition of this supposedly socially beneficial economic policy that had abysmally failed to serve its objectives.

On the basis of the recommendations contained in the Raghavan Committee Report, the government introduced a draft bill in November 2000, which was circulated for expert opinions and comments. The Competition Bill 2001 was finally introduced in the monsoon session of the Indian parliament with three overarching objectives, all economic in nature: the prevention of non-competitive practices and the promotion of

competition, the prevention of the abuse of corporate dominance, and the judicious handling of cases related to mergers and acquisitions (IFLR 2001, Narayana 2001).[68] The protection of consumer interests and the guaranteeing of freedom of trade were two other major objectives of the bill.

Subsequently, the government referred the bill to a Parliamentary Standing Committee for further discussions and recommendations. However, a bill with such far-reaching implications for the entire economy was expected to receive sharp reactions from all quarters, particularly from the business community and the regulators. For instance, the Associated Chambers of Commerce and Industry criticized the inflexible nature of the bill and argued that the competition commission that it proposed to install would mirror the MRTP Commission in its bureaucratic characteristics (*Businessline*, 2002a).

The public wrangling over the bill had its counterparts in the parliamentary committee, with the committee getting split into several camps (*Businessline*, 2002b). One group contended that given the ambiguity in the WTO over a multilateral competition policy and related trade and investment issues, it would not be in India's interest to pass the bill into law at this stage. Quite relevant to this dissertation is the observation by this group that enacting a domestic competition law at this juncture would severely undermine India's efforts at stalling the introduction of a multilateral competition policy at the WTO and make India "lose its bargaining power at the WTO

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[68] The Indian Parliament, or more specifically, the lower house of parliament (the Lok Sabha, or the House of the People), meets three times a year: Budget Session (February – May), Monsoon or Autumn Session (July – August), and Winter Session (November – December). See http://164.100.47.134/newls/FAQ.aspx

negotiations" since such a policy action would signal India's competence and readiness to engage in the area of competition policy.

A second group argued that the bill in its present form would strip Indian companies of all the protection that it required against foreign competition. Hence, it would be advisable to keep in abeyance the passing of the bill, which would provide sufficient time for Indian companies to reorient themselves to the changing environment. This group further recommended the continuation of the MRTP Act with necessary modifications until the new law was passed.

Yet another group unequivocally supported the bill in the current form, noting that the anachronistic MRTP Act lacked the provisions to handle the requirements of a changing global economic environment in which foreign competition in domestic markets was an accepted reality. This group further seconded the opening up of the public sector, government departments, and the small scale sector to competition.

After incorporating the concerns and opinions expressed by various trade, regulatory, and consumer groups, the Indian parliament passed the Competition Bill 2002 in its winter session. The President of India, who is the Head of State, gave his approval to the bill a month later in January 2003, and the Competition Act 2002 was born (*Businessline* 2003a).

Much drama followed in the aftermath of the enactment of the Competition Act 2002. For the act to take effect, the first task was the installation of the Competition Commission of India (CCI). However, two issues, both judicial, arose in the process. First, in June 2003 the government proposed the Commerce Secretary as the Chairman of the CCI (*Businessline* 2003b). The Supreme Court took issue with the fact that a

bureaucrat was appointed to head a commission that enjoyed quasi-judicial powers. Second—and this is related to the first point—the Competition Act 2002 vested the CCI with judicial powers that conferred the commission's orders the same weight as that of a High Court's order (*Businessline* 2004).[69] The CCI even had the authority to instruct the relevant High Court to carry out the CCI's orders if it (the CCI) was unable to execute that order and punish those entities found not complying with the CCI's orders.

Pooled together, the two aforementioned reasons forced the Supreme Court to express its strong objection to a quasi-judicial government body headed by a bureaucrat being vested with the power to issue instructions to a court (*Businessline* 2004). The result was the constituting of the Group of Ministers (GoM) headed by the country's Finance Minister, Mr. P. Chidambaram—himself an accomplished lawyer by training and profession—to address, *inter alia*, the serious legal concerns raised by the Supreme Court. The GoM submitted its report for the consideration of the union cabinet with the following main proposals: accord greater representation to the judiciary in the committee that selects the Chairman and other members of the CCI, effect changes in the sections of the Competition Act 2002 that deal with the judicial and punitive powers of the CCI, and initiate the constitution of an appellate tribunal for competition that would be headed by a Supreme Court or High Court judge and would be vested with the authority to pass judgments on appeals against infringement of the provisions of the Competition Act. In September 2004, the Union Cabinet gave its assent to the recommendations of the GoM.

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[69] In India, the High Court is the state-level judicial authority. The judgments of a High Court can be appealed only in the Supreme Court.

Soon thereafter, the Supreme Court gave its approval, thus eliminating the last legal hurdles that impeded the smooth operation of the CCI (*Financial Times* 2005).

In March 2005, a business newspaper in India carried a short news article on the CCI, titled "Competition panel taking shape" (*Businessline* 2005a: 1). The article began with a line that pithily summed up the saga of the CCI's formation: "The Competition Commission of India (CCI), set up under the aegis of the Ministry of Company Affairs, is *gradually* taking shape" (emphasis added). It reported an official communication that said that the foundation for the formation of the CCI had commenced. Nonetheless, this delay should have been expected, given the possibility that the comprehensive nature of the recommendations of the Raghavan Committee would ruffle many feathers. Moreover, the mandate that was proposed to be accorded to the CCI had legal and jurisdictional conflicts. On the contrary, even though the proceedings were slow, the earnestness with which the impediments were removed attests to the rare consensus among the bureaucracy, the judiciary, and the government on the role of competition in reducing corruption and improving consumer welfare (*Financial Times* 2005).

It is also worth noting that the CCI in particular and competition policy in general received a great deal of attention from the government. In early 2006, the government introduced The Competition (Amendment) Bill 2006 in parliament to obtain its approval to further streamline the CCI from a judicial body to an expert body that would perform the function of a market regulator apart from undertaking competition advocacy.

To its credit, the CCI has been engaged in competition advocacy for the past few years, even before the legal hurdles plaguing its smooth operation were completely cleared. The government's role in enabling the CCI to carry out this task early on

deserves to be mentioned here. In the middle of 2003, the government put into force certain provisions in the Competition Act 2002 that allowed the CCI to undertake training and awareness activities and to engage in discussions with government agencies and regulators that created the policy environment that favored increased competition in the market place (*Businessline* 2003c). Perhaps the rare consensus observed in the official circles of the Indian establishment over a competition law can partly be attributed to the competition advocacy efforts engineered by the CCI.

An aspect that is crucial to the effectiveness of the CCI is the degree of autonomy that the new body will enjoy. Metaphorically, if it remains a watchdog that can only bark but not bite, the chances of its playing a successful role in fostering competition and breaking up anti-competitive cartels and practices would be in serious jeopardy. The CCI itself feels that remaining part of the government and being devoid of the legal authority to tackle cartels would severely undermine its effectiveness (*Financial Times*, 2005).

Explaining India's Competition Policy Process

In the present section, I undertake an examination of the roles that the eight explanatory variables played in India's competition policy process. In the next section of this chapter, I compare the results from the case analysis with that from the large-sample analysis and highlight the similarities and reconcile any differences.

Technical Assistance by WTO – India is one of the many countries that received technical assistance in competition policy from the WTO Secretariat. Officials from India attended the regional workshop organized by the WTO in Thailand from January 21-23,

2003 for countries in the Asia-Pacific region.[70] Later, a regional workshop was organized in New Delhi, the capital of India, for countries in the Asia-Pacific region from October 6-8, 2004. The workshop titled "Trade and Competition Policy for Asian and Pacific Economies" was attended by 30 countries in the Asia-Pacific region. The Asia-Pacific region workshops were characterized by courses handled by competition policy experts both from the WTO and by speakers from the region.

India has also been an active participant in the WGTCP forum where member-countries exchanged both ideas and concerns regarding domestic competition legislation and the plans for a multilateral competition policy arrangement at the WTO.[71] These exchanges have complemented the WTO's technical assistance activities by keeping in motion the dialogue process among member-countries.

With regard to the role of the WTO's technical assistance activities in India's enactment of its Competition Act 2002, I argue that it was not a significant factor largely because the WTO technical assistance never had a sustained focus on training India's officials. While workshops and courses are helpful and the exchange of communications among member-countries at the WGTCP was constructive, they were too general to have mattered for the enactment of India's new competition law.

My conclusion is also in line with the general finding that technical assistance programs differ in their efficacy in achieving their objectives and that country-focused training programs have higher chances of success (Evenett 2006, Nicholson, Sokol, and

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[70] http://www.wto.org/english/tratop_e/comp_e/ta_e.htm

[71] These communications were sourced from the following interactive documents database of the WTO: http://www.wto.org/english/tratop_e/comp_e/wgtcp_docs_e.htm

Stiegert 2006). In the case of India's enactment of its new competition law, the WTO's technical assistance activities certainly do not figure as a prominent factor.

Technical Assistance by Other International Organizations (IOs) – Apart from the technical assistance received from the WTO, India also received technical assistance from the World Bank and UNCTAD in the area of competition policy. India was a recipient of the World Bank's competition policy technical assistance projects during the period 1996-2000 and also hosted seminars and conferences on competition policy with World Bank support in India (OECD 2001). In association with the OECD, the World Bank also organized a conference in May 1999 titled "International Conference on Competition Policy and Economic Adjustment" in which India was one of the handful of participants.

The involvement of UNCTAD in India's competition legislation has been even greater. During the few years leading up to the enactment of India's Competition Act 2002, UNCTAD organized numerous workshops and intensive training sessions in various cities across India (UNCTAD 2002, UNCTAD 2004). In November 2000, UNCTAD conducted an "Advisory Workshop on Competition" in India. Later, in December of the same year, UNCTAD teamed up with CUTS of India to launch the "7-Up Project" that was aimed at undertaking research and competition advocacy in seven developing countries across Africa and Asia, including India.

In early September 2001, a consumer seminar for the Asia-Pacific region was organized in the Indian state of Goa. This meeting was attended by consumer non-governmental organizations and government officials from the countries in the region.

The objective was to discuss various issues that pertained to consumer interests, competition, competitiveness, and development in developing countries like India. It was at this meeting that the UNCTAD adopted a list of recommendations christened "The Goa Declaration for the Expert Meeting on Consumer Interests, Competitiveness, Competition and Development" (UNCTAD 2002). The year 2001 also witnessed another intensive interregional workshop titled "Intensive Training Session for Negotiators of Investment and Competition Agreements," which was jointly organized by UNCTAD and India's Institute for Foreign Trade in New Delhi in November.

Therefore, an assessment of the role of international organizations like the World Bank and UNCTAD during the years before the enactment of India's new competition law in 2002 reveals that these two IOs—in association with other IOs like OECD and non-governmental organizations like CUTS—engaged India and Indian officials in a substantial manner during these years. Compared to the WTO's infrequent and general seminars, the regular workshops, conferences, and discussion sessions organized by the World Bank and UNCTAD were qualitatively better at achieving its objectives of promoting a competition culture and laying the ground for a new set of competition legislation in India.

Even though it has been pointed out that IOs have paid relatively little attention, in general, to competition advocacy and providing technical assistance for capacity building in competition policy and law (Khemani 2007), my study finds that the constant engagement of IOs like the World Bank and UNCTAD with India on competition policy has been non-trivial in equipping Indian officials and bureaucrats with the necessary

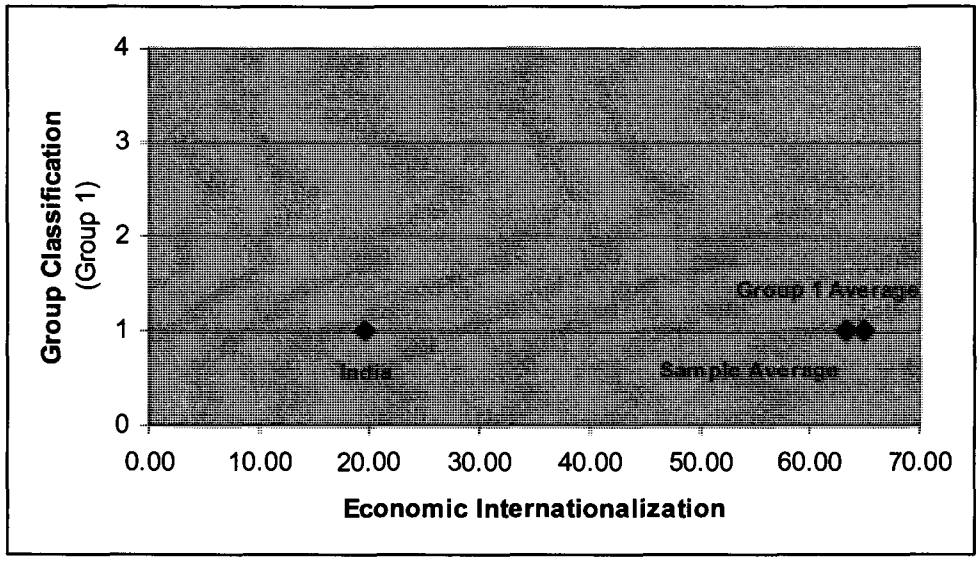
expertise and training to facilitate the drafting and enacting of a new competition law of India.

My finding, however, does not imply that Indian officials lacked a total understanding of competition issues. Far from it, because India has had a semblance of competition legislation by way of the MRTP Act, 1969 and the officials, therefore, had some experience handling cases of restrictive business practices. However, designing a new competition law that went beyond preventing restrictive business activities and that was aimed at increasing economy-wide competition levels was a task of much greater scope and magnitude and that was greatly facilitated by the constant interaction that the Indian officials had in the various Indian cities with the competition policy experts commissioned by the World Bank and UNCTAD. Therefore, I conclude that the technical assistance activities of other IOs mattered in a significant manner in facilitating the installation of a new competition law in India in the post-1996 period.

Economic Internationalization – The main hypothesis surrounding this variable was that countries having higher levels of economic internationalization would be more inclined to institute a national competition law, with economic internationalization being defined as it is done in the literature as the ratio of the external sector (exports and imports) to the national economy (the GDP). This reasoning was based on prior findings and works that argued that globally integrated economies converged on free market policies that attempted to keep their economies open and contestable, which is one of the main objectives of a competition law. The alternate hypothesis associated with this variable was that countries that were more globally integrated would not enact a

competition law since such policies only exposed them further to the vagaries of international markets.

Figure 6: Economic Internationalization: India versus Group 1 and Sample Averages



By the manner in which this variable has been defined in the study and operationalized in the data, India is not a globally integrated economy since the share of India's external sector in its domestic sector is only 19.5 percent (see figure 6). India's score is less than one-third of the average economic internationalization for the entire sample at 63.24 percent. And, for countries in Group 1, that is, countries like India that have enacted a national competition law in this period, the average is 64.79 percent. Therefore, India's action of instituting a new national competition law runs counter to the main hypothesis associated with this variable. I reconcile this finding in the following

paragraphs by arguing for the possibility of a reverse causality with regard to this variable in the case of India.

Since the economic reforms of 1991, India has constantly attempted to shed its erstwhile antipathy toward engaging with the global economy. And, though there have been recurrent attempts to maintain status quo, the country has pushed forward with an agenda that sought to both engage and compete with global players. The "for-and-against" vacillation in policy action toward greater global interaction was reflected in the divergent views among the members of the Parliamentary Standing Committee that was entrusted with the task of analyzing and vetting the draft Competition Bill 2001. As the discussion in the previous section demonstrated, the Parliamentary Standing Committee was essentially split into three camps: one camp arguing against passing the bill because India might then lose its bargaining position over competition policy at the WTO, a second camp contending that passing the bill would expose Indian firms to fierce foreign competition, and a third camp supporting the passing of the bill to increase domestic levels of competition and arguing for further opening up of the economy to foreign players. As the outcome shows, it was the third camp that ultimately succeeded with the passing of the bill and the enactment of India's Competition Act 2002.

My argument for the possibility of a reverse causality in India's case stems from the preceding discussion which demonstrates that a competition law was seen in India's policy circles as aiding India's efforts at greater economic internationalization. So, while India was not globally integrated enough for its actions to align perfectly with the main hypothesis, the instituting of the new national competition law can be seen as an attempt

to open up Indian's economy further and to take India along the path of greater economic internationalization.

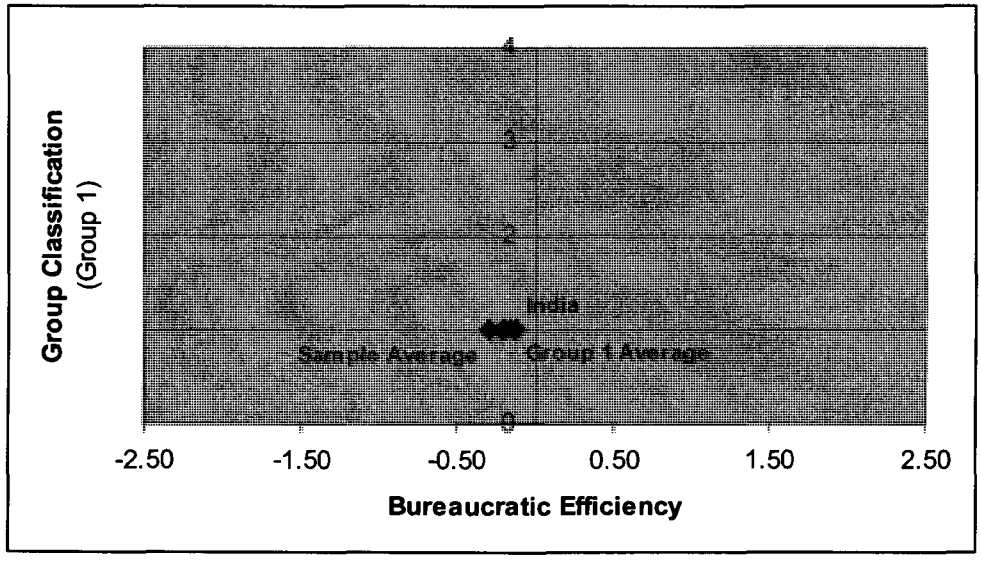
My finding sits well with the change in India's policy initiatives in the last few decades that have been directed at more, rather than less, global engagement. Such a shift in policy is, in turn, a reflection of the broader change in the mindset regarding the state-versus-markets debate. As argued by Subramanian (2008: xxii), "the state versus markets debate in India is largely settled. India has a long way to go in terms of shedding all the traces of its dirigiste past, but the principle of the primacy of the markets over the state is now not seriously questioned." So, while economic internationalization was clearly not the reason for India instituting its Competition Act 2002, the insight gained from this examination is that India is expecting its new competition legislation to increase its level of economic openness and engagement with the global economy.

Bureaucratic Efficiency – As discussed in the construction of this variable in chapter 1, existing literature shows that bureaucratic quality matters for economic policymaking, with higher levels of efficiency associated with the instituting of liberal economic policies. This empirical finding is then hypothesized in this study to apply to the instituting of competition laws in developing countries, where countries that have efficient bureaucracies would enact national competition laws that aim to promote competition and a liberal economic system.

India's score on bureaucratic efficiency for the countries in the sample is -0.13 on a scale of -2.5 to +2.5 (see figure 7). This score is only marginally better than the average scores of -0.30 for the entire sample and -0.21 for countries in Group 1. Therefore, based

on the score that India's bureaucracy receives on the scale of efficiency for countries in the sample, it can not be concluded that India's bureaucracy mattered significantly in India's enactment of its new competition law. However, since the case study is undertaken to go beyond general statistics and to analyze specific events and variables, I take a closer look at the bureaucrats that really mattered for the drafting of India's competition law. With this objective, I focus on the members that comprised the committee that initially deliberated among themselves and the concerned stakeholders, submitted their recommendations to the central government, and finally, drafted the Competition Bill 2001 that later became India's Competition Act 2002.

Figure 7: Bureaucratic Efficiency: India versus Group 1 and Sample Averages



As mentioned earlier in this chapter, in October 1999 the Department of Law, Justice and Company Affairs of the Government of India set up a High Level Committee

on Competition Policy and Law. Mr. S. V. S. Raghavan, a former Commerce Secretary in the central government, was appointed as the Chairman of this committee. Apart from Mr. Raghavan, the committee consisted of the following senior-level individuals (*Businessline* 2000b, Chakravarthy 2006): an economist, a chartered accountant, an economic journalist, a lawyer, the chairman of one of India's largest business houses, a consumer activist, and two high-level government officials.

The diversity in the composition of the high level committee is partly a reflection of the economy-wide impact that a national competition law is expected to generate and consequently, the numerous stakeholders—like businesses, bureaucracy, judiciary, and consumers—involved in this policy process. The nine-member committee undertook the initial round of deliberations and discussions over the state of India's competition legislation and the need, if any, for a new competition regime in the country. Once the nine-member group submitted its report to the government in May 2000, that is, within six months of its formation, a core group of five members was formed from the nine-member group.

The five-member core group consisted of the three bureaucrats from the High Level Committee: Mr. S.V.S. Raghavan, the chairman of the earlier nine-member High Level Committee, Dr. S. Chakravarthy, a former member of the MRTP Commission, and Mr. G. P. Prabhu, Joint Secretary in the Department of Company Affairs, Ministry of Law, Justice and Company Affairs. This core group was given the task of drafting the competition bill, which the government introduced in the parliament to be passed as the Competition Act 2002.

Even though India's bureaucratic efficiency score was only a little more than average on the statistical measure of this variable, the fact remains that the quality of the bureaucrats on the High Level Committee and later, in the core group, far exceeded this general statistic. These bureaucrats were accomplished individuals in their fields. For example, the Chairman of the High Level Committee, Mr. S. V. S. Raghavan is a recipient of the coveted Padma Shri Award, which he received in 1985 for his distinguished service to the nation in the area of civil services. The Padma Shri is the highest award given by the Government of India "for exceptional and distinguished service in any field including service rendered by Government servants."[72] Prior to joining as the head of the competition policy committee, Mr. Raghavan had served in various other government committees.

Dr. Chakravarthy is another distinguished bureaucrat who holds advanced degrees and certificates in law, management, and public administration from across the world, including from the Indian Institute of Technology (Delhi) and Harvard University. Currently, he serves as a consultant on competition policy and law and is a fellow at the CUTS Centre for Competition, Investment and Regulation in Jaipur, India.[73]

Further to their excellent academic and professional credentials, some of the senior committee members visited London to learn and ascertain whether it would be advisable and feasible to emulate or replicate the British competition law in India (*Businessline* 2000a). However, during the committee's deliberations and while drafting the competition bill, "[N]o competition law of any one country was adopted as a model,

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[72] http://india.gov.in/myindia/padma_awards.php

[73] http://www.circ.in/VF-schakravarthy.htm

but features of different competition laws considered relevant for India and its present milieu, were reckoned in giving a shape to the report" (Chakravarthy 2006: 21).

Arguably, efficiency in performing a task can not be predicated purely on qualifications and awards, and has to be evaluated with respect to the quality of the outcome and the overall nature of the process. The outcome in this case is the timely completion of the committee's report and drafting of a competition bill with modern provisions that reflected India's changed and constantly evolving economic milieu.

In this regard, the first outcome is the list of recommendations that the nine-member high level committee submitted to the government and the second outcome is the competition bill prepared by the core five-member group based on these recommendations. In both instances the two committees displayed sufficient grasp of not just competition legislation but also how a new national competition law would interact with the Indian economic situation. Even though the committee sought an extension of a few months in early January 2000, it managed to submit its report within six months since beginning its work (*Businessline* 2000a). During its deliberations, the committee met with members belonging to the areas of trade, commerce, and industry to elicit their views (*Businessline* 2000a). This process allowed the committee to obtain the opinions and views of the concerned parties and to ascertain that there was unanimity among those who deposed before the committee that the MRTP Act had outlived its utility and needed to be replaced by a new law that reflected the liberalized nature of the Indian economy (Chakravarthy 2006).

What can be gleaned from the discussion in this sub-section is that the quality of the bureaucrats who were entrusted with the task of deliberating over and drafting India's

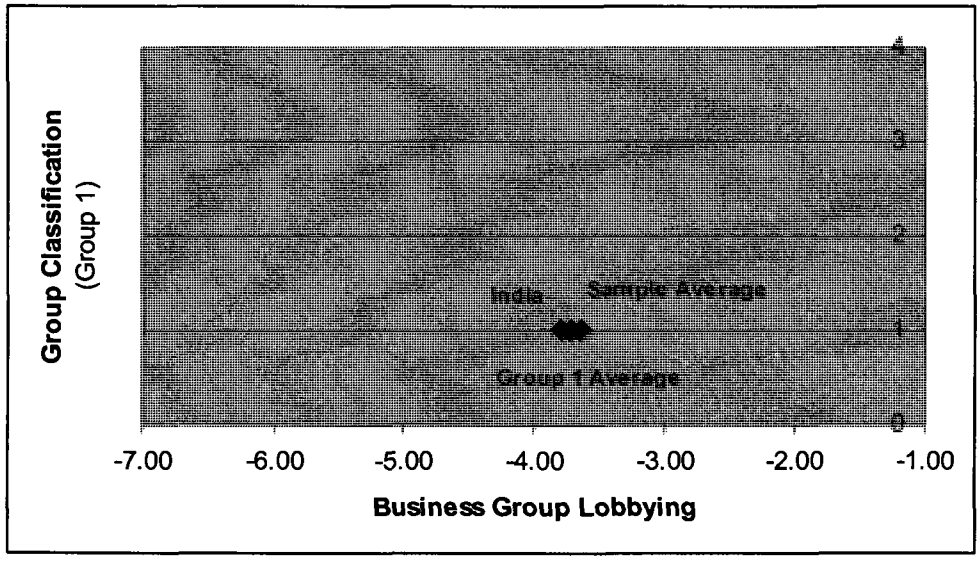
competition bill was significantly above what is accorded to India on the general statistical scale that was used in the large sample study. These were government officials who were adequately aware of the requirements of the task and who had had sufficient experience in similar policy situations. So, while the general quality and efficiency of Indian bureaucracy might leave much to be desired, the fact is that the key positions that mattered for this process were manned by government officials who possessed the requisite levels of education, experience, and efficiency. I, therefore, conclude that the quality of India's bureaucracy was a significant factor in India's installing a new competition law and authority.

My conclusion is not an endorsement of the contents of the recommendations or of the Competition Act 2002 since the exercise here was to examine whether the bureaucrats who were involved in this policy process performed their tasks satisfactorily. In that, my finding is in the affirmative since the report was submitted in a timely manner and after consulting most of the concerned parties.

Business Lobbying – India's score on the business lobbying variable seems to be close to the average for the countries in Group1 (see figure 8). With particular reference to antitrust and competition laws, businesses, in general, do not harbor a favorable view of such laws. This disposition of businesses toward competition laws was discussed at length while identifying and introducing this variable in chapter 1. Indian business groups were no different in their approach to the attempts by the Government of India to install a new competition regime. The Associated Chambers of Commerce and Industry slammed the Competition Bill 2001 and argued that the new competition law and authority would

soon morph into a bureaucratic leviathan that will stifle business activity (*Businessline*, 2002a). A major apprehension of most trade and industrial organizations was that the new competition authority would be simply the MRTP Commission in a new avatar, especially given the discretion that government officials enjoyed in these positions. Added to that were certain provisions that contained unclear terms and evaluation criteria that businesses viewed as only increasing the discretionary powers of officials of the new competition authority.

Figure 8: Business Lobbying: India versus Group 1 and Sample Averages



Given the history of state intervention and overregulation in the Indian economy that was discussed in the introductory section of this chapter, the above-mentioned concerns are not misplaced. However, the very fact that India managed to enact a new competition law in the face of opposition by business groups nullifies any significant role

for business lobbying in this policy process. There are two ways to reconcile this result: first, the business groups were only too happy to get rid of the draconian MRTP Act and Commission and did not oppose the installation of a new and modern competition law and authority that they hoped would be more pro-business and less restrictive than the MRTP Commission. Second, Indian business groups simply do not have enough clout in Indian policy circles to influence critical economic policies.

Both of these explanations are extremely difficult to verify and would require separate studies in themselves. However, based on the recent shift in Indian economic policy toward more business-friendly measures and greater engagement with the business community, the first explanation seems more plausible. This contention seems even more tenable when one considers the fact that the business community was represented in the High Level Committee on Competition Policy and Law by the head of one of India's largest business conglomerates. So, at least in the initial phase there was some serious engagement with the business community. However, it must be noted that the core group that actually drafted the Competition Bill 2001 did not contain any representative of Indian business groups, and instead, was comprised of three bureaucrats and two professionals.

Therefore, the finding is that business groups did find some representation in the competition policy process in India but were largely unsuccessful in totally preventing this law from being enacted or in effecting major changes to the bill. In fact, as recently as November 2007, business groups were still complaining about the new competition law: "Industry is seriously concerned that the new Competition Act...could impact local and cross-border mergers and acquisitions (M&As) and curtail business activities by

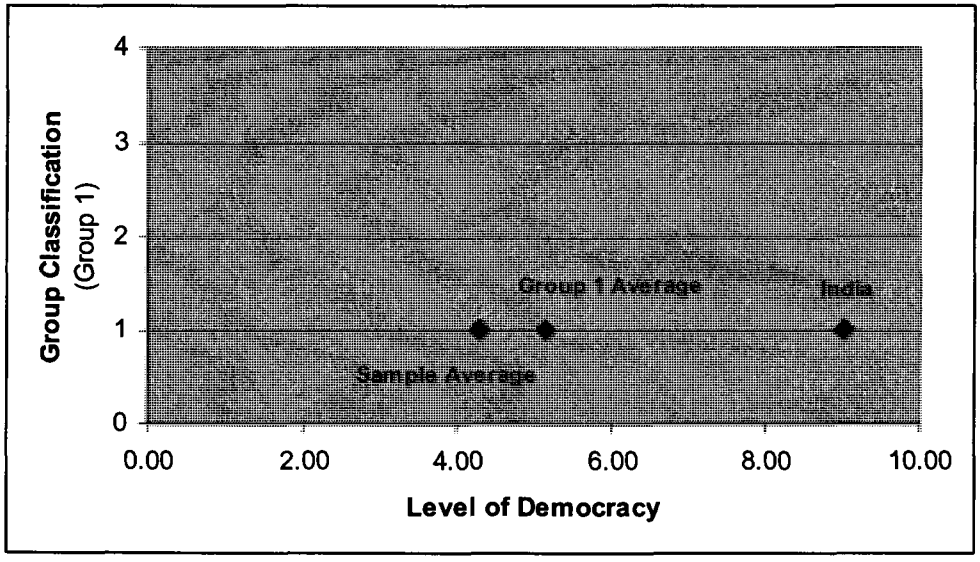
placing substantial discretionary powers in the hands of the thinly-staffed Competition Commission of India (CCI). Influential lobby groups and business houses have taken up the issue with various arms of the government like the ministry of corporate affairs, the Planning Commission and the CCI in the hope that the provisions may be altered" (*Business Standard* 2007).

Based on the reaction of the Indian business groups, it seems that their hopes that the new competition regime would be substantially different from the earlier one were largely misplaced. Their fears that the new competition authority would resemble the MRTP Commission in its discretionary powers have almost come true. Given the right leeway, these groups would have substantially altered the course and outcome of this policy process. The fact that they could not and that the competition bill was passed into law is sufficient evidence that business lobbying was not a significant factor in India's competition policy process.

Level of Democracy – The degree of democracy is hypothesized to play a role in the competition policy process since this policy is viewed as promoting competition and hence, attempts to facilitate the creation of the economic equivalent of a democratic polity which has political parties that compete among them for citizens' votes. Therefore, in a democratic political setup, the enactment of a national competition law that promotes competition is expected to be greatly encouraged. In India's case, this seems to be true since India has a high democracy score (see figure 9) and has enacted a new competition law.

As was mentioned at the beginning of this chapter, the Indian constitution explicitly requires the government to take policy measures that ensure the distribution of the ownership and control of material resources to best serve the common good. Furthermore, the constitution states that the state should take the necessary steps to prevent the concentration of wealth and the means of production that would be harmful to the ordinary citizens. Chakravarthy (2004) argues that this was the trigger that led to the instituting of the MRTP Act back in 1969, which will be replaced by the Competition Act 2002. Therefore, the need to prevent restrictive business practices and to ensure competition in the economic realm was ordained in the constitution on which the democratic polity in India was founded.

Figure 9: Level of Democracy: India versus Group 1 and Sample Averages



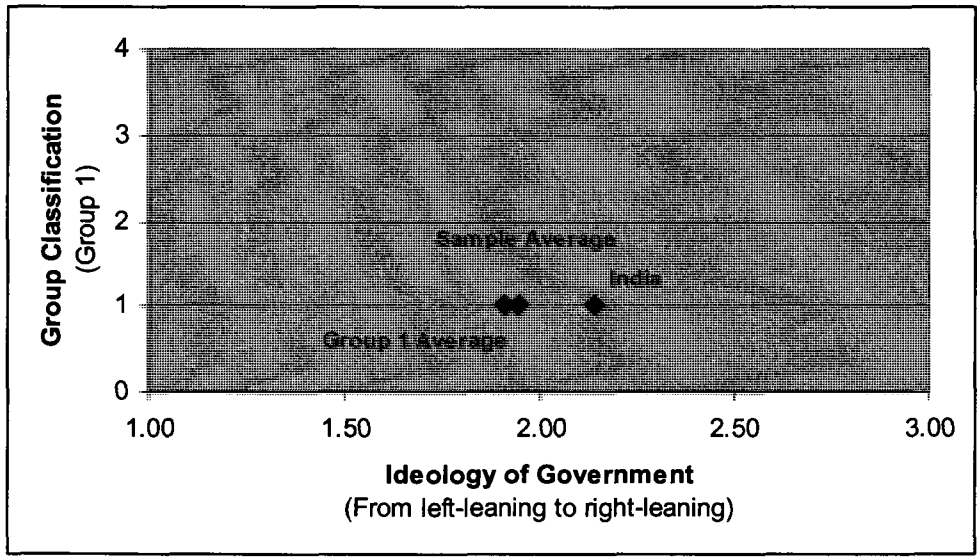
In India's case, there seems to be a strong association between a democratic polity and the need for an economy with competitive conditions. However, considering the fact that the Indian economy until the 1990s was characterized by a conspicuous absence of economic competition because of the overwhelming presence of the state in most economic functions or as a result of strict regulations, it can not be concluded that a competitive economy was always a priority for India's political masters. This conclusion is evident in the difference in objectives between the MRTP Act 1969 (preventing monopolies) and the Competition Act 2002 (promoting competition). So, while preventing monopolies was one way of achieving the directives of state policy under the constitution by preventing the concentration of wealth and resources, the promotion of competition which the new competition law attempts to achieve goes beyond the requirements of the constitution and approximates closer to the ideal of a highly competitive economic system that mirrors India's highly competitive democratic polity.

The discussion in this section on democracy and India's new competition law, thus, confirms the general finding of a strong association between democracy and a liberal economic system. However, to understand the shift in Indian economic policy from one of preventing monopolies to encouraging competition, one needs to look elsewhere, particularly to the ideology of the government as reflected by the statements and actions of the political leaders who undertook this policy measure.

Ideology of Government – Two hypotheses—a main and an alternate—characterize this variable and its causal relationship with the enactment of a competition law. The main hypothesis is that a right-leaning government that favors free-market policies would enact

a competition law since this law seeks to end monopolies (including that of state-owned enterprises) and promote competition, the bedrock a free-market system. The alternate hypothesis views a competition law as inhibiting business and entrepreneurship since it vests government officials with considerable discretion in regulating corporate affairs, a development that is not conducive to a free-market ideal. Therefore, the alternate hypothesis argues for a negative relationship between a right-leaning government and the enactment of a national competition law.

Figure 10: Ideology of Government: India versus Group 1 and Sample Averages



India's score on the ideology scale for this period was 2.14, which is a center-right position on the ideological spectrum (see figure 10). Confirming this statistic is the fact that the party that formed the government in India during the crucial years when the High Level Committee was constituted, the Competition Bill 2001 was drafted, and the

Competition Act 2002 was passed was the Bharatiya Janata Party (BJP), which is viewed as a strong right-wing, pro-commerce party (Das 2003, Karp 1998, and Sridharan 2003). The BJP, with the help of allies, was in power from March 19, 1998 to May 22, 2004, with Mr. Atal Behari Vajpayee serving as the Prime Minister.[74]

Although, as a party, the BJP often showed signs of economic nationalism and threats to disengage from the global economy (*Businessline* 1998, Gopalakrishnan 1998), the government and especially, the prime minister, held firm on India's commitment to continuing the economic reforms (Nayar 1998): "Prime Minister Atal Behari Vajpayee...has reassured global business leaders that economic reforms would continue... [A]sserting that the reform process has become irreversible, Vajpayee said his government had "depoliticized the economic agenda," and asked investors to utilize the "huge opportunities" that India offers... [T]he Prime Minister said his government was committed to creating "a milieu that can catalyze large flows of foreign and nonresident Indian investment" in priority areas on a sustained basis." Often, it was the case that the prime minister had to fend off members of his own party to keep the reforms rolling.

With particular regard to competition law, the Finance Minister, Mr. Yashwant Sinha, made a categorical statement during his Union Budget speech on February 27, 1999 that explains much of India's move from preventing monopolies to encouraging competition: "The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition.

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[74] http://www.pmindia.nic.in/former.htm

Government has decided to appoint a Committee to examine this range of issues and propose a modern Competition Law suitable for our conditions."[75]

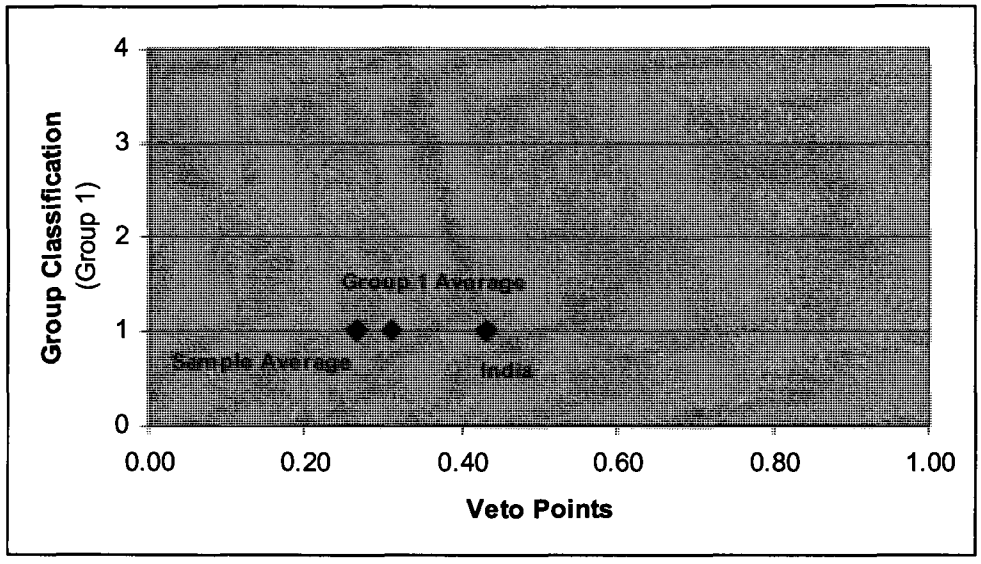
Therefore, in India's case, there is strong evidence to support the main hypothesis that a right-leaning government would enact a competition law that aims to promote competition. During the period of this policy process, India had a prime minister and a finance minister who were both in support of furthering the economic reform process and who saw the enactment of a new national competition law as an integral part of that process. The ideology of the government in India, especially of the political leaders at the helm of affairs, did play a decisive role in India enacting the Competition Act 2002.

Veto Points – The inclusion of veto points was to account for the fact that a policy process typically involved numerous officials in government whose consent was required to pass a bill into law. A higher number of veto points is hypothesized to be negatively associated with the enactment of a competition law since an objection by any one official would be enough to stall the process and the chances of such reactions would be greater the more the number of officials whose consent was needed. India's score for this variable on an increasing scale of 0 to 1 from the large-sample study is 0.43 (see figure 11). This score is higher than the group and full-sample averages of 0.31 and 0.27, respectively. India's high score is partly reflective of the democratic nature of India's polity where the power to enact laws is not concentrated in the hands of a few. Partly, it is indicative of the bureaucratic nature of the government machinery. However, even with a

[75] http://indiabudget.nic.in/ub1999-2000/bs/bs5.htm

high score on this variable, India enacted a new national competition law. The following discussion attempts to understand why that was the case.

Figure 11: Veto Points: India versus Group 1 and Sample Averages



In analyzing the variable "veto points" in the context of the enactment of India's competition law, one has to effectively enlarge this term to take into account the opinions of various parties such as consumers, businesses, and judiciary. Even though some of these groups do not figure in a purely technical definition of "veto points"—as was employed in the construction of this variable for the large-sample study—the fact that India was a democracy that had to engage with various stakeholders during a policy process has necessitated their inclusion in the qualitative analysis of this variable's role in the enactment of India's new competition law.

The diversity of the nine-member High Level Committee on Competition Policy and Law was discussed in the sub-section on Bureaucratic Efficiency. This diversity is reflective of the stakeholders involved in this process and the various quarters that needed to be consulted before a competition law was enacted. The role that the variable "veto points" played in the very early phase is evident from the following: even though there was overall unanimity among the members of the committee, while submitting the report to the government with their set of recommendations, three members expressed some degree of dissent (*Businessline* 2000b). This expression of disagreement, however, did not derail or cause any stoppage of the policy process. From the time the nine-member committee submitted its report to the government in May 2000, it took only a few months for the five-member core group to prepare the draft bill and for the government to start circulating it for expert opinions in November 2000. Immediately, during the monsoon session of parliament the next year, the government introduced the Competition Bill 2001, which was passed into the Competition Act 2002.

Therefore, it is evident that the enactment of the competition law in India's case was not hampered by the presence of the various "veto players." The only serious objection came in the form of the judiciary, which took exception to some of the provisions of the Competition Act that infringed upon the judiciary's powers and jurisdiction. This was discussed in sufficient detail in the previous section. These objections have substantially delayed the implementation of the law. However, these issues do not figure in this analysis since the subject matter in this study is the enactment and not the implementation of competition laws.

Returning to analyzing veto points and why a high score on this variable did not seriously impair the competition policy process in India, one is compelled to reconcile this outcome with the following line of reasoning: even though India had a high level of veto points, the fact that the political establishment was in favor of installing the new competition regime has undoubtedly negated any role that the high number of veto players could have played in thwarting the enactment of this new piece of legislation. Recall that the political establishment itself forms a major part of the definition of "veto points." So, if the establishment is inclined toward putting in place a new law, then the number of veto players may not necessarily derail that policy process because the policy change can be expected to be approved at every stage of the process. Therefore, in conclusion, I find that veto points did not figure as a significant variable in India's competition policy process in the manner in which it was hypothesized.

Having discussed and analyzed the significance and the roles played (or not) by each of the explanatory variables, I now turn to a comparison of the results from the India case study with that obtained from the large-sample study.

Comparing the Quantitative and Qualitative Results

In this section, I compare the results from the case study with that from the large-sample study and then undertake a discussion with regard to the similarities and differences between the two sets of results.

The two statistically significant variables that emerged from the quantitative study were Technical Assistance by Other IOs and the Level of Democracy. The qualitative case analysis informed us that, apart from these two variables, Bureaucratic Efficiency

and Ideology of Government were also critical in India enacting its new competition law. It is no surprise that Indian officials, like their counterparts in other developing countries, benefited greatly from their engagement with international organizations like UNCTAD and the World Bank. Whereas most of the officials have prior training and experience with some of the aspects of a competition law, participating at global competition policy forums and interacting with visiting competition policy experts invariably facilitate the effective assimilation of the latest developments in competition legislation. This participation is even more critical for developing countries that have relatively little history of competition legislation, though countries like India that have had some form of prior competition legislation have also benefited. This finding is adequately supported by the results from both the large-sample study and the case analysis that found this variable to have significantly mattered in the competition policy process.

The level of democracy as a significant variable also holds up in both the studies. India's score on the level of democracy on an increasing scale from 0 to 10 is 9, which is much higher than the Group 1 and overall sample averages of 5.13 and 4.27, respectively. Democracy does indeed seem to have a very high positive correlation with the enactment of national competition laws since the levels of democracy progressively go up in the large-sample as we move from Groups 3 through 1. This relationship is reflected in India's case also.

The two variables that did not return any general significance but were found to have mattered significantly in India's competition policy process are Bureaucratic Efficiency and Ideology of Government. Part of the reason for the efficiency of bureaucracy to have mattered in India's case and not so much in the large-sample

analysis is that the measurement of this variable was at an aggregated level in the latter analysis, which prevented a finer estimation of the quality of the bureaucrats that actually handled the drafting and enactment of the competition laws. This is a fact that was discussed during the case analysis in the present chapter. That is, even though India's bureaucratic efficiency on a general level was not very impressive, the bureaucrats who were involved with the competition policy process was of a very high level of experience and efficiency. Hence, the Bureaucratic Efficiency variable proved significant in India's case. The reporting of this finding also justifies the approach of my dissertation where case analyses supplement the large-sample analysis to provide depth and clarity to the overall study.

Of all the variables that were analyzed in the India case analysis, none turned out to be more significant than the Ideology of Government, especially the stance taken by the Prime Minister of India and his Finance Minister toward economic reforms and competition law. Even though the BJP is popularly know as the political party of business groups in India, the commitment of the prime minister toward extending economic reforms and continuing on the path of modernization of the Indian economy in terms of both the physical infrastructure and the overall policy structure prevented both business lobbies and veto players from derailing the enactment of India's new competition law. This is part of the reason why the Business Lobbying and Veto Points variables failed to play the hypothesized negative roles in India's case.

Conclusion

The India case study highlights the important role that the particular ideology or economic philosophy of political leaders plays in the adoption of economic policies. In India's case, the enactment of the Competition Act 2002 was also helped by the presence of efficient bureaucrats and the rendering of technical assistance by international organizations. India's democratic polity also seems to have mattered for the adoption of its competition law.

In concluding the present case, the interplay between the two critical variables, the Ideology of Government and Bureaucratic Efficiency, must be underscored. In India's case, the Ideology of Government represents the *willingness* of the political administration in India to approve the installation of a new competition law and authority in the country. This must be distinguished from the *ability* of the bureaucracy and the facilitation of this policy process by the other variables since ability alone does not determine outcomes. The government must be willing to allow that policy outcome to take place. Therefore, this case analysis informs us that in India's case, the two characteristics—willingness and ability—together determined the enactment of its Competition Act 2002.

CHAPTER VI

Case Study Two: China

Chinese Economy: No Longer the Hidden Dragon

One of the greatest and the most storied developments in global political economy in the second half of the twentieth century is the emergence of China as one of the world's biggest economies by the end of the century (Qian 2003).[76] More notably, China became one of the world's largest trading nations and a hotspot for foreign direct investments (Shane and Gale 2004). This situation is a far cry from the 1960s when China—like India, as was seen in the previous chapter— resorted to self-reliance and self-sufficiency in the wake of its growing suspicion of the outside world (Shen 2000). China began to make its presence felt in the global economy from the late-1970s, when it opened its doors to trade and investments with the rest of the world. It is safe to say that the county has not looked back since then and has placed itself on a trajectory of never-before-seen growth (Qian 2003). In this section, I present this fascinating historical development through a narrative that is both conveniently and appropriately divided into two significant periods in China's recent economic history: a pre-reform period before 1978 and a reform period beginning in 1978.

In discussing China's pre-reform period, I wish to start around the time when China came under communist rule in 1949. According to Brandt and Rawski (2008: 4), a decade before the Communist Party of China came to power, "China had developed a

[76] For an excellent list of works that document China's economic reform, see the "selected bibliography" section in Suliman (1998).

modern sector spanning industry, communications, transportation, banking, and finance, in which domestic ownership predominated. Although this nascent modern sector never surpassed one-tenth of GDP, its rapid development, along with China's growing integration with the international economy, had catalytic effects on agriculture and other sectors that pushed the economy toward modest gains in per capita GDP." But, the eight-year battle with Japanese invaders and then, the internal struggles between the Communist and Kuomintang forces disrupted this progress. In 1949, when the Communist Party of China formed the People's Republic of China under the leadership of Chairman Mao Zedong, the Chinese economy was in the throes of inflation and was suffering massively from the ravages of war (Brandt and Rawski 2008).

Even though this inflationary situation was brought under control with orthodox macroeconomic policies that restored fiscal balance and economic growth, the newly installed communist regime quickly leaned toward instituting a Soviet-style economic system characterized by central planning (Brandt and Rawski 2008, Howe, Kueh, and Ash 2003, Perkins 1966). While this shift was fashioned in large part due to the admiration that the Communist Party held for the achievements of the Soviet system, this affinity toward the Soviets was also fashioned by the West's—more specifically, the United States'—decision to isolate China and to impose a trade embargo on the Chinese economy (Howe, Kueh, and Ash 2003).

Following the Soviet lead, the economic system that China put in place in the 1950s was a command economy with the following characteristics: "government-made decisions concerning the volume and composition of output, and distribution; the allocation of resources through central planning; state ownership of all means of

production; and distribution of income based on the egalitarian principle" (Yeh 1993: 12-13). However, this economic system was not an exact replica of the Soviet system (Brandt and Rawski 2008, Howe, Kueh, and Ash 2003). The most important distinction was that China "did not attempt agricultural mechanisation or collectivisation in advance of, or even simultaneously with, the beginning of its industrialisation drive in 1953. Mao and the leadership were well aware of what they called 'Stalin's error' (*i.e.* a hasty and brutal agricultural collectivisation) and they understood that China could not risk a similar debacle in the rural areas" (Howe, Kuen, and Ash 2003: 2). Moreover, the management of Chinese industry was largely in the hands of provincial and local bureaucrats, and hence, was not as centralized as it was in the Soviet Union (Brandt and Rawski 2008). Apart from these differences, the fact that China was much poorer than the Soviet Union and much of the Eastern European socialist bloc was another factor that distinguished the two systems (Naughton 1995). Given these differences, the economic system that China adopted was a combination that included industrialization using imported Soviet plants, a process of rural socialization that was both gradual and voluntary, and mandatory state purchase of agricultural output (Howe, Kueh, and Ash 2003).

However, by the mid-to-late-1950s, it became apparent that China's economic system was failing in its objectives of lowering China's high levels of poverty and from improving the standards of living of its people (Howe, Kueh, and Ash 2003). The result was the initiation of the Great Leap Forward by Chairman Mao Zedong and the herding of "Chinese villagers into large-scale collectives known as people's communes in 1958" (Brandt and Rawski 2008: 4). Mao's goal was to achieve full-scale socialism in a quick

manner and to increase industrial and agricultural output that would result in rapid economic development (Shen 2000).

Howe, Kueh, and Ash (2003: 3) note that "[T]he Leap was not simply a rural phenomenon. It was an institutional revolution in which Soviet type planning with its calculated balances, administrative techniques, and personal financial incentives, was swept away. In its place was created a society where the population was organised in gigantic urban and rural communes inside of which individual property rights were largely lost and the criteria for institutional excellence were summed up by Mao in his famous description of the Peoples Communes as, 'One big. Two public'" By most accounts, the Great Leap and the People's Communes were massive failures that resulted in famine and starvation in China's country-side.[77]

In the aftermath of the Great Leap, the Chinese economy entered a period of economic adjustment in the early-to-mid 1960s that also witnessed a waning of Chairman Mao's power and control in favor of political moderates (Shen 2000). During this period, the most pressing needs were two-fold: provision of basic supplies of food and clothing to the Chinese population and coming to terms with the acrimonious break-up with the Soviet Union (Howe, Kueh, and Ash 2003). However, the rather quick resurgence of Chairman Mao as China's supreme leader led to the initiation in 1966 of the infamous Great Proletarian Cultural Revolution that derailed the plans adopted in the interim to

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[77] For an excellent survey of the literature pertaining to China's Great Leap Forward of 1958-1961 and its outcomes, see Yang, D. T. (2008) "China's Agricultural Crisis and Famine of 1959-1961: A Survey and Comparison to Soviet Famines." *Comparative Economic Studies* 50: 1-29. The fact that the Great Leap Forward was a mistake and Chairman Mao Zedong and his accomplices were to be blamed for it was also acknowledged by the sixth plenary session of the Eleventh Central Committee of the Chinese Communist Party in 1981 (see Shen 2000: 8).

modernize China's agriculture, industry, national defense, and science and technology (Shen 2000). The Cultural Revolution was an attempt by Chairman Mao and his supporters to cleanse "the Party, the army, and the government of "class enemies"—those whom Mao perceived as his antagonists or those who might pose a threat, real or imagined, to his supremacy" (Shen 2000: 10) Apart from its direct and violent impact on the Chinese polity and society, the Cultural Revolution had other disastrous, long-term consequences, especially for the economy: "No other socialist country has experienced the severe destruction of the education system as China did during the Cultural Revolution. The poor quality of the work force in the late 1970s was simply the delayed effect of that disastrous episode" (Yeh 1993: 13).

China entered the 1970s—the last decade of the pre-reform period—with Chairman Mao reluctantly yielding effective power to Premier Zhou Enlai, who survived the Cultural Revolution in spite of being viewed as a political moderate (Howe, Kueh, and Ash 2003, Shen 2000).[78] However, Zhou inherited an economy that faced severe food shortages and national fiscal deficits that resulted from ill-conceived plan targets and labor methods that were adopted in the previous plan periods. Though Zhou made attempts to open up China's borders to the rest of the world, to engage with the West, and to introduce elements of the market system to the Chinese economy, his efforts were successfully thwarted by the leftist hardliners in the Communist Party (Howe, Kueh, and Ash 2003, Shen 2000). In 1976, both Mao and Zhou died, and in 1978, Deng Xiaoping

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[78] Another notable political moderate who survived the Cultural Revolution was Deng Xiaoping, the Chinese leader who oversaw China's economic reforms after Mao's death.

took over as the supreme political head of the Chinese nation.[79] The reform period from 1978 onwards bears testimony to the efforts of Deng to fully and successfully transform the Chinese economic system to what the world knows it today.

In retrospect, the Chinese economic system in the pre-1978 period was a command economy that borrowed heavily from the Soviet system but was modified to suit the Chinese situation and context. The advantage of the Chinese economic system was that it allowed a quick and effective mobilization of resources for achieving rapid growth in selected priority sectors. Yeh (1993) notes that this is borne out by the continued economic growth, rapid industrialization, and technological advancements in defense-related sectors that China recorded in the immediate decades after the Communist Party assumed power in the late 1940s. This observation is also partly echoed by Brandt and Rawski (2008: 5) who note that "[D]uring the quarter century prior to the start of economic reform in the late 1970s, China's plan system delivered mixed results...[R]ising rates of saving and investment promoted economic growth, despite short-term disruptions associated with the Great Leap Forward of the late 1950s and the Cultural Revolution of the late 1960s."

Unfortunately, while a command economy can register such fast-paced results, the cost of these achievements tends to be high, and China was no exception. This is because the rapid economic growth that comes with such a system results from capital formation rather than from increases in productivity (Yeh 1993). Economic activity sans increases in productivity results in the absence of dynamic efficiency and in the inability

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[79] It must be noted that Deng Xiaoping never officially became the head of the Chinese state or the Chairman of the Communist Party. But he was the *de facto* leader and exercised real power over the party and the state (Shen 2000).

of an economy to match actual output with potential output (Brandt and Rawski 2008). This inefficiency increases the overall operating costs of the economy. So, even though China experienced economic growth during the period from the 1950s to the late 1970s, total factor productivity remained flat during much of this period and the Chinese economy suffered from multiple inefficiencies that resulted primarily from a combination of non-economic policy objectives, weak institutions, and poor incentives (Brandt and Rawski 2008).

In conclusion, a pithy summary of this period in China's economic history would run thus: though China recorded an average annual growth rate of 4.2 percent in per capita gross national product (GNP) during the plan period of 1950-1975 and performed much better during this period than many other populous developing countries like Brazil, Mexico, India, Egypt, and Indonesia, it continued to be a low-income country with one of the lowest per capita GNP levels among centrally planned economies and one that suffered from frequent supply disruptions of not just consumer goods but also industrial goods (Brandt and Rawski 2008, Naughton 1995, Yeh 1993). The following observation of the state of the Chinese economy on the eve of the onset of economic reforms provides the perfect segue to a discussion of the post-1978 reform period: by 1978, "the economy was plagued by slow growth of agriculture, persistent bottlenecks in energy, massive unemployment and an acute shortage of technical manpower, a large but technologically backward capital stock, institutional rigidities, and economic inefficiencies" (Yeh 1993: 15). Apparently, the Chinese economic system was badly in need of a major overhaul. I now turn to discussing that epoch.

If China's pre-reform period was dramatic for the actions of some of its leaders to impose a particular economic system on the nation, the reform period was equally dramatic for the efforts of its later leaders to reverse that process and to impose a different sort of economic system on a nation that was still reeling from the ill-effects of the former system. Transition from a socialist economy to a market economy had few precedents, and the Chinese state had to decide on the form and design of a new economic system with little help from history. The economic system that China adopted to replace the command economy was a "socialist planned commodity economy," or the model system, as the Chinese leaders called it (Yeh 1993; quotes in original).[80] This economic system could be thought of as a mixed economy that possessed elements of both a planned economy and a market economy, though the relative roles of these components were quite uncertain.

In terms of the dynamics of economic transition, this system came to be called the "dual-track system" because it used both the plan and the market simultaneously for the allocation of resources (Naughton 1995). Key to this system was the presence of a two-tier pricing mechanism, which is often cited as unique to the Chinese transition process and a major reason for the success of the Chinese economic reforms:[81] "[O]n one track, economic agents are assigned rights to, and obligations for, fixed quantities of goods at fixed planned prices as specified in the preexisting plan. At the same time, a market track

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[80] "Commodity economy" essentially means "market economy" (Wu 2005: 62)

[81] This dual-track pricing system can be contrasted with the economic reforms in Hungary in 1968 where bureaucrats began fixing prices administratively in accordance with market demand and supply and the shock-therapy in Russia and a few other Eastern European countries after 1990 where prices were freed abruptly (Qian 2003). It is commonly argued that both of these attempts were not as successful in ensuring a smooth economic transition as the Chinese dual-track system.

is introduced under which economic agents participate in the market at free market prices, provided that they fulfill their obligations under the preexisting plan" (Qian 2003: 307). The advantage of the dual-track system was that it limited the number of losers from the transition: the plan track protected the bureaucrats and their administrative power and positions while the market track benefited free market participants.

However, as the reform process got underway in the late1970s and the early 1980s, the share of the "planned economy" component slowly started giving way to the "commodity economy" component and the focus shifted from reforming the state sector to effecting changes in the non-state sector as the Chinese leaders quickly realized that tinkering with state enterprises and giving them greater autonomy did not necessarily lead to an efficient allocation of resources due to the absence of a price mechanism that adequately reflected the level of commodity scarcity (Wu 2005). By the late 1980s, the Chinese state had more or less resolved the planning-versus-market debate: "[T]he state will regulate the market demand and supply of fiscal, monetary, and legal means, and the market will guide the activities of the enterprises" (Yeh 1993: 16).

The market-based economic system that ensued had three major components, which approximated it to a regular market economy (Yeh 1993: 16): "a set of independent economic entities (enterprises, households, and individuals) responsible for their own profits and losses, a competitive market system, and a macroeconomic control mechanism." Moreover, the leaders made sure that the economy remained open to the rest of the global economy. In approximately 10 years, China had transformed itself from a centrally-planned command economy to an economy that relied less on planning and more on the market.

Yeh (1993) argues that the Chinese economic reform was a trial-and-error approach that targeted specific sectors and regions as part of a gradual process. In other words, there was no "grand strategy for reform" (Yeh 1993: 17). The reform process began in agriculture and foreign trade, and then shifted to the industrial and urban areas, including setting up of economic zones (Howe, Kueh, and Ash 2003, Shen 2000). Essentially, China's economic reform was targeted at four primary areas: "systemic reform, agriculture, industry, and foreign economic relations. Systemic reform included reform in planning, pricing, budgetary, and financial systems" (Shen 2000: 43)

The view that the Chinese reform process was gradual and not a clearly laid-out strategy is echoed, among others, by Zhong-Liang (1998) and expressed even better by Naughton (1995). In contrast to the sudden change that was attempted in some of the transition countries in Eastern Europe, Zhong-Liang (1998: 15) notes that "China's reform of economic structure took a developmental road that proceeded in an orderly way, unlike some countries that adopted so-called shock therapy. As to the depth and width of the reform, it was actually a revolution, rather than an abolishment of the socialist system; in fact, it was a self-improvement of the socialist system." Equally insightful is the observation by Naughton (1995: 7) that "[T]he overall distinctive pattern of reform...emerged from the interaction between government policy and the often unforeseen consequences of economic change. Only through this evolving process did the goal of a market economy gradually emerge as the generally agreed upon objective of the transitional process. By the later stage of the transition, there were clearly leaders who saw and embraced it as a strategy, but this should not be taken to mean that it was seen as such at the outset." So, even though China's move to a market economy was not exactly

premeditated, the steps it took along the way transformed it into a market economy, though with a socialist flavor (Suliman 1998).

Needless to say, China's move toward a socialist market economy from a centrally-planned one has increased the role of the private sector in China's overall economy. However, it still is the case that private firms are generally small in size, with state-owned enterprises in sectors such as electricity, aviation, railroads, banking, and telecommunication making up the largest enterprises in the nation (Owen, Sun, and Zheng 2005). The presence of dominant state-owned enterprises stems from the fact that the state enjoys *de facto* monopoly in these sectors, an observation that is relevant and crucial for competition policy. Moreover, these are the sectors that the Chinese government considers to be of strategic importance with respect to national security and economic development, and hence, the government has stayed put or enhanced its presence in these sectors, unlike the "non-essential" sectors like electronics, machinery, textiles, and chemicals in which the state has disinvested (Owen, Sun, and Zheng 2005).

Regardless of the evolving private-public share of China's growing economy, an overall review of China's economic performance since it initiated economic reforms would surely make Deng Xiaoping a proud man, for it was his conviction that reforms would lead to "common prosperity" (Howe, Kueh, and Ash 2003). During the period from 1978 to 2005, China recorded an average annual GDP growth rate of 9.5 percent, which dwarfs the 4.2 percent growth rate that it averaged annually during the plan period of 1950-1975 (Brandt and Rawski 2008). In fact, China's marvelous rates of growth during the first two decades of the reform period made China the fastest growing nation in the world not only during this period but also in all of recorded human history (Young

2003). Growth in productivity also broke from the past: "productivity improvement accelerated from 0.5 to 3.8 percent per annum after the reform, with productivity change accounting for 40.1 percent of overall GDP growth during 1978-2005, as opposed to 11.4 percent during 1952-1978 and -13.4 percent (*i.e.*, a productivity decline) during 1957-1978" (Brandt and Rawski 2008: 1).

Equally impressive is China's performance with regard to its external sector, which received a boost pursuant to the opening up of the economy as part of the reform process. Since the initiation of preferential foreign direct investment policies in the late 1970s by the Chinese government, the country has witnessed a flood of foreign capital, especially since 1990 (Wu 2005). "By the end of 2002, the total number of foreign-invested enterprises approved nationwide was 424,196; the total contract value of FDI reached US$ 828 billion; and the total used value of FDI stood at US$ 448 billion. Since 1993, China has been the largest recipient of FDI among developing countries. In 2002, for the first time, China surpassed the United States to become the country using the largest amount of FDI in the world" (Wu 2005: 300). Not to be outdone, China's foreign trade during the period 1978-2001 increased twenty-three times, with exports outpacing imports. Needless to say, China has become an important player in global trade with its share in world trade shooting up from the 32nd position to the 6th position. China is no more the hidden dragon that it was during much of the plan period. It is very much an economic superpower and a global player.

In summing up this section on the recent economic history of the Chinese nation, it must be admitted that what China has achieved in the last three decades is nothing short of a miracle. The extent and speed of China's economic performance makes the stunning

economic growth of its East Asian neighbors pale in comparison (Brandt and Rawski 2008). Perhaps, most importantly, China's growth in the 1980s and 1990s has reduced poverty levels drastically and lifted around 500 million Chinese from poverty between 1981 and 2004, which translates into a decline in poverty rate from a little over 60 percent of the population to around 10 percent during this period (Ravallion 2008). Unfortunately, income inequality in China has registered tremendous increases during this period and appears as a serious blot on an otherwise enviable economic performance.

The present section has summarized the recent economic history of China since the Communist Party of China came to power in 1949. The discussion was divided into two distinct time periods, the pre-1978 plan period and post-1978 reform period. In the next section, I present a report on the state of competition legislation in China that will serve as a primer to a discussion of the competition policy process in China during the period 1996-2007.

The State of Competition Law in China

The concept of competition is quite unfamiliar for many centrally-planned economies (Owen, Sun, and Zheng 2008). This is understandable since it is the plan and not the market that dictates production and consumption levels. As was seen in the previous section, China was a centrally-planned economy for the first thirty years of communist rule, and hence, the idea of competition and competition legislation was irrelevant in the manner in which it applied to a market economy. However, the overall shift of the Chinese economic system from a command economy to a socialist market economy has had its effect on the state of competition legislation in this country as well. In this section,

I document this development and advance the discussion to the point where the focus turns to the recent efforts by the Chinese leadership to institute a modern competition regime.

As observed by Ming (2009),[82] the history of Chinese competition legislation can be split into three periods: the period from 1949 to 1978 when the Chinese economy remained a centrally-planned economic system, the early reform stage from 1978 to 1992 when the Chinese economy was a planned market economy, and the period since 1992 when China proceeded to be a socialist market economy. The year 1992 is important since it was in this year that the 14th National Congress of the Chinese Communist Party decided to pursue the goal of a socialist market economy system for China (Ming 2009, Wu 2008).[83]

Ming (2009) notes that during the pre-1978 plan period, there was no market competition, and therefore, there were no regulations governing anti-competitive business activity. The state-owned enterprises were oblivious to the rules of supply and demand since decisions pertaining to allocation of resources and pricing of products were included in the plan, which left these enterprises to simply fulfill their plan obligations (Li and Du 2007). "A socialist planned economy left no room for the competitive process to operate in general, and competition law was irrelevant" (Li and Du 2007: 183).

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[82] Shang Ming is currently the Director General of the Anti-Monopoly Bureau at the Ministry of Commerce of the People's Republic of China.

[83] The year 1992 is also important in the recent economic history of China because it was in this year that Chairman Deng Xiaoping undertook his famous trip to the southern parts of China to ensure the continuation and acceleration of economic reforms in the Chinese economy (Owen, Sun, and Zheng 2005). This trip is widely considered as a major event that added critical momentum to China's march to becoming the global economic powerhouse that it is now.

During the next period from 1978 to 1992, the Chinese leadership opened up the economy and allowed limited competition in the domestic economy. It was during this period that the Chinese Government started to pass legislation curbing restrictive business practices, though most of the legislative efforts were few and far between and none of the laws passed resembled a comprehensive competition law of the modern kind.[84] A law titled The Provisional Regulation on the Development and Protection of Socialist Competition that was passed in 1980 was the first piece of legislation aimed at blocking monopolies.[85] "This regulation set out principles *inter alia* on development and protection of socialist competition, the breaking up of 'regional blockades' and sectoral compartmentalisation, and fostering competition through legal means" (Ming 2009: 4). Then, in 1987, another piece of legislation was passed that was called the Regulation on the Administration of Advertisement of the People's Republic of China. The objective of this legislation was to prevent monopolies and unfair competition in advertising. As is evident, these pieces of legislation were isolated in their approach and were aimed more at curbing monopolies rather than encouraging market competition among private business entities.

While legislative efforts in this policy area were limited until 1992, many new pieces of legislation concerning restrictive business practices were enacted once the government made the explicit decision to convert the Chinese economy from a planned

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[84] For the three standard provisions of a comprehensive competition law, see the section titled "A Primer on Competition Policy and Law" in chapter 1 of this dissertation.

[85] Under "socialist competition" in a centrally-planned economic system as in China, the state encourages state-owned enterprises and the workers to compete among themselves in order to improve quality, management, and productivity (Tung 1981).

market economy to a socialist market economy in the post-1992 era. The notable ones were the Anti-Unfair Competition Law of 1993, the Consumer Protection Law of 1993, the Commercial Banking Law of 1995, the Price Law of 1997, and the Bidding Law of 1999 (Ming 2009, Owen, Sun, and Zheng 2008). Collectively, all of these laws were aimed at preventing illegal business conduct of a monopolistic nature such as bid-rigging, price-fixing, predatory pricing, and abuses of dominant market positions by public enterprises and in ensuring the protection of consumers' rights and interests (Ming 2009, Owen, Sun, and Zheng 2008).

However, none of these approximated to a full-fledged competition law of the kind seen in economically advanced countries. That is, even though China passed a slew of laws in this period in this policy area, the country never had a comprehensive and coherent competition law that was explicitly aimed at encouraging market competition in tandem with the overall economic reforms (Bush 2005, Zhang 2007). Ming (2009: 5) notes this best: "China's antitrust legislation before the enactment of the AML displays the following characteristics: first, the antitrust rules were scattered through all types of laws, at various levels, including laws, regulations, administrative rules and regulatory documents. There was no unified anti-monopoly code, nor a specialised and integrated antitrust system. Secondly, the content of the antitrust laws and regulations was relatively simple. Most rules were general prohibitions. As to the concept, essential elements and legal liability of monopolistic conduct, the laws and regulations did not contain detailed rules, and this led to weakened enforcement of those rules. Thirdly, most antitrust regulations were promulgated by the various ministries under the State Council, with the effect that these regulations were legally less powerful, were of more reduced scope, and

had a relatively weak legal effect. Fourthly, many of these antitrust regulations did not contain rules on the legal consequences and the implementation of sanctions, making them less operational."

In sum, these laws lacked clarity and purpose, and were rarely enforced. Nevertheless, these isolated pieces of legislation can be seen as the initial steps taken toward the larger goal of drafting and enacting a modern national competition law in China. In the next section, I focus on China's efforts to install a new and comprehensive competition law, the Anti-Monopoly Law.

China's Anti-Monopoly Law

China's Anti-Monopoly Law (AML) was adopted by the Standing Committee of the National People's Congress (NPC) on August 30, 2007 (Huang 2008, Sheng and Bin 2007).[86] This policy development drew the world's attention for two reasons. First, it signaled to the global community that China was sprucing up its legal framework to better align itself as a market economy (Ha and O'Brien 2008). This policy action by China brought it closer to the economic laws prevalent in the advanced market economies of the West, which have very modern and updated competition laws. Given China's history of a centrally-planned economy, the introduction of the AML was heralded as China's "economic constitution" that would take it farther away from state control and ownership and more toward the status of a market economy (Bush 2005, *The Economist* 2008a).

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[86] Even though China has enacted a modern competition law, the enactment did not take place during the period under study in this dissertation, that is, 1996 to July 2007. Hence, China was placed in Group 2 as a country that drafted a national competition bill but one that had not passed the bill into law.

Second, and more relevant to this study, is that this concluded a long drawn out legislative process that began in 1994 (Huang 2008, Sheng and Bin 2007). The fact that it took China 13 years since the first draft to finally promulgate its national competition law is extremely puzzling because with an authoritarian government in power it would be expected that important legislation of this nature would be cleared with alacrity once the leadership agreed upon its enactment. Given China's dominant position in the global economy and the fact that many multinational corporations had set up shop in the last few decades in this fast-growing and rapidly-transforming country, the policy world both within and outside China was closely watching and analyzing this policy process for many years (Ren and Yang 2005). In the remainder of the present section, I explain the steps taken by China to draft the new competition law and examine the reasons why the enactment of this law has been inordinately delayed as of July 2007. To maintain consistency with the overall period under study in this dissertation, I do not focus on events beyond July 2007, including the eventual enactment of the AML.

Interestingly, the first step toward instituting a national competition law in China was undertaken in August 1985 by way of the constitution of a committee by the Legislative Affairs Bureau of the State Council (Ren and Yang 2005).[87] This committee was entrusted with the task of drafting the AML, the promulgation of which was delayed for well over a decade. However, in analyzing the history of the AML, most scholars begin from 1994 since this was the year in which the legislative process of the AML was

[87] The State Council is the executive branch of the Chinese government (Owen, Sun, and Zheng 2005)

initiated. I follow likewise, though I offer some information on the pre-1994 events before I examine the developments in the mid-1990s and later.

As was seen in the previous section, early during the reform period, the Chinese government passed a law in 1980 to promote socialist competition among state-owned enterprises. So, even at an early stage in the reform process, the Chinese establishment was seized of the significance of promoting competition at the workplace and among the enterprises. Later, in August 1987, the Legislative Bureau of the State Council formed a working group on Antitrust Law (Neumann and Guo 2003). Finally, in 1994, the Antitrust Law was included as part of the legislative plan of the Eight Standing Committee of the National People's Congress (Neumann and Guo 2003). So, some preliminary steps were undertaken toward the AML before it was placed on the legislative agenda. However, it was at the legislative stage that it got unduly delayed.

For the most part, much of the debate over a national competition law that occurred within the Chinese establishment was not made public (Owen, Sun, and Zheng 2005).[88] However, one of the most comprehensive works on the Chinese competition policy process, and by its own admission, the only such book available at the time of its publication—Williams (2005)—contains valuable information that will help present this narrative. This work contains exclusive information on internal official meetings on competition law in China that was provided to the author by Chinese officials on the basis of strict anonymity. Hence, this work holds considerable value to the discussion that follows and I draw heavily on this work toward this purpose.

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[88] After all, there is a Chinese Law that pertains to regulations on guarding state secrets and is stated in Williams (2005: 172): "All state affairs which have not yet been decided upon, or which have been decided upon but not yet been made public [are secret]."

By 1994, China was well into the economic reform stage and had opened up many of the sectors of the economy to both private and foreign businesses. As part of the reform process, the Chinese government decided in early 1994 to set up a working group that consisted of two departments of the State Council, State Economic and Trade Commission (SETC) and State Administration for Industry and Commerce (SAIC). Both of these departments were critical to the economic reforms process: "[T]he SETC had several roles including managing the amalgamation of state-owned industries into viable and more commercially run organisations, economic policy advice to central government and promoting competition policy as part of wholesale restructuring of the economy into a 'socialist-market economy.' The SAIC is the body charged with granting business licences to enterprises and enforcement of business-related laws including the 1993 Anti-Unfair Competition Law..." (Williams 2005: 173).

Apart from members from these two departments, the working group consisted of additional members from industries like telecommunications, posts, railways, and aviation. These were sectors of the economy that were characterized by the presence of large state monopolies. The remaining members of the group were officials from the National People's Congress' legislative affairs committee.

The group was entrusted with the task of assessing whether China was in need of a competition law, and if found so, was required to draft a statute. At its first meeting on May 12, 1994, the working group concluded that a comprehensive competition law was in China's best interests. Specifically, the group recommended a competition law for the following reasons: to assist in the process of transforming China into a socialist market economy, to facilitate China's modernization drive, to help in the development of a legal

system that would effectively enforce laws that facilitated China's move toward a socialist market economy, to serve as a catalyst for reforming state-owned enterprises and for changing the role of the government in the economy, and finally, to modernize Chinese economic laws and regulations to be in line with international practices.

While making these recommendations, the group took cognizance of the fact that any competition law for China should align with the Chinese government's idea of a socialist market system that was characterized by a fair trading environment and by a unified and open national market without regional economic boundaries. In other words, the Chinese political establishment was loath to install a completely foreign competition policy system in China that was not compatible with China's socio-economic characteristics and economic policy goals. This principle of "double conformity" was at play right though the drafting stage of China's AML (Ming 2009: 5): "On the one hand, the establishment of an antitrust law system should examine and learn from established international practice and be in conformity with international standards and practice. On the other hand, it should also fully take into account China's level of development and its state of market competition, and be in conformity with Chinese reality."

The initial deadline for the working group to submit a draft competition law was by the end of 1995, which was widely thought to be highly optimistic given the enormity of the task. In fact, the first draft was made available only in 1999. However, during the period from 1994 to 1999, the group met with various stakeholders in this policy process to elicit their views on the proposal for a new competition law. The parties who were consulted for their opinions ranged from state enterprises from various industries to industry lobbies to academics to international competition policy experts and foreign

government officials. While state enterprises clamored for exemption from some of the provisions of the new law on the basis of "national interest," the industrial lobbies were worried about the potential grey areas that would characterize the new competition regime.

These diverse concerns coupled with detailed studies and analyses of international competition laws consumed much of the time of the working group. Moreover, the group had to grapple with some technical issues that were related to China's large geographical size. That is, whilst the proposed competition law aspired to break barriers to entry in all markets (including regional markets), the fact that China was a large country—both geographically and population-wise—naturally created regional monopolies: "the difficulties of transport and distribution over such large geographical distances, as are encountered in China, all conspire to provide considerable barriers to entry to regional markets. It may be that the Working Group in using a national perspective and with an eye on industrial concentration, economies of scale and the industrial policy of promoting national champions, may have lost sight of the need to promote economic efficiency by competitive means at the consumer level. In effect, the definition of relevant markets was deficient" (Williams 2005: 175).

Soon it became clear that the working group would not meet the legislative deadlines, giving rise to calls in 1997 from some quarters to heighten the pace of the drafting process. A series of conferences were held in 1998 and 1999, both in China and outside, and the help of the OECD was taken to organize these conferences and to expedite the drafting of the competition law. Even though these conferences and the engagement with the OECD were highly beneficial to the drafting process, the fact that

no timetable was set for finalizing the draft law and that various sections of the draft and the proposed competition regime remained undefined and murky led to serious delays during this process. In 1999, a draft competition law was prepared which was discussed during the aforementioned conferences within and outside China. This draft was later modified in 2001.

The legislative process gathered steam in 2004, when a new draft was submitted by the Ministry of Commerce (MOFCOM) to the State Council.[89] This new-found sense of urgency is partly attributed to China's entry into the WTO in late 2001 and the need for a modern and comprehensive competition law to tackle cross-border competition issues (Williams 2005). This momentum continued into the following years, and in June 2006, the State Council's Legislative Office submitted the final draft of the AML to the NPC for its review, with an earnest request for its early passage into law since anti-competitive business practices had become common in China and there was need for a clear competition law framework (Huang 2008). Adding urgency to the legislative process was a relatively neglected fact that has been highlighted by Huang (2008: 117): "the Chinese legislature had promised to establish a fairly comprehensive legal system to regulate the socialist market economy by 2010, and 2007 is the last year of the current administration. Therefore, it is no surprise that the government wants to have the AML as a political legacy."

As of 2005—a little more than a full decade after the legislative process was begun on a competition law for China—Williams (2005) notes that the final legislation

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[89] The Ministry of Commerce (MOFCOM) was created in 2003 by abolishing and merging the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the earlier-mentioned State Economic and Trade Commission (SETC).

was still being awaited. However, the creation of MOFCOM and the entrusting of the legislative process to this agency seem to have accelerated the drafting process, given that the new agency has worked very closely and actively with both the State Council and the NPC in the last few years (*The Antitrust Source* 2009). And, as of July 2007, the end-point of the period under study in this dissertation, China was on the threshold of enacting the AML.

In the next section, I examine the significance of each of the explanatory variables in this study in explaining China's competition policy process, especially the extensive and widely-noticed delay in enacting its national competition law.

Explaining China's Competition Policy Process

China's long delay in enacting its AML makes for an interesting case analysis since there are bound to be causal factors not adequately captured and illuminated by the quantitative analysis that can possibly explain the reasons for this procrastination. In this section, I undertake an incisive analysis of China's competition policy process by using the explanatory variables that were identified in chapter 1. The task here is two-fold: one, to identify the significant variables that helped China reach the final draft stage in July 2007, and two, to highlight the factors that prevented China from actually enacting the AML during the period under study. These two tasks will be undertaken simultaneously as I proceed to analyze China's efforts at adopting a competition law.

Technical Assistance by WTO – Soon after joining the WTO in late 2001, China hosted a national workshop on competition policy in July 2002 that was focused solely on the

Chinese competition policy scenario.[90] This was followed by an attendance by China at the Trade and Competition Policy for Asia and the Pacific regional workshop that took place in Thailand in January 2003. Finally, in October 2004, China participated in another regional workshop held in India. As is typical of these workshops, most of it consisted of courses and lectures handled by competition policy experts from the region or as scheduled by the WTO. Since its accession to the WTO, China also sent its communications and responses to the WGTCP.

Beyond these engagements, there is no evidence of China having interacted in a continuous and sustained manner with the WTO for technical assistance in the area of competition policy. Part of the reason is that China joined the WTO very recently, and within a few years of its entry, the WGTCP ceased functioning.[91] Moreover, the overall opposition by developing countries to a multilateral competition policy framework at the WTO and the resultant sidelining of this policy proposal at the WTO did not augur well for a new entrant like China to engage in a serious dialog over this policy at the WTO.

As in the case of India, I conclude that the WTO technical assistance variable did not matter significantly for China's competition policy process since no evidence exists to point toward the WTO having played a major role in the drafting of China's AML. Even though a national conference on competition policy was organized by the WTO in China in 2001, it failed to rectify many of the difficulties that China faced in finalizing

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[90] http://www.wto.org/english/tratop_e/comp_e/ta_e.htm

[91] Even though the WGTCP was suspended in 2004, it continues to respond to national requests for technical assistance.

the draft of the AML, and as mentioned in the previous section, the drafting process remained in a limbo well until 2004.

Technical Assistance by Other International Organizations (IOs) – China received significant technical assistance from many of the IOs in this subject area. Very early, China engaged with the World Bank in various technical assistance projects related to competition policy (OECD 2001). In 2001 and 2002, UNCTAD offered assistance to China during the drafting stage of the AML (UNCTAD 2002, 2004). In December 2001, UNCTAD organized a National Workshop on Competition Policy and Investment: The Treatment of Mergers and Acquisitions.

China's engagement with the EU in the area of competition policy has also been substantial. At the EU-China Summit in 2001, the two parties adopted a Joint Statement under which they decided to establish an EU-China Competition Policy Dialogue that *inter alia* emphasized the provision of technical and capacity-building assistance to China in the area of competition policy (EU 2004). The Competition Policy Dialogue was finally agreed upon in November 2003 and the terms of reference were signed in May 2004. It was decided that The Dialogue would take place at least once a year.

The Competition Policy Dialogue was undertaken as part of the larger EU-China Trade Project that was begun in 2004 between the European Commission and the Ministry of Commerce of China. This project emanated partly from China's recent entry into the WTO and the need to support China's greater integration into the world trading system, and partly from the fact that the EU is China's largest trading partner and China

is the EU's second largest trading partner.[92] Since competition policy and trade policy are complementary to each other, it was only prudent for these two large trading entities to cooperate on trade and trade-related policies like competition policy.

The two parties organized an EU-China Conference on Competition Policy in April 2005 in Beijing.[93] As part of the EU's technical assistance activities in China, it organized seminars and training for Chinese officials, and more notably, financed a study to assist China's Ministry of Commerce develop China's competition law by discussing the EU's own experience in drafting and enforcing competition legislation. This study culminated in a report titled, *Building Competition Policy in China: An EU Approach*, which was commissioned by the EU-China Trade Project and authored by Stockmann and Pera (2005).[94] This study and the consequent report reflect to a great degree the extent of EU involvement in the drafting of China's competition law. For, this report contained direct responses and helpful answers—in both Chinese and English—to the numerous and vitally important technical questions raised by Chinese competition officials regarding the drafting of China's competition law.

The help that the EU rendered to China for drafting its competition law is adequately summed up by Neelie Kroes, the EU Competition Commissioner, during her visit to China on the eve of China's adoption of its AML in 2007: "We were quite close

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[92] http://www.euchinawto.org/index.php?option=com_content&task=view&id=12&Itemid=26

[93] http://www.euchinawto.org/index.php?option=com_content&task=view&id=85&Itemid=54

[94] Kurt Stockmann is the former Vice-President of the German competition authority (Bundeskartellamt) and Alberto Pera is the former Secretary-General of the Italian competition authority (Autorità Garante della Concorrenza e del Mercato).

in our cooperation, and are prepared to give a hand and to offer our experience with our competition policy and regulations to China. As during the process of drafting of the Anti-monopoly Law, China has showed willingness to reach outside and take inspiration from the EU in this new implementation phase."[95]

No less was China's engagement with the OECD during the drafting stage since it was "a keen recipient of OECD technical assistance and several seminars have been held in China to discuss competition-related issues and to assist with and comment on draft Chinese competition statutes" (Williams 2005: 83). As noted by Williams (2005), the OECD conducted four seminars in China during the period 1997 to 1999—three in Beijing in December 1997, November 1998, and October 1999 and one in Shanghai in December 1999. At these seminars, the OECD officials impressed upon the Chinese government to accelerate the drafting and promulgation of the new competition law and offered critical advice in proceeding with these activities. Williams (2005) mentions that the meetings that the Chinese competition officials had with the OECD were largely positive, though technical issues still remained to be ironed out. The supportive role that the OECD played in the drafting of China's competition law is highlighted by Li and Du (2007: 186) also: "[M]any international organisations, especially the Organization for Economic Cooperation and Development, have paid close attention to the drafts and have offered a great deal of help in developing them."

The discussion in the preceding paragraphs point to the fact that China seriously courted IOs for technical assistance and capacity-building measures in the area of

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[95] http://www.chinadaily.com.cn/china/2007-09/05/content_6083848.htm

competition policy. This observation is in line with the one by Williams (2005: 74) that "China has...been active in engaging with international organizations in its efforts to learn about international trends in competition law and policy as well as seeking specific technical assistance in drafting a competition law from organizations such as UNCTAD and OECD."

The discussion hitherto confirms that China received extensive technical assistance from almost all the IOs that are active in this policy area. But, whether this assistance significantly mattered to the drafting of China's AML is the pertinent question and one that warrants a careful answer. That is, if these technical assistance activities were *truly* influential, then why did China take so long to finalize the draft of its competition law? And, why did it reach the threshold of its enactment only by mid-2007? After all, China's engagement with these IOs began almost a decade back in the mid-to-late 1990s and its efforts at enacting the AML began even farther back in 1994. So, if these IOs really mattered, then China should have finalized the draft of the AML well before it actually did.

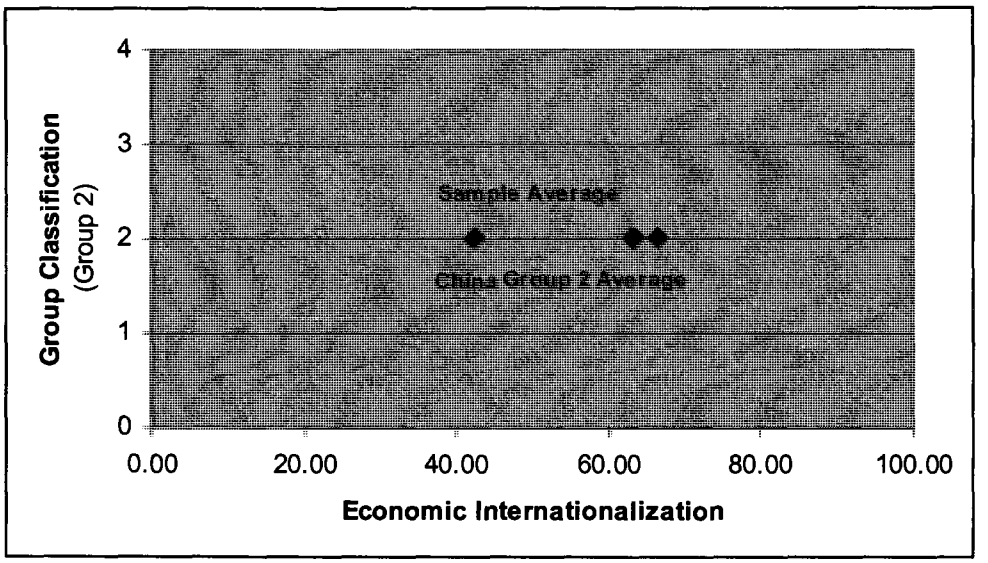
Notwithstanding the fact that the Chinese competition policy process got unduly delayed *in spite of* the involvement of IOs in this process, I argue that these technical assistance activities mattered significantly and positively in the drafting of China's competition law because these sustained efforts helped in curtailing what could otherwise have been a much longer wait than the 13-year delay that was witnessed. In other words, absent these IOs and the attendant technical cooperation in drafting the AML, China would not have reached a near-certain point of concluding this legislative process by July 2007. This can be inferred from the very serious and in-depth involvement that the EU

had with China in the years immediately prior to the finalization of the draft of the AML and is particularly evident from the observation by Williams (2005) of the positive effect that OECD had on China's competition law process. Moreover, it became apparent as the years slipped by that the Chinese competition officials needed external assistance and advice in tackling very complex and technical competition issues. And, as was discussed in the previous paragraphs, this assistance was successfully rendered by the other IOs that are active in this policy area. Therefore, I conclude that, as in India's case, technical assistance from other IOs mattered significantly in helping China draft its competition law and make the draft available for enactment by mid-2007.

Economic Internationalization – The Economic Internationalization variable is hypothesized to positively impact a country's process of adopting a national competition law. China's score on this variable is 42.31 (see figure 12), which means that a little more than 40 percent of China's economy consists of the external sectors, *viz.*, exports and imports. For an economy of China's size, this is a high number for this variable, and is definitely higher than India's, though it is lower than that of the Philippines. It is also lower than the Group 2 average of 66.49 and the overall sample average of 63.24.

The fact that China has a high score on this variable and that it has drafted its competition law is an indication that there exists a positive association, as hypothesized, between this variable and the policy outcome. The key task is to ascertain how this causal variable has played out in China's case. In other words, the question to be answered is whether the fact that China has a large external sector contributed to its moving along on the competition policy track and drafting a national competition law for enactment.

Figure 12: Economic Internationalization: China versus Group 1 and Sample Averages



Much of the literature suggests that that might be the case. Li and Du (2007) state that the increased presence of foreign enterprises in the Chinese economy, especially after China's accession to the WTO in 2001, has prompted the Chinese government to enact a comprehensive competition law to ensure that these large multinational companies would not engage in anti-competitive business practices and undermine free-market competition. "With their strong capital backup, superior technology and mature management skills, foreign enterprises might easily beat their Chinese competitors, establish monopoly status, and engage in anti-competitive practices. In this situation, only an effective competition law can protect the interests of domestic enterprises and the safety of the national economy" (Li and Du 2007: 186-187).

This observation is also echoed by Williams (2005), who, while discussing the rationale for China to adopt a competition law, notes that China's entry into the WTO in

2001 and the fact that a more open economy will increase the pressure on domestic firms has possibly made the government contemplate legislation to help the small domestic enterprises compete successfully with global behemoths that have efficient production and distribution systems to deliver quality products. "The government fears that such business methods may enable foreign firms to capture market share and destroy indigenous producers. The nightmare scenario for Beijing is that companies such as Ford, Unilever and Sony will dominate the Chinese market and destroy China's ability to create world-beating companies. Therefore, the country needs to employ effective measures to tackle abusive anti-competitive behaviour, cartelisation and mega-mergers, which it does not perceive to be in its national interest" (Williams 2005: 145).

Therefore, there is very clear evidence from existing literature which point toward China's high economic internationalization score as having influenced the Chinese political establishment to initiate the required steps to draft a new competition law for possible enactment in the near future. However, one can not help but reflect on the true motivation of the Chinese authorities in this regard to install a new and comprehensive competition regime *vis-à-vis* the theoretical understanding that links the Economic Internationalization variable to the policy outcome. That is, the theoretical basis for the main hypothesis that posited a positive link between economic internationalization and the enactment of a national competition law stems from the understanding that a globally integrated economy—like China's economy in the last decade—would install a competition law to keep their domestic economies open and contestable. Therefore, the motivation arose primarily from keeping the domestic market contestable since this allowed domestic firms to remain efficient and competitive to withstand foreign

competition. However, a little reflection on the Chinese action to install a new competition regime—as far as this variable's role is concerned—shows that the motivation stemmed largely from protecting domestic firms against the anti-competitive business practices of foreign firms. While this by itself does not negate the fundamental theoretical understanding—since anti-competitive business practices go against the free market ideal and legislation to combat this aligns well with the theory—this primary motivation of the Chinese political establishment is one that has caught many a scholar's eye since this brought into question the true reason for China's efforts at promulgating a comprehensive competition law.

These sentiments were observed during the years when the AML was still being drafted: "many Western companies fear the still-evolving law might take aim at them before it attacks China's own anticompetitive behavior. Their concern was heightened when a recent government report on market competition singled out for criticism such global giants as Microsoft Corp. of Redmond, Wash., Eastman Kodak Co. of Rochester, N.Y., and Swedish packaging company Tetra Pak AB" (Buckman 2004: A7). A section of Chinese and Western lawyers were of the opinion that the greater involvement and the noticeable success of multinational corporations in the Chinese economy in the last decade might be causing concern in the Chinese political establishment, which sees the AML as the tool that would simultaneously help in the development of a "socialist" market economy while providing the government with control over economic activity. This view of the AML by the Chinese government, however, creates confusion and challenges since competition law is rooted in the market economy, and China's situation

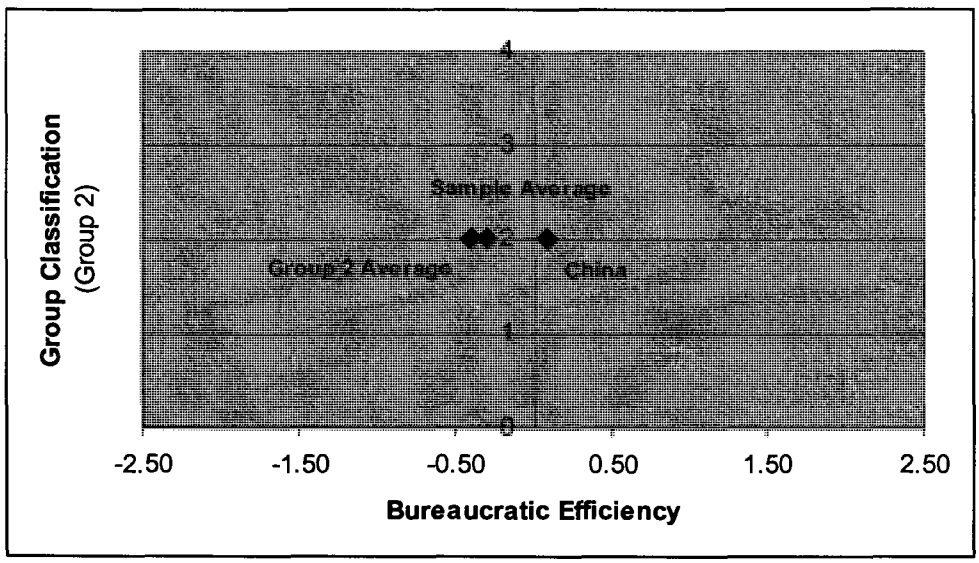
where the government is the biggest competitor to private firms obfuscates the true objectives of the AML (Cohen 2006).

I conclude that while economic internationalization has definitely been a significant factor in China drafting its competition law, the path that it has taken does not seem to be as hypothesized. The intervening variable of "promoting domestic market competition" seems to have been supplemented, and some might argue, supplanted, by China's concern for its domestic firms and for promoting a "socialist" market economy and not a market economy *per se*. While this action by the Chinese government does not negate the causal link characterizing this variable and the policy outcome, it certainly adds a new dimension to our understanding of why a country that is globally integrated would proceed to draft and enact a national competition law.

Bureaucratic Efficiency – China has a relatively high score on this variable compared to the rest of the countries in Group 2 and in relation to the complete sample. China's score is a positive 0.09 (see figure 13) while the average score for Group 2 is -0.40 and for the full sample is -0.30.

A quick historical explanation for this rosy scenario is provided by Williams (2005: 147): "China has had the most sophisticated and long-lived bureaucracy in the world...[T]he Chinese imperial civil service was a genuine meritocracy and this tradition still, to some extent, holds good today." While Chinese bureaucrats might have been efficient a century ago, and also found to be efficient in a general sense even to this day, the task here is to evaluate the performance of the Chinese officials who were closely associated with the drafting of China's competition law.

Figure 13: Bureaucratic Efficiency: China versus Group 2 and Sample Averages



However, the task of evaluating the bureaucrats who were closely connected with the competition law process is hindered by the fact mentioned earlier in this chapter: China maintains a high level of secrecy when it comes to its policy processes. One of the best sources for information on the working group formed in 1994 to begin work on the AML is Williams (2005). But even this work does not list the officials that constituted the group, and only mentions the different government agencies from which the members of the working group were drawn.

Nonetheless, since the formation of the new Ministry of Commerce (MOFCOM) in 2004 and the entrusting of the drafting work to this agency, more information has been made available regarding the competition policy process in China. In fact, and as mentioned earlier in this chapter, the period from 2004 to 2007 witnessed a substantial acceleration in the drafting of the AML. Information made available by Mr. Shang Ming, the Director General of MOFCOM's Anti-Monopoly Bureau, reveal that in 2003,

MOFCOM was assigned the work of drafting the AML (*The Antitrust Source* 2009). This task was previously handled by a group comprising different government agencies. After detailed research and discussions, MOFCOM prepared a draft of the law and submitted it to the State Council in February 2004. This was a clear break from the past; for, it took five years—from 1994 to 1999—for the first draft to surface during the initial phase of China's long and arduous competition law process. The State Council's Legislative Office then worked on the draft provided by MOFCOM and finalized the draft a year later (Huang 2008). Finally, in June 2006, this final draft was presented to the NPC for legislative review. As of July 2007, it is known that the AML was on the verge of being enacted.

To examine bureaucratic efficiency in this policy process, I partition the long period between 1994 and 2007 into an initial phase lasting until 2004 and a later phase beginning in 2004. I do so because these two phases appear as distinct periods with respect to the speed of the legislative process, with the post-2004 phase displaying greater swiftness in concluding this lawmaking process. Available evidence from the pre-2004 period does not present any clear evidence to conclude that bureaucratic inefficiency contributed substantially to the slow pace of the legislative process during this initial period. For, during this period, the political establishment dragged its feet even after the working group submitted numerous drafts: "[D]espite the fact that top leaders have stressed that the enactment of an anti-monopoly law is of the utmost importance to the healthy development of a socialist market economy, the draft law has been shelved in the legislative agenda of the National People's Congress (Li and Du 2007: 186). So, it would

be unfair to pin significant blame on the bureaucracy for the fact that the competition lawmaking process witnessed such a massive delay in the pre-2004 period.

However, information on the role of the MOFCOM in the post-2004 phase in expediting the finalization of the draft of the AML indicates that the concerned officials acted with the required enthusiasm to accelerate the process (*The Antitrust Source* 2009). This evidence prompts one to conclude that during this phase of the policymaking process, the new officials who were entrusted with the task of drafting the AML displayed high levels of dedication to their assigned duties. However, here too, the role played by the political establishment to accelerate the drafting of the AML has to be taken into serious consideration.

To ascertain whether this variable mattered in a significant manner to China's overall competition policy process, one needs information on the level of technical expertise that the concerned Chinese officials had in the area of competition policy. In other words, to have been efficient in drafting a competition law for the nation, the officials who were involved in this task should have possessed the requisite technical knowledge of competition issues. To that effect, Chinese officials, in general, lack a fundamental understanding of the concept of competition and what characterizes a national competition law: "the weakness in comprehension of competition principles exhibited in the report appears to indicate a lack of capacity to undertake the necessary analysis of complex competition issues..." (Williams 2005: 214).[96] However, there is

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[96] The report mentioned in this quote is a widely-discussed publication in May 2004 by China's State Administration for Industry and Commerce (SAIC) titled "The Competition-Restricting Behavior of Multinational Corporations in China and Counter Measures." This report alleged that large foreign firms had built up monopolies in China that threatened domestic firms. Williams (2005) contends that some of

also evidence that some of the officials who were involved with the drafting of the AML in the later stages after MOFCOM was assigned this duty were accomplished professionals in the area of competition law (Huang 2008).[97] Wu (2008: 75) has this to say about the drafting process once MOFCOM and the officials associated with it took over this task:

> In March 2003, after the establishment of MOFCOM through an organizational restructuring of the State Council, MOFCOM assumed the task of drafting the AML. The Party Group of MOFCOM prioritized the anti-monopoly legislative work and made thoughtful and detailed legislative work arrangements. After careful and thorough drafting, extensive consultation, in-depth research, and numerous revisions, the AML (Submission Draft) was formulated and then submitted to the State Council for review and discussion in February 2004. Leaders in the State Council paid great attention to the AML's drafting, review, and revision. It was listed in the State Council legislative plan for 2005 and 2006, and the review process was accelerated. The draft AML was eventually formulated and submitted to the Standing Committee of the National People's Congress for review and discussion in June 2006. During the drafting, review, and revision process, MOFCOM, the Office of Legislative Affairs of the State Council, and the Law Committee of the

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the statements in the report by Chinese officials clearly displayed a lack of understanding of competition issues.

[97] Yong Huang is a professor in the School of Law at the University of International Business and Economics in Beijing and was, himself, involved in the drafting of the AML (Huang 2008).

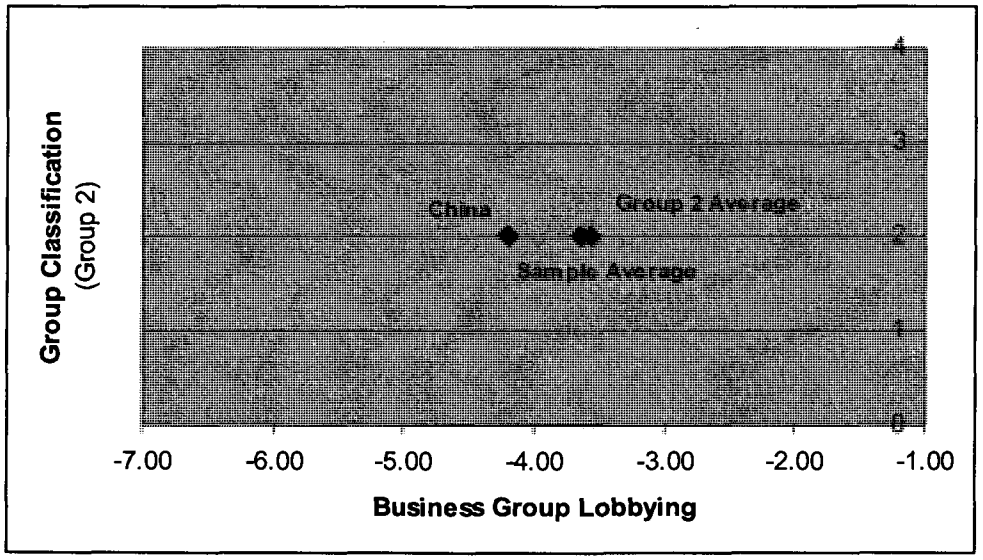
> Standing Committee of the NPC extensively sought opinions from the relevant departments under the State Council, local governments, enterprises, industry and commerce associations, and experts. They also communicated with the anti-monopoly law enforcement authorities in Europe and America.

The preceding discussion of bureaucratic efficiency in the Chinese context is very similar to what was witnessed in the India case study where the general bureaucratic efficiency levels were suspect but the officials involved in this lawmaking process were personnel of adequate training and expertise, especially during the later stages.

Therefore, with regard to the significance of the role of this variable to the overall competition policy process in China, I find that the officials entrusted with the task of drafting the AML appear to have done justice to their assigned roles, notably in the later phase. Based on this observation, I conclude that the efficiency of the Chinese officials who worked closely on this policy process was a major factor to the finalization of China's draft competition law. However, in China's case, evidence suggests that this variable should be viewed as having played more of a "facilitative" role than a "determining" role. This finding also relates to that from the India case study where the efficiency of the Indian bureaucrats facilitated the quick drafting of India's competition bill by providing the critical ability that was required for concluding the lawmaking process.

Business Group Lobbying – China's score on the Business Group Lobbying variable is a -4.2 (see figure 14), which is lower than both the Group 2 average of -3.56 and the sample average of -3.64.[98] This means that, relative to Group 2 and the overall sample, Chinese firms lobby their government less. With regard to business lobbying during the drafting of China's competition law, evidence suggests that the working group that was formed in 1994 to draft the AML had consulted industry lobbies for their views and opinions (Williams 2005). Naturally, these lobbies "were worried about regional blockades, the demarcation line between permissible and impermissible competition, and the need to have a clear distinction between acceptable economies of scale and monopolisation; they fretted that the mere size of an undertaking might make it impermissible, rather than its behaviour in the marketplace" (Williams 2005: 174).

Figure 14: Business Group Lobbying: China versus Group 2 and Sample Averages



[98] Recall from chapter 1 that the Business Group Lobbying variable was reverse-coded so that higher numerical values signified greater levels of lobbying of government by business firms.

These concerns are quite standard for business firms in regards to a competition law. But what makes it severe in the Chinese case is that Chinese officials—in their policy dialogues and utterances—rarely distinguish between the twin issues of becoming a natural monopoly and the actual abuse of such a position. Put differently, these officials erroneously "conflate two issues—the building of market share and the actual or potential abuse of market power" (Williams 2005: 214). These technical issues and their proper comprehension by the competition authorities have serious repercussions for business operations.

With regard to competition law and business lobbying, China's situation is special—though, not unique—in more ways than one. First, the threat to market competition in China does not come primarily from Chinese firms but from the state itself (Owen, Sun, and Zheng 2005, Williams 2005). Owen, Sun, and Zheng (2005: 130) note that "China's regulatory systems are still beset by abuses of government's regulatory power. The most prominent of those regulatory abuses is the so-called 'administrative monopolies,' *i.e.* government-created monopolies." Regarding this regulatory situation and competition law, these authors point out that "administrative monopolies are seen as posing a far more significant problem to China's burgeoning market economy than monopolies created by private enterprises" (Owen, Sun, and Zheng 2005: 131). On this aspect, Williams (2205: 215-216) does not mince words: "the major competition problems that the Chinese economy actually suffers from are not a result of the actions of profit-oriented, privately owned firms in a laissez-faire market, rather they are the result of too much *government* intervention in all aspects of the economy, whether by reason of state firms abusing their dominant positions, the SOEs engaging in officially sponsored

cartels or new monopolies being created by government-inspired mergers. The administrative monopoly problem is clearly *not* a free market competition issue. In contrast, true competition problems that arise from the actions of domestic private business or from foreign participation in the Chinese domestic market are so insignificant in their economic impact..." (emphases in original).[99, 100]

Second, in contrast to most national competition laws, a conspicuous reason driving the Chinese efforts to erect a new and comprehensive competition law is to target foreign firms that are operating in the Chinese economy. This has become all the more imperative for the Chinese political establishment—and their intentions even more obvious—after China's entry into the WTO and the further opening up of the economy to foreign players. So, observers argue that "[A]lthough the draft Antimonopoly Law does not distinguish foreign and domestic firms, its initial targets are likely to be foreign firms with prominent positions in Chinese markets...[A]lthough Chinese officials insist that the Antimonopoly Law will be enforced even-handedly, the fact remains that many of China's most conspicuous market leaders—and hence most promising targets for antitrust enforcement—are foreign" (Bush 2005: 31).[101]

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[99] SOE is short for State-Owned Enterprises.

[100] In general terms, "administrative monopoly" "refers to abusive conduct committed by state agencies and organizations, which are authorized by the law and regulations to control public affairs, to the extent that they distort or restrict competition. Two factors account for the widespread and intractable existence of administrative monopoly in the Chinese economic system. The first is the tradition, hundreds of years old, that "state power comes first"; in other words, a tradition that state power controls every single aspect of the society's economic life. The second is the current political and economic structure, which has closely linked monopoly enterprises to the government since the 1949 revolution" Huang (2008: 124).

[101] It is quite paradoxical that the Chinese government should target multinational corporations that have become market leaders in the Chinese economy because "many of the foreign entities with large market shares have obtained this market position as a result of the purchase of SOE assets from the *government*"

Together, these two aspects of the Chinese economy indicate that the biggest players in the Chinese market are the Chinese state-owned firms that enjoy government-sanctioned monopoly and the large multinational corporations that have registered significant growth in business operations in China in the recent past. Hence, relevant to the analysis of this variable, it seems that—apart from the scores of small private businesses that dot China's economic landscape—these are the two business entities in the Chinese economy that need to be particularly concerned about the enactment of a national competition law and the ones that would form the lobbying group against the AML.

During the drafting stage, the proponents of administrative monopoly lobbied hard to avoid the inclusion of provisions that seriously curtailed their authority. These individuals argued that "the so-called administrative monopoly was so different from normal monopoly conduct in terms of subject matter, investigation, remedies, and liabilities, that jurisdiction over administrative monopolies should not be inserted in a competition statute" (Huang 2008: 132). Huang (2008) goes on to mention that the lobbying by supporters of administrative monopoly was so successful that they managed to get an entire chapter deleted from the draft of the AML that was dedicated to discussing and combating this practice. This deletion occurred while the AML was still being drafted in the State Council and before it was submitted to the NPC (Owen, Sun, and Zheng 2008). However, once the deletion of this crucial chapter became public, it led to extreme resentment among observers and the general public alike. To assuage these

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(Williams 2005: 199; emphasis added). It appears that the Chinese government wants to get rid of the loss-making state units but worries over the repercussions and still wishes to maintain control over them through the proposed competition law.

feelings, the NPC decided to include a softer version of this chapter in the final draft. This is a special chapter on administrative monopoly in the AML (Wang 2008), which says that "administrative authorities and other organizations authorized by law or regulations to administer public affairs shall not abuse their authority to eliminate or restrict competition" (Wu 2008: 84). Huang (2008) is extremely pessimistic about the effectiveness of this chapter to tackle administrative monopolies because the provisions are exceedingly mild to have any enforcement power. It, therefore, seems that groups favoring the continuation of administrative monopolies in the Chinese economy have succeeded in their lobbying efforts. This is clearly evident from the watered-down version of the chapter that really mattered to this interest group.

The other two business interests—the small private firms in China and the large multinational corporations—do not seem have had the success that the pro-administrative monopoly group had in lobbying for special favors during the drafting of the AML. This is not to mean that these interest groups were not consulted during the drafting process (Wu 2008). However, the final version of the draft overwhelmingly targets anti-competitive business practices by private Chinese businesses and dominant foreign corporations, particularly the latter (Buckman 2004, Bush 2005, *The Economist* 2008). This clearly indicates that these groups could not succeed in influencing the drafting of the AML in a substantial manner to their advantage. This conclusion in the case of the drafting of the AML is supported by the general finding about the diminishing role of interest groups in Chinese politics and the ability of the Chinese government to prevail over these groups in the 1990s (Naughton 2008).

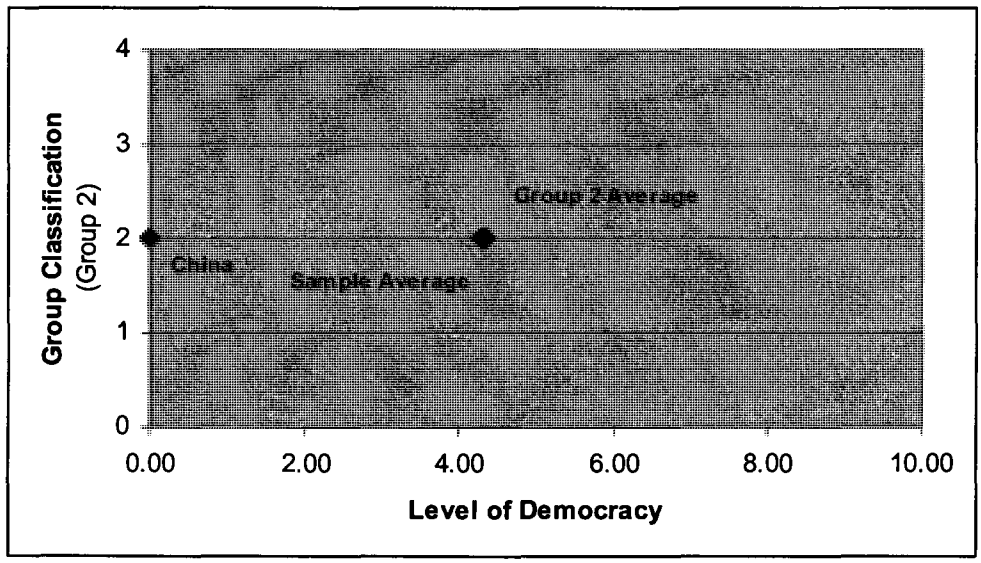
Therefore, going by the standard definition of business groups as consisting only of private business enterprises that operate "for-profit" businesses, it can be concluded that business group lobbying did not play a significant role in the drafting of China's competition law. However, if I expand this definition of "business groups" to include the various and large Chinese state-owned enterprises that result from administrative monopoly, then this conclusion has to be altered likewise since the lobbying activities of the proponents of administrative monopoly were highly successful. But, this modified finding in the case of the Chinese competition lawmaking process would be at the cost of consistency in the definition of this variable and in the analytical treatment of its role in the competition policy process in the selected countries. Hence, after noting the modified definition of this variable in the Chinese context and its impact on the AML legislative process, I conclude that the Business Group Lobbying variable, as traditionally understood, did not influence the Chinese competition lawmaking process in a significant manner.

Level of Democracy – Not surprisingly, given the authoritarian nature of China's government, China's score on the democracy scale is zero (see figure 15). The Group 2 and sample averages are very similar at 4.33 and 4.27, respectively, and are substantially higher than China's score, signifying that many of the countries that reached the Group 2 stage of drafting their national competition laws had higher levels of democracy compared to China.

So, does the competition policy action in China indicate that the nature of the political regime is irrelevant to the nature of economic legislation since China, in spite of

not being a democracy, has drafted their competition law, and by all accounts, was ready to enact the law? It appears so in China's case because the positive relationship between democracy (a particular kind of political system) and the enactment of a competition law that promoted competitive markets (a particular kind of economic system) was hypothesized on the competitive structures that characterized these two systems, and as is obvious, there was no "competitive political system" in China to spillover to the economic system and motivate the promulgation of a competition law. So, the explanatory variable—that is, democracy—itself was missing in the case of China.

Figure 15: Level of Democracy: China versus Group 2 and Samples Averages



But my analysis of China's competition policy process reveals that, even though democracy was absent in China, the nature of China's political establishment—that is, authoritarian, which is demonstrated by China's score of zero on the democracy scale—and more importantly, its legacy of command and control, has played a very significant

role in this nation's competition lawmaking process. For, far from the installation of a pure form of a competitive market economy where "competition" rather than "competitors" were protected, the Chinese political establishment was more concerned about losing control of the economy to the large multinationals and has possibly found the AML as the right tool to rein in these firms (Buckman 2004, Bush 2005, *The Economist* 2008).

This observation is also echoed by Williams (2005: 147) when he talks about the Chinese affinity for the competition laws of the EU: "the adoption of competition law based on the EC system has sufficiently broad and open-textured language to allow wide discretionary enforcement and creative, but possibly prejudicial, interpretation. In fact, an EC-based system in China could be precisely the tool to reassert control over the developing domestic private sector that does not accept the blandishments of CCP membership. An additional benefit would be to curb the undesired encroachment of foreign enterprises in the Chinese domestic market."[102]

So, while democracy was not a factor in the drafting of China's competition law—because China is not a democracy—the particular nature of the Chinese political establishment—authoritarian—has definitely played a role both in the drafting of the AML and in the design of its contents. The finding that the authoritarian nature of China's political establishment mattered for its competition lawmaking process, however, contradicts the theoretical understanding that underpinned the hypothesis associated with the Level of Democracy variable, which posited a negative association between

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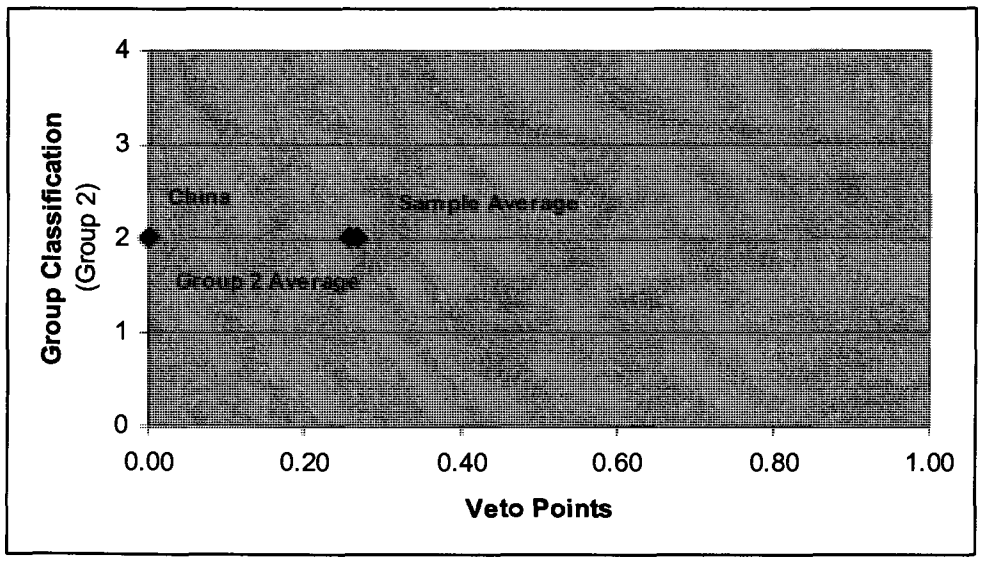
[102] The European Commission, or EC, is the executive arm of the European Union (EU). CCP is short for Chinese Communist Party.

authoritarianism and the adoption of competition laws. I reconcile the contradictory finding by noting the leftist ideological stance of the Chinese government that has played a non-trivial role—as alternatively hypothesized—in China's competition lawmaking process. The importance of ideology in the context of China's drafting of its AML will be presented in detail when I conduct the analysis of the Ideology of Government variable later in this section.

Veto Points – In China's case, Veto Points do not technically matter because of the authoritarian government that is in power. That is, once a policy is decided to be enacted, its promulgation is not delayed by any vote of dissent. This is reflected in China's score on this variable, which is zero (see figure 16) and is lower than the Group 2 and sample averages of 0.25 and 0.27, respectively.

Figure 16: Veto Points: China versus Group 2 and Sample Averages



To better comprehend the role of Veto Points in China's competition law process, one needs to first get an understanding of the general lawmaking process in China. This will provide the required information to analyze this variable in the context of this policy process.[103]

As per China's constitution, the NPC and its permanent body, the Standing Committee, hold the highest state power and exercise the legislative power of the state. A Plenary Session of the NPC is held once a year to undertake legislative functions. When the NPC is not in session, the Standing Committee undertakes these legislative functions.

The three stages in the lawmaking process in China are drafting, approval, and promulgation. The drafting of most of the bills, especially high profile ones like the competition bill, is undertaken by a working group in the Commission for Legislative Affairs (CLA) that is part of the NPC. Once a draft is prepared, it is sent to the Standing Committee for its review and comments. At this stage, opinions on the bill are solicited from other government bodies, political organizations, academia, and occasionally, foreign consultants. After incorporating any required changes, the draft is submitted to the NPC for approval. Usually, bills with far-reaching effects or that are considered controversial—like the competition bill—undergo many revisions before submission to the NPC. Once a bill reaches the NPC, it is only a matter of time before it is promulgated either at the next Plenary Session or by the Standing Committee. Once a bill is approved by the NPC, the President signs it into law through promulgation (Presidential Order).

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[103] Information on the lawmaking process in China is drawn from the relevant section in Owen, Sun, and Zheng (2005)

Apart from the CLA, the other government bodies that can draft and submit bills directly to the NPC are the Supreme People's Court, the Supreme People's Procuratorate, the Central Military Commission, and the State Council, which is the executive arm of the government. Quite important for the analysis of this variable is the fact that once a bill reaches the floor of the NPC, its approval and the subsequent promulgation are guaranteed because the NPC is akin to a rubber stamp and the President always signs a bill into law. So, the real bargaining by various interest groups takes place at the drafting, or even the pre-drafting, stage.[104]

Returning to the analysis of Veto Points, the technical definition that was used to operationalize this variable considered only veto points that existed in the legislative and executive branches of a government. As understood from the foregoing discussion of lawmaking in China, these two organs are the NPC (the legislature) and the State Council (the executive), respectively. As was explained in the previous paragraph, practically no veto points that can delay or nullify the passing of a bill exist at the approval (NPC) and promulgation (the President) stages in China. Therefore, the NPC is irrelevant to this analysis, which leaves the State Council as the remaining government branch that figures in the construction of Veto Points. As the executive branch of the government and where the draft of the AML was submitted by MOFCOM for revision and finalization, the State Council is the appropriate government body that needs to be focused on to analyze the role of Veto Points in the drafting process. And, this would be in line with the strict

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[104] This was witnessed during the drafting of the AML when various interest groups bargained for favorable provisions, notably the supporters of administrative monopoly who lobbied to eliminate a chapter from the draft AML that they considered particularly harmful to their interests. This was discussed during the analysis of the Business Group Lobbying variable earlier in this section.

definition and operationalization of this variable which included only the executive and the legislature in its construction.

The analysis of Veto Points at the State Council as an explanatory variable should begin by noting that this government body received the draft of the AML from MOFCOM in 2004 (Huang 2008). Once it received this draft, the Legislative Office of the State Council began its work on the draft and finalized it the next year for submission to the NPC. Therefore, the swift outcome at this executive stage corroborates the understanding that the lawmaking process in China does not encounter any veto points. That is, by the time the bill reaches the executive stage, the nature and pace of the outcome is decided and the drafting process exists to put final shape to the law.[105] This is exactly what happened in the drafting of China's competition law because by the time the draft reached the State Council, it was near-certain that it would be submitted soon to the NPC for its approval and later, to the President for promulgation. This is further evident from some of the articles and policy briefs that appeared in 2005 when the draft was being reviewed at the State Council (Bush 2005, Ren and Yang 2005). The collective understanding gathered from these articles is that most observers and scholars did not expect any major obstacles to the enactment of the AML once it had reached the State Council.

The preceding discussion illustrates adequately that veto points, as defined and operationalized in this dissertation based on prior scholarship, did not exist in the context of China's drafting of its AML. However, this leads to the question whether it was the

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[105] Though, even at the drafting stage, lobbying by interest groups still continues. This aspect was discussed while analyzing the Business Group Lobbying variable earlier in this section.

total absence of veto points that helped speed up the drafting process in the post-2004 phase. I answer this question in the affirmative because an examination of the pre-2004 period drafting process reveals that a major reason for the unusually long delay was the "division in government circles between those who believe that competition and free markets will more quickly and efficiently modernise and galvanise Chinese industry and those who have looked with admiration at Korea and Japan and seek to emulate their economic success by adopting a dirigiste state-sponsored industrial policy" (Williams 2005: 175). This finding of extreme differences of opinion in the Chinese policy circles over competition law is supported by Huang (2008: 118): "The prolonged process is the result of a fierce debate around the crucial issue of whether an AML might be far from necessary at this moment." Therefore, there existed very clear objections to the AML that evidently delayed the finalization of its draft.

I come away with two findings from the discussion in the previous paragraph. First, Veto Points—as they are operationalized in my study—mattered for the speedy completion of the drafting of the Chinese AML in the post-2004 phase because it was partly the absence of veto points at the State Council that helped finalize the draft. Second, while determining the presence of veto points in the case of Chinese lawmaking, the focus should not be restricted to the executive (State Council) and the legislature (NPC). This measurement should also include the various other points of power that can effectively veto a policy proposal.[106] While it might appear that an authoritarian

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[106] This statement is further supported by a similar delay that was observed in the drafting and enactment of China's Securities Law, which was passed in 1998 after a long drawn-out lawmaking process that lasted six years (*Wall Street Journal* 1998).

government may not encounter any obstacles in the passing of a bill, based on the discussion and analysis in this sub-section, I report that in China's case veto points do exist, though not as understood and accepted by some of the prior scholarship.[107]

Ideology of Government – Since the coming to power of the Communist Party of China in the late 1940s, the Chinese government has remained left-leaning. This is not surprising given the socialist ideology that underpinned the Party's approach toward Chinese society and economy. This is reflected in China's score of 1 on this variable, which signifies a left-leaning government (see figure 17). Taking into account the fact that the scale measuring this variable runs only from 1 to 3, China's score is considerably lower than the Group 2 and sample averages of 2.13 and 1.95.

While the Chinese government may be characterized as a left-leaning one, many of the economic policies that it has undertaken—especially under the leadership of supreme leader Deng Xiaoping since 1978—represent a departure from that tradition. Though this departure might be away from socialism, the overall ideological moorings still remain socialist, with some aspects of a free-market economy thrown into the mix. This is best illustrated by the following quote from Deng Xiaoping as given in Zhong-Liang (1998: 6): "A planned economy is not socialism—there is planning under capitalism too, and a market economy is not capitalism—and there is market regulation

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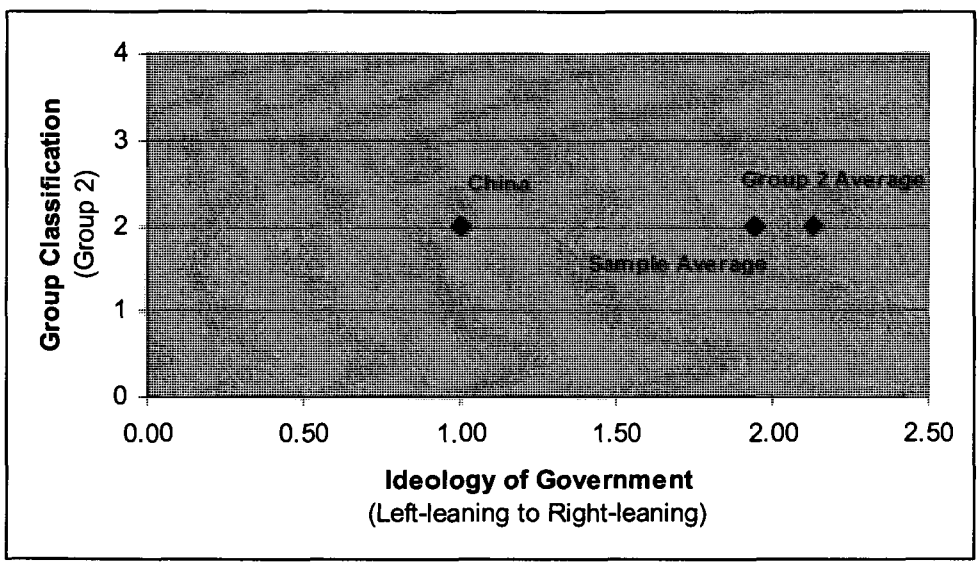
[107] This second finding is supported, in part, by noted Chinese scholar Barry Naughton (2008: 105) who states that veto points have traditionally been a problem in effecting policy changes in China and attributes the inability of the Chinese government to enact many of the sweeping reforms during the 1980s to the fact that "each of the important veto players was able to protect specific social groups and block reforms that would have imposed losses on them." While Naughton notes that the role of veto players has progressively diminished in the period after 1994—thus helping the passage and implementation of many laws—my analysis of the competition policy process in China finds that these veto points—though diminished in number and power—still manage to delay the lawmaking process in China.

under socialism too. Planning and market regulations are both means of controlling economic activity. Whether the emphasis is on planning or on market regulation is not an essential distinction between socialism and capitalism." These lines formed part of the famous and highly policy relevant speech that Deng delivered during his celebrated inspection tour of southern China in early 1992. Deng's tour and his talks that outlined his philosophy of reform and economic development were collectively instrumental in China's adoption of a socialist market economy model since 1992.

Figure 17: Ideology of Government: China versus Group 2 and Sample Averages



As can be gathered from Deng's words, he never really wanted the Chinese government to whole-heartedly embrace free markets and give up "controlling economic activity," though he was sufficiently convinced that the dirigiste policies adopted under Mao were not particularly beneficial for China. Deng made this amply clear during his southern journey where he impressed upon the Chinese people that continued reforms

were in their best interests (Howe, Kueh, and Ash 2003). Deng's paramount position in Chinese politics ensured that his philosophy would find expression in Chinese economic policies, including convincing senior leaders and reform-skeptics like Li Peng and Jiang Zemin. As testimony to this, the Fourteenth Party Congress in 1992 adopted a socialist market economy for China, and at least in theory, scrapped the centralized mandatory planning system (Howe, Kueh, and Ash 2003).

So, by the mid-1990s, China was well on its way to becoming a market economy, albeit with a socialist bent. There was increased emphasis on reforms and the attendant benefits that could accrue from these changes. Therefore, in the context of the Chinese competition policy developments, the question that arises is this: given such a decisive ideological shift toward economic reforms on the back of Deng's powerful endorsement of these changes, why did the Chinese competition law take so long to materialize? Part of this reason can be clearly situated in the ideological change that occurred in the Chinese political establishment after Deng's death in 1997.

Jiang Zemin was the General Secretary of the CCP at the time of Deng's demise. With the passing away of Deng, Jiang began placing more emphasis on stability than on effecting free-market reforms. This is summed up by Howe, Kueh, and Ash (2003: 22) thus: "[A] distinguishing mark of the Jiang Zemin years has been the abandonment of any 'dash for reform' in favor of new emphasis on 'stability'. Stability has been reflected in emphasis on the Party, on ideology and on suppression of dissent." Therefore, the focus shifted from effecting economic reforms to the promotion of communist ideology and the Party. The lackadaisical attitude toward market reforms—including key economic legislation like competition laws—explains, to a significant degree, why the AML

drafting process languished until 2004.[108] The general slowness of the pace of reforms after Deng's death is also observed by Naughton (2008: 116): "[A]fter 1998, the pace of new policy introduction slowed somewhat..."

Part of the reason for Jiang's relative disinterest in pushing economic reforms was the occurrence of the Asian financial crisis in the late 1990s that, to a large degree, vividly displayed some of the problems associated with open economies (Howe, Kueh, and Ash 2003). This, coupled with his original skepticism of free market reforms, appears to have contributed significantly to the delay in the drafting of China's AML. If ideology explains the delay in the drafting of the AML in the pre-2004 period, the question then arises whether it can also explain the speeding up of this process in the post-2004 period. My finding is that it does and I explain the reasons for this in the following paragraphs.

As was mentioned at various places before in this dissertation, part of the reason why the drafting of the AML gathered steam in 2004 was China's entry into the WTO in late 2001 and the threat that the Chinese political establishment expected from the flood of large multinational corporations into the Chinese economy. In this situation, the government needed fresh legislation to successfully tackle any anti-competitive business activities of these conglomerates. The AML appeared to be the perfect tool for this. Moreover, this also signaled to the international legal community and to IOs like the WTO that China was streamlining its legal structure in line with its increasing integration into the global economy.

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[108] Incidentally, Jiang Zemin stepped down as the General Secretary of the Chinese Communist Party in 2002.

Therefore, the motivation that underlined the quick drafting and finalization of the AML in the post-2004 period was the ideological viewpoint that typically considered large multinational corporations as entities that needed to be controlled by the state. Moreover, the Chinese government was concerned that the encroaching by large foreign firms into the Chinese economy might endanger their control over the nation's economic resources and structures. This observation in the context of China's AML is supported by Williams (2005: 217): "whilst China may want the fruits of capitalism, the government seems intent on not relinquishing too much control over the 'commanding heights' of the economy to domestic private interests or to foreigners; core industries will remain SOEs and competition law may be used to discipline unruly market participants." Therefore, the speeding up in the post-2004 period was also substantially driven by the ideological stance of the Chinese government.

Paradoxically, the same ideological leaning—greater belief in statism and suspicion of private and foreign market players—seems to have significantly impacted both the pre-2004 *delay* and the post-2004 *dash* in the drafting of China's AML. So, has something gone amiss in the analysis here since the same variable explains two divergent outcomes? Actually, not, because a closer examination reveals that, as far as the Chinese government was concerned, their actions during both the periods—that is, the delaying of the AML in the pre-2004 period and the quick drafting of the AML in the post-2004 period—led to the same desired outcome: continuation of effective control of the economy, which aligns perfectly well with the statist ideology that characterizes the Chinese government. However, this explanation generates a follow-up question: if the AML could have increased the government's control of the economy, then why did the

Chinese government not adopt this law earlier, that is, in the pre-2004 period? This is because in the pre-2004 period the wrong-doers were largely found to be mostly private Chinese business firms, and as mentioned in the previous section of this chapter, there existed fragmented pieces of legislation to tackle their anti-competitive and monopolistic business practices. Hence, a new competition law was not viewed as necessary to address these competition issues and to continue the government's control of the economy. However, these pieces of legislation were found to be inadequate in the changed economic scenario resulting from China's entry into the WTO and the emergence of the perception in Chinese official circles that the dominance of large foreign firms might be a threat to local firms and to the government's ability to prevent undesirable business activities in the economy.

Therefore, delaying or expediting the drafting of the AML were only actions that served the same purpose, *viz.*, ensuring the control of the economy. In turn, this purpose is explained by the left-leaning ideology of the Chinese political establishment that advocates greater involvement of the state in economic matters and is evident from both the numerical score that China received on the ideological scale and the results of the analysis in this sub-section. And, the fact that left-leaning China finally ended up drafting a competition law confirms the alternate hypothesis associated with this variable.

At this point, I proceed to the next section which compares the results from the China study to that from the large-sample study.

Comparing the Quantitative and Qualitative Results

The results of the large-sample, quantitative analysis pointed to the significant roles played by Other IOs and the Level of Democracy in the drafting and enacting of competition laws in our sample of developing countries. The China study informs us that the variable Other IOs is still significant though the Level of Democracy does not appear so. However, in the case of China, a few other variables also turn out to be significant in China's drafting and finalization of its competition law, the AML. These are Economic Internationalization, Bureaucratic Efficiency, Veto Points, and Ideology of Government. Even though these four variables were not found to be statistically significant in the quantitative analysis, Economic Internationalization and the main hypothesis associated with Ideology of Government reported the expected positive signs. For the remainder of this section, I compare these two sets of results with respect to each variable.

The China case study overwhelmingly reinforces the understanding gathered from the quantitative study that other IOs that are active in providing technical assistance in the area of competition policy were decisive in effecting competition policy actions in a significant number of the developing countries in the sample. While being adequately aware of competition issues in China, most Chinese government officials obviously lacked a clear understanding of competition and competition laws, and therefore, immensely benefitted from the programs organized by these IOs and from the interactions that they had with international competition policy experts. In the case of China, notable and influential technical assistance was rendered by the OECD and EU.

This is partly reflected in the Chinese AML resembling more of the EC-system of competition laws rather than the American version of it.[109]

The reason why democracy did not figure as a major explanatory variable in the Chinese situation though it was reported as significant in the large-sample analysis is that China simply does not have a democratic set-up. So, in the very absence of this variable, its role could not be ascertained. However, the absence of democracy essentially means the presence of some other form of political system, which, in China's case, is an authoritarian system of government. And, what the case analysis revealed was that the authoritarian nature of China's political establishment mattered for the drafting and design of this country's competition law.

The conclusion from the case study that Economic Internationalization mattered significantly for China aligns with the finding from the large-sample analysis of the hypothesized, though not significant, positive relationship of this variable with the dependent variable (competition policy action). Given China's burgeoning trade and inward foreign investment levels in the past two decades, this variable has, however, not only taken a positive relationship but has been found to have figured prominently in China's decision to draft their AML.

With regard to Bureaucratic Efficiency, I reported a nuanced understanding of this variable having played more of a facilitative role than a determining one. This positive association in the case of China's competition policy process is not in agreement with the

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[109] Compared to the American antitrust regime, the EC system of competition legislation provides more discretionary powers to government authorities in adjudicating on competition issues. Given the affinity for state control among China's political brass, it is not surprising that China adopted this system in preference to the American system.

negative association that was discovered in the large-sample analysis. One reason for this is that, relative to the rest of the sample, China's bureaucratic quality is much better. Another, and the more critical, reason is that some of the Chinese officials and professionals who participated in this lawmaking process, especially in the post-2004 period, were personnel who had some level of experience with competition legislation and were in a position to interact with international competition policy experts.

The finding of a significant role for Veto Points in the drafting of China's AML contrasts with that from the large-sample study where this variable was not only found to be insignificant but also took a sign opposite to the one hypothesized. However, similar to the finding reported for Bureaucratic Efficiency, the conclusion that Veto Points mattered significantly in China's case warrants a nuanced understanding because I had modified the operationalization of this variable to suit the particular situation in China and to explain the long delay in the drafting process in the pre-2004 period. That is, as far as this variable is concerned, this delay occurred not because of veto points in the executive or the legislature—the two government branches that figure in the measurement of Veto Points—but because of the vetoing power enjoyed and exercised by special interest groups found elsewhere in the Chinese polity. However, the veto power enjoyed by these groups is increasingly getting reduced in China, which partly contributed to the speeding up of the drafting and finalization of China's AML. So, the difference observed between the results from the quantitative and qualitative analyses stems largely from a problem associated with accurately measuring this variable. As the case study permitted a richer and more in-depth exploration of the nature of this variable

in China and its relation to the drafting of China's competition law, I was successful in unearthing the true explanatory role of this variable in this case.

Finally, Ideology of Government was found to have behaved as hypothesized in both the large-sample study and the China case study, though in the China study this variable confirmed the main hypothesis during the pre-2004 period and the alternate hypothesis in the post-2004 period. The main hypothesis associated with this variable was that countries with right-leaning governments will draft and enact a national competition law. In other words, a left-leaning government will not adopt a competition law. This was visible in the delay in drafting that occurred in the pre-2004 period when the death of Deng in 1997 rekindled leftist sentiments in the top Chinese establishment. However, the swiftness in the drafting of the AML in the post-2004 period aligned with the alternate hypothesis that stated that left-leaning governments will adopt a national competition law since this law will effectively bestow greater government control over private economic activity. This finding reinforces the often-mentioned feature of a competition law that it is akin to a double-edged sword that can cut both ways. Which way it cuts depends on the particular motivations that underpin the enactment and implementation of such a law.

In the next section, I offer a few concluding comments on the China case study and then proceed to the next chapter which focuses on the last of the three countries in this comparative case study exercise, the Philippines.

Conclusion

The discussions and analyses in the present chapter suggest that China's success in finalizing the draft of the AML—notwithstanding the long delay that was witnessed in the initial phase of this lawmaking process—results from the government and the bureaucracy working together and earnestly in completing this task. In this undertaking, they received critical support in the form of technical assistance from external organizations. The process, which was motivated in part by China's increasing integration into the global economy, was also facilitated by the absence of officials who could have vetoed the passage of the bill. Therefore, a combination of these domestic- and international-level variables contributed to China reaching the final draft stage of its competition law by July 2007.

However, China's drafting of its competition law also highlights the fact that the motivations that sometimes underlie the adoption of a national competition law may not necessarily be to increase the levels of competition. Actually, competition among Chinese private firms is quite intense. The true motivations lie elsewhere: in according greater control of private economic activity to the government. In a general sense, this is a paradox that characterizes a competition law: "the purpose of merger control is to enable competition authorities to regulate changes in market structure by deciding whether two or more commercial companies may merge, combine or consolidate their businesses into one. Needless to say, the benefits of economies of scale and the economic

efficiency of M&As should be weighed against the risk of the anti-competitive market structure that may result" (Li and Du 2007: 207-208).[110]

The Chinese government is especially concerned about the increasingly dominant role played in the Chinese economy by large foreign firms that keep on increasing their market shares. For a government with such a disposition, a comprehensive national competition law serves to vest a great amount of control of economic activity while simultaneously displaying to the world that the nation has successfully restructured its economic legislation to suit current times.

The possibility that the AML can become an impediment to private economic activity—especially in a country where the government owns some of the biggest businesses—has led some scholars to even question the need for a competition law for China. Williams (2005) is of the opinion that unless there is a fundamental change in the mindset of the Chinese political establishment *vis-à-vis* the role of the government in the economy, a national competition law will lend itself to abuse. On the other hand, Li and Du (2007) argue that China needs a competition law because China has shed many of its past dirigiste characteristics and has embraced a freer economic system, which requires a national competition law to tackle monopolistic practices. Furthermore, these authors are of the opinion that China's entry into the WTO necessitates its having a well-functioning and comprehensive competition regime. In conclusion, the true impact of the AML on China's economic future will depend on the nature of its implementation by the Chinese government.

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[110] "M&As" stand for Mergers and Acquisitions.

CHAPTER VII

Case Study Three: The Philippines

The Philippine Economy: A Stray Cat Amidst Tigers[111]

In recounting the recent economic history of the Philippines, one must note the fact that this island nation was under two major colonial masters: Spain, from the early sixteenth century until the end of the nineteenth century, and the United States, from 1898 until independence in 1946.[112] This is a nation whose post-independence political economy has been unmistakably dictated by its colonial past, especially by the more recent American rule (De Dios and Hutchcroft 2003). In narrating the recent economic history of the Philippines, it would be prudent to divide the time since its independence into three roughly twenty-year periods: 1946-1965, 1965-1986 (the Marcos era), and 1986-present (the return of democracy).

Politically, the Philippines entered the post-independence period as a democratic republic with a presidential system. However, the domination of the Philippine polity and society by the elites made this nation only a democracy in name:[113] "[T]he political

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[111] The "stray cat" metaphor is taken from the title of the book by Vos and Yap (1996).

[112] For an excellent and detailed treatment of the economic history of the Philippines during the Spanish and American colonial periods, see Corpuz, O. D. (1997) *An Economic History of the Philippines*. Quezon City, the Philippines: The University of the Philippines Press.

[113] It is important to note that oligarchy has been an ever-present problem in the Philippine polity, so much so that the elites were not really in favor of obtaining independence from the United States because the arrangement that they had struck with the American colonial regime was highly beneficial to the oligarchs. Therefore, when the Philippines did become independent, "it was accompanied by provisions that were clearly advantageous to the landed oligarchy that controlled the state (most of all, a bilateral trade agreement ensuring continuing dependence on the American market)" (De Dios and Hutchcroft 2003: 47). The superpower status of the United States in the post-war years and its geo-political interests in South East

system, though formally democratic, merely provided a means for contending elite factions to rotate in and out of office; the two major parties—Nacionalista and Liberal—were indistinguishable in terms of ideology; vote buying, fraud, and violence by the private armies of the elite were the key determinants of electoral success" (Schirmer and Shalom 1987: 125). As in many other third-world countries emerging out of colonialism, the true nature of the political system was central to the economic development of the Philippines economy. The discussion that follows bears testimony to this fact.

Economically, the period immediately after independence was one of growth for the Philippine economy. However, the nation had to surmount numerous economic troubles before registering impressive growth in the 1950s and 1960s. Just three years into being an independent state, the country suffered a balance of payments crisis in 1949 (Boyce 1993). This crisis almost resulted in the total collapse of the nascent Philippine state and prompted the government to institute foreign exchange and import controls, which led to a period of import substitution industrialization (ISI) (De Dios and Hutchcroft 2003, Hawes 1987).

Though the controls were put in place to tackle the external payments crisis, they became tools to protect domestic consumer goods industries from import competition (Boyce 1993). These trade protection measures helped the Philippine manufacturing industry attain higher levels of significance in the economy: during the 1950s, the output of the manufacturing sector registered an average annual increase of 12 percent (Boyce 1993) and the share of manufacturing in the GDP of the Philippines increased from 10.7

Asia and the Pacific meant that the Philippines failed to effectively detach itself from the United States and become a fully sovereign state.

percent in 1948 to 17.9 percent in 1960 (De Dios and Hutchcroft 2003). However, according to De Dios and Hutchcroft (2003: 47) "the period of controls can be seen as one more source of privilege for an oligarchy whose strategies of capital accumulation had long depended on favorable access to the state apparatus."

Quite important for the Philippine political economy, the surge of industrialization led to the emergence of a rich industrial class that was at odds with the agricultural exporters, especially on the question of exchange controls. "[T]he industrialists favored a strong peso (that is, a low peso/dollar rate), which allowed them to import capital goods cheaply while keeping out imported consumer goods with the controls. The agro-exporters favored a weak peso (a high peso/dollar rate), which would increase the peso earnings from their exports" (Boyce 1993:7). Hawes (1987: 20) notes that this acrimonious division between supporters of ISI (*i.e.*, industrialists) and supporters of export-led growth (*i.e.*, agriculturists) was often played out in government circles and this stalemate led to overall "indecisiveness and economic stagnation."

The agricultural lobby emerged victorious in this tussle when exchange controls were lifted in the early 1960s and the peso was drastically devalued. However, the massive drop in the value of the Philippine currency and the reorientation of Philippine agriculture toward the export market resulted in sharp increases in domestic food prices, thereby negatively impacting the real incomes of citizens not connected with the agricultural industry (Boyce 1993). So, even though the Philippines registered impressive economic growth in the 1950s and 1960s compared to its South East Asian neighbors (Balisacan and Hill 2003), the living conditions of most of the citizens were miserable and becoming worse during this period (Shirmer and Shalom 1987), with real wages

registering sharp decreases in both urban and rural areas (Boyce 1993). Blame for this "immiserizing growth"[114] (Boyce 1993) can be placed on the oligarchic nature of the Philippine society and the contradictory economic policies pursued by the government in the early 1960s of attempting to boost exports while simultaneously imposing tariff barriers: "[A]lthough incoherent from an economic standpoint, contradictory macroeconomic policies seem to have been a quite coherent means of serving the economic interests of the diversified family conglomerates that dominated the political economy" (De Dios and Hutchcroft: 2003: 48).

It is in the mid-1960s that the second phase of the modern economic history of the Philippines begins. This coincides with the inauguration of Ferdinand Marcos as the President of the Philippines in 1965 (Boyce 1993). Marcos' tenure was besieged by balance of payments crises and high levels of inflation because of his plundering of the government coffers to maintain his control over the nation (De Dios and Hutchcroft 2003). Placing Marcos' first term in relation to stints by earlier presidents, Shirmer and Shalom (1987: 163) note that it was "a typical one in many respects: great promises and few results."

In 1969, Marcos was voted back as the President in an election in which it was alleged and widely acknowledged that Marcos used dubious methods to defeat his opponent (Boyce 1993, De Dios and Hutchcroft 2003). Then, in 1972, not wishing to step

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[114] Immiserizing growth is economic growth where "the poor become poorer even as income per person grows" (Boyce 1993: 4). This term was originally coined by noted economist Jagdish Bhagwati in 1958 to demonstrate that, under certain circumstances, a country's economic expansion can result in lowering its terms of trade due to increased global supply of its products that can, in turn, harm the same country due to lower world prices for its products, and thus, reduce the real income of the country. See Bhagwati, J. (1958) "Immiserizing Growth: A Geometrical Note." *The Review of Economic Studies* 25: 201-205.

down after his second term as President—the Philippine constitution stipulates a two-term limit as president—Marcos declared martial law (Shirmer and Shalom 1987).

Marcos was a master manipulator—right after taking office in his first term as president, he "built a power base among military officers, civilian technocrats, and a fraction of the elite who became known as the President's 'cronies.' At the same time, he secured crucial external backing from the US government, skillfully manipulating its preoccupation with the military bases..." (Boyce 1993: 8). And, in his proclamation declaring martial law, Marcos "argued that the security of the nation was under threat from a growing leftist movement determined to overthrow the government, a threat compounded by worsening Muslim-Christian conflict in the southern Philippines. Using his power as commander-in-chief of the armed forces, Marcos closed the Philippine Congress; he subordinated the judiciary to the executive by demanding signed, undated letters of resignation from all judges; and he engineered the ratification, by show of hands in open assemblies, of a new constitution that allowed him to remain in office indefinitely" (Hawes 1987: 13). As a dictator, Marcos ruled the Philippines through decrees and by rigging and manipulating referenda (Shirmer and Shalom 1987). His 20-year reign over the nation—first as an elected president and then as a dictator—came to an end in 1986 when a peoples' revolution drove him, his family, his friends, and, together with the money he had plundered, into exile (Boyce 1993, Hawes 1987).

The economic development strategy that Marcos adopted for the nation was a "technocratic approach" where technocrats designed the development plan, though they failed to address the inegalitarian structure of the Philippine society (Boyce 1993). This strategy of increased involvement of technocrats in policy formulation helped Marcos

obtain greater amounts of foreign loans (De Dios and Hutchcroft 2003). In fact, Marcos "financed his martial law government with vastly increased foreign loans, foreign aid, and new investments from abroad" (Hawes 1987: 14). Though he promised economic reforms as part of his development plan and vowed to break up the established oligarchy when he assumed dictatorship, it soon became evident that the old oligarchy had been simply replaced by a new oligarchy consisting of Marcos and his cronies (De Dios and Hutchcroft 2003). As part of economic reforms, Marcos dropped the emphasis on ISI and adopted an export-led strategy of economic growth. However, the ISI policies were not completely abandoned, thus continuing the Philippine legacy of incoherent economic policymaking.

Under Marcos' dictatorship, the Philippine economy grew as it did in the previous two decades: while the 1950s and the 1960s witnessed average annual GDP growth rates of 6.5 percent and 6.1 percent, respectively, the 1970s under Marcos recorded an average growth rate of 6.3 percent (Balisacan and Hill 2003). By the late 1970s, exports of manufactured products registered remarkable gains (De Dios and Hutchcroft 2003, Vos and Yap 1996). The mid-to-late 1970s also witnessed a surge in government spending, with the public sector deficits reaching a record 9.3 percent of GDP (Vos and Yap 1996). However, the impressive growth of the economy did not filter down evenly to the general population, with real wages declining and the growth of employment lagging behind that of economic growth (Vos and Yap 1996).

But, for the most part, the growth of the economy in the 1970s was driven by debt that Marcos managed to get from international lenders because of his cozy relationship with the United States, and hence, with the World Bank and the International Monetary

Fund (De Dios and Hutchcroft 2003, Hawes 1987, Vos and Yap 1996). This debt-driven growth did not augur well for the Philippine economy, and in the early 1980s, the country underwent another economic crisis that resulted in major part from the excessive government borrowing during the previous decades. Moreover, external finance became harder to obtain due to the debt crisis in the global economy (Vos and Yap 1996). So, when Marcos boarded the U.S. Air Force jet in February 1986 that took him to exile in Hawaii (Boyce 1993, Hawes 1987), he left behind an economy that was reeling from the ill-effects of his "patrimonial plunder" (De Dios and Hutchcroft 2003). But more importantly from a political standpoint, he left behind a country that had witnessed a decimation of democratic institutions over a two-decade period and one that had to undertake the arduous task of cleansing the vestiges of his dictatorship and restoring democracy to the country (Abueva 1997).

The period since the overthrow of Marcos in February 1986 has been one of democratic consolidation in the Philippines (Abueva 1997). But problems of transition from an authoritarian to a fully-democratic system have lingered. However, there was—and still is—considerable support among the masses for a democratic system, and the nation has managed to remain as a single political unit in spite of testing political and economic situations (Miranda 1997). Politically, the most notable event after 1986 was the ratification of a new constitution in 1987 that was "the most idealistic, progressive, and optimistic constitution in the nation's history" (Abueva 1997: 10).[115]

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[115] Noticeably, the new constitution does not permit the president to be re-elected. See http://www.gov.ph/index.php?option=com_content&task=view&id=2000321&Itemid=26

Economically, the Philippines has been burdened by a lot of historical baggage. The extent of some of the problems that the Philippine economy faced during the first decade after the fleeing of Marcos is reflected in the following lines by one of the best-known Philippine scholars: "The Philippines, saddled with an enormous foreign debt ($26 billion in 1986 at the time of Marcos' fall, growing to over $35 billion in 1993) and a recurring balance of payments crisis, has been under the close supervision of the IMF since the early 1980s. Macroeconomic programs and targets set annually by the national government's financial institutions are negotiated with and require approval from the International Monetary Fund" (Miranda 1997: 167).

To effect an economic recovery during the early years of the post-Marcos era, the government resorted to pump-priming by increasing government expenditure. Though initially there were some signs of growth, the economy soon started to suffer from inflation in the late 1980s and by the early 1990s, growth had diminished to just around 2 percent (Vos and Yap 1996). For most of the 1980s and 1990s, the Philippine economy has experienced much lower levels of economic growth compared to the previous decades, with annual average growth rates for the periods 1980-1990 and 1990-2000 being 1 percent and 3.2 percent, respectively (Balisacan and Hill 2003). In fact, the 1980s, and sometimes the 1990s, are referred to as the "lost decades" with regard to the Philippine economy (Balisacan and Hill 2003, Bird and Hill 2008).

Even though growth picked up in the mid-to-late 1990s, the Asian financial crisis quickly quashed any chances of sustained economic recovery.[116] This economic malaise continued well into the early years of the new millennium. However, the recent years have been uncharacteristically good for the Philippine economy, with growth hitting a 30-year record high of 7.3 percent in 2007 (Bird and Hill 2008). Since 2003, the country has been "experiencing its longest period—five years—of uninterrupted positive per capita economic growth since the 1970s" (Bird and Hill 2008: 6). Quite noticeably for the Philippine economy, the business side of the economy has started to protect itself from and remain immune to the manipulations of the political class. In other words, "business and politics are apparently 'decoupling'" in the Philippine political economy (Bird and Hill 2008: 6).

Before concluding this section, I need to highlight the fact that the Philippines "is one of the world's major development puzzles" because it had very favorable initial conditions when it achieved its independence and was one of the wealthiest nations in the region, with one of the highest educational standards among developing countries (Balisacan and Hill 2003: 3). Moreover, it had privileged access to the world's biggest economy (the United States), its political and legal institutions were relatively advanced, its press was free and vibrant, it had vast agricultural land, and though not perfect, it had a democratic set-up (Balisacan and Hill 2003). Yet, the country has failed to do justice to these enabling conditions with respect to its overall economic performance.

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[116] Though the Asian financial crisis devastated much of East Asia and South East Asia, it "affected the Philippines only mildly and briefly (certainly when compared with its neighbors)" (Balisacan and Hill 2003: 10).

A comparison with its neighbors will illustrate the extent to which the Philippines has been left behind in the race to economic prosperity: "[I]n 1962, per capita income in the Philippines was comparable to that in Taiwan, and one-quarter of that in Japan. In 1986, it was one-seventh of Taiwan's and three percent of Japan's" (Boyce 1993: 1-4). This stagnation is mirrored in the structure of the economy as well: "[A]round 1970, the Philippines had a comparable employment structure to that of South Korea, Malaysia and Thailand with about half of the labour force in agriculture. Two decades later, the Philippines has shown remarkably little structural change, while in South Korea the share of labour in agriculture dropped by 32.3 percentage points in favour of industrial and modern services employment. Malaysia and Thailand show a more moderate transformation, but both in the same direction" (Vos and Yap 1996: 16).

Miranda (1997) is not alone when he states that the failure of the Philippine economy to record the high levels of performance seen in its neighborhood stems from the weakness of the state. Before 1986, the state was dominated and manipulated for private gain by the oligarchy. After 1986, even though oligarchy has been subdued, the state still remains weak. As mentioned earlier in this section, the recent years have been good for the Philippine economy. However, scholars remain skeptical, given the tendency of the Philippine economy to flicker out after showing promising signs.

The present section has provided a summary of the recent economic history of the Philippines since it achieved independence from the United States in 1946. As it is clear, the economic record is not very impressive, and compared to India and China, the Philippines has lagged behind in economic performance. Some might even say that the Philippines is East Asia's stray cat (Vos and Yap 1996). In the next section, I take a look

at the state of competition legislation in the Philippine economy, which will provide a backdrop to the competition policy developments that occurred in this nation in the post-1996 period.

The State of Competition Legislation in the Philippines

Economic policy reforms in the Philippines started in the 1980s and especially after the fall of Marcos and when democracy was restored to this island nation in 1986. In general, these reforms have shifted the Philippine economy to being more market-friendly, and with specific regard to competition, the policy changes in the trade, banking, and foreign investment sectors and the overall deregulation and privatization of various areas of the economy "have explicitly and implicitly recognized the benefits of competition" (Medalla 2002a: 308). There exist many legal provisions pertaining to competition; however, as of 2002, the Philippines does not have a competition law (Medalla 2002b). But, in the last few years, some attempts have been made to strengthen competition legislation in the Philippines.[117] These are in line with similar attempts made before.

The 1987 Philippine constitution explicitly prohibits anti-competitive business practices and empowers the state to act in public interest in this regard (Abad 2005). But the provisions and definitions are too weak to provide the government with the required enforcement power. Apart from the constitution, there exist various other criminal and civil laws that touch upon the issue of competition. But these are spread across various

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[117] In spite of these attempts and the fact that some of these bills made it to the Philippine Congress, I have placed the Philippines in Group 3 because the provisions in the competition bills that were drafted did not conform to the standard provisions of a modern competition law, as was mentioned in chapter one. Therefore, to maintain consistency with regard to the definition of competition law, I placed the Philippines in Group 3.

agencies in the government machinery and do not present a coherent and comprehensive framework for effective implementation.

The lack of a proper and effective competition policy framework coupled with the government's protectionist measures since independence have had an impact on the state of competition in the Philippine economy. During the era of ISI, the Philippine manufacturing sector remained insulated from foreign competition. This led to high levels of concentration and to the emergence of cartels in this sector (Medalla 2002b). Though trade reforms since the 1980s have relaxed the high levels of protection that this sector enjoyed, the cartels still remain and have impeded the growth of the Philippine manufacturing sector. The high degrees of concentration and the low levels of competition seen in the Philippine manufacturing sector are reflected across the economy. "[S]tudies confirm a high concentration ratio in ownership and production, *i.e.*, the measure of the market share of the top three or four firms to total market size in certain key industries...[T]his high concentration ratio is a direct result of the failed economic policies of the past, particularly from a surfeit of regulation and a dearth of competition" (Abad 2002: 357).

Given such a scenario, the proponents of a national competition law for the Philippines have been clamoring for it since the 1980s, but to no avail. In a subsequent section in this chapter, I will examine and discuss the reasons why the Philippines have not managed to draft and enact a comprehensive and modern competition law that tackles the present-day competition issues that this nation is facing. But before that I present the competition lawmaking process that occurred (or not) in the Philippines during the period 1996 to July 2007.

The Philippines' Competition Lawmaking Process

The title of this section—though it maintains consistency with that of the India and China case studies—is a little misleading because the Philippines did not draft a modern competition law or enact one. And, that places the country in Group 3 and in the Non-Action Group. Therefore, in this section, I will document the attempts that have been made to draft a few of the competition bills that, however, do not qualify as a modern competition law as it is understood generally and in my dissertation.

In the case of the Philippines, there is no single legislative piece—like the Competition Act in India's case and the Anti-Monopoly Law in China's case—to focus on and track its progress and trajectory. On the contrary, there have been numerous draft bills brought up for enactment by various members of the Philippine Congress, though none of these represents a comprehensive competition law, and to a great extent, reflect that particular member's concerns about a specific aspect of competition regulation or of the economy. For example, both Houses of the 13th Congress that ran from 2004 to 2007 had at one time 11 draft bills pending enactment—eight in the House of Representatives and three in the Senate (Abad 2005). As per the lawmaking process in the Philippines, once a bill is brought up by a member, it is assigned to a committee for reading and further action. In the case of competition laws, the committees that are supposed to start hearings on these bills and finalize them as part of further legislative process have been, literally, sitting on them without taking any action (Abad 2005).

Therefore, it is evident that even though competition bills serving various purposes of a comprehensive competition law have been brought up for legislation, none

has survived the drafting stage. Moreover, as per latest reports, competition bills of this nature brought up in both the 13th and 14th Congresses simply died at the committee stage (General 2007), which is also what happened to nine bills in the 11th Congress (Catindig 2001) . Though these bills do not represent the kind of overarching draft competition bills seen in the Indian and Chinese cases and in the case of countries in Groups 1 and 2, the fate that finally befell these bills says a lot about the approach and attitude toward competition lawmaking in the Philippines. That is, while there are politicians who take the time and trouble to prepare these bills, there are counteracting elements that manage to kill the passing of these bills. If this is what happens to bills that only partially impact the state of competition in this nation, then it is not difficult to comprehend the uproar that a fully comprehensive national competition law will elicit.

One politician who is in the thick of that furor and has taken upon himself the task of fighting anti-competitive business practices is noted politician and Senator Juan Ponce Enrile. As of late 2007, Enrile heads a subcommittee that has been assigned the task of drafting a competition law for the country (General 2007). Enrile is one of many Congressmen whose attempts to pass bills in the earlier sessions of the Philippine Congress failed because these bills got stuck at the committee stage.[118]

In the next section, I investigate why a comprehensive competition law is still absent in the Philippines and what factors have prevented this lawmaking process from

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[118] Enrile's attempt in mid-to-late 2007 to draft a competition bill falls effectively outside the data period under study in this dissertation. Hence, this development did not qualify for the Philippines to be placed in Group 2, that is, among countries that have drafted a competition bill. Moreover, a detailed reading of Enrile's bill, which, if passed, would become the Philippine Antitrust Act, reveals that it focuses mostly on price-fixing and monopolistic behavior and relatively little on abuse of dominant position in the market and mergers and acquisitions, thus leaving out some of the standard provisions of a national competition law.

reaching its logical end of enacting a competition law for the land. Toward this end, I will analyze the competition law scenario in the Philippines using the eight explanatory variables that were initially identified in this dissertation.

Explaining the Philippine Competition Policy Process

In the Philippines, there was no competition lawmaking process of the sort witnessed in India and China. Therefore, my attempt in this section is to examine the variables that mattered significantly in deterring and not enabling the drafting and enactment of a comprehensive national competition law in the Philippines during the period 1996 to July 2007.

Technical Assistance by WTO – The engagement of the Philippines with the WTO in the context of competition policy has been less than that of India and China. Philippine officials attended a three-day regional workshop organized by the WTO titled "Trade and Competition Policy for Asia and the Pacific" in Thailand in January 2003. Later, in October 2004, the Philippines participated in a similar three-day regional workshop held in India.

As far as the WGTCP is concerned, the Philippines has been very active in this working group since the inception of this forum (WTO 1997a, b, 1998, 2000, 2001a, b, c, 2002, 2003b). Most notably, it has represented the Association of South East Asian Nations (ASEAN) in submitting comments and questions on competition policy at the WTO (1997a, b). Quite noticeably, in its communications to the WGTCP, the Philippines comes across as a strong critic of the efforts to include competition policy under the

WTO, which reflects the overall opposition to this policy proposal from developing countries (WTO 2000, 2001b).

In spite of all these engagements, there is little evidence to conclude that WTO technical assistance activities played a major role in the competition policy outcome in the Philippines. To a large extent, this conclusion is very evident since the Philippines did not draft or enact a modern competition law. Moreover, as mentioned under this variable in the cases of India and China, the WTO technical assistance activities were unlike that provided by the other IOs in this field. WTO assistance was mostly restricted to workshops and courses and lacked a specific country focus for a sustained period of time.

Given this understanding, I conclude that the Technical Assistance by WTO variable did not play a significant role in the competition policy action taken in the Philippines. This conclusion is in line with similar conclusions reached for this variable in the India and China case studies. In the next sub-section, I examine whether IOs other than the WTO were instrumental in a significant manner in influencing what occurred in the competition policy arena in the Philippines.

Technical Assistance by Other International Organizations (IOs) – Similar to India and China, the Philippines has also received considerable technical assistance in the area of competition policy from other IOs. In 1998, the Philippines received technical assistance from the United Nations Development Programme as part of a project named "Developing a Comprehensive Fair Trade and Competition Policy Framework in the Philippines" (UNCTAD 2000). Typically, in delivering technical assistance, IOs like UNCTAD request the assistance of government agencies of economically developed

countries that have a longer history of administering competition legislation (UNCTAD 2002). Most of the developed countries have obliged in this request and frequently report to the UNCTAD the nature and type of assistance that they have provided as part of the coordination efforts of the UNCTAD. In the case of the Philippines, one such government agency is the Australian Agency for International Development (AUSAid) that has provided in-depth and sustained assistance and cooperation in the area of competition policy (UNCTAD 2000, 2002). AUSAid has not only conducted study tours for Philippine officials but also provided hands-on training in some of the technical aspects of competition policy (UNCTAD 2002).

The Philippines has been a recipient of technical assistance from the OECD. In December 1999, the country participated in an international seminar on "The Role of Competition Policy and Competition Authorities" that was held in Thailand (OECD 2000). The OECD Secretariat also organized three seminars, one each in 1997, 1998, and 1999 in Seoul, South Korea for countries in the Asia-Pacific region that included the Philippines. The OECD sent their competition policy experts to four seminars held in Thailand in 1996, 1997, 1998, and 1999 and one in the Philippines in 1996 for countries in the Asia-Pacific region.

While the European Commission has not engaged with the Philippines in the area of competition policy to the extent to which UNCTAD and OECD have, it arranged visits in 2001 for Philippine government officials to various national competition agencies in Europe (WTO 2003c). These visits were designed to help these officials learn more about the competition laws in Europe and to understand the structure and functioning of

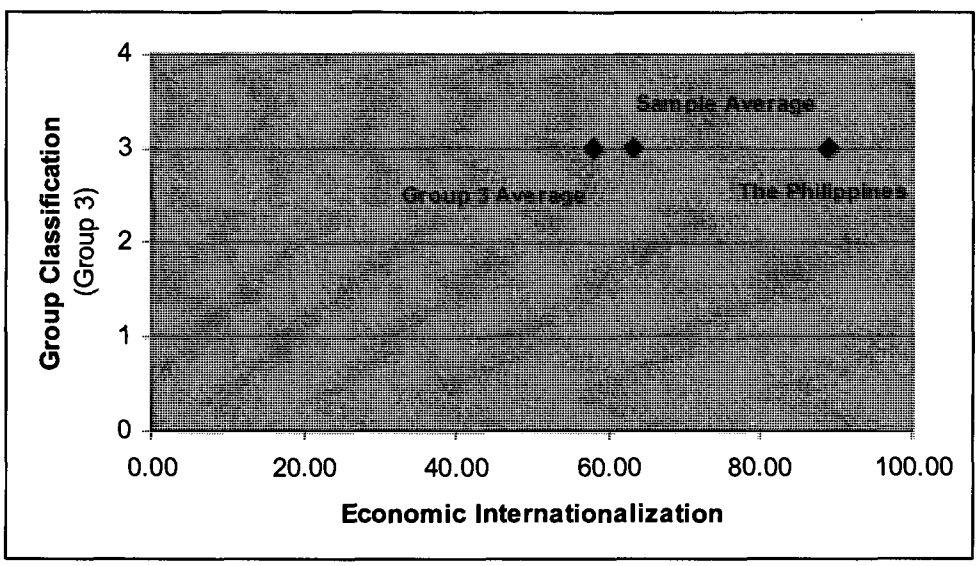
European competition agencies. In September 2002, French competition policy experts attended a conference on trade and development in the Philippines. Moreover, for the period 2002-2004, the European Commission had set aside 2 million euros to "support the considerable amount of research analysis and dialogue still to be undertaken, as well as the advocacy programme, prior to its implementation" in the Philippines (WTO 2003c: 9).

It is very evident that, as in the case of many of the developing countries, the Philippines has also been a recipient of considerable amount of technical assistance in the area of competition policy in the recent past. However, it is also the case that this assistance has not significantly affected the competition policy outcome in this country because the Philippines is still without a comprehensive and modern national competition law. Though many attempts were made to get started on this process, apparently with assistance from IOs and other external agencies, they were all scuttled before they reached the final legislative process. This means that there are other significant factors at play elsewhere that have managed to ensure that a national competition law does not get adopted in the Philippines. An examination of the remaining explanatory variables in this section is expected to identify those factors.

Economic Internationalization – The Philippines has a very high economic internationalization score of 88.88 (see figure 18). This score is much higher than that of both India at 19.50 and China at 42.31, and beats both the Group 3 and sample averages of 57.90 and 63.24, respectively. This high share of the external economy—relative to its overall economic size—and the fact that the Philippines has not adopted a national

competition law confirm the alternate hypothesis associated with this variable. The alternate hypothesis argued that open economies that had a high proportion of exports and imports in its overall economy would not institute a free-market-promoting competition law because this legislative action would not permit the state to intervene in the domestic economy and protect domestic labor from the ill-effects of foreign competition.

Figure 18: Economic Internationalization: The Philippines versus Group 3 and Sample Averages



This argument is similar to the idea of "embedded liberalism" advanced by Ruggie (1982): in return for keeping an open international order and encouraging international competition, the state undertakes welfare measures to protect its social groups from the harmful domestic effects of such an open order. That is, the state would intervene in the domestic economy in the case of highly open economies. Relevant to the

analysis in my dissertation is the fact that a comprehensive competition law that is guided by free-market principles would make it increasingly harder for the state to intervene, and hence, the state might refrain from adopting such a law. Even though the Philippines seems to fit the profile of a state that has a large external sector in its overall economy and its competition policy action has been as alternatively hypothesized, the interest here is to investigate whether it is indeed the "embedded liberalism" compromise that has played a role in producing its competition policy outcome. In other words, the question is whether the "embedded liberalism" compromise is the intervening variable between the globally integrated Philippine economy and its policy action of not adopting a competition law. Based on two lines of reasoning that I present below, I argue that it is not.

First, the "embedded liberalism" argument was developed by Ruggie (1982) to explain the liberal international economic system that was created during the immediate post-World War II period. Part of the objective was to distinguish this economic system from what prevailed during previous periods when either economic nationalism or pure laissez-faire capitalism prevailed in the international economic system. Quite importantly, Ruggie applied the idea of "embedded liberalism" mostly to the domestic situations in the rich countries of the West, especially the United States and the United Kingdom. Poorer countries like the Philippines were only supposed to be the beneficiaries of the open economy policies of these rich countries and not the orchestrators of such a liberal compromise (Harvey 2005). As such, it is hard to imagine a country like the Philippines, with a weak state, mounting international debt, and an underdeveloped economy, undertaking an "embedded liberalism" compromise.

Moreover, Ruggie (1997) himself notes the apparent and gradual replacement of the "embedded liberalism" compromise in the last few decades by the forces of globalization. The change in the character of domestic economies pursuant to systemic changes in the global economy is also observed and emphasized by Harvey (2005). Therefore, what has happened in the Philippines is arguably not a case of "embedded liberalism."

My second argument against the possibility of an "embedded liberalism" compromise in the case of the Philippines is motivated by the identification of a causal variable that can possibly explain this policy outcome, and thus, deny any role for the "embedded liberalism" compromise in this case. I argue that, even though the Philippines had a very high external sector—relative to its economic size—it never felt the need to institute a competition law to make its industries and firms competitive and efficient because these business entities were already competitive in the international markets due to the trade liberalization measures that were pursued by successive democratic governments since the fall of Marcos in 1986 (Bautista and Tecson 2003). That is, *as far as this variable is concerned*, the Philippines never required a competition law for its firms to succeed internationally because those incentives were being provided from some other source, namely, trade policies. The manner in which the liberalized trade regime has helped Philippine firms to become internationally competitive in the absence of a competition- and efficiency-inducing competition law is magnificently underscored by Hill (2003: 238-239): "[W]hile superficially attractive, it needs to be recognized that a competition commission could be both costly and ineffective. The first point to emphasize is that practically all of the manufacturing sector consists of tradable goods industries, and so, providing import and domestic distribution channels operate

competitively, the most effective anti-monopoly policy is an open trade regime. Here...the Philippines has made considerable progress over the past decade..." Therefore, liberalization of the Philippine trade policy in the recent decades has positively impacted the competitiveness of Philippine firms and has vastly enhanced the ability of these firms to exploit their comparative advantage (Bautista and Tecson 2003, Hill 2003). The role of trade policy reforms in increasing the levels of competition in the Philippine economy is well-documented by one of the leading scholars of Philippine competition policy, Medalla (2002a: 309-310): "[T]rade liberalization could...be considered the first major layer of competition policies to be implemented in the postwar era. Indeed, the major trade reforms implemented since the mid-1980s have contributed much to improving the state of competition in the Philippines."

Based on the presentation in the previous paragraph, I argue that the reason why the Philippines did not adopt a competition law—with specific regard to the role of the Economic Internationalization variable—was not the presence of an "embedded liberalism" compromise—as the alternate hypothesis states—but the working of an increasingly open and liberalized trade regime that improved the competitiveness of Philippine firms, and hence, served the same purpose that is typically expected from a national competition law. So, instead of increased domestic competition—through a national competition law—making Philippine firms more efficient and competitive, it was foreign competition that produced these outcomes. However, even though the outcome confirms the alternate hypothesis and my second argument provides an explanation for observing this relationship in this case, there is no clear evidence to substantially and unambiguously link the absence of a national competition law in the

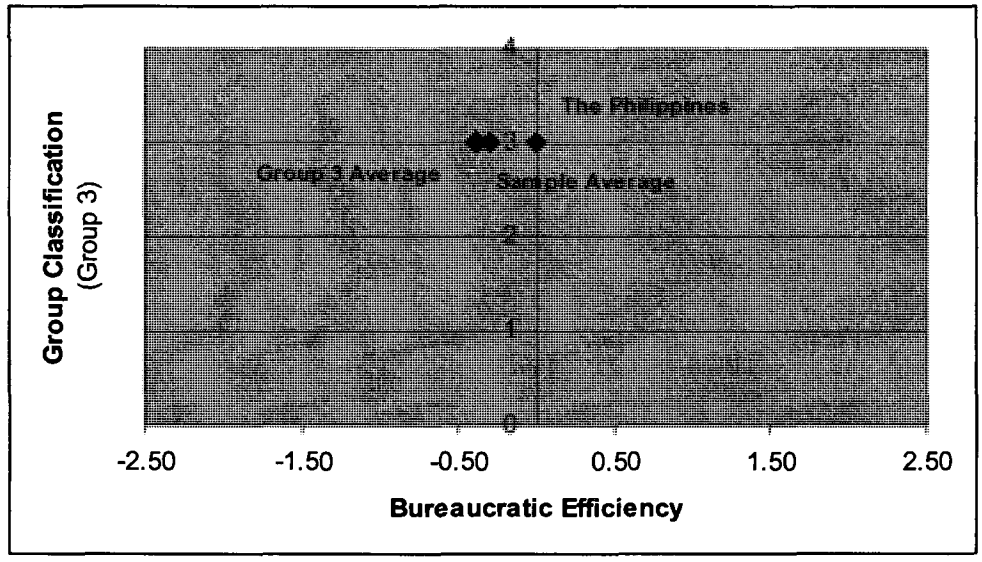
Philippines to the high economic internationalization score of this country. That is, even though trade policy liberalization comes across as a major variable, it is not an intervening variable between the high economic internationalization score of the Philippines and this country not having a national competition law. On the contrary, the shift to a liberal trade policy regime appears to have been a *common variable* that has impacted *both* the economic internationalization score *and* the non-adoption of a competition law. The first of these relationships, that is, the liberal trade policy positively impacting the external sector is confirmed by Bautista and Tecson (2003: 144): "[W]ith the resumption in earnest of the trade reform policy in 1986, and the progressive dismantling of the anti-export bias of the prevailing protectionist regime, there has been a continuous acceleration of export growth through to the present." The second of these relationships, that is, the open trade regime having negated the need for a competition law was confirmed in the previous paragraph based on the statements in Hill (2003).

In light of this finding, I conclude that economic internationalization was not a significant factor in the non-adoption of a national competition law in the Philippines. There is no evidence of either a direct link or an indirect link through an intervening variable. The real reasons lie elsewhere, and the search to identify those critical variables continues in the rest of this section.

Bureaucratic Efficiency – The Philippines has a score of zero on the scale of bureaucratic efficiency (see figure 19). This is, in fact, a positive number and falls right in the middle of the scale of -2.5 and +2.5 that was used to measure this variable. In comparative terms, the Philippines has a more efficient bureaucracy than India, which has

a score of -0.13. However, it does not fare as well as China, which has a score of 0.09. When compared to the Group 3 and sample averages of -0.38 and -0.30, the Philippines does, indeed, have a more efficient bureaucracy.

Figure 19: Bureaucratic Efficiency: The Philippines versus Group 3 and Sample Averages



Even though the Philippines has a relatively better score on this variable, the key question is whether the bureaucrats who were involved in the competition policy process were adequately efficient or not. Available evidence points to a woeful lack of technical capacity and knowledge of competition issues among bureaucrats in the Philippines. Abad (2002: 361) makes this abundantly clear when he addresses the problems that the Philippines faces in formulating a comprehensive competition law for the land: "[M]ost officials in the bureaucracy, as well as politicians, nongovernment organization (NGO) members and consumers, still lack technical knowledge in competition policy. This is the

same for bureaucrats involved in the enforcement of fair trade and those who could potentially be involved in competition regulation. A number of officials of the Tariff Commission, Department of Trade and Industry, and the National Economic Development Authority, have been attending various seminars and workshops on competition policy, but all still lack the practical experience."

This lack of technical expertise in competition policy is further evidenced by the following forms of technical assistance that the Philippines requested from UNCTAD (2002: 22-23) in 2001:

> (a) Access to other countries' experience in enhancing and enforcing comprehensive competition laws and policies;
> (b) Strategic measures to refine and enhance approaches and measures for dealing with competition matters;
> (c) Institution building for competition authorities;
> (d) A case-study-based seminar for enhancing investigative techniques;
> (e) Network building to sustain information sharing;
> (f) Participation in bilateral and multilateral forums;
> (g) Advice and training for regulatory agencies;
> (h) Skills enhancement for members of the legislative, executive and judicial branches

This list of assistance solicited by the Philippines, for the most part, covers the entire gamut of technical assistance that a country needs to get started on this policy path. Moreover, and relevant to the analysis of this variable, it provides conclusive evidence of the lack of bureaucratic ability in this policy area among the officials of this country. It is

only natural to expect an ill-informed and under-trained set of officials to be, therefore, inefficient in the execution of their tasks in this policy area.

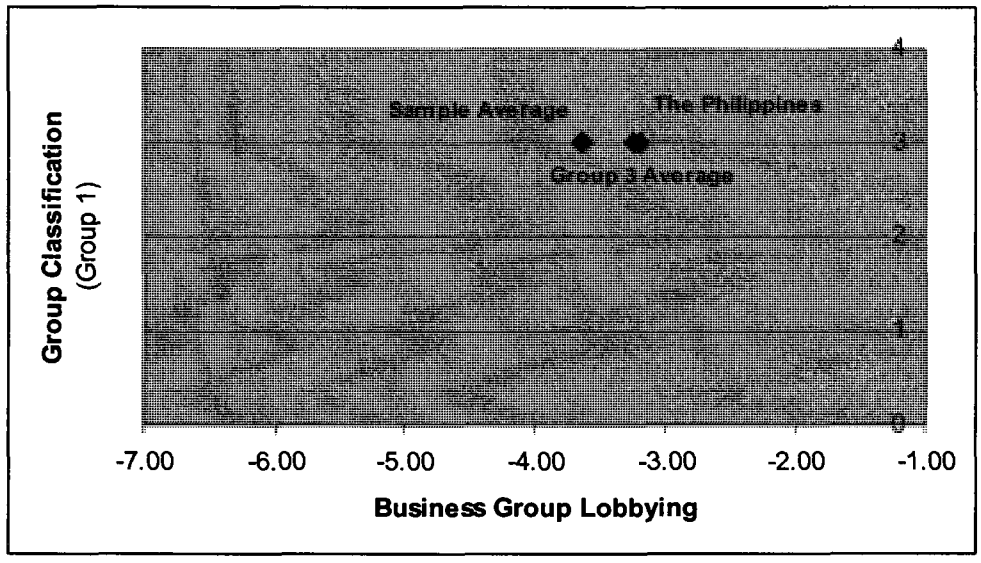
The discussion by Abad (2002: 361) on the difficulties that the Philippines faces in adopting a competition law provides some insights into why the Philippine officials have been found wanting in their lawmaking roles: "[S]trict rules on the management of government agencies and the allocation of agency resources severely limit the organizational capacity of these agencies. This makes it difficult for an agency to institute innovations and reforms internally and react swiftly and flexibly to various external situations." Apart from this management constraint, there is also the question of adequately compensating government officials: "low salary scales have a detrimental effect on morale in the bureaucracy. It explains why the agencies are unable to attract and maintain the best graduates from the best schools...low levels of compensation render government officials and employees highly vulnerable to corruption and undue influence by vested interests" (Abad 2002: 361).

Based on the finding that technical expertise in competition policy has eluded Philippine officials, I conclude that Bureaucratic Efficiency, or the lack of it, has been a significant factor that has impeded the development of a comprehensive competition law for this country. My conclusion is in line with that in the India and China case studies where Bureaucratic Efficiency was found to have mattered in those two countries having enacted and drafted, respectively, their national competition laws.

Business Group Lobbying – The score of the Philippines on the Business Group Lobbying variable is -3.20 (see figure 20), which is higher than that of both India and

China at -3.80 and -4.20, respectively. This is also higher than the Group 3 and sample averages of -3.25 and -3.64, in that order. This means that, compared to these two countries, businesses in the Philippines lobby their government more for favorable policies. In other words, business groups form a major interest and lobbying group in the Philippines.

Figure 20: Business Group Lobbying: The Philippines versus Group 3 and Sample Averages



Based on the score that the Philippines has on this variable, it appears that business groups with established economic interests have managed to thwart the efforts to draft and enact a national competition law that would dislodge their monopolistic control over various sectors of the economy. And, much of the evidence, apparently, points to that conclusion.

The Philippine economy is characterized by high levels of concentration (Abad 2002, Medalla 2002b). High levels of concentration in a particular sector or market mean that a handful of firms enjoys the major market shares of that sector, and thus, act as a barrier to entry for new firms. One of the tasks of a competition law is to tackle these barriers to entry. High levels of concentration and incontestable markets have been reported in Philippine manufacturing and industries (Medalla 2002b: 12): "the manufacturing sector is still indeed highly concentrated with roughly two-thirds of the manufacturing sector having concentration ratios ranging from 70 to 100 percent. On the average, 73.6 percent of value-added were from the top four firms in each manufacturing subsector."

In some instances, high levels of concentration need not necessarily be a cause for alarm, and could, in fact, be the result of dynamic efficiency and high levels of competition that weed out inefficient firms from a market segment, thus leading to a few efficient firms inhabiting that segment. Medalla (2002b) cites various sources that concur with this view, and reports that trade liberalization has led to higher levels of competition and efficiency in many sectors of the Philippine domestic economy, and has, thus, produced dominant firms that have survived due to their superior performance. However, Medalla (2002b) is also of the opinion that there would be sectors in the Philippine economy where business firms collude and abuse their dominant positions.

The fact that entry barriers and high concentration ratios are ever present in the Philippine economy is emphasized in unequivocal terms by Abad (2002: 358):

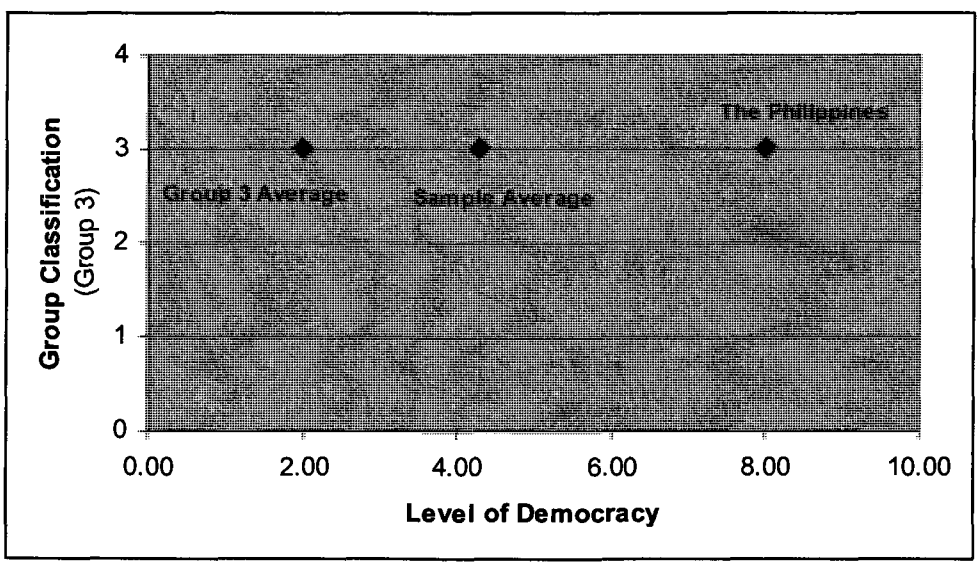
> The high concentration ratio in various industries is also directly attributable to entry barriers that prevent new participants from entering and competing in the same industry.
>
> The Philippine economy, therefore, is largely captive to a small group of economic interests who have succeeded in maintaining market dominance by successfully excluding other firms from entering to participate and compete in the markets.
>
> With this concentration of economic power, political power was likewise concentrated in the hands of a small elite. Only 60 to 100 political clans control all elective positions at the national level. The Philippine Congress, on the basis of reported statements of assets and liabilities submitted by its members, is composed largely of multimillionaires. The marriage of economic and political power presents a formidable hindrance to any form of change that may, or threaten to, alter the existing *status quo*.

Given such a situation, it is only natural to expect the politically connected and economically powerful business lobbies to block the adoption of a competition law that would strike at their comfortable positions. That this could be the case is further noted by Abad (2002: 360): "[W]ith major powerful economic interests involved and entrenched, the development of a comprehensive competition policy to guide future economic regulation in the Philippines will definitely run into serious political obstacles if such interests are opposed." Moreover, the fact that numerous bills that touched upon competition issues languished in the policy process and eventually died at the committee stage points to the role of powerful business lobbies that managed to effectively kill their progress into becoming a law (General 2007).

Overall, there is evidence to conclude that powerful and effective business group lobbying has prevented the Philippines from adopting even a partial version of a national competition law, let alone a comprehensive and modern one. While the finger can be pointed at the lack of government will to tackle these lobbies (Abad 2002), it still is the case that lobbying by well-entrenched business groups has, indeed, deterred in a significant manner the drafting and enactment of a comprehensive competition law in the Philippines.

Level of Democracy – The Philippines' level of democracy is 8 on the democracy scale (see figure 21), which is closer to India's score of 9 but much higher than China's score of 0. The Philippines has a very high level of democracy compared to the Group 3 average of 1.98 and the sample average of 4.27.

Figure 21: Level of Democracy: The Philippines versus Group 3 and Sample Averages



The Philippines' democratic system was restored in 1986 when the dictator Marcos was forced out of the country and into exile. Since then, the country has managed to remain democratic. However, this high level of democracy and the associated ideal of political liberty do not seem to have translated into the Philippines drafting or enacting a national competition law that promoted a liberal market system. There are two lines of reasoning that I offer to reconcile this anomaly.

First, it is not entirely true that the return of democracy in 1986 in the Philippines has not contributed to the democratic ideals of liberty and choice spilling into the economic realm. For, it was after the reinstatement of democracy and democratic institutions that the government started seriously and continuously dismantling many of the protectionist measures that the previous authoritarian government had erected (Ringuet and Estrada 2003). Noteworthy among these is trade policy liberalization, which was mentioned earlier in this section while analyzing the Economic Internationalization variable. Trade policy liberalization has improved the levels of competition in the Philippine economy and made Philippine firms more competitive and efficient (Bautista and Tecson 2003).

Second, and following from the first point above, the arguable reason why the government stopped at trade policy liberalization and did not replicate this in the competition policy arena by installing a comprehensive competition law is that the latter is far more costly to set up and requires greater levels of technical capacity to adopt and administer. That is, installing a completely new competition regime is far more prohibitive in terms of financial costs and institutional capacity than tweaking existing trade policies to better align with free-market principles.

That instituting a competition law and a system to implement and enforce it are costly has been noted by Bautista and Tecson (2003). And, the fact that budgetary constraints plague the instituting of a competition law in the Philippines has been pointed out by Abad (2002). That the technical capacity of Philippine officials in the area of competition policy is inadequate is abundantly clear from the discussion that accompanied the analysis of the Bureaucratic Efficiency variable earlier in this section. So, as far as the role of democracy in the instituting of a competition law is concerned, these two limiting factors—budgetary constraints and lack of technical capacity—together prevented the Philippines from achieving a liberalized competition regime the way in which this country managed to adopt a liberalized trade regime.

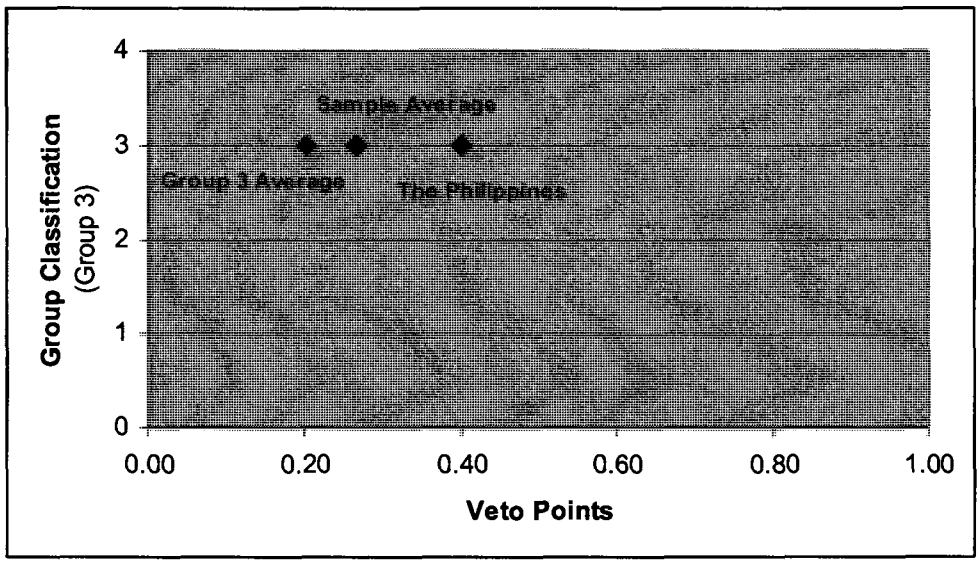
To conclude the analysis of this variable, I report that the level of democracy has not played a significant role in the Philippine competition policy scenario though it has managed to achieve a semblance of free-market economics in the foreign trade sector of the Philippine economy.

Veto Points – The Philippines has a Veto Points score of 0.40 (see figure 22). This is very close to India's score of 0.43 and much higher than China's score of 0. The Philippine score is also higher than the Group 3 average of 0.20 and the sample average of 0.27. So, like India, the Philippines also has many veto points that can potentially block a policy change. This is partly a reflection of the democratic nature of these two countries, as opposed to the authoritarian system in China.

As mentioned in the previous section, the Philippine lawmaking process involves the presenting of a bill in the Philippine Congress by a member, and the bill is then

assigned to a committee for multiple readings to elicit expert and public opinions. To become law the bill has to be approved by the Congress and the President.

Figure 22: Veto Points: The Philippines versus Group 3 and Sample Averages



However, since no bill that satisfied the definition of a modern and comprehensive competition bill was drafted and taken up by the legislature, the role of the Veto Points variable was absent. This absence is because, as per the construction of this variable, Veto Points enter the analysis only after a committee or group is assigned the task of drafting a bill. Since no such committee was formed and no comprehensive competition bill was drafted in the case of the Philippines, it is impossible to ascertain what hypothetical role it would have played in this process.

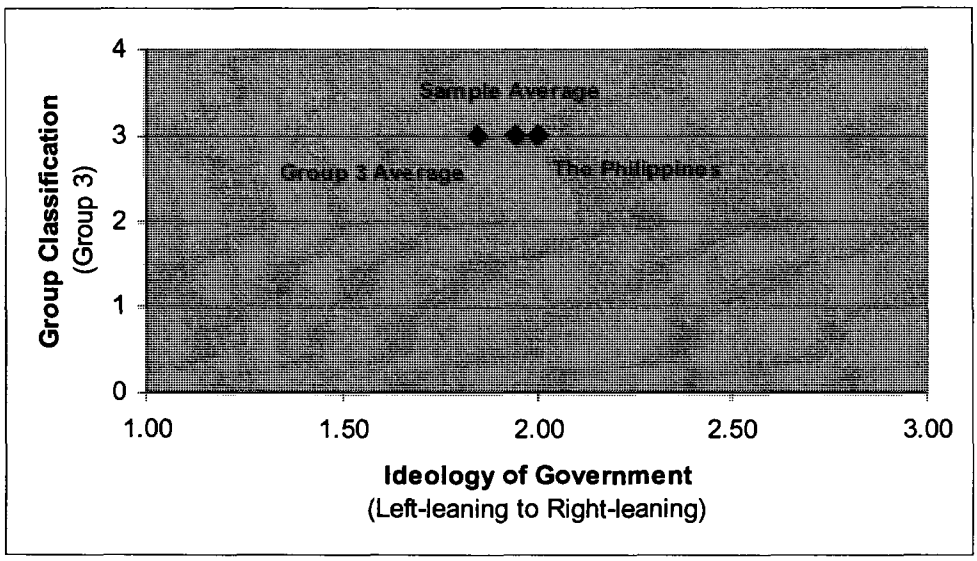
Nonetheless, and as mentioned in the previous section, numerous bills that touched upon certain aspects of a competition law were killed at the committee stage (General 2007). Going by the fate that befell these bills, one can reasonably conclude that a comprehensive national competition law would have met a similar fate. So, using the

outcome of several competition bills as a proxy, I note that Veto Points do pose a problem for policy change in the area of competition legislation in the Philippines. However, I refrain from making a conclusive statement regarding this variable in this context since the event that must have occurred for me to analyze it and make such a statement—that is, a competition lawmaking process—never took place.

The foregoing conclusion points to the fact that the Veto Points variable, in general, has no role to play in the competition policy process for Group 3 countries. This is because the manner in which this variable has been constructed in the literature and used in this study—that is, counting only the veto points that exist in the executive and the legislature—means that a competition bill has to be drafted for this variable to take effect. And, drafting a bill would have placed a country in Group 2 and not in Group 3. Until a bill is drafted, restraints on policy change are typically placed by other factors like business/special interest lobbying and bureaucratic inefficiency. However, I have already included these other factors as separate explanatory variables and have analyzed them previously in this section.

Ideology of Government – The score of the Philippines on this variable is 2 (see figure 23), which reflects a centrist ideology. This score is very similar to that of India's score of 2.14 (center-right), but different from China's score of 1 (left). The Philippine government's ideological stance is very close to the Group 3 average of 1.85 and the sample average of 1.95. So, as far as the ideology of the government during this period goes, the Philippines reflects the average scores for the group and the full sample.

Figure 23: Ideology of Government: The Philippines versus Group 3 and Sample Averages



The Philippines' centrist ideological position confirms neither the main nor the alternate hypothesis associated with this variable. Moreover, the fact that it has not drafted and enacted a national competition law makes the relationship between ideology and competition policy action in the Philippines even more difficult to tease out. This difficulty is compounded by the fact that unlike political parties around the world that have distinct ideological underpinnings, parties in the Philippines are devoid of a similar ideological flavor and are hardly distinguishable on this characteristic (Rocamora 1998). Instead, they are mostly parties headed and managed by elites who tend to be conservative but not necessarily right-leaning.[119]

[119] The word "conservative" is used here in its literal sense of being "traditional" and not as it is understood as "right-leaning" in the context of American politics.

However, a focus on the economic philosophies of key Philippine political leaders would be instructive in analyzing this variable's relationship to the competition policy action taken in this country. For example, Fidel Ramos, who was president of the Philippines from 1992 to 1998, was an economic reformer and a staunch believer in free-market principles (Gutierrez 1998, Ringuet and Estrada 2003). His successor, actor-politician Joseph Estrada, was widely seen as a populist but did continue Ramos' hugely successful economic reforms before he was forced out during his impeachment proceedings in 2001 (Ringuet and Estrada 2003). The current president, Gloria Macapagal-Arroyo, who was a professor of economics before becoming president after Estrada, harbors an economic philosophy of free enterprise and a determination to improve efficiency and reduce bureaucratic red-tape (Tyner 2009).

It is, therefore, evident that during the post 1996 period, the Philippines has been ruled by three presidents, each of whom professed a right-leaning ideology as far as their approach toward markets are concerned. The ideological leaning to the right was especially pronounced during the term of Ramos. So, the question that arises is the following: given such an ideological slant toward the right, why did the Philippines not adopt a competition law? A major part of the answer lies in some of the discussions that I have had earlier in the present section.

While analyzing the variable Level of Democracy, I highlighted the relative difficulty of instituting a new competition regime *vis-à-vis* undertaking trade policy reforms. When Ramos took office in 1992, the Philippines was still struggling to regain its democratic roots, given the instability that characterized the presidency of Corazon

Aquino from 1986 to 1992.[120] During his presidency, Ramos directed the focus of his economic reform program to trade policies and to industrial deregulation and privatization (Ringuet and Estrada 2003). Therefore, Ramos evidently started off by reforming the existing structures of the economy rather than by undertaking the enormous task of erecting a new competition law. Ramos was succeeded by Estrada, who continued the reforms initiated by Ramos, but whose term was beset by corruption scandals and financial troubles until he was impeached in 2001. It is during the current administration of President Arroyo that some of the competition bills were introduced but got stuck in the committees.

The purpose of the discussion in the previous paragraph was to demonstrate that—given the right-leaning ideologies of most of the presidents since 1996—the Philippines has indeed been progressing on the track of economic liberalization. Therefore, the non-adoption of a competition law is not because of the lack of an ideological commitment to market reforms but because of powerful forces elsewhere that have managed to delay its drafting and enactment. This finding, however, leads me to conclude that the Ideology of Government variable did not play a significant role in the competition lawmaking process in the Philippines.

In the next section, I evaluate the qualitative results that have been obtained from this case study and compare them to the results from the large-sample study. As before, I will highlight the similarities and reconcile any differences between the two sets of results.

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[120] During her presidency, Corazon Aquino successfully endured seven coup attempts (Ringuet and Estrada 2003).

Comparing the Quantitative and Qualitative Results

The Philippines case study highlights the important roles played by the variables Bureaucratic Efficiency and Business Group Lobbying in the Philippine competition policy process. Specifically, the lack of bureaucratic efficiency and the powerful lobbying by vested business interests have prevented the adoption of a modern and comprehensive national competition law in the Philippines. Interestingly, these two variables were not found to be significant from the large-sample analysis. Moreover, the two variables that were identified from the large-sample analysis as having played major roles—Technical Assistance by Other IOs and Level of Democracy—hardly mattered in the case of the Philippines' competition policy process. This is despite the fact that both of these two variables were vibrantly present in the Philippine case.

An examination of the differences between the two sets of results further emphasizes the powerful political and economic lobbies that have worked to prevent any progress on a competition law in the Philippines. I reach this conclusion because, even with the amount of technical assistance received from IOs and given the fact that the Philippines had restored its democratic tradition and that the top political leaders of this nation professed a disdain for monopolistic behavior, this country has failed to adopt a competition law. Therefore, the deterrent (read, special interest lobbying) has been powerful enough to negate the combined positive influence of the enabling factors mentioned in the previous line.

My conclusion has implications for the character of the Philippine state: that is, whether it is a "strong state" or a "weak state."[121] If the Philippine state is incapable of overcoming the powerful influence of special interest groups to effect policy changes, then it qualifies itself as a weak state, at least as far as competition policy is concerned. My observation that the Philippine state might be a weak one is supported by existing literature, and most notably by Gutierrez (1998):

> What has kept the Philippine state weak is that no one class has been strong enough to bend the state to its will. Instead, the Philippine upper classes are divided into class fractions dependent on government. Their competing demands on government have made it impossible for the central government to formulate and implement a coherent economic development strategy or to develop political institutions capable of providing a reliable regulatory framework for the economy.
>
> The weakness of the Philippine state is also manifested in the contradictory character of local-central government relations. The Philippines' unitary and presidential form of government is, by most measures, a centralized government. But because the central government has not had a dominant ruling class behind it and has been either formally or informally dominated by foreign powers, it has historically been a weak body.

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[121] In comparative politics literature, a strong state is one that has control over the society and can effect the desired policy changes, while a weak state is one in which social control is fragmented and rests with local-level organizations and leaders. As per this criterion, and with only a few exceptions, most post-colonial states have been identified as weak states. See Migdal, J. (1988) *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World.* Princeton: Princeton University Press.

And, with particular regard to the role of the Philippine state *vis-à-vis* competition and competition legislation, Abad (2002: 362) observes how much the state is weak and is captive to powerful interests: "Ever since the creation of the modern Philippine state, the rule has actually been to prevent and destroy competition in order to protect the dominant political and economic elite of the country...[T]he Philippines is yet to craft a truly effective and regulatory framework for enforcing competition in the economy." Abad (2002) adds that the development of a competition law and a competition regime in the Philippines will depend, in part, on the politico-economic realities that exist in the country.

As the Philippines case study demonstrates, Abad (2002) is correct in assigning substantial weight to the nature of the Philippine political economy as a determining factor in the adoption of a competition law in the Philippines. Unlike the case in India or China, this is largely because the Philippine state is weak in this critical policy area, which is evident from the decisive role played by the powerful lobbies and the lack of technical and managerial capacity of the Philippine government bureaucracy.

Conclusion

The finding from the Philippine case analysis is that bureaucratic inefficiency and strong lobbying by powerful political and economic interest groups—particularly the latter—have prevented the Philippines from drafting and enacting a modern and comprehensive competition law. This has occurred in spite of the Philippines receiving substantial technical assistance from IOs in the area of competition policy and after having restored its polity to a democratic system. Based on these findings, I conclude that special interest

lobbying was the most decisive factor in preventing this law from taking birth in the Philippines. My conclusion points to the weak nature of the Philippine state, which is an observation supported by existing literature that characterizes the Philippine state in similar terms. The finding that it is the fundamental weakness of the Philippine state that has prevented the instituting of this law in this country—in spite of other enabling factors—means that any further research concerning competition law and its adoption in developing countries must take this aspect of the political system into serious consideration.

CHAPTER VIII

Conclusion: An Integrated Understanding

In this concluding chapter, I synthesize the findings and conclusions from the quantitative and qualitative studies to provide an integrated understanding of the explanatory value of the eight causal variables with respect to their roles in the divergence in domestic competition policy actions among developing countries.[122] While developing this integrated understanding, I compare the quantitative and qualitative results and also note the similarities and differences in the results from each of the three cases.

The advantage of conducting two kinds of analyses—quantitative and qualitative—is that the results from each can greatly enhance our understanding of the role of the explanatory variables. Whereas the quantitative study provides a generalizable result based on a large-enough sample, the qualitative study lets a researcher tease out the exact channels of influence of the explanatory variables in the cases analyzed. Together, these two sets of results illuminate better the causal connections between the explanatory variables and the dependent variable.

Table 6 is the first step toward developing an integrated understanding of the determinants of competition policy actions in developing countries during the period analyzed in this study. The table provides a snapshot of the variables found to be significant in both the quantitative and qualitative analyses. An ***X*** stands for significance

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[122] Providing this integrated or combined understanding is without prejudice to the quantitative results that were based on a large-sample analysis. Adding the insights from the case analyzes to the quantitative results is only intended to better illuminate the channels of influence of these eight explanatory variables.

in the quantitative analysis or in any of the three case studies. Column 1 lists the eight explanatory variables while columns 2-5 contain information on the significance of a variable for each study or case.

Table 6: An Integrated Understanding: A Snapshot of Significant Explanatory Variables

Explanatory Variable	**Quantitative Analysis**	**Qualitative Analysis**		
(1)	**(2)**	**(3)**	**(4)**	**(5)**
		India	***China***	***Philippines***
Technical Assistance by WTO				
Technical Assistance by Other IOs	*X*	*X*	*X*	
Economic Internationalization			*X*	
Bureaucratic Efficiency		*X*	*X*	*X*
Business Group Lobbying				*X*
Level of Democracy	*X*	*X*		
Veto Points			*X*	
Ideology of Government		*X*	*X*	

*Note: An **X** in a cell means that the particular variable was found to be significant in that analysis and/or case. Blank cells mean that the variable was not found to be significant.*

Together, the quantitative and qualitative studies have reported seven significant variables. That is, except for the variable Technical Assistance by WTO, all the others

have been found to be significant either in the large-sample analysis or in the case analyses, or in both.

A simultaneous examination of these seven significant variables reveals the channels through which the variables have worked to produce some of the competition policy changes in developing countries in the recent past. Technical assistance in the area of competition policy is given to developing countries by IOs engaged in this policy area. Typically, it is government bureaucrats and officials of developing countries who participate in the seminars and training sessions and who directly receive this assistance. Given an enabling domestic environment by way of a liberal democratic system and a government that is ideologically oriented—either left or right—these officials can then undertake the task of drafting a competition law, while being constantly supported by IOs in reviewing the drafts and commenting on them. In this mix, the relative absence of business lobbying and veto points greatly facilitates the completion of the legislative process, and thus, the passing of a competition bill into law.

The description in the previous paragraph of the competition policy change in developing countries should not be taken to understand that only the Technical Assistance by Other IOs is the *true* explanatory variable while all others are simply intervening or facilitative variables. The fact of the matter is that, for the most part, they all work together and simultaneously. For example, in the total absence of bureaucratic efficiency and capacity in the area of competition legislation, no amount of international technical assistance can create the right conditions required for the effective drafting of a competition bill or statute. This is because the capacity of the bureaucracy to absorb the

technical knowledge concerning competition issues can be critical to the success of technical assistance programs.[123] Moreover, absorptive capacity is typically higher among more efficient and well-trained government bureaucrats and officials. An additional example of a simultaneous working of these variables is the following: a government should have an ideological bent of mind or an underlying economic philosophy—as seen in the India and China cases—to actually allow its officials to successfully draft a competition bill and to enact it into law.

My integrated findings from this dissertation research are the following:

1. Technical assistance from international organizations like UNCTAD, World Bank, OECD, and EU has been decisive in effecting competition policy changes in developing countries. This is adequately showcased by the statistically significant and robust results from the quantitative study. This quantitative result is further validated by the findings from the India and China case studies where this variable played a major role in helping these two countries with drafting their national competition laws. Even in the case of the Philippines, this variable was clearly present, though its impact was checked by other opposing factors.

2. The efficiency and technical capacity of the bureaucrats and officials engaged in competition legislation in developing countries is critical to a successful adoption of a

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[123] The role of absorptive capacity in the national-international connection is noted in the recent literature on foreign direct investments (FDI), where FDI is found to have positive spillover effects into the local economy if the local firms and labor are capable of absorbing and utilizing the exposure to superior foreign technological and managerial skills. See Keller, W. (1996) "Absorptive Capacity: On the Creation and Acquisition of Technology in Development." *Journal of Development Economics* 49: 199-227 and Girma, S. (2005) "Absorptive Capacity and Productivity Spillovers from FDI: A Threshold Regression Analysis." *Oxford Bulletin of Economics and Statistics* 67: 281-306.

competition law in these countries. The reason why this variable did not display significance in the large-sample study is possibly due to the fact that the measurement of this variable was at the aggregate level and not specific to competition policy officials. Unfortunately, a database that focuses solely on competition officials does not exist as of date.

3. The extent to which a country is democratic is found to positively impact the adoption of a competition law in developing countries. This result was obtained from the quantitative analysis as well as from the India case study. This relationship observed among developing countries is not unique—developed countries are also predominantly democratic in their political character and have well-functioning competition regimes in their countries. However, it must also be pointed out that the exact nature in which democracy influences the adoption of a competition law is not in the manner traditionally understood, that is, as the liberal character of democracy spilling onto the economic realm. Rather, it is the concern and respect for citizens' rights—which are typically embodied in a democratic system—that spillover to the economic realm and motivate the enactment of a competition law that protects consumers from anti-competitive business practices. This conclusion is, however, valid only for democratic political systems and may not apply to authoritarian ones because, as was seen in China, a competition law was drafted and was close to being adopted, though the motivations were not driven by a concern for citizens' rights.

4. The India and China case studies point toward the role of the state, and in particular its ideology or its economic philosophy, as a key variable in the instituting of a

competition law. Though this variable was not found to be significant from the quantitative study, the case studies support the argument that the economic philosophy of a government—be it left-leaning or right-leaning—has an impact on the adoption of a competition law.

5. Both the Level of Democracy and the Ideology of Government variables need to be understood in the context of state strength. An important point to note here is that the role of this variable becomes significant only if the state is strong in terms of possessing efficient bureaucrats and having the wherewithal to effect policy changes. I make this statement based, in part, on what was observed in the case of the Philippines, where, despite a democratic system and the presidents being seized of free-market principles, the country could not adopt a competition law because effective power was in the hands of oligarchs and not with the state machinery. In contrast to that, both India and China, with relatively efficient competition officials and the power to effect policy changes managed to successfully undertake this lawmaking task.

6. I analyze Veto Points and Business Group Lobbying together because they are both deterrents to the adoption of a competition law. In fact, in the case of the Philippines, it was observed that lobbying by business groups represented a veto point before the formal veto points had an opportunity to take part in this process. Even though these two variables were not found to be statistically significant from the quantitative analysis, they both turned out to have negative relationships with policy change, as hypothesized. In the case of these two variables also, the role of the state assumes significance since veto points are integral parts of the government—the legislature and

the executive—and the government is the target of business lobbying. So, to a large part, the adoption of a competition law is determined by the ability of a government to weather these two deterrents.

7. Economic Internationalization was found to be significant only in the case of China, with the India analysis pointing toward the possibility of a reverse causality at play. This variable did not appear to be significant for the Philippine scenario. Even though it was statistically insignificant, this variable was found to have a positive sign—as per the main hypothesis—from all the models that formed part of the quantitative analysis. In light of the unclear verdict from the case studies, I go with the results of the large-sample study and note that developing countries that are more open and have a greater share of the external sector in their overall economies tend to institute a competition law. However, this relationship is not statistically significant, and drawing on the case analyses, I qualify this finding by stating that the exact channels through which this relationship operates are also unclear. For example, even though China had a relatively high Economic Internationalization score, its finalization of a competition law was not for the reasons originally hypothesized. It was adopted for the Chinese government to gain greater control over multinational corporations.

In concluding the present chapter, I wish to revisit the research question that I set out to answer: why do countries differ from each other in a particular policy area after they have displayed near-unanimity in opposing this policy development in the international arena? The integrated understanding that I have derived from my findings point to the joint influence that the international-level variable, *viz.*, Technical Assistance

by Other IOs, and the host of domestic-level variables had on the competition policy actions of developing countries during the period 1996-July 2007. The manner in which the IOs engaged with these countries and acted as "agents of change" was taken up in chapter 3. For their part, all the domestic-level variables together point in one direction: the role of the state. This is particularly evident from the case studies, where the role of the state assumes great significance. This significance arises from any or all of the following: its ideological stance, its democratic credentials, the efficiency of its bureaucrats, the strength and number of its veto points, and its vulnerability to business group lobbying.[124] So, the final conclusion I draw from this dissertation—after integrating the results from the quantitative and qualitative analyses—is that, in developing countries, modern-day policy changes that require high levels of technical expertise and that have wide-ranging domestic and international repercussions—like adopting a competition law—require the concurrence of both international-level variables (like IOs) and domestic-level variables (like the state). So, both international and domestic-level variables have to work in tandem to achieve policy changes of this complexity, importance, and influence.[125]

Even though my conclusion is derived exclusively from global competition policy developments and after supplementing my quantitative results with insights from the three country case studies, it touches upon the larger debate concerning the role of the

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[124] I do not mention Economic Internationalization because the case studies returned inconsistent channels of influence for this variable and the quantitative study did not report the variable as statistically significant.

[125] This is the integrated understanding, which does not detract from the quantitative results that highlighted the overwhelmingly critical role played by international-level variables (i.e., IOs).

state in the process of economic globalization.[126] This has been one of the most controversial and vibrant debates in recent times in international relations, and particularly, in international political economy. After the fall of communism nearly two decades ago and ever since the onward march of the free-market philosophy and globalization, there emerged the notion that the state was powerless against the forces of globalization and the liberal order (Fukuyama 1992). However, such statements have also been famously retracted (Fukuyama 2004a, b). The state is still an integral part of the global economy, as the case studies in this dissertation reiterate. I make this statement in a positive sense and not in a normative one.

My conclusion sits well with the understanding that underpins the second-image-reversed theoretical approach that was employed in my dissertation. The idea that the impact of international developments or the influence of the international system on state actions is mediated by domestic politics is empirically confirmed by the findings of my study. In that sense, my dissertation has added a key empirical work to the second-image reversed literature by documenting the relevance of this theoretical framework for the first time in the issue area of competition policy.

Beyond the conclusion that the state is critical to the global economy is the evidence from the analysis of global competition policy developments: the successful integration of many of the developing countries into the global economy—with respect to both their capacity to participate *and* their chances of success—requires the joint efforts of both IOs and the governments of developing countries. Whereas this has been visible

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[126] I use the term "economic globalization" to keep the focus limited to the economic dimensions of globalization. Hereinafter, the term "globalization" essentially refers to "economic globalization."

in other policy areas like trade policy, my dissertation documents this integration process in a systematic manner in the case of competition policy.

With particular reference to the policy or legal area that I have analyzed in this dissertation—competition policy or national competition laws—it must be noted that this is a potent tool that provides great benefits if utilized judiciously. If not, it can wreak havoc with the performance of economic agents in a society and lead to unintended consequences of the negative type. As I have presented in this dissertation, many developing countries have recently gotten on to this policy bandwagon. But the proof of the pudding is in the eating. Hopefully, future research will document if the enthusiasm seen among developing countries toward this piece of legislation was misplaced or not.

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Appendix A: List of Countries in the Sample

Countries in Group 1 (65)	Countries in Group 1 (contd.)	Countries in Group 2 (32)	Countries in Group 3 (34)
Albania	Mali	Angola	Afghanistan
Algeria	Mauritania	Antigua and Barbuda	Bahamas
Argentina	Mauritius	Benin	Bahrain
Armenia	Moldova	Bolivia	Bangladesh
Azerbaijan	Mongolia	Botswana	Belize
Barbados	Morocco	Cambodia	Bhutan
Belarus	Namibia	Chad	Brunei
Bosnia and Herzegovina	Nepal	China	Burundi
Brazil	Nicaragua	Colombia	Central African Republic
Bulgaria	Panama	Dominican Republic	Congo, Republic (Brazzaville)
Burkina Faso	Papua New Guinea	Ecuador	Cuba
Cameroon	Peru	Gabon	Djibouti
Chile	Romania	Gambia	Dominica
Chinese Taipei (Taiwan)	Russia	Georgia	Ethiopia
Cote d'Ivoire	Saint Vincent and the Grenadines	Ghana	Grenada
Croatia	Saudi Arabia	Guatemala	Guinea
Cyprus	Serbia	Kyrgyz Republic	Haiti
Egypt	Slovenia	Lebanon	Iran
El Salvador	South Africa	Lesotho	Kuwait
Estonia	Sri Lanka	Malaysia	Libya
Fiji	Tajikistan	Mozambique	Madagascar
Guyana	Tanzania	Nigeria	Maldives
Honduras	Thailand	Oman	Myanmar
India	Tunisia	Pakistan	Niger
Indonesia	Ukraine	Paraguay	Philippines
Israel	Uzbekistan	Sudan	Qatar
Jamaica	Venezuela	Swaziland	Rwanda
Jordan	Vietnam	Togo	Saint Kitts and Nevis
Kazhakhstan	Yemen	Trinidad and Tobago	Saint Lucia
Lao PDR	Zambia	UAE	Samoa
Latvia	Zimbabwe	Uganda	Sierra Leone
Lithuania		Uruguay	Solomon Islands
Macedonia			Suriname
Malawi			Tonga

Appendix B: Selecting Countries for Case Studies

The objective here is to pick one country from each of the three groups such that the three countries are *similar* with respect to their control variables and adequately *representative* of their respective groups. Since India was an automatic selection from Group 1 due to the pilot study conducted on that country, the remaining task was to choose one country each from Groups 2 and 3 that were similar to India with respect to the control variables. The selection process is described below in a step-wise manner.

1. Since there are two control variables—political stability and level of economic development—countries in each group were first arranged in order of political stability and then in order of economic development.

2. To ensure that the chosen countries were representative of their respective groups, for each country an index comprising the values on the explanatory variables was constructed. I call this the Index of Explanatory Variables (IEV). The two dummy variables—Technical Assistance by WTO and Technical Assistance by Other IOs—were not included in the calculation of this index.

3. For each group, an average value of the IEV was calculated and countries were arranged in order of their closeness to this average value in order to be representative of their respective groups.

4. Finally, ten countries from each group that were closest to India with regard to their control variables and adequately representative of their groups were chosen.

5. The final selection of one country from each of the Groups 2 and 3 was done based on availability of secondary information to conduct in-depth case studies.

APPENDIX C: SPSS Output of Logistic Regression

1. Simple Estimate: Technical Assistance by WTO

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	128	97.7
	Missing Cases	3	2.3
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	21.849	3	.000
	Block	21.849	3	.000
	Model	21.849	3	.000

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	122.108	.157	.232

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	15.626	8	.048

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	WTO_TECH	-.483	.725	.444	1	.505	.617
	INDEX_OF	.170	.275	.381	1	.537	1.185
	SIZE_OF	1.456	.369	15.561	1	.000	4.290
	Constant	-12.603	3.547	12.629	1	.000	.000

a Variable(s) entered on step 1: WTO_TECH, INDEX_OF, SIZE_OF.

2. Simple Estimate: Technical Assistance by Other IOs

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	127	96.9
	Missing Cases	4	3.1
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	35.293	3	.000
	Block	35.293	3	.000
	Model	35.293	3	.000

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	105.869	.243	.362

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	4.620	8	.797

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.363	.305	1.409	1	.235	1.437
	SIZE_OF	.899	.398	5.087	1	.024	2.456
	TECHNICA	1.964	.545	12.975	1	.000	7.124
	Constant	-8.710	3.731	5.450	1	.020	.000

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, TECHNICA.

3. Simple Estimate: Economic Internationalization

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	126	96.2
	Missing Cases	5	3.8
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	25.935	3	.000
	Block	25.935	3	.000
	Model	25.935	3	.000

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	114.664	.186	.277

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	18.105	8	.020

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.091	.305	.089	1	.766	1.095
	SIZE_OF	1.551	.385	16.221	1	.000	4.718
	ECONOMIC	.018	.010	3.600	1	.058	1.018
	Constant	-15.064	3.775	15.923	1	.000	.000

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, ECONOMIC.

4. Simple Estimate: Bureaucratic Efficiency

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	128	97.7
	Missing Cases	3	2.3
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	21.381	3	.000
	Block	21.381	3	.000
	Model	21.381	3	.000

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	122.577	.154	.228

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	11.439	8	.178

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.164	.455	.131	1	.718	1.179
	SIZE_OF	1.455	.420	11.994	1	.001	4.284
	BUREAUCR	-.024	.615	.001	1	.969	.977
	Constant	-13.025	4.082	10.180	1	.001	.000

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, BUREAUCR.

5. Simple Estimate: Business Group Lobbying

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	63	48.1
	Missing Cases	68	51.9
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	4.109	3	.250
	Block	4.109	3	.250
	Model	4.109	3	.250

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	25.686	.063	.168

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	8.201	8	.414

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	BUSINESS	-2.187	1.576	1.925	1	.165	.112
	INDEX_OF	.873	.845	1.068	1	.301	2.395
	SIZE_OF	.612	.970	.398	1	.528	1.844
	Constant	-10.587	12.321	.738	1	.390	.000

a Variable(s) entered on step 1: BUSINESS, INDEX_OF, SIZE_OF.

6. Simple Estimate: Level of Democracy

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	110	84.0
	Missing Cases	21	16.0
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	12.209	3	.007
	Block	12.209	3	.007
	Model	12.209	3	.007

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	89.032	.105	.175

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	8.012	8	.432

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.290	.366	.630	1	.427	1.337
	SIZE_OF	.825	.416	3.941	1	.047	2.283
	LEVEL_OF	.188	.093	4.109	1	.043	1.207
	Constant	-7.135	4.066	3.079	1	.079	.001

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, LEVEL_OF.

7. Simple Estimate: Veto Points

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	124	94.7
	Missing Cases	7	5.3
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	19.301	3	.000
	Block	19.301	3	.000
	Model	19.301	3	.000

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	115.589	.144	.217

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	19.991	8	.010

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.193	.283	.465	1	.495	1.213
	SIZE_OF	1.328	.381	12.146	1	.000	3.775
	VETO_POI	1.449	1.310	1.224	1	.269	4.259
	Constant	-12.068	3.612	11.162	1	.001	.000

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, VETO_POI.

8. Simple Estimate: Ideology of Government

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	73	55.7
	Missing Cases	58	44.3
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	11.070	3	.011
	Block	11.070	3	.011
	Model	11.070	3	.011

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	47.250	.141	.256

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	30.635	8	.000

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	-.259	.521	.247	1	.619	.772
	SIZE_OF	1.830	.686	7.114	1	.008	6.237
	IDEOLOGY	.014	.414	.001	1	.973	1.014
	Constant	-16.134	6.527	6.110	1	.013	.000

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, IDEOLOGY.

9. Full Model Estimates

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	109	83.2
	Missing Cases	22	16.8
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	23.623	8	.003
	Block	23.623	8	.003
	Model	23.623	8	.003

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	77.237	.195	.323

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	9.006	8	.342

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	WTO_TECH	-.517	.913	.320	1	.571	.596
	TECHNICA	1.694	.650	6.796	1	.009	5.441
	ECONOMIC	.018	.012	2.086	1	.149	1.018
	BUREAUCR	-.069	.851	.007	1	.935	.933
	LEVEL_OF	.260	.142	3.326	1	.068	1.297
	VETO_POI	-2.249	2.241	1.008	1	.315	.105
	INDEX_OF	.281	.598	.221	1	.638	1.324
	SIZE_OF	.694	.526	1.745	1	.187	2.002
	Constant	-7.350	5.396	1.856	1	.173	.001

a Variable(s) entered on step 1: WTO_TECH, TECHNICA, ECONOMIC, BUREAUCR, LEVEL_OF, VETO_POI, INDEX_OF, SIZE_OF.

10. Reduced Model Estimates: Only Domestic Variables

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	67	51.1
	Missing Cases	64	48.9
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	10.526	7	.161
	Block	10.526	7	.161
	Model	10.526	7	.161

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	29.875	.145	.321

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	28.314	8	.000

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	-.787	1.123	.491	1	.483	.455
	SIZE_OF	.218	.933	.054	1	.816	1.243
	ECONOMIC	.012	.019	.399	1	.528	1.012
	BUREAUCR	3.650	1.950	3.503	1	.061	38.481
	LEVEL_OF	-.052	.349	.022	1	.882	.950
	VETO_POI	-.646	5.630	.013	1	.909	.524
	IDEOLOGY	.632	.669	.894	1	.344	1.882
	Constant	.675	10.287	.004	1	.948	1.964

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, ECONOMIC, BUREAUCR, LEVEL_OF, VETO_POI, IDEOLOGY.

11. Reduced Model Estimates: Domestic Variables plus Technical Assistance by WTO

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	109	83.2
	Missing Cases	22	16.8
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	16.617	7	.020
	Block	16.617	7	.020
	Model	16.617	7	.020

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	84.242	.141	.234

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	11.194	8	.191

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.150	.570	.069	1	.792	1.162
	SIZE_OF	.963	.509	3.587	1	.058	2.621
	ECONOMIC	.016	.011	1.898	1	.168	1.016
	BUREAUCR	-.042	.822	.003	1	.959	.959
	LEVEL_OF	.323	.139	5.416	1	.020	1.381
	VETO_POI	-2.552	2.134	1.429	1	.232	.078
	WTO_TECH	-.342	.894	.147	1	.702	.710
	Constant	-9.069	5.224	3.014	1	.083	.000

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, ECONOMIC, BUREAUCR, LEVEL_OF, VETO_POI, WTO_TECH.

12. Reduced Model Estimates: Domestic Variables plus Technical Assistance by Other IOs

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	109	83.2
	Missing Cases	22	16.8
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	23.282	7	.002
	Block	23.282	7	.002
	Model	23.282	7	.002

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	77.577	.192	.319

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	10.964	8	.204

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.250	.584	.183	1	.668	1.284
	SIZE_OF	.670	.520	1.660	1	.198	1.954
	ECONOMIC	.018	.012	2.282	1	.131	1.019
	BUREAUCR	-.037	.832	.002	1	.965	.964
	LEVEL_OF	.261	.142	3.353	1	.067	1.298
	VETO_POI	-2.276	2.231	1.040	1	.308	.103
	TECHNICA	1.659	.642	6.667	1	.010	5.252
	Constant	-7.571	5.343	2.008	1	.156	.001

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, ECONOMIC, BUREAUCR, LEVEL_OF, VETO_POI, TECHNICA.

13. Reduced Model Estimates: Only International Variables

Case Processing Summary

Unweighted Cases(a)		N	Percent
Selected Cases	Included in Analysis	127	96.9
	Missing Cases	4	3.1
	Total	131	100.0
Unselected Cases		0	.0
Total		131	100.0

a If weight is in effect, see classification table for the total number of cases.

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	35.992	4	.000
	Block	35.992	4	.000
	Model	35.992	4	.000

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	105.169	.247	.368

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	4.409	8	.818

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1(a)	INDEX_OF	.378	.311	1.480	1	.224	1.459
	SIZE_OF	.906	.401	5.109	1	.024	2.474
	WTO_TECH	-.622	.766	.658	1	.417	.537
	TECHNICA	1.990	.548	13.202	1	.000	7.319
	Constant	-8.248	3.792	4.729	1	.030	.000

a Variable(s) entered on step 1: INDEX_OF, SIZE_OF, WTO_TECH, TECHNICA.

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PUBLICATIONS AND PRESENTATIONS

"Competition Policy in Emerging Markets: Lessons from India's Experience," *Paper presented at the International Studies Association-South Conference in Birmingham, AL, October 20-21, 2006.*

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