

ANTITRUST AND LIBERALIZATION IN DEVELOPING COUNTRIES

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A number of developing countries around the world have recently liberalized once highly protected regimes through privatization programs and by reducing impediments to market trade. Many of these countries have adopted an antitrust policy as an integral component of their market reforms. Recent assessments of trade liberalization programs show disappointing results. Such outcomes contradict long-held beliefs that free trade is sufficient to generate competitive outcomes in small economies. Antitrust advocates view these underwhelming achievements as further justification for extensive antitrust enforcement. We argue instead that the failure of liberalization suggests not the correctness but the inappropriateness of the enactment of antitrust policies. The continuance of market power after liberalization is due primarily to lobbying activities by producer interest groups to establish nontariff barriers rather than to collusive practices among producers. Interest groups find carteli-

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zation and rent seeking as substitutes in raising prices above competitive levels. Accordingly, the establishment of antitrust serves to improve the relative attractiveness of seeking nontariff barriers. Antitrust policies are ineffective in challenging the emergence of nontariff barriers and thus may have the unintended consequence of promoting anticompetitive activities.

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I. INTRODUCTION

Economists have long argued that the elimination of trade barriers is sufficient to prevent the exercise of market power in small economies.¹ Accordingly, free trade policies, with their introduction of competitive pressure on domestic industry, have been central components of liberalization programs recently adopted by Latin American, Eastern European, and other developing countries. Many observers claim that these trade liberalization programs have not been as successful as their proponents had originally claimed (Fishlow, 1990; Globberman, 1990; Leamer, 1988; Naim, 1992).² Because of this perceived failure, many have advocated the establishment of antitrust enforcement as a necessary element of successful market economies (Coate, Bustamante, and Rodriguez, 1992; Frischtak, Zachau, and Hadjimichael, 1989; Gray, 1992; Gray and Davis, 1993; Kovacic, 1992; Kovacic and Thorpe, 1993; Langenfeld and Blitzer, 1992; Ordoover and Pittman, 1991, 1992; Rill, 1991a, 1991b; Thomas, Matin, and Nash,

¹Godek (1992), for example, represents the most recent incarnation of classical arguments; see also Levinsohn (1993).

²However, Levinsohn (1993), in a case study of Turkey, finds that imports have disciplined domestic prices.

1990; Willig, 1992).³ We believe that the failure of trade liberalization programs suggests that antitrust policies will also be less effective than their advocates claim for much the same reason: policy regime changes induce interest groups to seek preferential treatment from the government to counteract these changes. Proactive antitrust enforcement may not only be welfare reducing but also contradict the stated goals of liberalization.

Before the advent of modern political economy theory, economists analyzed economic policies and their effects assuming the policies were determined exogenously. Even today, a large segment of development and international trade theory treats government policy as exogenous (Baldwin, 1989). An interest group theory literature has developed concerning the incentives that these groups and government regulators face to enact protectionist policies during liberalization regimes [see, for example, Leidy and Hoekman (1991); Baldwin (1989), Rowley and Tollison (1986), Shughart (1990) and references therein]. By endogenizing interest group behavior as a determinant of protectionist government policies, one can extend endogenous trade theory to attempt to better analyze the effects of establishing antitrust enforcement (or any other economic policy) in a liberalizing economy.⁴

We believe that trade liberalization has failed not because incumbent firms cartelize but because producer interest groups seek nontariff barriers to imports through government lobbying efforts as a replacement to tariff barriers. In this sense, tariffs and nontariff barriers are substitutes in producing higher prices. As we more fully argue in a previous paper (Rodriguez and Williams, 1994), the effectiveness of antitrust policies depends on whether interest groups will divert their

³Additionally, May 3-4, 1993 World Bank Conference on Competition Policy underscores the World Bank's interest in antitrust policy in developing countries.

⁴See also Rodriguez (1994) for theoretical arguments challenging the necessity of merger scrutiny in economies in transition.

efforts from cartelization if such a regime is established. Critics have questioned whether cartelization and rent-seeking efforts are substitutes in maintaining supracompetitive prices (Conrath and Freeman, 1994). To answer this question we formally model the interaction of cartelization and tariffs (and nontariff trade barriers) in maintaining higher prices. We demonstrate that efforts devoted to seeking rents through trade restrictions and private cartelization are substitutes. As such, the establishment of an antitrust regime induces producer interest groups to seek preferential treatment in enacting (nontariff) barriers. Thus, antitrust policy is likely to be less effective in maintaining competition than its advocates proclaim. Presumably, an accounting of potential costs and benefits would suggest that government resources devoted to antitrust enforcement could generally be used more efficiently elsewhere.

This article is organized as follows. In the next section we review rent-seeking behavior and discuss why import competition has seemingly not properly disciplined domestic industry in liberalizing countries. The section also contains a brief overview of plausible reasons behind the export of American- and European-style antitrust. The article's principal contribution is to show how efforts directed as rent seeking and cartelization are substitutes in keeping prices above competitive levels. This point is developed in the third section. Apart from antitrust policy, are there any other means to ensure that market mechanisms effectively discipline domestic industry in developing countries? We advanced an alternative policy prescription in the fourth section and conclude in the last section.

II. PROTECTIONISM IN RESPONSE TO IMPORT COMPETITION

Mainstream trade and antitrust economists hold as an article of faith that reducing tariffs and other barriers to trade promotes imports that discipline domestic supracompetitive pricing. As such, trade re-

form intended to improve competitive performance in developing economies has figured prominently in World Bank and International Monetary Fund (IMF) policy packages known as the "Washington Consensus" (Williamson, 1990).⁵

Trade protection is designed to protect domestic industry from international competition. Such protection establishes monopoly rents in markets where long-run domestic supply elasticities are finite. Inevitably, trade protection has a domestic rent-seeking constituency prepared to fight for the creation and retention of protectionist policies. Interactions between these rent-seeking constituencies determine the precise protectionist policy that will emerge in the political marketplace (Rowley and Tollison, 1986). As trade liberalization programs are implemented, domestic interest groups that have traditionally benefitted from high tariffs and other government favoritism have incentives to solicit nontariff barriers as a means of maintaining supra-competitive earnings in home markets. Governments can enact policies, such as establishing product standards, environmental standards, local purchasing preferences, exemptions from restrictions on specialization and export-sharing agreements, antidumping legislation, trade remedy laws, and formal and informal vertical restrictions such as exclusive dealing arrangements, that act as nontariff barriers and impose significant costs on the economy (Anderson and Baldwin, 1981; Coughlin, 1991; Leidy and Hoekman, 1991; Messerlin, 1990; Runge, 1990). By raising prices for imported substitute goods, these barriers protect domestically produced products. An economy in full employment maximizes its income available to consume and invest by producing goods and services in which it has a comparative advantage

⁵The Washington Consensus was arrived at primarily by the IMF, the World Bank, and the U.S. executive branch, although at least the Inter-American Development Bank, consisting of members of Congress with interests in Latin America, and economic think tanks also provided input. The policy package advocated macroeconomic prudence, outward orientation, and domestic liberalization.

and importing the rest. As an economy is liberalized, increased imports in an industry force resources to be employed in other sectors where they can be used more productively. Because increased protection through nontariff barriers distorts relative prices away from costs, it leads to an inefficient allocation of resources and social welfare losses (Srinivasan, 1985).

Traditionally, antitrust advocates justify interventionist policies by alleging a market's inability to deal with particular structural problems.⁶ Many developing countries have enacted antitrust legislation and established enforcement-oriented antitrust agencies due to the perceived persistence of anticompetitive pricing. The World Bank, the U.S. Federal Trade Commission, the Antitrust Division of the U.S. Department of Justice, the German Federal Cartel Office, the Office of Economic Cooperation and Development, and others have actively advocated the establishment of antitrust agencies and continue to provide assistance (Mastalir, 1993). All Eastern European countries, several of the ex-Soviet republics, most Latin American countries, and a number of African countries have recently inaugurated or reformed their antitrust agencies (Coate et al., 1992; Glater, 1993; Langenfeld & Blitzer, 1991; Mastalir, 1993; Slay, 1994).

Of course, apart from economists' dispassionate concerns over increased market power, other rationales for its advance arise from political debate and the details of these policies often reflect the strengths of countervailing political forces, not reasoned argument exclusively. Indeed, several competing hypotheses provide plausible political explanations for the establishment of antitrust policy in developing countries. First, political interest in antitrust could follow

⁶The focus of U.S. antitrust enforcement has historically been on market structure, especially concentration levels. Although one still finds proponents of the structural approach, the new "law and economics" learning has shifted this focus to overall market efficiency and the short-term interests of consumers. For the most part, U.S. antitrust has challenged activities that restrict competition and lead to higher consumer prices. See, generally, Bork (1978), Posner (1976), and Easterbrook (1984).

from forces mimicking the standard economic model. Conventional public interest theory suggests that a workably competitive marketplace will achieve a more efficient allocation of resources, greater efficiency in production, and increased innovation (Areeda, 1974). This argument assumes that the state is benign and maximizes social welfare, a "naive" premise vigorously challenged by critics that views government officials as seeking private goals, giving rise to endogenously determined policies (Rodriguez and Williams, 1994; Stigler, 1971).

Second, it is possible that government officials incorrectly infer what antitrust can accomplish. Apart from anecdotal vignettes we found no clear evidence that the objectives of antitrust have been misinterpreted. It is, however, more likely that diverse interest groups view government antitrust policies as privately beneficial (Comanor, 1982). For example, consumer groups find antitrust useful as a weapon against corporate power or business may find antitrust useful in establishing corporate legitimacy.

Third, the adoption of antitrust may be one of several mechanisms whereby developing countries can signal investors that investment in their countries is attractive. For example, in a recent statement, a Department of Justice official, referring to recently passed antitrust legislation in Eastern Europe, noted, "They recognize the importance of maintaining a competitive marketplace to attract trade and foreign investment, and to promote the vigor of their domestic economies" (Stark, 1993).

Fourth, assuming that nontariff barriers are fairly close substitutes for tariff barriers, an interest group that controls government policy might allow tariff liberalization. This allows the government to claim victory to international lenders. In turn, to placate internal opposition, the government could swiftly establish some antitrust policies as nontariff barriers.

Fifth, the referral of a troublesome matter, such as the rise of gasoline prices after tariff removals, to an "independent" antitrust authority enables the executive to effectively defuse potentially trou-

blesome demands for action by affected groups. These are only a subset of the possible political explanations for the demand for establishment of antitrust policies. None provide a cogent explanation of the current interest in establishing antitrust policies in developing countries.

To be sure, both proposed and recently adopted antitrust policy recommendations for developing countries have for the most part been remarkably restrained.⁷ These programs reflect the U.S. antitrust experience of the past decade—an economic approach with a “Chicago School” minimalist view as to the proper scope of these laws as business regulation (Bork, 1978; Easterbrook, 1986; Posner, 1979). Chicagoists “seems to favor little other than prosecuting plain vanilla cartels and mergers to monopoly” (Easterbrook, 1986). However, despite continued recognition of the detrimental and anticompetitive effects of many forms of regulation, few distortionary rules and regulations are overturned even once the explicit link between regulatory barriers to competition and the influence of interest groups in the political process is noted. Policies that sever government’s role in obtaining market power for interest groups are rarely discussed. Policies that confront government protection of rent-seeking interest groups are generally limited to small competition advocacy programs (Coate et al., 1992).

Nevertheless, antitrust policy in developing countries (or anywhere else, for that matter) is ill suited to challenge this “new protectionism” of nontariff barriers. As such, the impact of trade

⁷An especially clear example of this is the recently passed Mexican Law, “Ley Federal de Competencia Economica,” *Diario Oficial de La Federacion* (December 24, 1992). In contrast, the recently enacted Venezuelan law seems much more restrictive. However, the Venezuelan antitrust agency has been writing ingeniously minimalist “Rules or Bylaws” (“Reglamento”) to implement the law. In practice, Venezuelan and Mexican antitrust policies are similar. See, “Ley Para Promover Y Proteger El Ejercicio De La Libre Competencia,” *Gazeta Oficial* (January 15, 1992); “Reglamento De La Ley Para Promover Y Proteger El Ejercicio De La Libre Competencia: Sobre El Regimen De Excepcionès,” *Gazeta Oficial* (January 21, 1993).

liberalization on domestic competition often depends critically on both the institutional structure of the government and how amenable that structure is to interest group influence.

III. THE EFFECT OF ANTITRUST: A MODEL

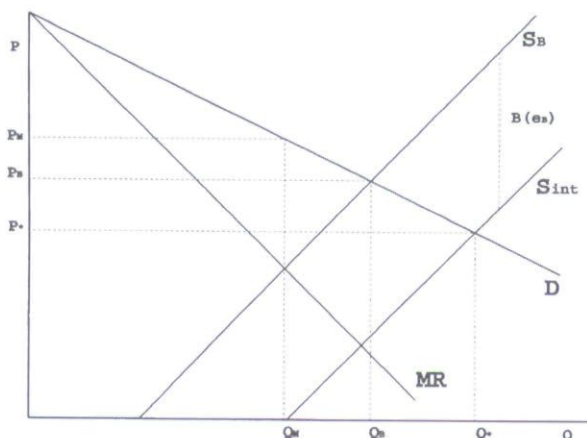
We now examine the interaction of trade barriers and antitrust policies attacking horizontal cartelization. We assume that market and government structures in developing economies allow producer interest groups to choose whether to obtain anticompetitive rents from either cartelization or seeking favors from the state. Interest groups will choose the combination of collusion and government protection that maximizes expected rents. Rent-maximizing interest groups will devote resources between attempted cartelization and government influence based on the relative costs and benefits of the two activities. First we show that these two efforts are substitutes in raising prices above competitive international levels. Then we demonstrate how increased antitrust activity is less likely than its advocates proclaim to return prices to competitive levels and how it may in fact raise prices further.

We first consider the following simple partial equilibrium linear supply-and-demand model illustrated in Figure I to examine the relationship between efforts to influence government to erect import barriers and efforts to cartelize through private action. From this we find that these efforts are substitutes in maintaining supracompetitive prices. The demand curve, expressed as the price a marginal consumer is willing to pay, and the international supply curve, which is the marginal domestic and foreign firm's willingness to sell and coincides with the industry marginal cost curve, are as follows⁸:

$$(1) \quad D: \quad P = P_D - m_D Q \quad \text{and} \quad MC^{\text{int}} = S^{\text{int}}: \quad P = P_S + m_S Q$$

⁸All parameters are positive.

Figure I



We model the erection of trade barriers as a parallel shift back in the supply curve. By expending effort e_B , a producer interest group can influence government to erect a barrier of size $B(e_B)$. We assume that the new supply curve coincides with the marginal opportunity cost curve of domestic producers⁹:

$$(2) \quad MC^B = S^B: \quad P = P_S + B(e_B) + m_S Q$$

⁹A sufficient condition for the barrier to cause a parallel shift leftward in the supply curve is that foreign producers have higher marginal costs of serving the domestic market than domestic producers and that the imposition of the barrier eliminates imports in descending order of marginal costs. As the trade barrier increases, more and more foreign firms will find that it is no longer economic to sell in the domestic market and this shifts the supply curve back to the left in a parallel fashion.

If marginal costs between firms are distributed such that the marginal firm (that firm with the highest marginal costs that is still willing to supply the market) might be either a foreign or domestic firm, then the imposition of a barrier to trade may have the effect of rotating the supply curve counterclockwise rather than a parallel shift. If this is the case, the qualitative results of the model remain: Efforts devoted to rent-seeking and cartelization are substitutes in raising prices above the competitive level.

We assume the conditions on the functional form for $B(\cdot)$:

$$(3) \quad 0 \leq B(e_B) \leq P_D - P_S, \quad B'(e_B) \leq 0, \quad \text{and} \quad B''(e_B) \leq 0 \\ \forall e_B \geq 0$$

These say that, even with the largest possible import barriers, there still is a domestic market and that additional effort results in higher barriers but with diminishing returns. One can readily determine that the imposition of barrier $B(e_B)$ will raise the equilibrium price by:

$$(4) \quad \Delta P_B = P^B - P^* = \frac{m_D B(e_B)}{m_D + m_S}$$

The amount of price increase is increasing in the size of the trade barrier, the elasticity of supply, and the inelasticity of demand.

We model cartelization as a movement along the demand curve toward the position where a monopolist would operate. An expenditure of cartelization effort e_C by the producer interest group shifts the new equilibrium price a fraction $C(e_C)$ between the equilibrium price without cartelization and the monopolist's price. We make the following assumptions on the functional form of $C(\cdot)$:

$$(5) \quad 0 \leq C(e_C) \leq 1, \quad C(e_C)' \geq 0 \quad \text{and} \quad C(e_C)'' \leq 0 \quad \forall e_C \leq 0$$

These say that the producer interest group never raises price above what a hypothetical monopolist would charge and that additional cartelization efforts are effective at raising prices, but with diminishing returns. By setting the marginal revenue curve equal to the marginal cost curve MC^B , one can determine that a monopolist would charge a price:

$$(6) \quad P^M = P_D - m_D \left(\frac{P_D - P_S - B(e_B)}{2m_D + m_S} \right)$$

Thus, cartelization efforts will further raise the price above P^B by

$$(7) \quad \Delta P_C = C(e_C)(P^M - P^B) \\ = C(e_C)m_D^2 \left(\frac{P_D - P_S - B(e_B)}{(2m_D + m_S)(m_D + m_S)} \right)$$

The amount of the price increase is increasing in cartelization effort, inelasticity of demand, and elasticity of supply, but it is decreasing in efforts to influence government to erect trade barriers.

The producer interest group faces the following "production function" in raising prices given its "inputs," the efforts devoted to seeking government influence and cartelizing:

$$(8) \quad \Delta P(e_B, e_C) \\ = \Delta P_B + \Delta P_C \\ = \frac{m_D}{m_D + m_S} \left(B(e_B) + \frac{C(e_C)m_D(P_D - P_S - B(e_B))}{2m_D + m_S} \right)$$

We now examine the properties of this production function. First derivatives give the productivity (the amount of additional price increase) of the expenditure of an additional unit of either type of effort:

$$(9) \quad \frac{\partial \Delta P}{\partial e_B} = \frac{m_D}{m_D + m_S} \left(1 - \frac{m_D C(e_C)}{2m_D + m_S} \right) \quad B' \geq 0 \quad \text{and} \\ \frac{\partial \Delta P}{\partial e_C} = \frac{m_D^2 (P_D - P_S - B(e_B))}{(m_D + m_S)(2m_D + m_S)} \quad C' \geq 0$$

The expenditure of either type of effort increases the equilibrium price; however, the amount of increase is a decreasing function of the amount of effort devoted to the *other* activity.

If the two types of effort are substitutes everywhere, the production function must be quasi-concave. Global concavity is a sufficient condition for global quasi-concavity. To show that the production function is concave if its Hessian matrix is negative semidefinite. As such, the second derivatives of the production function are as follows:

$$\begin{aligned}
 (10) \quad & \frac{\partial^2 \Delta P}{\partial e_B^2} = \frac{m_D}{m_D + m_S} \left(1 - \frac{m_D C(e_C)}{2m_D + m_S} \right) \quad B'' \leq 0 \\
 & \frac{\partial_2 \Delta P}{\partial e_C^2} = \frac{m_D^2 (P_D - P_S - B(e_B))}{(m_D + m_S)(2m_D + m_S)} \quad C'' \leq 0 \quad \text{and} \\
 & \frac{\partial^2 \Delta P}{\partial e_B \partial e_C} = \frac{-m_D^2 B' C'}{(m_D + m_S)(2m_D + m_S)} \leq 0
 \end{aligned}$$

While the increase in output price through the expenditure of additional amounts of effort in either activity is positive, both activities exhibit diminishing returns. Moreover, an increase in one type of effort diminishes the price raising value of the other type of effort. In this sense, rent-seeking and cartelization efforts are substitutes in the "production of higher prices." Sufficient conditions for ΔP to be concave are that the effect of both types of effort follow both of these assumptions:

$$\begin{aligned}
 (11) \quad & \frac{|B''|}{B'} \leq \frac{1}{P_D - P_S - B(e_B)} \quad \forall e_B \quad \text{and} \\
 & \frac{|C''|}{C'} \leq \frac{1}{2 + \frac{m_S}{m_D} - C(e_C)} \quad \forall e_C
 \end{aligned}$$

These assumptions state that $B(\cdot)$ and $C(\cdot)$ are sufficiently smooth that small changes in e_B and e_C do not induce large changes in B' and C' . Under these conditions, ΔP is concave and, its "isoquants" are convex in the conventional manner.

In analyzing the effect of increasing the level of antitrust policy, we look at a variant of the standard model of consumer behavior. We assume that a producer interest group maximizes its utility subject to a resource constraint, a limit of the level of effort it is willing to devote to rent-seeking and cartelization behavior. We assume that the level of private benefits is an increasing function of only the level of supracompetitive prices.¹⁰ We then analyze the imposition of antitrust as a raising of the price of cartelization.

Because the interest group's utility is increasing in the price level, the level of benefits obtained by the interest group increases in both the amounts of rent seeking and cartelization effort the group undertakes. "Isoquant" curves IQ_1 , IQ_2 , and IQ_3 draw out sets of the amount of effort devoted to the two strategies (lobbying the state or organizing a cartel) that yield the same levels of price increase (and benefit to the interest group) with these private benefits increasing as one moves farther from the origin. The "budget lines" follow equations of the form $r = p_B e_B + p_C e_C$, where r is the total resources that the group will allocate to these activities, p_B is the unit price of lobbying the government for the erection of trade barriers, and p_C is the unit price of organizing, monitoring, and enforcing a cartel. For any given level of resources r , the group will attempt to reach the highest isoquant. Thus, a group will choose its level of activity at the point where the budget line is tangent to the isoquant.

¹⁰ Hence the interest groups benefits are homothetic in both types of effort.

Consider for the moment an interest group choosing to expend resources such that it is on budget line BL_1 .¹¹ With this constraint, it will choose X on curve IQ_1 where the price increase is maximized. If an antitrust agency is established, p_C , the unit price of cartelization efforts rises and this shifts the group's budget line to BL_2 .¹² The group then shifts its composition of efforts to point Y on curve IQ_2 . Obviously, economies of scale and scope in political influence may cause different firms to face different relative prices for particular resources. However, as the costs of cartelization rise relative to rent seeking, at the margin,¹³ the interest group may seek more rents through government protection. The establishment of an antitrust regime may cause an increase in other forms of government protection. If the starting of an antitrust agency only makes it more difficult to cartelize, the special interest group is worse off than before.

As we have shown, lobbying the government for protection may be substitutable for organizing cartels. While the stated intent of increasing antitrust activity is to encourage market competition, in reality utility-maximizing interest groups will shift resources into monopolization through government protection. This shifting of resources may have other social costs beyond deadweight loss triangles and socially inefficient rent seeking (Posner, 1975). While monopolists have the same incentives as competitive firms to minimize costs by producing efficiently with the appropriate technology and factor mix, firms operating under nontariff barriers may not. In this sense, increas-

¹¹A change in the relative prices of lobbying vs. cartelization may induce the interest group to change the total amount of resources devoted to these efforts. We do not address this nontrivial issue in this paper.

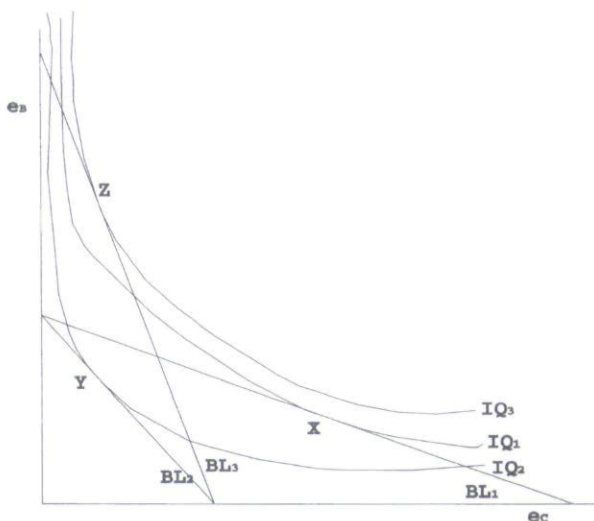
¹²Note that BL_2 intersects the rent seeking effort axis at the same point as BL_1 because the cost of rent seeking has remained the same.

¹³The marginal rate of substitution is the instantaneous slope of the isoquant curve. This slope is steeper at point Y than point X .

ing antitrust may cause inefficiencies that are worse than the allocative losses that it is designed to defend against.

Indeed, the previous analysis assumes that antitrust will be effective in raising the costs of cartelization. By establishing an antitrust agency, these proposals may also establish yet another target for rent seeking by interest groups (Benson, Greenhut, and Holcombe, 1987; Faith, Leavens, and Tollison, 1982; Shughart, 1990; Wood and Anderson, 1993). This can be analyzed as a fall in the price of rent-seeking effort.¹⁴ Referring to Figure II, such a fall will shift the interest group's budget line from BL_2 to BL_3 . The interest group would then maximize its expected benefits on the isoquant IQ_3 at point Z. If the price

Figure II



¹⁴As the technology to rent-seek expands, the costs of rent seeking cannot go up *ceteris paribus* and if the new technology, lobbying the antitrust agency, is more efficient than other technology, lobbying congressmen, for example, then the cost (price of effort) of rent seeking falls.

of rent seeking falls, interest groups will seek even further protection at the margin. Indeed, benefits to the interest group and prices may be higher with both the increased price of private cartelization and the reduced price of rent seeking if IQ_3 is to the right of IQ_1 (as shown).¹⁵ The establishment of an antitrust regime may actually advantage targeted special interest groups that act anticompetitively.

IV. POLICY ALTERNATIVES

Antitrust economists analyze how restraints on competition lead to reductions in consumer welfare. This same type of analysis can also be used in the study of governmental barriers to trade. In this sense, an antitrust agency may be uniquely qualified as a competition advocate within government.¹⁶

While it might be appropriate to expand the role of antitrust agencies to allow comment on governmental legislative and regulatory action, it is important to realize that not all legislation and regulation is inherently anticompetitive, protectionist, or driven by special interest influence. In fact, some interest group regulation may be procompetitive. A competent competition advocacy role must determine whether a particular regulation is, in fact, anticompetitive and whether it is the result of interest group pressure (Wiley, 1986). We suggest that an agency charged with competition advocacy criticize regulations meeting the following criteria. First, it should be established as to whether the policy was enacted at the initiative of a producer

¹⁵ Whether prices are higher depends on the size of the shifts in prices of rent seeking and cartelization, as well as the position of the original equilibrium and the shape of the isoquants. Price will be higher if the income effect outweighs the substitution effect.

¹⁶ Indeed, FTC Commissioner Mary Azcuenaga recently advocated targeting government anticompetitive restraints in the United States (Azcuenaga, 1990).

interest group. Second, if the first condition is met, then competition agency should determine whether the particular regulation has anti-competitive consequences. Only then should the competition agency attempt to challenge the legislation. If this regulation does not restrain competition, it should not be challenged. That the regulation is anticompetitive is a necessary but not a sufficient condition for it to be challenged. There are many types of regulation that may be socially efficient yet may restrain competition. A proposed regulation should not be challenged if it directly solves a serious market (or social) failure whose unavoidable efficiency losses likely outweigh the costs of the regulation. If the costs of the regulation outweigh the benefits, the regulation should be scrapped.

Because challenging lobbying efforts by producer interest groups raises objections to limiting traditional constitutional rights to petition one's government and freedom of speech, the competition advocacy agency should be limited to an advisory role. Given government's distaste for interagency squabbling, it is likely that this competition advocacy might not be fully effective (Wilson and Rachal, 1977), as we believe history has demonstrated. This, although we propose interest group-targeted competition advocacy as a policy alternative to persistent anticompetitive prices in developing economies, we are not sanguine as to the prospects of its success.

In any event, we believe that antitrust agencies should be limited to enforce relatively specific *per se* law against horizontal price fixing and other nonambiguous forms of anticompetitive behavior. Being allowed broad prosecutorial discretion in ambiguous merger and nonmerger matters (particularly in vertical relationships and predation cases), the antitrust agency will find itself susceptible to the potentially anticompetitive rent seeking that it has a role to criticize. By keeping itself to a narrow and unambiguous enforcement agenda, the antitrust agency lessens the odds of lowering the price of influencing government.

V. CONCLUSION

We have argued that the recent antitrust initiatives proposed by antitrust advocates are inappropriate or, at best, ineffective for most developing economies. Rather than cartelization, we believe the primary reason that liberalization in developing economies has failed is the ease with which interest groups successfully petition public authorities to raise nontariff barriers to competition in response to reductions in tariffs, imposition of antitrust regimes, and other components of liberalization programs. In countries with immature commercial regulation, the gain to interest groups of establishing cartels or private price-fixing schemes are often vastly outweighed by the simple solicitation of preferential treatment from the state. As such, the role of traditional U.S. antitrust in developing countries may be slight and antitrust advocates may wish to reconsider their rosy predictions of its success.

The broad question of the future of antitrust in currently developing countries remains unanswered. Most if not all of these countries lack a historical, natural constituency willing and capable of supporting a successful antitrust agenda. Although we have no concrete evidence of this, based on our experience with several budding antitrust regimes, we sense that these policies are viewed merely as technocratic instruments. Presumably, as the influence of proliberalization technocrats fades, so will the fortunes of the antitrust agencies. Other factors compound the probability that these incipient bureaucracies will fail. For example, mainstream antitrust learning developed under common law systems. The legal codes of many developing economies share very little jurisprudence with common law countries. Given this, it is doubtful that common law antitrust policies can be successfully grafted to other legal systems. These and other related questions constitute a promising area of future research with significant policy implications. A modest understanding of these issues

would have been helpful before antitrust policies were so uncritically recommended to developing countries.

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