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**U.S. Competitiveness in World Markets:  
What is the Relationship to U.S. Antitrust Policies?**

by  
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U.S. Competitiveness in World Markets:  
What is the Relationship to U.S. Antitrust Policies?<sup>1</sup>

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The goal of this paper is to explore the interdependencies between U.S. domestic competition policies and this country's competitiveness in global markets. Some of the questions I've wrestled with include:

1. What are the U.S. competition policies and to what extent are they the result of concerns about international competitiveness? From the standpoint of those who enacted the U.S. antitrust statutes, did they expect these laws would affect U.S. imports or exports?
2. To what extent is there evidence of a linkage between competition policies and international trade? That is, regardless of the intent of competition policies, is there in fact a linkage between these policies and either imports or exports?
3. What are the interrelationships between competition policy and trade policy? To what extent are the two compliments, substitutes, or conflicting?
4. If Porter is right that competitiveness in domestic markets is one of the major determinants of competitiveness in international markets, what role has U.S. competition policy played in affecting the domestic and international competitiveness of U.S. industries?

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## A. U.S. Competition Policies

The U.S. and Canada were among the earliest nations to enact antitrust laws. Background on the Sherman Act, the first of the U.S. antitrust statutes, indicates that international trade was an important consideration in the passage of the Act. In the 1880s, tariffs were a great national issue, and particularly tariffs in combination with trusts. The passage of antimonopoly legislation may have facilitated passage of the McKinley tariff in the same year. Pro-tariff Republicans (including Sen. Sherman), saw antitrust as an alternative way to ensure competition (Thorelli, p 219).

During the early years of the Sherman Act, international competition continued to play a role, particularly with regard to shipping cartels. And U.S. Steel, in the 1920 Supreme Court decision, successfully defended its mergers in part on the importance of the mergers for world trade (Stelzer, p. 21).

Although during 1890-1920 there was a modest linkage between competition policy and trade issues, this linkage became less apparent in later years. The primary focus of U.S. competition policies in the 20th century has been pretty squarely on U.S. consumers and U.S. markets.

In smaller countries like Canada and New Zealand, industries must be export oriented in order to have growth opportunities. It is perhaps natural that antitrust policies in these countries often reflect concerns about international competitiveness. Auquier and Caves (1979) conclude: "...that a nation exporting a large share of its tradeable goods production will be more tolerant of anticompetitive conditions, and will take more chances of adverse spillovers to the home market when it sets rules for the operation of export cartels."

In the U.S., by comparison, industries and policy makers don't have to be internationally oriented. With the huge U.S. market, economies of scale or size are rarely a binding constraint for domestic firms. Size economies and growth can be achieved without participating in the markets of other countries. Thus, there is less of a tendency for U.S. antitrust policy to reflect concerns about international competition.

It may very well be that companies benefit from competing with foreign competitors--benefit, that is, in being forced to perform at a higher level than they would otherwise. In small countries that are export oriented, the companies are under more pressure to compete with global competitors. In large countries like the U.S., encountering global competitors in export markets is less essential. In these countries, import policies may be especially important since they may facilitate competitive encounters between domestic and foreign firms.

One of the purposes of U.S. antitrust laws is to protect and maintain effectively competitive markets. As the nature of markets has changed, both in the U.S. and globally, the interpretation of these laws has changed some to reflect more of an international focus. For example, we have seen people like the economist Lester Thurow and Secretary of Commerce Malcolm Baldrige call for a relaxation of antitrust laws for those firms and industries that compete in global markets.

Relative to competition policies in other countries, U.S. policy has placed more emphasis on:

- a. Merger restrictions

- b. Per se treatment of price fixing and market allocation conspiracies and cartels. Historically, most other countries have judged these with rule of reason in which the gains are weighed against the losses. However, most other countries are moving toward per se rules.
- c. Private antitrust litigation. Treble damages and liberal discovery laws make this more attractive in the U.S. During 1974-83, private cases in U.S. outnumbered public cases 14 to 1.
- d. Market structure as a major determinant of competitive behavior. Other countries concentrate mainly on conduct and performance. Some have competition policies that allow direct intervention by the state if prices are judged to be exorbitant.

The antitrust policies of other industrial nations have generally gotten tougher over the last 20-40 years, particularly regarding mergers, cartels and dominant firms. During this period, U.S. policies have become softer. As a result, the antitrust policies of developed nations are now quite similar. Some of the countries that appear to be the most successful in international competition, like Japan and Germany, are also countries in which antitrust policies have become much stronger since World War II. This raises the question of whether domestic and international competitiveness may be influenced more by changes in antitrust policies than by the historical rigor of these policies. I will say more about this later.

U.S. competition policies have reflected a concern about international markets in at least two ways.

1st- In the enforcement of U.S. antitrust laws, international competition is sometimes considered. For example, if a relevant geographic market is global (e.g., the film industry), then antitrust investigations must assess the characteristics of appropriately defined global markets. In some instances, mergers have been defended on the basis that the merger will result in a U.S. company better able to compete with international competitors. For those products that truly operate in global markets, the combined effects of trade policies and competition policies must be considered.

U.S. competition policies also allow challenging competitive behavior by foreign firms that injure American consumers or the domestic operations of U.S. firms. State sponsored cartels are largely immune. However, a foreign cartel of private companies that ships goods into the U.S. is within the reach of U.S. law. Similarly, foreign firms that engage in predatory behavior in U.S. markets are subject to challenge, at least theoretically. In reality, the problems of obtaining information on foreign firms and concerns about comity and international relations result in few antitrust cases brought against foreign firms.

2nd- A few laws have been passed that exempt certain export oriented activities from the antitrust laws. These include the Webb-Pomerene Act of 1918, the Export Trading Company Act of 1982 and the National Cooperative Research Act of 1984. The last two Acts were at least in part a response to the growth in foreign imports. Although none of these Acts have been heavily used by

U.S. companies, Golden and Kolb (1983) argue they are alternatives to protectionist responses such as quotas, higher duties, export subsidies, etc.

Because these Acts attempt to deal specifically with factors affecting the international competitiveness of U.S. industries, we will review the evidence to date on the effects.

### Export Cartels

Most countries allow export cartels. In the U.S., the 1918 Webb-Pomerene Act provided limited antitrust exemption for associations of otherwise competing businesses to engage in collective export sales. The exemption does not apply to conduct that has an anticompetitive effect in the U.S. or that injures domestic competitors of the members of Webb-Pomerene associations.

In 1982, the Dept. of Commerce was successful in encouraging Congress to pass the Export Trading Company Act. The ETC Act does not expand the scope of legal activities, but provides a vehicle to get the opinion of the Dept. of Justice concerning the legality of proposed export activities. The Act also clarifies the jurisdictional reach of the Sherman Act and the FTC Act regarding non-import foreign commerce. Thus, one purpose of the Act was to reduce uncertainty concerning the application of the U.S. antitrust laws to export trade.

Both of the above Acts apply only to export sales. They reflect a belief by U.S. policymakers that it is not the responsibility of the U.S. to protect foreign consumers or firms, and that U.S. firms should be allowed to compete on equal grounds with foreign firms in foreign markets. The Webb-Pomerene Act was justified in part to permit small U.S. firms to penetrate foreign markets more effectively and secure economies of scale through coordinated

marketing. The Webb-Pomerene exemptions have been little used. For example, only 1.5 percent of U.S. exports in 1982 were done by Webb-Pomerene associations (Davidson 1983).

The Export Trading Company Act has also had relatively little use. Export trade certificates of review called for by this Act are issued by the Dept. of Commerce (DOC) with the concurrence of the Dept. of Justice (DOJ). DOJ is mainly concerned about "direct, substantial and foreseeable effects" on competition that would harm U.S. consumers--that is, the "spillover effect."

As of 1991, only 130 trade certificates had been issued--covering roughly 5000 firms. DOC personnel report that most certificates are issued to single firm trade facilitators, not to collaborative groups of producers. Some certificates are also issued to trade associations but tend not to be used much by association members. Finally, there are several groups of collaborating firms that have obtained certificates. These tend to be marketers of relatively homogeneous products like cherries, raisins, rice and timber.

There probably is a learning curve in export markets. Thus, there may be some cost advantage from export cartels. However, there is a serious question about the compatibility of maintaining competition in domestic markets while allowing collusion in export markets. Auquier and Caves (1979) indicate: "The available case studies of U.S. industries confirm that collusion in export markets spills over to domestic markets."

Larson (1970) studied 47 Webb-Pomerene associations (involving 418 firms) from 1958-1962. Most of the firms involved were large (from Fortune 500) and from highly concentrated industries. Larson concludes that Webb-Pomerene has not accomplished its purpose of helping small firms compete more effectively in global markets. Rather he

contends W-P associations have exacerbated the lack of competition in domestic markets. And, companies in W-P associations have often ended up conspiring with foreign firms and participating in international cartels.

#### Joint Ventures and Cooperative R & D

The U.S. antitrust laws have been relatively tolerant of legitimate efforts to collaborate in international markets. And, the Reagan and Bush administrations have promoted joint ventures and cooperation between firms that are perceived as beneficial to international competitiveness. For example, in 1989 Commerce Secretary Robert Mosbacher stated: "All American industries deserve the opportunity to form cooperative ventures that will enhance their international competitiveness without exposing themselves to unwarranted antitrust" (Adams and Brock, p. 436).

The National Cooperative Research Act of 1984 was enacted during a period of declining U.S. competitiveness. Advocates of the Act argued that cooperation among U.S. competitors would promote efficiency and meet the challenges of international competitors. The Act was consistent with the philosophy of the Reagan administration that government interference in markets should be reduced.

NCRA requires U.S. courts to judge the competitive effects of joint R&D under a rule of reason standard that balances the pro and anti competitive effects. Scott (1989) questions the rationale behind NCRA, and the consequences of the Act. One rationale for the Act was that it would allow firms to appropriate the results of R&D. However, Scott's (1988) study of cooperative R&D projects filed under NCRA indicates that:

- a. The ventures are occurring in industries that are more concentrated, that have relatively high productivity-growth, and that have high R&D intensity.
- b. There is no evidence that cooperative R&D is in categories where there are significant appropriability problems.

Overall, Scott concludes that there is no evidence that NCRA has enhanced innovation.

Jorde and Teece (1990) argue that NCRA doesn't go far enough--that joint commercialization should also be allowed. They contend that Japan and the European Community take more lenient positions on joint ventures, including joint production.

Brodley (1990) disagrees, arguing that Japan rarely allows jointly owned production or marketing facilities. He contends that antitrust enforcement in the U.S. has not impeded innovation collaboration. The G.M.-Toyota joint venture is raised up as an example of joint production that was approved by the FTC, in part to encourage the diffusion of innovations from Toyota to G.M. Even joint ventures in selling are only challenged if concentration is very high.

Shapiro and Willig (1990) also disagree with Jorde & Teece. More than 50 production joint ventures involving at least one U.S. firm have been formed in each of the last few years. There is no evidence that such undertakings are more important in Europe or Japan. Shapiro and Willig conclude:

...there is precious little evidence that overly strict antitrust policies have stifled innovation by American firms or hindered American firms from competing abroad.... Indeed, rationally firm antitrust policies are likely to promote

business efficiency...and thereby enhance competitiveness in global markets (p. 129-129).

Adams and Brock (1991) examine joint ventures in general, particularly their effects in petroleum, autos and airlines. Infatuation with cooperation was behind the cartel movement that occurred in the first four decades of this century. In the end this movement failed to achieve the benefits proponents had claimed; instead of boosting technological progress, cooperation retarded it. Adams and Brock conclude that there is no credible evidence that joint ventures are the keys for promoting efficiency, technological innovation or international competitiveness. In fact, there is considerable evidence to the contrary. They suggest that joint ventures should be subject to the same tests as mergers and acquisitions.

Overall, there is little evidence that legislation enabling export cartels/associations or cooperative R&D have had much effect one way or the other on U.S. competitiveness. These Acts have been little used, apparently because of the unwillingness of U.S. companies to work together. The lack of joint efforts by U.S. companies does not appear to be attributable to the antitrust laws.

#### **B. Evidence of a Linkage Between Competitive Policy and International Trade**

The unfavorable U.S. trade balance and the perception of declining international competitiveness of U.S. industries have led to proposals to soften the antitrust laws and have been factors considered in enforcement. For example, it is doubtful if the GM-Toyota joint venture would have been approved by the FTC had it not been proposed as a way of improving GM's competitiveness.

There is little evidence that U.S. competition policies have had a major impact on U.S. trade. However, in some industries, the inability of antitrust policy to correct entrenched monopoly power has probably had a significant negative impact on U.S. competitiveness. The U.S. auto and steel industries are cases in point. The lack of effective competition in these industries over several decades resulted in bloated costs, few innovations and non-responsiveness to customer preferences that made both industries vulnerable to the market penetration of foreign firms. Although the U.S. antitrust laws are generally viewed as being tougher than those of other nations during the first 75 years of the 20th century, they still are relatively impotent in being able to deal with entrenched concentrated oligopolies and dominant firms. Monopoly power, once obtained, is difficult to challenge. And as Adam Smith and Michael Porter have argued, monopoly is the great enemy of good management and of international competitiveness.

### **C. Interrelationship Between Competition Policy and Trade Policy**

Trade policy and competition policy in the U.S. are often at odds. Trade laws tend to be used to protect U.S. companies and workers whereas antitrust laws focus more on protecting U.S. consumers. The Dept. of Justice and FTC have had little success in attempts to influence trade policies.<sup>2</sup> In some cases, freer trade can accomplish what antitrust cannot--infuse competition into an entrenched oligopoly or industry with a dominant firm.

The relaxation of antitrust enforcement during the 1980s appears to have done substantial harm. The deregulation of the airline industry was initially pro-competitive but

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<sup>2</sup> There has been some effort to encourage those administering trade policy to judge dumping by similar standards as predation, i.e., using a cost standard. At present, dumping may be found even though prices are above costs.

needed to be accompanied by strong antitrust to prevent the consolidations and joint ventures with foreign airlines that have now largely eliminated the benefits of deregulation.

Imports of autos, steel and consumer electronics have brought substantial benefits to American consumers. However, the enormous number of joint ventures between U.S. and foreign firms is moving the world markets toward tight oligopolies. Foreign competitors have been co-opted, at least to a degree. Thus, the benefits from liberalization of trade policy can be lost or reduced by unwise competition policy.

**D. What Impact Has Competition Policy Had on International Competition? Is Porter Right?**

Based upon his massive cross national study of competitiveness in 10 leading nations, Michael Porter concludes that competitiveness in domestic markets is one of the major determinants of competitiveness in international markets. In order to enhance domestic competition, Porter argues for stronger antitrust policies, not weaker. Porter's main conclusions regarding the factors affecting competitiveness are consistent with what we know about the factors affecting efficiency, progressiveness, costs and competition in domestic markets.

However, the proposition that tough antitrust policies enhances both domestic and global competitiveness encounters something of a historical paradox. For most of this century, U.S. competition policy has been stronger than that in other developed nations, ostensibly making U.S. companies better able to compete in world markets. Yet there has been growing evidence over the last 20-25 years that U.S. firms are less able to compete in world markets than Japanese, German and other foreign firms.

Part of the explanation may lie in the changes in the competition policies of other nations. In both Japan and Germany, cartels were permitted until World War II. In Germany, for example, there were 1000 cartels in 1922, 2500 in 1925 and the number peaked before World War II. After World War II, Germany put in place more stringent antitrust policies. By 1987, the number of "rationalization" cartels had dropped to 300.

Antitrust policy in Japan also became more similar to that in the U.S. following World War II. There, as in Germany, the change was at least in part aimed at breaking up concentrations of economic power and in part a way of penalizing the owners and managers of large industrial companies that were perceived by the U.S. to have encouraged and profited from the war. The change in antitrust policy in Japan and Germany after World War II has been credited with at least some of the substantial improvement in competitiveness that these countries have realized.

An additional explanation of the "paradox" is that after World War II, U.S. industries had relatively little competition in world markets. The industries of Japan, Germany and many European countries had been devastated by the war and went through a substantial period of rebuilding. When their industries were rebuilt, however, with state-of-the-art technology, they gradually began to challenge the dominance of U.S. industries. Thus, a major part of the apparent paradox may be attributable to the dynamics that affected Japanese, German and other foreign industries after World War II.

Yet another contributing factor is the differences in corporate control in various countries and the effect that has on management objectives. DeJong contends that the oligarchically structured Germanic and Japanese firms are virtually immune to hostile

takeovers, are more long-run in orientation, and tend to maximize sales or sales growth. In contrast, Anglo-Saxon companies (U.S. and U.K.) are mainly run in the interest of shareholders, are exposed to a relatively free takeover market, are short-run in focus and tend to profit maximize. And--being competitive in international markets is difficult without a long-run focus.

Finally, the rigor of antitrust policy may be an imperfect predictor of domestic competitiveness. History tells us that it took only a few years of lax enforcement to create a U.S. Steel, with 65% of the nation's steel making capacity at the turn of the century. Once formed, such a firm is relatively immune from the antitrust laws as long as it is reasonably cautious in its behavior.

In other industries like cigarettes, competition has largely been smothered by roughly 70 years of advertising and product differentiation efforts. Years of high advertising in an industry tend to be associated with high levels of seller concentration, high entry barriers and high price-cost margins (Connor et al, 1985).

Porter's hypothesis that domestic competitiveness is a major determinant of international competitiveness carries major implications for domestic competition policies. If Porter is correct, a major source of conflict in the goals of antitrust policy would be removed. Antitrust policy that promotes competition in domestic markets will also be consistent with competitiveness in international markets. But--that conclusion remains to be rigorously tested.

## References

- Adams, Walter and James W. Brock (1991). "Joint Ventures, Antitrust, and Transnational Cartelization," Northwestern J. of Int'l Law and Business, 11:433.
- Auquier, A. and Richard Caves (1979). "Monopolistic Export Industries, Trade Taxes, and Optimal Competition Policy," Economic Journal, Vol 89.
- Brodley, Joseph (1990). "Antitrust Law and Innovation Cooperation." J. of Econ. Persp., Vol 4:3.
- Connor, John M., Richard T. Rogers, Bruce W. Marion and Willard F. Mueller. (1985). The Food Manufacturing Industries: Structure, Strategies, Performance, and Policies, Lexington, Mass.: Lexington Books.
- Davidson, Joel (1983). "Cartels, Competition Laws and the Regulation of International Trade." J. of International Law and Politics, 15: 351-376.
- DeJong, Jenry W. "The Takeover Market in Europe: Control Structures and Performance of Large Companies Compared," Rev. of Indust. Org., 6:1 (1991).
- Golden, Cornelius Jr. and Charles Kolb (1983). "The Export Trading Company Act of 1982: An American Response to Foreign Competition." The Notre Dame Law Review. Vol 58: 743.
- Jorde, Thomas and David Teece (1990). "Innovation and Cooperation: Implications for Competition and Antitrust." J. of Economic Perspectives, Vol 4:3.
- Larson, David (1970). "An Economic Analysis of the Webb-Pomerene Act," The Journal of Law and Economics. 461-500.
- Porter, Michael (1990), The Competitive Advantage of Nations. The Free Press.

- Scott, John T. (1988), "Diversification Versus Cooperation in R & D Investment,"  
Managerial and Decision Economics, Vol 9, 173-180.
- Scott, John T. (1989), "Historical and Economic Perspectives of the National Cooperative  
Research Act," in Cooperative Research and Development: The Industry-University-  
Government Relationship, A. Link and G. Tasse, ed., Kluwer Publ., pp. 65-84.
- Shapiro, Carl and Robert Willig (1990). "On The Antitrust Treatment of Production Joint  
Ventures," J. of Econ. Persp., Vol 4:3.
- Stelzer, Irwin M. Selected Antitrust Cases: Landmark Decisions. 4th ed., Richard Irwin,  
Inc. 1972.
- Thorelli, Hans B. The Federal Antitrust Policy, Johns Hopkins Press, 1955.