



The American Antitrust Institute

Bridging the Trade-Competition Gap

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The moderator, Mr. Rosenthal, introduced the panel. He noted that a genuine crisis existed and that free trade is a hard sell, *e.g.*, the “Buy American” provisions of the United States’ economic stimulus policy. Professor Sokol briefly reviewed the history of trade policy since World War I, and he expressed doubt as to whether trade could provide any answers to the questions of competition policy. Mr. Singham, however, suggested the need to integrate competition and trade policy is particularly acute in this time of economic emergency.

Sokol: The development of trade since World War I, including the work of the Munich Group in the early 1990s, raises the question of whether there is anything relevant for the World Trade Organization (WTO) with regard to competition policy. One problem with the WTO stems from the fact that governments, not private parties, have standing to bring cases, and the interests of governments go beyond the merits of individual cases. Protectionist interests tend to be more powerful than competition interests. The Antitrust Modernization Commission, for example, skirted the trade issues. In short, trade is not a solution for competition problems.

Singham: The world today has significantly reduced trade barriers. Consequently, the internal barriers to competition have become more noticeable, including not only regulatory distortions, but also private sector behavior. The WTO fails to grasp the world of today—competing global supply chains, not goods made in one place and sold in another. Today’s world puts a premium on efficiency, regulation, and global GDP. So competition is particularly needed at this time of economic crisis. We could take the view that everything is fine. In the European Union, for example, competition authority enforcement is increasing while tariffs are decreasing. In the United States, however, we do not have a tradition of dealing with government induced anticompetitive practices.

The issue is on a spectrum. At one end, the option would be to do nothing. Government competition authorities are and will be able to do the job over the next several decades. This leaves only the question of whether there is anything we can do to speed up the process. At the other end of the spectrum, as exemplified by Leon Brittan during the ‘90s, we could treat the WTO as an evolving institution. This suggests there should be a greater effort to inject competition concerns into trade thinking.

Moderator: One point of view may be that we were told that we had competitive markets when, in fact, these markets were rigged and failed.

Audience: Don't over anticipate the movement toward regulation. The Obama administration is not enamored with regulation and prefers markets even though it recognizes exigent circumstances in specific sectors.

Singham: These observations may be true for the U.S., but he is not sure about the rest of the world. He doesn't see market as the default or fall back position for solutions outside the U.S. Consequently, it's all the more important to get competition policy a seat at the table of trade policy discussions. It's a long, difficult process, but he pointed to reforms in Japan as an example of success.

Audience: Are the Federal Trade Commission and the Department of Justice consulted as trade policies are developed?

Moderator: Not very much. The Executive Branch economic policy groups, *e.g.*, Council of Economic Advisors, is more important but often overburdened.

Sokol: Competition rhetoric promised too much and didn't deliver. South America experienced big growth, but no improvement in income distribution. Competition doesn't help people move up the ladder. To have an impact, you need to make arguments about how competition will improve people's day-to-day lives, *e.g.*, the break up of the toilet paper cartel in South America.

Audience: The benefits of monopoly have been shared with labor, *e.g.*, automobile and steel industries. Wipe out the barriers to trade and you wipe out the social services. You need to look at the structures of the economy and nationalize social services so, for example, you don't care whether GM or Toyota survives the competitive struggle.

Audience: Competition and trade are linked, but doesn't having them work together risk contamination? Shouldn't we be especially concerned about the corrupting influence of trade on competition? Perhaps it would be best not to let the WTO handle competition.

Moderator: What about the differences, if any, between bilateral and multilateral trade agreements on competition?

Singham: The important distinction is between trade diverting (managed trade) and trade creating agreements. Trade diverting is more common, but bilateral agreements can keep trade creation moving forward where sometimes Doha cannot. There is a risk of contamination. That's because the purpose of trade has been lost. It's not to increase the market share of a particular nation's industry. It's to improve the lot of consumers through the competition of imported goods and services, *i.e.*, to increase consumer, not producer welfare. Competition has the potential to infuse consumer welfare into trade. Most of the protectionist barriers are gone. The problem is internal regulations that thwart domestic and foreign competition.

Audience: In the U.S., this raises the problem of the state action doctrine.

Moderator: For example, Department of Transportation regulations that immunize bilateral air service agreements. I don't agree protectionist trade barriers are largely gone. They are still strong in agriculture, national security sectors and services.

Singham: The Organization for Economic Co-operation and Development (OECD) toolkit modeled on the approach of the United Kingdom may provide an answer for the state action issue in the U.S.

Sokol: FTC competition advocacy doesn't go far enough. Perhaps we should consider eliminating the state action exemption.

Moderator: Philip Areeda, however, proved that competition advocacy could have a significant effect in the Ford Administration.

Sokol: The important thing is focus on a few key objectives or policies.

Singham: It is important to break down the silos that prevent competition from influencing trade.