

Experts Want Coordination Of Competition, Trade Policies

By **Matthew Perlman**

Law360, New York (March 15, 2017, 1:57 PM EDT) -- A group of experts commissioned by the U.S. Chamber of Commerce released a report Tuesday calling for more coordination of competition and international trade policies to prevent other countries from using antitrust enforcement actions inappropriately.

The International Competition Policy Expert Group issued its report and recommendations on how to stop foreign governments from using their competition laws to harm U.S. companies. Deborah Garza, co-chair of the group and a partner in Covington & Burling LLP's competition practice, said in a statement accompanying the report that while U.S. law generally supports international competition, this is not true for some of our trade partners.

"The U.S. has long supported the use of antitrust law to promote competitive markets that drive economic development and prosperity," Garza said. "But there is legitimate concern that some countries may be using their competition laws to distort competition and to favor their own interests at the expense of U.S. companies and global prosperity."

A particular area of concern the experts pointed to was the enforcement of intellectual property rights and laws in foreign jurisdictions. The group said some authorities have subject U.S. companies to investigations and remedies relating to their intellectual property for conduct outside their territories, and impacted the way the companies can assert their IP rights in other countries. The report recommended that the Trump administration take a hard line on the issue with foreign leaders and to consider sanctioning the offenders.

"Given the seriousness of the economic consequences of foreign disrespect for U.S. IP rights, the Trump administration may wish to take a strong stance against specific foreign antitrust abuses that target U.S. patents in a manner inconsistent with core competition principles by engaging in international consultations and by considering possible sanctions if all else fails," the report said.

The report offered broader recommendations for the administration and for Congress on how to address issues around the abuse of antitrust laws in other nations, largely through better coordination among U.S. antitrust enforcement and trade policy agencies.

In addition to reaffirming the general purpose of U.S. competition policy as a driver for economic efficiency and consumer welfare, and the promotion of that principal internationally, the report said,

the U.S. should start using existing trade laws to punish foreign governments that use antitrust regimes to thwart international competition. But, the group warned, actions taken against other nations could have an impact beyond just the promotion of competition.

“The competition and trade law issues addressed in the report are complex, and the consequences of taking any particular action vis-à-vis another country must be carefully considered in light of a number of factors beyond the scope of this report,” the group said.

The experts also called for the creation of a cabinet-level White House working group to study international competition policy that includes representatives from the U.S. Department of Justice, Federal Trade Commission, Council of Economic Advisers, Office of the U.S. Trade Representative, U.S. Department of State, U.S. Department of Commerce and U.S. Department of the Treasury. That working group would be tasked with articulating and promoting policies that respond to the inappropriate use of foreign competition laws and the monitoring of antitrust enforcement policies abroad, according to the report.

The working group would also look into other laws and regulations that could hamper competition from U.S. companies that are not explicitly antitrust in nature, the report said.

The report recommended that the U.S. collaborate with other governments, both individually and through multilateral organizations, to work toward a consensus on standardized principles for competition law. This includes asking the World Trade Organization and the Organisation for Economic Cooperation and Development to consider conducting reviews of national competition policies, and working to promote agreements between nations to cooperate on antitrust issues to help avoid jurisdictional conflicts.

Eleanor M. Fox, a professor of trade regulation at New York University School of Law, wrote a separate statement included in the report that raises some differences of opinion, including on the use of trade remedies to address applications of antitrust law. Fox said she feared this could lead to “tit-for-tat retaliation.”

“Except in extreme cases, I would rather proceed by intense, focused conversations, both bilaterally and in international fora, in an attempt to understand the roots of divergences and the space for convergence, and to shine light on improprieties,” Fox said in the statement.

--Editing by Edrienne Su.