# NARROWING THE U.S. TRADE DEFICIT BY ANTITRUST REFORMS

A Cabinet-level committee last week recommended to Ronald Reagan a package of sweeping changes in the U.S. antitrust laws. These overdue reforms would go a long way toward making U.S. industry more competitive at home and abroad. The President should endorse these recommendations and submit them to Congress. The Senate and House should give them urgent consideration, for it is by relaxing some of the anachronistic antitrust shackles on American business, and not by protectionism, that the U.S. will narrow its trade deficit.

The need for antitrust reform is clear. U.S. antitrust statutes have not been seriously reviewed by Congress since the early 1950s. At that time, the prevailing philosophy was simply that "big is bad" and that consumers best could be helped by strict laws limiting the actions of large firms. Few economists today, however, believe that big companies necessarily are bad. Large firms, for instance, often can gain economies of scale, allowing them to reduce costs and benefit consumers.

Antitrust laws, moreover, often reduce competition rather than spur it because the laws allow firms to file paralyzing antitrust lawsuits to frustrate the activities of their rivals. For years, the damage these outmoded laws inflicted on the economy went largely unnoticed. Today, however, U.S. firms are facing increasingly tough foreign competition in almost every area. The Cabinet committee's reforms would make U.S. firms more competitive by allowing them to become more efficient through restructuring and freeing them from the threat of baseless, paralyzing litigation.

Among the specific reforms recommended:

1) Modification of section 7 of the Clayton Act of 1914. This statute restricting mergers between competitors has not been revised significantly since 1950. For many years it was used to ban large-scale mergers with little consideration for the level of international competition faced by firms involved or the economic benefits of the

merger. The guidelines set by the Reagan Administration's antitrust enforcers already give more weight to such considerations. Yet without a change in the law, this more sensible approach could evaporate under another administration less familiar with the challenge of the Japanese and other international competitors. Even under the Reagan guidelines, merging firms face the threat of private lawsuits. Only changing Section 7 could prevent this.

2) Temporary relief from antitrust laws for certain industries threatened by foreign competition. Under current trade law, if an industry is found by the International Trade Commission to have been injured by foreign competition, the President can help it only by establishing tariffs or by imposing quotas to restrict imports. Both measures hurt the consumer and give no incentive for American firms to take steps to improve their competitiveness. The Cabinet proposal gives the President a third option: exempting the industry from the antitrust laws for a limited time. This would enable that industry to restructure and increase its efficiency. Competition would not be harmed by the antitrust exemption because the industry would not qualify for the exemption unless it were facing intense competition from abroad.

3) Elimination of treble damages. A successful plaintiff in an antitrust case currently receives three times the amount of damages actually suffered. This predictably encourages many frivolous antitrust claims in the hope of a large award. Defendants often settle such lawsuits out of court, regardless of the merits of the case, for they fear potentially enormous liability. The proposed reforms would limit awards to actual damages, except for such offenses as price fixing.

4) Payment of defendant's attorney's fees by plaintiff in frivolous suits. Under current law, if the plaintiff in an antitrust suit wins, the defendant must pay the plaintiff's attorney's fees. If the defendant wins, however, he still must pay his own fees. The proposed reforms would force the plaintiff to pay the defendant's legal fees if the suit is found to be frivolous, unreasonable, without foundation, or in bad faith.

These reforms, of course, will not solve all U.S. trade problems, or eliminate all the inefficiency in American industry. The reforms do, however, move significantly in that direction. They recognize that America's trade problems are not wholly due to the actions of other countries, but often are caused by legal restrictions on U.S. industry. If Congress wishes to improve the competitiveness of U.S. industry, rather than embark on the costly and destructive road to protectionism, it should give urgent consideration to the Cabinet antitrust reform proposals.

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For further information:

Catherine England, "Bringing Antitrust Laws into the Twentieth Century," Heritage Foundation Backgrounder No. 344, April 18, 1984.

Malcolm Baldrige, "Rx for Export Woes," The Wall Street Journal, October 15, 1985.