

Executive Summary

A national competition policy is a constitution for overseeing competition in the domestic market. Competition policy sets out rules and procedures for business structure and conduct in the market place. As in a constitution, however, a competition policy regime cannot possibly list a comprehensive set of rules to be followed in every conceivable instance in precise detail. In practice, competition policy is couched in terms that can be interpreted and applied as the economy and the nature of competition change in dramatic and unpredictable ways.

This Paper explores how philosophies of competition in the U.S., Japan and the EU (the Triad) have shaped the making, interpretation and enforcement of competition policy and laws in each jurisdiction. National competition philosophies, we submit, can be situated on a spectrum stretching from the individualistic to the communitarian. Why would differences in philosophies of competition policy matter in the future evolution of trade policy?

The WTO mixes elements of domestic and international economic policy rules and regulations. Competition policy analysts have cautioned that the negotiation model of reciprocal tariff reductions does not necessarily extend to the area of competition regimes. Under the WTO, there are already proposals for a search for harmonization of national competition laws. While some analysts favour quickly getting on with negotiations on the convergence of substantive national competition laws, others are sceptical whether the content of complicated agreements can at all be negotiated in the near future.²

The main message of this Paper is that in debating the convergence or harmonization of competition laws and their enforcement across countries, the trade and competition policy community will benefit considerably by paying attention to the basic competition philosophies that have generated existing differences in national competition laws and jurisprudence. Such an approach will help sort out what competition laws and practices can or cannot be agreed upon in multilateral negotiations.

In comparing the competition policies of the U.S., the EU and Japan, this Paper argues that:

- in the U.S., the approach is economic, in search of efficiencies that emphasizes individual consumer welfare;

²For example, see Jagdish N. Bhagwati and Robert E. Hudec, eds., *Fair Trade and Harmonization: Pre-requisite for Free Trade?*, vols. I and II, Cambridge, MA: MIT Press, 1996.