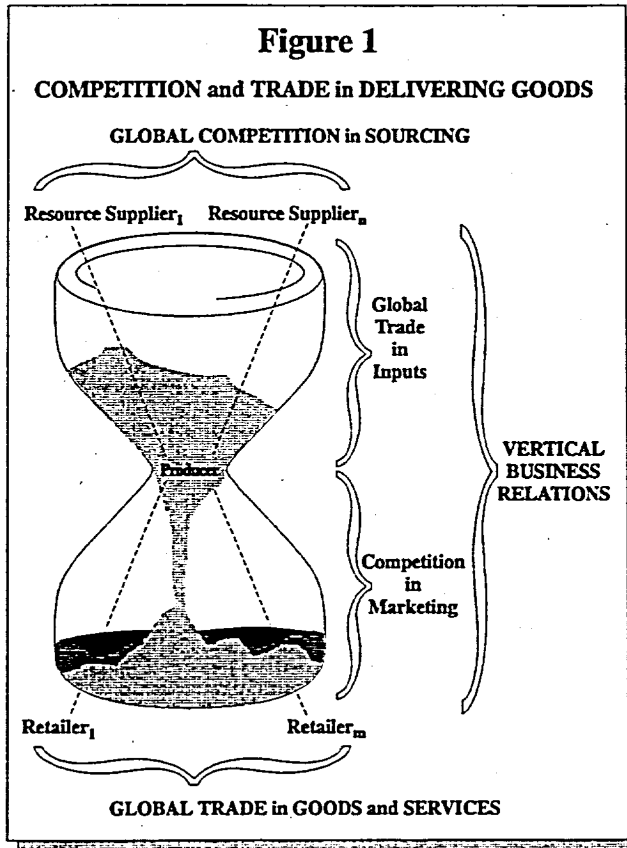

Vertical restraining clauses are essential for the distributors to perform their function. Vertical restraints[2] may put restrictions on the behaviour of individual distributors, but they may promote competition by enabling each player in the distribution chain to do its job in a cost minimizing fashion.

This positive view is tempered by concern over the economic harm that vertical price and non-price restraints might have on competition. Countries use competition policy and regulatory regimes to permit restraints on competition in the vertical chain that do not cause economic harm in the economy. However, not all vertical restraints deliver net benefit to consumers in all situations. The principal concerns are that vertical restraints raise prices to consumers and can be used to facilitate horizontal collusion at either the manufacturer or dealer level. Most countries treat vertical price fixing (e.g., resale price maintenance) as outright illegal. In contrast, actual competitive effects of vertical non-price restraints (e.g., exclusive territories, customer restrictions) are examined on a case-by-case basis in the context of specific facts attending the practice. Consequently, countries differ with regard to those vertical restraints that are treated as outright illegal and which tests or defences businesses are to meet for lawful vertical agreements.

An analysis of vertical business restraints is important because it deals with national distribution systems. An example of the potentially contentious role of distribution systems is the U.S. charge that the distribution system in Japan shuts out imports.

National competition policy with regard to distribution networks can interact with trade policy through interesting channels. For example, potential entrants could bump up against an entrenched sole importer and distributor. In such a market, the monopoly price of imports is

[2] The terms vertical restraints, vertical controls or vertical contracts are often used interchangeably.