

Congress

Democrats Warn Against Sanctions to Rein in Foreign Antitrust Cops



By **Alexei Alexis**

Top House Judiciary Committee Democrats said June 29 they have questions about an industry proposal that calls for trade sanctions to discourage foreign countries from engaging in antitrust enforcement abuses against American companies.

The sanctions proposal is part of a report from an antitrust task force, commissioned earlier last year by the U.S. Chamber of Commerce. Antitrust scholars and analysts at a hearing of the antitrust subcommittee echoed the report's findings that some countries have used antitrust enforcement to protect their own markets from foreign competition or to force technology transfers from U.S. companies.

The Democrats' questions indicate that a bold proposal like imposing sanctions to avoid antitrust enforcement would face some opposition if attempted by Congress or the administration, although both Republicans and Democrats are sympathetic to the problem. There isn't legislation about it, but Republicans, including the antitrust subcommittee chairman, think the option of sanctions should at least be considered.

"We must be careful not to provoke retaliation against American businesses with any effort to penalize or pressure other countries to change their enforcement practices," said Rep. John Conyers (D-Mich.), the committee's ranking member.

Subcommittee ranking member David Cicilline (D-R.I.) said the use of trade sanctions might "backfire." He said bilateral cooperation is a better method for dealing with antitrust disputes with other countries. "The use of sanctions could have serious, unforeseen consequences and should be reserved for egregious misconduct," he said.

'On the Table'

After the hearing, Subcommittee Chairman Tom Marino (R-Pa.) told Bloomberg BNA that he doesn't necessarily share all of the Democrats' cautionary views. However, he added, "Trade sanctions would be a last resort, but if that's what it will take to get the attention of some countries that are taking advantage of the U.S. and other countries, then that's an option that's on the table."

At a minimum, publicly voicing the problem at a formal hearing could get other countries' attention. That might make them more amenable to discussing how their enforcement regimes work. Committee Chairman Bob Goodlatte (R-Va.) said the hearing "will provide a record regarding how the administration and our executive agencies, including our antitrust enforcement agencies, can coordinate among each other and engage with foreign countries on international competition law enforcement."

Makan Delrahim, President Donald Trump's nominee to head the Justice Department's antitrust division, has also said he wants to improve communications with other competition agencies around the world.

But Conyers said there should be limits on what the U.S. demands from other countries. "When it comes to antitrust and competition policy, divergences in outlook, and philosophy are not always rooted in a desire to protect national champions or to discriminate against American firms," he said.

Exploding Enforcement Entities

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has expanded from a few dozen to
vin, a law professor at George Mason
University. There were only 23 jurisdictions with competition laws in 1990, she said.

She wasn't part of the chamber's task force, but she said at the hearing that she agrees with its assessment that certain foreign governments, particularly China, appear to be using their competition laws in ways that unfairly harm U.S. companies.

A high-profile example, she said, is China's 2015 decision to impose a nearly \$1 billion fine against smartphone chipmaker Qualcomm Inc. It required the company to calculate royalty fees at 65 percent of the wholesale price of phones sold in China, instead of the full price used previously.

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