

Cultures and Cartels: Cross-Cultural Psychology for Antitrust Policies

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I. Introduction

Among the many factors that exert perpetual influences upon competition policies, culture might be one of the least illuminated. Until recently cultural factors have generally been disregarded, not because the existence of their impact was denied, but because there was no tool available for systematic measurement of the impact. Nevertheless, more and more scholars and practitioners who are engaged in international antitrust became aware of the importance of cultural factors, as the development towards international coordination of antitrust policies increased its pace.¹ And some scholars found their tool to figure out correlation between culture and antitrust policy in the

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¹ William Kolasky, a Culture of Competition for North America, Address Before “Economic Competition Day: Shared Experiences,” Mexico City, Mexico (June 24, 2002), available at <http://www.usdoj.gov/atr/public/speeches/11351.htm>; Randolph W. Tritell and Russell W. Damtoft, the Role of Antitrust in the Free Trade Area of Americas, 16-Fall Antitrust 37 (2001); Harry First, Antitrust in Japan: The Original Intent, 90 Pac. Rim L. & Pol’y J. 1 (2000); Spencer Weber Waller, Can U.S. Antitrust Laws Open International Markets?, 20 Nw. J. Int’l L. & Bus. 207 (2000); Russell Pittman, Competition Law in Central and Eastern Europe: Five Years Later, 43 Antitrust Bull. 179 (1998); William Kovacic, Getting Started: Creating New Competition Policy Institutions in Transition Economies, 23 Brook. J. Int’l L. 403 (1997); Daniel J. Gifford, The Draft International Antitrust Code Proposed at Munich: Good Intentions Gone Awry, 6 Minn. J. Global Trade 1 (1997); William Kovacic, The Competition Policy Entrepreneur and Law Reform in Formerly Communist and Socialist Countries, 11 Am. U. J. Int’l L. & Pol’y 437 (1996); Harry First, Antitrust Enforcement in Japan, 64 Antitrust L. J. 137 (1995); Symposium: Cultural Conceptions of Competition, 44 DePaul L. Rev. 1049 (1995); Spencer Weber Waller, Neo Realism and the International Harmonization of Law: Lessons from Antitrust, 42 U. Kan. L. Rev. 557 (1994); Roger W. Mastalir, Regulation of Competition in the “New” Free Markets of Eastern Europe: A Comparative Study of Antitrust Laws in Poland, Hungary, Czech and Slovak Republics, and Their Models, 19 N.C.J. Int’l L. & Com. Reg. 61 (1993); Russell Pittman, Some Critical Provisions in the Antimonopoly Laws of Central and Eastern Europe, 26 Int’l Law. 485 (1992); Eleanor M. Fox, Harnessing the Multinational Corporation to Enhance Third World Development: The Rise and Fall and Future of Antitrust as Regulator, 10 Cardozo L. Rev. (1981). See also Sally Southey, Building a Competition Culture, Address Before Seoul International Competition Forum, Seoul, Korea (Nov. 6, 2002), available at http://seoulforum.ftc.go.kr/ko/data/sally_korea4_.doc (focusing on the advocacy role of the Commissioner of Competition in Canada).

discipline of anthropology.²

Anthropology is a very promising discipline in that it provides us the detailed portrait of each culture and the general concepts useful for comparing cultures. It could help us design antitrust policies that could fit each culture and coordinate antitrust policies among different cultures. But drawing each picture is a painstaking and time-consuming job, and the global-scale comparison of cultures and antitrust policies through anthropology seems to be a quite remote, although not impossible, goal. And more importantly anthropology does not provide tools to compare cultures or describe the correlation between cultures and competition policies on statistical basis.

Cross-cultural psychologists developed a framework to compare cultures on statistical basis and in global scale. It's called the Cultural Value Dimension (CVD) framework. Many disciplines, such as management and international accounting, fruitfully applied the framework in dealing with different cultures. And in legal discipline Amir Licht first applied the framework in comparative corporate governance laws.³ Even without the help of an econometrician, he could demonstrate quite vividly the correlation between CVD's and corporate governance laws. And as he suggested, international and comparative antitrust is one of the most fertile area to apply the framework. The CVD framework provides us the world map of cultural values and enables us to locate competition policies on it, so that we could compare cultures and competition policies in global scale.⁴

However, the static comparison through the CVD framework might not be sufficient for antitrust. If CVD's prove to be relevant to the performance of antitrust policies, we might want to figure out how to help the change of national cultures take the direction towards more competition-friendly ones. And if national culture differences could not be ironed out in the foreseeable future, we might have to find a way to pursuing synergy among different cultures for the international coordination of antitrust policies.

This article is a sketch of the potential of the application of CVD framework in comparative and international antitrust. Part II of this article gives the outline of CVD framework, Part III illustrates the correlation between CVD's and cartel regulations, Part IV presents what we could do with an insight into the correlation between nations' CVD indexes and their antitrust policies, and Part V suggests an agenda for future research.

² Andrew I. Gavil, *Competition and Cooperation on Sherman Island: An Antitrust Ethnography*, 44 DePaul L. Rev. 1225 (1995); Wolfgang Fikentscher, *Market Anthropology and Global Trade*, The Gruter Institute Working Papers on Law, Economics, and Evolutionary Biology: Vol. 1: Article 4 (2001), available at <http://www.bepress.com/giwp/default/vol1/iss1/art4>.

³ Amir N. Licht, *The Mother of All Path Dependencies Toward a Cross-Cultural Theory of Corporate Governances Systems*, 26 Del. J. Corp. L. 147 (2001).

⁴ Taking advantage of the bird's-eye view that CVD framework gives us, we could always consult the detailed map of each culture that anthropology provides. E.g. Anthropology could help us reveal the origins of nations' cultural values.

II. The Outline of Cultural Value Dimension (CVD) Framework

Cross-cultural psychologists developed cultural value dimensions to describe cultures in measurable terms. Among other scholars Geert Hofstede identified five independent dimensions of national culture differences:⁵

1. Power Distance: “The extent to which the less powerful members of institutions and organizations within a country expect and accept that power is distributed unequally.”⁶ Hereinafter the index of Power Distance will be quoted as “PDI”.

2. Uncertainty Avoidance: “The extent to which the members of a culture feel threatened by uncertain or unknown situations.”⁷ Hereinafter the index of Uncertainty Avoidance will be quoted as “UAI”.

3. Individualism/Collectivism: “Individualism stands for a society in which the ties between individuals are loose: Everyone is expected to look after him/herself and her/his immediate family only. Collectivism stands for a society in which people from birth onwards are integrated into strong, cohesive in-groups, which throughout people’s lifetime continue to protect them in exchange for unquestioning loyalty.”⁸ Hereinafter the index of Individualism/Collectivism will be quoted as “IDV”.

4. Masculinity/Femininity: “Masculinity stands for a society in which social gender roles are clearly distinct: Men are supposed to be assertive, tough, and focused on material success; women are supposed to be more modest, tender and concerned with the quality of life. Femininity stands for a society in which social gender roles overlap: Both men and women are supposed to be modest, tender, and concerned with the quality of life.”⁹ Hereinafter the index of Masculinity/Femininity will be quoted as “MAS”.

5. Long-term/Short-term Orientation: “Long Term Orientation stands for the fostering of virtues oriented towards future rewards, in particular, perseverance and thrift. Its opposite pole, Short Term Orientation, stands for the fostering of virtues related to the past and

⁵ This article uses Hofstede’s framework mainly because of the importance of Uncertainty Avoidance Index in comparing antitrust policies. Another prominent cross-cultural psychologist, Shalom H. Schwartz, lists similar 3 value types in his framework: Embeddedness/Autonomy, Hierarchy/Egalitarianism and Mastery/Harmony. Shalom H.Schwartz, A Theory of Cultural Values and Some Implications for Work, 48 Appl’d Psychol. Int’l Rev. 23 at 26-28 (1999). His project covers more countries than that of Hofstede. Licht, *supra* note 3, at 174.

⁶ Geert Hofstede, *Cultures’ Consequences* at 98 (2d ed. 2001).

⁷ *Id.* at 161.

⁸ *Id.* at 225.

⁹ *Id.* at 297.

present, in particular, respect for tradition, preservation of ‘face’ and fulfilling social obligations.”¹⁰ Hereinafter the index of Long-term/Short-term Orientation will be quoted as “LTO”.

Based upon the data collected within the subsidiaries of IBM in 72 countries by using more than 116,000 questionnaires between 1967 and 1973, Hofstede ordered 50 countries and three regions (Arab countries, East Africa and West Africa) along the five cultural value dimensions. His research not only shows us the index scores and ranks for countries and regions concerning each dimension,¹¹ but also locates countries and regions on the coordinates of several pairs of correlated CVD’s.¹² And on the basis of their scores on the four indexes of PDI, UAI, IDV and MAS, he clustered the 53 countries and regions into 12 branches using a hierarchical cluster analysis.¹³ Later on, additional data were collected from other countries unrelated to IBM, and Hofstede estimated index scores for 16 countries from the data.¹⁴

III. The Impact of National Cultures upon Antitrust Policies: An Illustration

This article assumes that nations’ CVD indexes are in close correlation with the adoption and the implementation of their antitrust policies. However, to demonstrate the proposition fully, we should carry out a global-scale research of cultures and antitrust policies. And the full-scale research requires the cooperation among economists, econometricians and cross-cultural psychologists as well as legal scholars. The cooperation among legal scholars are essential to get beyond the formal language of statutes. Economists could help develop economic indexes that could measure the performance of antitrust policies.¹⁵ Econometricians could help describe the correlation between cultures and antitrust policies in numeral letters, e.g., “ $r = .xx^{**}$ ”(positive

¹⁰ Id. at 359.

¹¹ Id. at 500 Exhibit A5.1.

¹² Id. at 152 Exhibit 4.2.(UAI x PDI plot); Id. at 217 Exhibit 5.2.(IDV x PDI plot); Id. at 294 Exhibit 6.8.(IDV x UAI plot); Id. at 294 Exhibit 6.8.(IDV x MAS plot); Id. at 299 Exhibit 6.11.(MAS x PDI plot); Id. at 334 (UAI x MAS plot).

¹³ Id. at 62. This was done without consulting LTO which was adopted later than other 4 dimensions after the survey of Chinese culture. Concerning the process of adding the fifth dimension, see Id. at 69-71.

¹⁴ For the summary of the results, see Id. at 502 Exhibit A5.3.

¹⁵ In developing these indexes we could consult the results of following researches: Michael E. Porter et al, The Global Competitiveness Report 2001-2002: World Economic Forum (2002); Office of Fair Trading, Guidelines for Competition Assessment: A Guide for Policy Makers Completing Regulatory Impact Assessments (2002); The World Bank Annual Report (2001) (Chapter 3 contains the cross-country survey of the effectiveness of legal systems); Mark A. Dutz & Maria Vagliasindi, Competition Policy Implementation in Transition Economy: An Empirical Assessment, European Bank, Working Paper, No. 47 (1999).

correlation) or “ $r = -.xx^{**}$ ” (negative correlation). Cross-cultural psychologists could help update nations’ CVD indexes through new survey and develop new CVD indexes that fit our specific need of comparing cultures and competition policies.

Lacking the resources to support the full-scale research, this article will demonstrate the above proposition rather impressionistically. The aim of this incomplete demonstration is to invoke the need for full-scale research rather than to jump into conclusions without sufficient proofs. This article will follow the most distinct lane that least requires the guidance of statisticians. The lane starts from cartels.

By definition cartels are against competition and probably the most obvious targets of competition policies. But nations do not seem so unanimous in dealing with them. Some allow several exemptions for them and others do not treat them as crimes. Although there exists broad consensus against hard-core cartels, most countries are not eager to prosecute executives involved in those cartels. Which CVD’s are responsible for these variations?

Let’s first look over the CVD indexes of US, as it has undoubtedly the most strict antitrust policy against cartels: it hardly allows exemptions for cartels; it frequently jails and fines executives involved in cartels. According to Hofstede’s research,¹⁶ US ranks high in IDV(1/53) and MAS(15/53), and ranks low in PDI(38/53), UAI(43/53) and LTO(27/34¹⁷).¹⁸ The boldest assumption that we could draw from these ranks might be that IDV and MAS has positive correlation with the strictness of cartel policy, while PDI, UAI and LTO has negative correlation. But as this article lacks the econometric tools to juggle all these CVD’s, it picks up a pair of less bold hypotheses: (i) the combination of low’s and high’s in the CVD ranks which is similar to that of US has something to do with strict cartel policies; and (ii) the CVD in which US ranks highest (IDV) has positive correlation with the strictness of cartel policies, while the CVD in which US ranks lowest (UAI) has negative correlation. The second hypothesis seems quite coherent with the definition of both CVD’s quoted above: cartels are definitely a collective phenomenon, even though they do not involve lifelong relationship such as family; cartels incline to reduce the uncertainty that competitive process provides. Now let’s move on to test our hypotheses by quoting other countries’ CVD indexes, without further delving into the definitions of CVD’s.

We could easily find the countries with the combination of low’s and high’s in CVD ranks similar to that of US in one of the 12 branches of countries and regions that

¹⁶ Hofstede’s research is mainly based on the data collected between 1967 and 1973, and nations’ cultural values could have changed since. However, according to Hofstede, “Culture change basic enough to invalidate the country dimension index scores will need either a much longer period –say, 50 to 100 years– or extremely dramatic outside events.” Hofstede, *supra* note 6, at 36. This article elaborates on the possibility of culture changes below in Part IV.

¹⁷ As LTO was added later than other 4 CVD’s, Hofstede’s research of the 5th CVD covers only 34 countries and regions.

¹⁸ Let’s focus on ranks rather than indexes for the convenience of comparison.

Hofstede clustered. It's the 8th branch and includes Australia, US, Canada, Great Britain, Ireland and New Zealand.¹⁹ And among the 9th branch countries Germany and South Africa show similar combinations.²⁰

For easier comparison of the ranks of countries in IDV and UAI, this article simply adds the UAI rank of each country to its reverse rank in IDV to create the new "U-I" index, with apologies to econometricians and cross-cultural psychologists. According to our hypothesis, U-I shall have positive correlation with the strictness of cartel policies. Top ten rankers in U-I are Great Britain(1st), US and Denmark(2nd), Sweden(4th), Canada(5th), Ireland(6th), Australia(7th), New Zealand(8th), Netherlands(9th) and Jamaica(10th).²¹ We could notice that all the 8th branch countries of Hofstede's clusters (Australia, US, Canada, Great Britain, Ireland and New Zealand) rank above 8th in U-I. And Germany(17th) and South Africa(13th), which have the combination of high's and low's in CVD ranks similar to that of US, also rank fairly high.

If we could find some particular features of strict cartel policies in the countries mentioned above, we could infer some plausibility of our hypotheses. Then what's the most distinct feature of strict cartel policies? This article chooses criminal sanctions, especially against natural persons involved in cartels, as it could get very hard to prosecute executives when the values of citizens collide with such a rigorous policy. And it regards imprisonment as the more distinct feature of strong cartel policies than fines, as imprisonment could deal a fatal blow to the respondent.²²

According to OECD's Report on the Nature and Impact of Hard Core Cartels and Sanctions against Cartels under National Competition Laws of 2002 (hereinafter "OECD Report"), less than half of its member countries provide for the imposition of fines on natural persons involved in cartel: Australia, Canada, France, Germany, Ireland, Japan, Korea, Mexico, New Zealand, Norway, Slovak Republic,²³ Spain and US.²⁴ We can recall that 6 out of these 13 countries show the combination of high's and low's in CVD ranks similar to that of US: Australia, Canada, Germany, Ireland, New Zealand and US itself. We can also see that 5 (Australia, Canada, Ireland, New Zealand and US) among the 13 countries are top 10 rankers in U-I and 2 of the 13 countries rank fairly high in U-I: Norway(11th) and Germany(17th). These results suggests that the combination of

¹⁹ Hofstede, *supra* note 6, at 62.

²⁰ *Id.*

²¹ See Appendix.

²² S. Chesterfield Oppenheim, Glen E. Weston & J. Thomas McCarthy, *Federal Antitrust Laws: Cases, Text, and Commentary* at 1056 (4th ed. 1981).

²³ The data collected by IBM between 1967 and 1973 does not cover Slovak Republic. But Hofstede later estimated index scores for Slovak Republic from other data: PDI 104, UAI 51, IDV 52, MAS 110, LTO 38. Hofstede, *supra* note 6, at 502, Exhibit A5.3 (ranks are not available).

²⁴ OECD Report at 10.

CVD ranks and the U-I ranks have undeniable correlation with the adoption of the provision for the imposition of fines on natural persons involved in cartel.

We can deduce similar correlation between CVD's and the adoption of imprisonment provisions from the data in OECD Report. It says that only 9 of OECD member countries provide for the imprisonment of natural persons involved in cartels: Canada, Germany, Ireland, Japan, Korea, Mexico, Norway, Slovak Republic and US.²⁵ 4 among the 9 countries show the combination of high's and low's in CVD ranks similar to that of US, and 5 of them are top 10 rankers or fairly high rankers in U-I. We should also note that UK, which tries to introduce long jail sentences against cartels, has the combination of high's and low's in CVD ranks similar to that of US, and ranks 1st in U-I.

However, if we turn our attention from the adoption to the implementation of criminal penalty provisions, the correlations get much more close. OECD Report lists only 4 countries that reported in the survey they had imposed fines on natural persons: Australia, Canada, Germany and US.²⁶ All these countries show the combination of high's and low's in CVD ranks that is similar to that of US, and 3 (Australia, Canada and US) of them rank above 7th and 1 (Germany) of them rank fairly high (17th) in U-I. Further, OECD Report lists only 2 countries that reported sentencing individuals to terms of imprisonment: Canada and US.²⁷ Both of them show similar combination of high's and low's in their CVD ranks, and rank above 5th in U-I.

This is a quite impressive result, even if we take into account the roughness of our methodology. The correlation between the CVD ranks and the strictness of cartel policies seems to be more than undeniable. We might say it's almost evident. However, to test further this proposition, we should explore into less distinct lanes, such as non-criminal sanctions and exemptions, as most countries are still very much reluctant to prosecute executives involved in cartels. And such an exploration will soon head towards the full-scale research that requires the interdisciplinary cooperation for the global-scale comparison of cultures and competition policies. But, will the full-scale research be worth the efforts? What could we do with an insight into the correlation between CVD's and antitrust policies? The next part of this article tries to answer these questions.

IV. The Path of Antitrust Policies Through Different Cultures

Although it's hard to forecast the results of the full-scale research of correlation between nations' CVD's and their antitrust policies, it seems improbable that our proposition turns out to be totally false: the above illustration of antitrust policies against cartels suggests

²⁵ Id.

²⁶ Id. at 11.

²⁷ Id.

so strongly the opposite. We might be able to discern the close correlation between CVD's and most antitrust issues, including cartels, mergers²⁸ and vertical restraints.²⁹ Concerning the issues to which CVD's prove to be irrelevant, that are hard to identify without empirical research, we could at least spur on the development towards the international convergence of antitrust policies by rejecting the defenses based on cultural differences. But, what could we do concerning the issues to which CVD's prove to be relevant? The answer is three fold: (i) in the short run, we could be more successful in designing and implementing antitrust policies in different countries, if we could consider more seriously the cultural texture of those countries; (ii) in the long run, we should think about promoting the change of national cultures into more competition-friendly ones and pursuing synergy among different cultures; (iii) we could implement new survey of CVD's to examine whether there has been significant cultural changes in any countries since 1970s, which may signal a greater receptiveness to antitrust policies, depending on which CVD index scores are changed and in what direction.

A. Aligning Antitrust Policies with National Cultures

Nations often adopt antitrust statutes that are not consistent with their citizen's cultural values, and have difficulties in implementing them. Of course, even US have some difficulties in implementing its antitrust laws. For instance, business people do not always feel guilty about their price fixing.³⁰ But this kind of difficulties could be much more serious in different cultural context. In countries which show the combination of high's and low's in CVD ranks different from that of US, or which rank low in U-I, cartels could be more pervasive. People in those countries might be more likely to collude without feeling guilty. The antitrust agencies in those countries might have more difficulties in persuading their people that cartels are bad. To make things worse, it's often so hard to detect and prove cartels, especially in oligopoly situations. People who deem cartel as a form of cooperation could be very reluctant to cooperate in discovering cartels.

The performance of leniency program, a device to cope with the difficulties in detecting and proving cartels, could also be heavily dependent on the cultural values of the citizens.³¹ In a culture, which regards cartel as a form of cooperation rather than a

²⁸ Despite of the recent development towards the convergence of merger regulation, it seems hard to find any reason to believe that nations' CVD index scores will prove to be irrelevant to the performance of merger regulation.

²⁹ Vertical restraints could be perceived as a form of cooperation in some cultures, and incline to reduce the uncertainty that competitive process provides. Thus the performance of antitrust policy against them could prove to be in close correlation with IDV and UAI.

³⁰ Cartels often create sympathy or fellow-like feeling among participants for successful conspiracy. See David Sally, Two Economic Applications of Sympathy, 18 J.L. Econ. & Org. 455 at 465-66 (2002).

³¹ On the cultural importance of antitrust enforcement in U.S. that enables the leniency program to function well, see W. Todd Miller, Whistleblowing on Conspiracies and Cartels: Risks and Lessons from South (East?) of the Border, Victoria, B.C. (April 24, 2001).

conspiracy for crime, an informer is nothing but a betrayer. And if the provisions for criminal sanctions against cartels do not work due to the resilience of cultural factors, only a few will dare to be a betrayer to avoid non-criminal sanctions.

So what shall we do? “Be patient.” is this article’s first suggestion. For most of the countries in the world, antitrust laws came from abroad.³² Moreover, if their cultural textures are not so competition-friendly, they need time to adapt themselves to the foreign culture of competition. Their antitrust laws might work quite differently from their original prototype, especially on their initial stage of development. Some countries might put too much stress upon unfair practices or deceptive advertising rather than cartels or mergers.³³ Other countries might introduce in their antitrust statutes quite alien elements that are generally regarded as irrelevant to competition policies, such as equality and discrimination.³⁴ Though these statutes or their implementation look unbalanced or wide of the mark at first glance, they could substantially contribute to the citizens’ adaptation to the foreign culture of competition.

The second suggestion of this article is that nations could get on the track by aligning their antitrust policies with their own cultures that could be described with CVD indexes.³⁵ Assume that nation X wants our advice in designing and implementing its antitrust policies. And also assume that X scores high in the CVD of Y which is in close and positive correlation with the performance of antitrust policy concerning issue Z, while X scores high in the CVD of YY which is in close and negative correlation with the performance of antitrust policy concerning issue ZZ. In that case, we could recommend that, in the short run, X had better put more stress on the adoption and implementation of antitrust policy concerning issue Z than ZZ, as it could be much more fruitful owing to the support of X’s national culture characterized by the high CVD index in Y. And accumulating positive achievements concerning issue Z, X could gradually put

³² Canada’s competition legislation preceded that of US by a year. On the indigenous roots of European competition laws, see David J. Gerber, *Law and Competition in Twentieth Century Europe: Protecting Prometheus*, Chapters II-V (2001).

³³ Korea (South) put in force the Monopoly Regulation and Fair Trade Act (MRFTA) in 1981. During the first 13 years of its enforcement, the ratio of the cases concerning improper concerted acts (cartels and cartel facilitators) to the entire cases, in which Korea Fair Trade Commission used corrective measures against the violations of MRFTA, was only 1.09%. But the ratio increased to 6.28% by 2001. The statistics on the enforcement of MRFTA, written in Korean, are available at <http://www.ftc.go.kr/stat/stat.htm>.

³⁴ Eleanor M. Fox, *Equality, Discrimination, and Competition Law: Lessons from and for South Africa and Indonesia*, 41 *Harv. Int’l L. J.* 579 (2000).

³⁵ On the ground of his internal view of social norms, Robert D. Cooter wrote, “The primary way to prompt people to instill civic virtue in each other is by aligning law with morality. When law aligns with morality, individuals who cultivate morality necessarily acquire civic virtue. Consequently, the law enlists the force of internalized morality to achieve the ends of the state.” Robert Cooter, *Do Good Laws Make Good Citizens?: An Economic Analysis of Internalized Norms*, 86 *Va. L. Rev.* 1577 at 1597 (2000).

more and more stress upon the antitrust policy concerning ZZ.³⁶ The successful implementation of antitrust policy concerning ZZ requires the conciliation of X's national culture characterized by the high CVD index in YY.³⁷

However, success in one area does not guarantee the change of national culture that is required for the success in other areas, which means that we might want to help the change of national cultures take the direction towards more competition-friendly ones.

B. Towards More Competition-Friendly Cultures

1. The Need for More Competition-Friendly Cultures

The correlation between nations' CVD indexes and their antitrust policies could be examined from various points of view. The above illustration of cartels focuses on the strictness of antitrust policies. But more promising point of view might be the performance of antitrust policies. From that point we could measure the correlation between nations' CVD indexes and the degree in which their antitrust policies accomplish their missions, such as enhancing consumer welfare and promoting innovation. Lawyers and economists could cooperate in identifying the goals of nations' antitrust policies and developing economic indexes to measure the degree in which antitrust policies reach their goals. And after the survey of the actual performance of nations' antitrust policies, econometricians could help us to describe the correlation between nations' CVD indexes and the performance of their antitrust policies in numeral letters.

When the research leads us up to this point, we should be confronted with the question, "Which combination of CVD indexes are superior to others in relation to the performance of antitrust policies?" This is a serious question. A particular country's combination of CVD indexes could prove to be the best one. Or, more likely, we might be able to assemble a model culture for antitrust policy by using the CVD indexes of best performers in each area of antitrust policies.³⁸ In any case, we could not avoid the issue

³⁶ Robert D. Cooter explains the interrelation between law's alignment with citizen's morality and the respect for law as follows: "These two mechanisms for support of law by citizens--alignment of law with morality and respect for law--are allegedly interrelated. According to some philosophers, when citizens reflect upon the state, they often evaluate its performance against standards of justice. If the state performs well relative to these standards, then reflective citizens conclude that the law deserves respect. Once citizens respect the law, they obey it habitually in their daily lives. Thus a just state achieves stability by generating its own support among reflective citizens." *Id.* at 1600.

³⁷ In designing regulation for nations, experts often take into account the industrial infrastructure of them. E.g., Russell Pittman, Chinese Railway Reform and Competition: Vertical or Horizontal Restructuring, US Department of Justice, Antitrust Division, Economic Analysis Group Discussion Paper, EAG 02-2 (March, 2002). Likewise we could take into account the cultural infrastructure of nations in designing antitrust policies.

³⁸ If any nation's culture did not reach the optimal level for antitrust policies yet, the diversity of cultures could facilitate innovation of antitrust policies through the competition among cultures. The most radical measures to promote innovation among regulators through increased competition has been suggested in

of promoting competition-friendly cultures for the better performance of antitrust policies.³⁹ Nations might want to adjust their own cultures to improve the performance of antitrust policies.⁴⁰

And if we pursue the international coordination of antitrust policies, it might be desirable for nations to adjust their cultures as well as their antitrust policies for successful coordination. As long as national cultures and the adoption and the implementation of their antitrust policies are in close correlation, unadjusted national cultures could resist the coordination itself or seriously undermine the effectiveness of the enforcement of coordinated policies. Similar impediments could get in the way to the negotiation for international antitrust policies. Even if various techniques of international negotiation and adequate forum could help us to persuade countries with different cultures to cooperate in adopting international antitrust policies, these policies could perform badly until the national cultures of participants are actually adjusted in accordance with them. The resilience of unadjusted national cultures could be more persistent when the enforcement of the international antitrust policies remains at the hands of local agencies.⁴¹

2. The Possibility of National Culture Changes

Despite the eminent need for more competition-friendly cultures, national cultures are generally perceived as extremely stable. Geert Hofstede found only small changes within the IBM data between the survey cycles of 1967-69 and 1971-73.⁴² And after examining possible refutations, he concluded: “Mental programs [cultures] do change, but slowly

connection with securities regulation: Stephen Choi and Andrew Guzman, *Portable Reciprocity: Rethinking the Reach of U.S. Securities Regulation*, 71 S. Cal. L. Rev. 903 (1998); Roberta Romano, *Empowering Investors: A Market Approach to Securities Regulation*, 107 Yale L.J. 2359 (1998); Stephen Choi, *Law, Finance and Path Dependence: Developing Strong Securities Markets*, 80 Tex. L. Rev. 1657 (2002).

³⁹ Good performance of a country’s antitrust policy could directly lead to the promotion of its international competitiveness. See William J. Kolasky, *Using Competition Policy to Promote International Competitiveness*, Address Before the American Chamber of Commerce, Seoul, Republic of Korea (Nov. 14, 2002), available at <http://www.usdoj.gov/atr/public/speeches/200485.htm>. The data on nations’ competitiveness in the Global Competitiveness Report 2001-2002 of World Economic Forum suggests that there could be a correlation between nations’ competitiveness and their CVD indexes. Among the top 10 rankers in growth competitiveness rankings (Finland, US, Canada, Singapore, Australia, Norway, Taiwan, Netherlands, Sweden and New Zealand), 6 countries (US, Canada, Australia, Netherlands, Sweden and New Zealand) are top 10 rankers in our U-I index, and 4 countries (US, Canada, Australia and New Zealand) have the combination of high’s and low’s in CVD ranks similar to that of US. We could find similar patterns among the top 10 rankers in current competitiveness index ranking and the top 10 rankers in innovation subindex. See Porter et al., *supra* note 15, at 15, 41.

⁴⁰ On citizens’ motive to change their preferences, Robert D. Cooter wrote, “People will tend to change their preferences when doing so increases their opportunities sufficiently to increase their satisfaction relative to their initial preferences and their final preferences.” Cooter, *supra* note 35, at 1595.

⁴¹ On the possibility that statutorily similar antitrust policies could be radically different as enforced, see Andrew T. Guzman, *Is International Antitrust Possible?*, 73 N.Y.U. L. Rev. 1501 at 1540 (1998).

⁴² Hofstede, *supra* note 6, at 35.

and not according to anyone's master plan. Changes take decades, if not centuries."⁴³ If this means that we could not expect significant culture changes towards more competition-friendly ones in the near future, and that there is nothing we could do to promote more competition-friendly cultures, it would mean too much frustration for antitrust. Fortunately, however, we could find several clues for national culture changes towards more competition-friendly ones in Hofstede's work.

As Hofstede indicated, the two surveys by IBM were only 4 years apart,⁴⁴ and almost three decades have passed since the 1971-73 survey. It's highly probable that national cultures have already changed significantly, not only because a few decades have passed, but also because the recent development of telecommunication technologies have increased the speed of cultural changes. Hofstede himself admitted that "the products of scientific discovery (including mass media) represent the major force of culture change",⁴⁵ although influences of new technologies could affect all countries without necessarily changing their relative position or ranking.⁴⁶ We don't need the culture changes that invalidate the country dimension index score which describes the country's relative positions to the other countries in the set. We only need the changes that reduce the differences among nations. As long as cultural changes have already occurred, there could be a chance that the changes point to more competition-friendly cultures.

And we don't even necessarily need the change of all the CVD index scores. We just need the score changes in CVD's that are closely correlated with antitrust policies. In the previous chapter we found that IDV and UAI might be in close correlation with antitrust policies against cartels. Even in the short period of 4 years between the two surveys mentioned above, Hofstede found increased individualism for countries that had become richer.⁴⁷ He even suggested that country differences in IDV may become smaller with increasing affluence in the future, although they are very unlikely to disappear.⁴⁸ If we implement new survey of IDV, we might be able to discern much more increase in IDV index scores of many countries that have become richer during the past 30 years. This could mean that many national cultures have already become more competition-friendly.

Even though Hofstede could not identify any meaningful change in UAI scores, he found in developed countries a strong negative correlation between their populations' total life satisfaction and their scores on the Uncertainty Avoidance Index.⁴⁹ So if we implement new survey of UAI, we might be able to discern some decrease in UAI index scores of

⁴³ Id. at 454.

⁴⁴ Id. at 35-36.

⁴⁵ Id. at 34.

⁴⁶ Id. at 36.

⁴⁷ Id. at 254-55.

⁴⁸ Id. at 209.

⁴⁹ Id. at 157-58.

countries which, developed or not, have experienced increase in their populations' total life satisfaction during the past 30 years. This could also mean that several national cultures have already become more competition-friendly.

Now let's move on to the more problematic issue of culture changes: what could we do to help national cultures change into more competition-friendly ones? We might not be able to change national cultures by design. But it does not necessarily mean that there is absolutely nothing we could do to help culture changes take a more desirable course. If we are not pursuing the impossible goal of bringing about instant cultural changes, but the modest goal of doing our best for next generation, there could be a vast range of possible measures for influencing the course of national culture changes. We could find some clues in history, e.g. in the process of Japan's modernization, or borrow some know-how's of changing organizational cultures from the discipline of business management. However, these kinds of measures are way beyond the ordinary scope of antitrust policymaking. Thus this article focuses much more narrowly on how the insight into nations' CVD indexes could help antitrust policies influence the course of national culture changes so that competition could prevail.⁵⁰

3. The Impact of Antitrust Policies upon National Cultures

Competition advocacy is the activities of antitrust agencies that are closely related to the promotion of competition-friendly cultures.⁵¹ The insight into the correlation between cultures and antitrust policies could help antitrust agencies to cope with the resilience of cultural factors within the rest of the government as well as among citizens in promoting the culture of competition.

As long as citizens perceive competition as a foreign idea, they could not apply sufficient energy and spirit to promote rigorous competition. So the best way for nations to promote the culture of competition is to find relevant traditions in their own history. In that way nations could facilitate the sense of historical continuity in promoting competition. Westerners will have no difficulties in finding affluent traditions of competition-friendly cultures in their history.⁵² However, it could be hard to find an equivalent to the culture

⁵⁰ On the function of antitrust as a social tutorial that could aid the commercial culture to internalize competitive value, see Lawrence A. Sullivan, *Is Competition Policy Possible in High Tech Markets?: An Inquiry into Antitrust, Intellectual Property, and Broadband Regulation as Applied to "the New Economy,"* 52 Case W. Res. L. Rev. 41 (2001).

⁵¹ A report of the Competition Advocacy Working Group of ICN defines competition advocacy as follows: "Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition." The Advocacy Working Group, *Advocacy and Competition Policy* at 25 (2002), available at <http://www.internationalcompetitionnetwork.org/advocacyfinal.pdf>.

⁵² David J. Gerber wrote: "Competition law in Europe is based primarily on ideas developed by European thinkers and decision-makers in response to European conditions, and it has spread through Europe along indigenous channels rather than through emulation of US antitrust law." Gerber, *supra* note 32, at 3.

of marketplace competition in the history of non-western countries. In that case, we could try to find the traditions that are most closely related to competition in their history. As an example, the tradition of innovation could be found in many cultures. We could encourage them to revive the tradition. And then we could help them to get familiar with the notion of competition by putting more stress upon the idea of “competition for innovation” or “innovation for competition” in designing and implementing antitrust policies. We could also revive the tradition of cooperation in most cultures, and help them to get familiar with the notion of “cooperation for competition”.⁵³

The insight into nations’ CVD indexes could help us in these processes. Assume that low scores in IDV represent the high willingness to revive the tradition of cooperation, while low scores in UAI represent the high willingness to revive the tradition of innovation. And also assume that nation X scores high in IDV and low in UAI, while nation Y scores low in IDV and high in UAI. From these indexes we could infer that the nation X is more willing to revive the tradition of innovation than Y, while Y is more willing to revive the tradition of cooperation than X. Thus we had better put more stress on “innovation for competition” in designing and implementing antitrust policies for X, while we’d better focus on “cooperation for competition” for Y.

We could apply similar measures in international setting. We could enhance international coordination of antitrust policies by emphasizing cultural values, such as innovation and cooperation, that are closely related to competition and could be shared by the participating countries. We could identify such values by consulting the CVD indexes of the participants. And we could also help the negotiation for international antitrust policies by emphasizing universal cultural values that are closely related to competition in designing international antitrust policies. By consulting the CVD indexes of nations we might be able to identify a culturally optimal international antitrust policy.

Even if it’s hard to find the greatest common measure among widely different cultures, we could enlist the least common denominator, a higher cultural value, to embrace all the antagonistic values.⁵⁴ And from its origin antitrust has always pursued such value:

⁵³ The National Cooperative Research and Production Act of 1993 (NCRPA) contains all these elements: competition, cooperation and innovation. Although NCRPA provides some protection only to research and production joint ventures, its original draft, written by Thomas Jorde and David Teece under the title of National Cooperative Research and Commercialization Act (NCRCA), provides the same protection to commercialization joint ventures as well. See Thomas M. Jorde and David Teece, *Innovation, Cooperation, and Antitrust*, in *Antitrust, Innovation, and Competitiveness* 47 at 71-81 (Thomas M. Jorde and David Teece ed., 1992). The NCRCA of Jorde and Teece seems to contain the melodies that touch the strings in the hearts of people from different cultures. EU adopted Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements (2001/c 2/02), which covers not only the cooperative research and production, but also the cooperative commercialization among competitors. The NCRCA of Jorde and Teece could be a model for international antitrust rules for the cooperation among competitors in that it makes competition ultimately compatible with universal cultural values, such as innovation and cooperation.

⁵⁴ On the structure of people’s preferences, Robert D. Cooter wrote, “The preferences of people have structure. To illustrate, a person’s choices might reveal a preference for milk over soda. Behind this choice might lay a preference for health over infirmity. The first-order preference is for milk and the second-order preference is for health. Behind our particular preferences lie more general, abstract preferences. The

progress.⁵⁵ In the global community, in which many countries still do not feel comfortable with the notion of competition in the marketplace, progress could be the centripetal force that could gather all the members of the community and help them to adapt themselves to the paradigm of global market economy geared with antitrust policies.⁵⁶

V. Conclusion

The CVD framework could provide us a bird's-eye view of cultures and antitrust policies of the world. It describes cultures in measurable terms and enables us to measure the correlation between cultures and antitrust policies in numeral letters. If we could develop economic indexes that could measure the performance of antitrust policies, we could figure out which CVD's are responsible for the performance of antitrust policies and how much. By assembling the CVD indexes of best performers in each area of antitrust policies, we might be able to create a model culture for antitrust policies.

We could consult nations' CVD indexes in various phases of designing and implementing antitrust policies. The insight into nations' CVD indexes could help us design "tailor-made" antitrust policies for nations. We could align antitrust policies with nations' cultures, that are characterized by CVD indexes, for better performance of antitrust policies. We could also promote the culture of competition by emphasizing competition-friendly cultural values, that could be identified by consulting nations' CVD indexes, in designing and implementing antitrust policies.

All these measures could be extended into international setting. The CVD framework could be most beneficial to the negotiation for international antitrust policies, as it helps us to deal with different cultures in global scale. And it could also help us in various activities concerning the international cooperation for competition policies, including

existence of different orders of preferences provides a potential explanation for how a rational person would choose his own preferences. In general, higher-order preferences can provide a guide for changing lower-order preferences. If a person's lower-order preferences determine his opportunities, then he might choose his lower-order preferences so that the resulting opportunities maximize his higher-order preferences." Cooter, *supra* note 35, at 1595-96.

⁵⁵ Gavil, *supra* note 2, at 1247-1249.

⁵⁶ On the role of antitrust policies in advancing the national economy and the global economy as a whole, see Joseph Seon Hur, Capacity building and technical assistance in the area of competition policy: Korea's Experiences and Suggestions, Address Delivered to the OECD/GFC (Mar. 18, 2002), available at <http://ftc.go.kr/data/hwp/20020214.doc>. See also William J. Kolasky, The Role of Competition in Promoting Dynamic Markets and Economic Growth, Address Before the Tokyo America Center, Tokyo, Japan (Nov. 12, 2002), available at <http://www.usdoj.gov/atr/public/speeches/200484.htm>; Nam-Kee Lee, Competition Policy and Economic Growth and development -Lessons from experiences of Korea, Address Delivered to the Conseil de la Concurrence 15th Anniversary Conference (13 Feb, 2002), available at <http://ftc.go.kr/data/hwp/20020213.doc>.

advocacy, capacity building and outreach program (technical assistance).

The beneficiary of the research of nations' cultures and antitrust policies include: international organizations and institutions, such as WTO, OECD, UNCTAD, ICN and possibly World Bank⁵⁷; national and international antitrust agencies; and international antitrust lawyers and scholars. These organizations and people could greatly help us in implementing the research. The existing researches and experiences of OECD, UNCTAD, ICN and World Bank concerning advocacy, capacity building, economic development and international cooperation will greatly help us to implement the research. ICN and OECD could help us in implementing the survey of culture, economic reality and the performance of antitrust policies of their member countries. As each country has its own personnel and budget that could be used for the survey, funding problem of the research could get much easier. ICN could help us by granting access to the data it has already collected, as it has surveyed its members and received fairly voluminous information which could be helpful to the research. International antitrust lawyers and scholars could help us interpret the results of the research with their affluent experiences of dealing with different cultures in the context of antitrust.

The cost of research could be even more remarkably reduced, if we use existing results of the cross-cultural psychologists' researches on nations' CVD indexes. Or we could confine the new survey to the CVD index(es) developed for our specific purpose of studying cultures and antitrust policies, or the indexes that are in close correlation with antitrust policies. If we implement a new survey of nations' CVD indexes, the results could also be used for the research of other global issues, such as corporate governance laws. And the survey of the performance of antitrust policies could give us another critical insight into the issue by itself.

What we urgently need is a bird's-eye view. As we have to deal with global antitrust issues, we need a global perspective. And CVD framework could help us to have one. There seems to be no other alternative that could give us such an insight within one or two years' research. If we start soon enough, we could help WTO to conclude a Multilateral Competition Agreement in 2005. The resources required for the research might be the minimal cost of such an insight. The outcome will be worth the efforts.

⁵⁷ On the proper role of international organizations in the process of the internalization of antitrust policies, see Merit E. Janow, *Observations on Two Multilateral Venues: the International Competition Network (ICN) and the WTO* (Working Draft: Prepared for the Fordham Corporate Law Institute Twenty-Ninth Annual Conference on International Antitrust Law and Policy October 31 and November 1, 2002), available at <http://www.columbia.edu/~mj60/PDF/janow.fordham.pdf>; Merit E. Janow, *What Role for Competition Policy in the WTO?* (Prepared for forthcoming book, *The Next Trade Round*, A. Appleton Ed., Kluwer Pub. 2003), available at <http://www.columbia.edu/~mj60/PDF/janow%20rorcam%20912.pdf>.

APPENDIX

U-I Index

rank	country or region	index*
1	Great Britain	98.5
2	United States	96
3	Denmark	96
4	Sweden	93
5	Canada	91
6	Ireland	89.5
7	Australia	89
8	New Zealand	87.5
9	Netherlands	84.5
10	Jamaica	81
11	Norway	79
12	India	78
13	South Africa	77.5
14	Switzerland	73
15	Italy	70
16	Finland	68.5
17	Germany	68
18	Philippines	67
	Singapore	67
20	Hong Kong	66.5
21	Malaysia	64
22	Iran	61.5
23	Austria	60.5
24	East Africa (region)	56
	France	56
26	Arab Countries (region)	54.5
27	Israel	54
28	Belgium	50.5
29	Indonesia	48
30	West Africa (region)	48
31	Brazil	48
32	Spain	46.5
33	Argentina	44
34	Thailand	44
35	Turkey	42.5
36	Mexico	40
37	Japan	37.5
38	Taiwan	36
39	Pakistan	31

40	Ecuador	30
41	Uruguay	29
42	Chile	28.5
43	Ugoslavia	28
44	Korea (South)	27.5
45	Venezuela	25.5
46	Greece	25
47	Columbia	25
48	Portugal	22
49	Costa Rica	20.5
50	Peru	18
51	Salvador	17.5
52	Panama	15.5
53	Guatemala	4

* U-I index is the sum of each country's or region's UAI rank and its reverse rank in IDV. When multiple countries rank the same in Hofstede's research, the average of the upper next rank and the next lower rank is regarded as the countries' rank. For instance, Brazil and Venezuela rank 21st together in UAI. So their UAI rank is regarded as 21.5, the average of 20 and 23.