

As far as export cartels are concerned, the gap between policy prescriptions and its actual practice is widening. If tariff policies are no longer available to constrain international competition, attempts are being made to change competition and antitrust laws themselves. Export cartels are increasingly coming to be viewed as an instrument of strategic trade policy. A national government exempting its export cartels, it is argued, would permit cartels based in its territory to capture supra normal profits in international markets. This Paper argues that there is only limited support from economic analysis for such a presumption.

Another reason for export cartels arises when a major importing country negotiates a restriction on exports from foreign sources. For instance, in the last three decades the U.S. and the E.U., among others, have negotiated many voluntary export restraints (VERs) or voluntary import expansion agreements (VIEs), or have imposed anti-dumping duties on many goods they import from Japan and elsewhere. In the Japanese case, at least, the use of such "managed" trade policy has led to the emergence of export cartels in Japan. Furthermore, VERs and VIEs can facilitate cartels in both exporting and importing countries.

In contrast, some other cooperative arrangements among firms, even those in similar lines of business, have the potential of being beneficial. For example, research joint ventures (RJVs) can benefit the member firms, as well as being efficiency enhancing for the economy at large, provided the RJV firms do not collude in selling their products. Moreover, export consortia established in smaller economies (including Canada) where firms are not usually large by global standards can assist those firms in competing more effectively in the international market place. Such participation can enhance the degree of competition in the market, contributing to dynamic economic benefits.

This Paper argues that the pro-efficiency contributions of export consortia should be recognized and permitted (as they are under the current Competition Act in Canada), while the potential cartelizing and price-fixing elements should be restrained. Therefore, a per se prohibition of export cartels clearly is not desirable. On the other hand, it is for consideration whether broader Canadian interests might lie in supporting proposals to replace the current export cartel exemption found in the competition statutes of most OECD countries as part of a comprehensive multilateral or plurilateral review of competition issues and trade remedy practices. Economic theory indicates that a case-by-case rule of reason application of competition policy law is preferable, although trade policy experience would indicate that such an approach would also require mutually agreed guidelines on the operation of rule of reason procedures to foreclose the unilateral adjustment of such criteria by our major trading partners.