

Two recent cases illustrate how these provisions operate. In one case an automobile manufacturer (British Leyland) sued a parts manufacturer for making and selling copies of BL parts. BL had licenced other manufacturers to do so, but had not licenced the particular firm concerned. The defendant argued that BL was abusing a dominant position, in terms of Article 85 and 86 of the Treaty of Rome. The court rejected this and found for BL citing the provisions of copyright.²⁵ A different case, again involving automobile parts, concerns Ford Motor Company Ltd.; this case is different than the BL case because what was at issue was the policy of Ford of not granting licences to manufacture or sell replacement body parts for Ford vehicles (there was also the issue of parts the designs of which could be "registered designs"). In the case of Ford, the situation was investigated by the Office of Fair Trading to determine whether, in the view of the Director General, Ford's practices were "anti-competitive". The Director General expressed his opinion that they were anti-competitive, and recommended a reference to the U.K. Monopolies and Mergers Commission.²⁶ The purpose of such a reference is to establish whether or not an anti-competitive practice is contrary to the public interest. In its report the Commission argued for changes in the U.K. law to reduce the duration of protection under copyright for the parts at issue.²⁷ Ford continued its court actions against various parts producers for alleged breach of copyright; meanwhile, the Commission of the Communities thereupon opened proceedings designed to force Ford to grant licenses to independent suppliers against payments of royalties. The proceedings were halted when Ford agreed.²⁸

These provisions do not concern only domestic commerce. U.K. producers have, as would be the case with patents, used these rights to combat imports. In this context it is important to keep in mind that the protection they invoke under the copyright act arises from the existence of a drawing of the design of the part or product at issue; the drawing need not have been made in the U.K.²⁹ We do not wish to comment on current cases in which U.K. producers are suing or threatening to sue importers; these are either the subject of private discussion or are before the courts; some of these involve imports and the disposition therefore is a legitimate concern of trade policy, and should be a concern of competition policy.

The U.K. authorities have recognized that these copyright provisions give protection, in domestic commerce and in trade, going beyond that available in other countries. In the Green Paper on reform of the copyright law, essentially a discussion document, it was proposed to remove protection from "purely functional designs", "Whatever that may be", as The Economist noted.³⁰ There the matter rests.

Summary

In this appendix we have noted a variety of policy devices: procurement, product standards, patents, subsidy policies, copyright and so forth. The object has been primarily to make the point that these are areas where trade policy and competition policy are both involved. We have shown that what is, in effect trade policy, is often implemented by the use of devices outside the confines of trade policy and by bureaucrats (or by courts) applying their own versions of trade policy, often in contradiction with trade policy. And frequently they pay even less regard to the logic of competition policy than they do to concepts of trade policy.