

standards.⁴⁹ More unusual is the suggestion that an international antitrust authority could be empowered to sue in a contracting party's national court when the contracting party has failed to enforce its law in violation of its obligations. A dispute resolution mechanism is proposed.

4.2 Is There a Case for a Limited Anti-Export Cartel Multilateral Obligation?

It is reasonable to ask whether, in light of the globalization of business, there should be a change of course in competition policy regarding export cartels.

Past efforts to constrain export cartels have not been successful. International cartels were studied in the late 1920s under the League of Nations. Addressing the drift toward cartelization during the Depression and World War II, President Roosevelt declared in 1944 that cartels that restrict the flow of goods in foreign commerce must be curbed. This drive to restrict export cartels was reflected in the proposals for the Havana Charter for the International Trade Organization, which, of course, was still-born.

More recent efforts to discipline various restrictive business practices have faltered. In particular, a Restrictive Business Practices Code and the Transfer of Technology Code begun in the 1970s, broke down over the differences between the industrial and developing countries. The 1976 OECD Guidelines reflect a symbolic success, to the degree that export cartels are at least openly flagged. These Guidelines, among other points, state that enterprises should:

- Refrain from participating in or otherwise purposely strengthening the restrictive effects of international or domestic cartels or restrictive agreements which are not generally, or specifically accepted under applicable national or international legislation.

The OECD updated its recommendation in 1986 urging:⁵⁰

- When considering whether to order or approve export or import limitations, governments of member nations should take into account the effect of such limitations on competition and on their trading partners.

⁴⁹ This assumes, of course, that the evidentiary threshold required for enforcement can be met by authorities.

⁵⁰ OECD, *1986 Council Recommendation for Co-operation between Member countries in Areas of Potential Conflict between Competition and Trade Policy*, in *Competition Policy and International Trade, Instruments for Co-operation*, Paris, 1987.