

1. Introduction¹

A growing number of economic policy instruments have become subject to international discipline. As a result, the remaining national policy tools have become increasingly salient to domestic interests searching for some advantage. In parallel, the international community has become concerned that the remaining instruments falling outside effective multilateral commitments not be misdirected to protect or improve the terms of trade of domestic firms. In such an environment, any perception that governments manipulate markets for the benefit of domestic firms raises questions regarding the national competition regime and its application. Exceptions to national competition law and the selective or discriminatory application of these laws is thus coming under increased international scrutiny.

The purpose of the paper is to highlight a specific issue, the tolerance of export cartels under most national competition laws. Export cartels permit the shifting of profits from foreigners to home-country firms, presumably on grounds that no national is injured and that domestic producers profit. Virtually every nation has laws or policies that permit export cartels to operate from within its borders. Export cartels are authorized by governments or are broadly exempted from competition law. Their alleged purpose is to increase the quantity and value of exports, especially by domestic firms that are small players in international markets.

In an integrating world economy, the treatment of export cartels goes to the heart of the trade-competition interface, particularly the direct relationship between market integration and competition. Countries have become increasingly vulnerable to the actions of foreign actors due to the growing interdependence of international markets. In the past, many claims related to alleged export cartel activity were dismissed or went unchallenged on the grounds that, because they did not demonstrate the requisite effect on home markets, the domestic courts lacked jurisdiction. This jurisdictional requirement is unlikely to be a barrier to future antitrust action in view of the growing interdependence of markets.

The basic premises of this paper are:

- the effects of competition policies spill across national borders, and trade and competition policies are interrelated;

¹ The authors thank the following for their comments: Keith Christie, Nicolas Dimic and Prue Thomson from Foreign Affairs; Derek Ireland, Don Partridge and Margaret Sanderson from the Competition Bureau; and Gilles Gauthier from Finance. Mrs. Joanne Burger provided valuable research assistance. Of course, the responsibility for the views expressed in this Paper remains with the authors. A segment of this Paper was used for the inter-departmental preparations of the OECD initiative on trade and competition.