

CHAPTER I

INTRODUCTION

The purpose of this paper is to examine the proposition that the emerging system of "contingency protection"¹, is, in many aspects, in conflict with the objectives of competition policy. The system of "contingency protection" is the trade policy system centered on measures against "unfair" trade, and "safeguard" or "escape clause" measures, which has developed slowly since the General Agreement on Tariffs and Trade² was launched in 1947, and which was endorsed and sanctioned by the Multilateral Trade Negotiations of 1973-79. Competition policy purports to provide a legal regulatory system to restrain the abuse of monopoly or oligopoly power, abuse which would lessen competition; those elements of the trade policy system which are directed at so-called "unfair" methods of import competition (dumping, subsidization) invoke standards different from those of competition policy. To the extent, therefore, that some elements of trade policy legislation are directed against practices in import trade which, when occurring in domestic commerce, are dealt with under the different standards of competition policy, those elements of trade policy may confer additional protection on domestic producers. This additional protection, like protection by a tariff imposed at the frontier, imposes costs. Further, and more particularly, the contingency protection system involves or endorses actions, such as agreed increases in prices by exporters to the national market, or limitations on quantities to be supplied to the national market, which, if taken without the cover of trade policy legislation, would be recognized as anti-competitive in effect, and frequently actionable under competition law. Under the various national anti-dumping systems exporters may agree to raise prices; under so-called "voluntary" export restraint arrangements, which are "surrogates" for action under Article XIX of the General Agreement on Tariffs and Trade, exporters may agree to limit quantities exported to the domestic market. These exporters may secure economic rents from these restrictions, and protected domestic producers secure additional returns by being able to increase prices. What is required by trade policy, what is profitable under trade policy, would, under competition policy, bring substantial fines or prison sentences. This confusion or contradiction between two important branches of national economic policy brings both trade policy and competition policy into disrepute, and weakens the respect for law which the successful working of trade policy and competition policy both require.

This paper examines this issue by considering a range of trade policy measures as applied in the U.S., Canada, and the EEC in the perspective of competition policy. It attempts to describe the extent of these contradictions. However, we do not consider in any detail how and why these contradictions have developed, for the good reason that the answer to that question is relatively simple and short. In no important western country have legislators, in addressing trade policy, taken much account of the proposition that trade policy, to the extent that it addresses some of the same phenomena as competition policy,

trade policy + competition policy, some different programs

1
2

needs study, need to merge to 15:15
to a non-15:15
to a

Europe Report