

analytically similar to a tariff. Sweeping away the explicit tariffs while allowing monopoly distributors is not likely to result in genuine competition and liberalized markets. Competition policy must underpin the momentum built by the free trade regime.

The following are some of the important international issues pertaining to vertical business practices:

- Have our trading partners adopted national competition laws or enforcement practices which sanction vertical restraints that would otherwise be deemed unlawful? Is such foreclosure (while also affecting potential national industries) considered desirable as a matter of national policy aimed at precluding access to the market by foreign companies?
- Would a change in policy with respect to vertical restraints increase foreign investment in new local competitors (who are now excluded from their own domestic market), thereby increasing competition and consumer welfare in those local markets?

The purpose of this Paper is: (a) to examine various vertical restraint practices, especially with an eye to their implications for international business and markets; (b) to provide a comparative analysis of the treatment vertical business practices are accorded in the law of Canada, the U.S. and Japan; and (c) to draw out some of the implications for the coordination of trade and competition policies.

Since the 1960s, few questions in the field of industrial economics have been debated more heatedly than vertical restraints. In 1985, the Antitrust Division of the U.S. Department of Justice (AD-DOJ) under the Reagan Administration issued Vertical Restraint Guidelines on three areas of controversy. Recently, the AD-DOJ under the Clinton Administration, led by Assistant Attorney General Anne K. Bingaman, again lit a fire under the debate about the role of vertical antitrust when it withdrew the 1985 Guidelines in August 1993. The perception was that the 1985 Guidelines were too lax.³ The AD-DOJ has also issued draft guidelines on the relationship between intellectual property rights and antitrust law.

³ Rebecca P. Dick, "Antitrust Enforcement and Vertical Restraints", Department of Justice, Washington, D.C.. An address before the ABA Section of Antitrust Law and the Corporate Bar Association of Westchester and Fairfield, the Plaza Hotel, New York, 4 November 1994.