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THE CHANGING INTERNATIONAL STATUS OF EXPORT CARTEL EXEMPTIONS

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ABSTRACT

In an attempt to create more consistently pro-competitive antitrust policies, many countries have eliminated or restricted antitrust exemptions for firms engaged in export activity. Of the fifty-six countries surveyed, we find only seventeen which offer exporters an exemption from domestic antitrust laws. Thirty-three countries provide no exemption from antitrust laws for export activity, but exempt such activity implicitly: their competition laws are silent on restrictive activities that affect foreign markets. Within the last decade, at least ten countries have rewritten their laws, moving from explicit exemptions to this more passive policy of speaking only to the domestic market. However, the construction of national antitrust laws that ban only activity that harms domestic competition leaves a vacuum in which export cartels can operate with no obvious institution to restrict their activities or limit adverse effects on competition. The elimination of reporting requirements has reduced the information that we have about their activities. International cooperation to regulate and prosecute collusive activity affecting international markets could rationalize these policies and promote competition more effectively than the current haphazard set of national laws.

Key words: Competition policy; antitrust; collusion; market access; Exporting Trading Company Act; Webb-Pomerene Act

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I. INTRODUCTION

Prosecuting and deterring international cartels increasingly occupies the time and energy of competition authorities around the world. In order to provide appropriate policy instruments, policymakers have had to address a range of issues: corporate amnesty policies, extraterritoriality, building antitrust institutional capacity in developing countries, and multinational agreements for competition authorities to cooperate and share information. In a similar vein, some countries have eliminated or limited previously existing antitrust exemptions for cooperation among private firms for the purpose of exporting goods and services. Others, however, have steadfastly insisted on the importance of maintaining these exemptions.

With increasing consensus both in favor of freer international trade and in opposition to price fixing and market division agreements, these exemptions have come under criticism over the last decade. By 1991, academics were beginning to call for a change in policy toward export cartels. "[Export exemptions from antitrust laws] authorize firms to collaborate to engage in anticompetitive behavior in foreign markets, at the expense of other countries' consumers and producers, in a manner that would be unlawful if undertaken at home."[1] Spencer Weber Waller, the preeminent expert in this area, wrote that "the absence of international regulation pertaining to the use of export cartels leaves a conspicuous gap in the enforcement of competition norms."[2] The Organization for Economic Co-Operation and Development ("OECD") voiced similar criticism, calling for the "worldwide repeal of cartel exemptions coupled with an efficiency defense."[3]

Whether in response to these criticisms or broader economic and political forces, over the last decade many countries have eliminated or limited explicit antitrust exemptions for exporters and the associated notification requirements. In part, this reflects an international movement toward

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[1] A. Paul Victor, *Section: Antitrust in a Global Environment: Conflicts and Resolutions: Export Cartels: An Idea Whose Time Has Passed*, 60 ANTITRUST L.J. 571, 571 (1991).

[2] Spencer Weber Waller, *The Failure of the Export Trading Company Program*, 17 N.C. J. INT'L L. & COM. REG. 239, 272 (1992) [hereinafter Waller, *The Failure of the ETC Program*]. In an earlier article, Waller argues that while the "shining success" of U.S. antitrust law in the latter part of the 20th century is our strong stance against international cartels that harm U.S. consumers, we have a "poor history of responding to the challenges posed by single-country export cartels." *See* Spencer Weber Waller, *The Ambivalence of United States Antitrust Policy Towards Single-Country Export Cartels*, 10 NW. J. INT'L L. & BUS. 98, 99 (1989).

[3] Organization for Economic Co-operation and Development (OECD), OBSTACLES TO TRADE AND COMPETITION, 11, (1993).

creating stronger cooperation in competition policy, as well as more uniform rules and enforcement.[4] In this article, we document this shift and discuss its implications for antitrust enforcement and the effectiveness of global competition.

A few countries, such as the U.S. and Australia, continue to offer explicit export exemptions. The question arises, is this antiquated or protectionist thinking on the part of these "hold out" countries, or is it the correct policy stance? Do we want explicit exemptions, implicit exemptions, or no exemptions at all? Many would argue that we should have no exemptions: allowing firms to fix prices for domestic *or* export purposes should be illegal. But if we cannot achieve that goal in the near future, it may be worse, not better, to have countries moving to implicit exemptions if "implicit" implies no notification, no ongoing oversight, and increased uncertainty regarding firm's vulnerability to foreign antitrust prosecution. If there are explicit exemptions, they should be based on considerations of global welfare rather than "beggar-thy-neighbor" strategies. Countries should work together either to agree to eliminate export exemptions or to adopt explicit exemptions that are jointly monitored: the current patchwork of implicit and explicit exemptions is the *least* favored approach.

This paper presents an overview of different types of "pure" export cartel exemptions (i.e., those that are intended exclusively for trade in foreign markets), documents their changing international status, and discusses the reasons for these changes.[5] Throughout the paper we will use the phrase "export cartel exemptions" because this is the phrase commonly used in policy discussions. However, many of these "export cartels" are actually "export associations" or "export joint ventures," that is, groups of firms that are permitted to work together (sometimes with clear restrictions specifying over which dimensions they may and may not coordinate). Such an association may or may not function as a classic price-fixing cartel. A "hard-core"

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[4] The European Commission issued a report in 1995 in which they begin by recommending increased cooperation among competition authorities around the world. One of the reasons for their recommendation is that "there are more and more competition problems which transcend national boundaries: international cartels, export cartels, restrictive practices in fields which are international by nature (e.g., air or sea transport, etc.), mergers on a world scale … or even the abuse of a dominant position on several major markets…." European Commission, REPORT OF THE GROUP OF EXPERTS, COMPETITION POLICY IN THE NEW TRADE ORDER: STRENGTHENING INTERNATIONAL COOPERATION AND RULES, 6 (1995).

[5] Export cartels can be "mixed," meaning that they have both domestic and foreign effects. Alternatively, they can be classified as "national" in membership (domestic firms only) or "international" in membership. The pure export cartels discussed here are usually national, but some countries, including the United States, permit foreign firms to join export associations and receive antitrust exemptions, as long as their effects are strictly outside the United States.

cartel has as its goal price fixing and/or market allocation.[6] An "export cartel" *may* have the identical primary goal, or it might have strictly efficiency enhancing goals; or it may do both. For example, the firms in the association may simply be sharing the fixed costs of marketing or transportation. Still, it is their self-selection in obtaining exemptions from antitrust laws regulating "hard core cartel" activities that sets these associations apart; therefore we will, for brevity's sake, refer to them as export cartels.

The paper proceeds as follows. Section II provides a brief overview of the motivations for export cartel exemptions. We then turn in Section III to the current policy debate about these exemptions and discuss the positions of different countries with respect to continued exemptions. Section IV gives a detailed discussion of the types of export cartel exemptions and the changing status of these exemptions around the world. We survey the antitrust laws in fifty-six countries, report on how they currently treat export cartels, and whether and why their policy has changed over the past decade. Section V draws on this analysis to offer relevant policy recommendations.

II. MOTIVATION FOR EXPORT CARTEL EXEMPTIONS AND THEIR PREVALENCE

A. MOTIVATION

As the country with the strongest and longest standing antitrust laws, the United States also adopted the earliest "export exemption" to its antitrust laws in 1918. At the time, Congress was primarily concerned with two factors that might inhibit exports: (1) the inability of U.S. firms to work together in representing their own interests vis-à-vis powerful foreign cartels, and (2) the high fixed costs of exporting, which would be particularly burdensome to small firms. Although there was a great deal of controversy about such legislation (in particular, there were concerns that the firms in these export associations would coordinate to increase domestic prices), the Webb-Pomerene Export Trade Act ("WPA")[7] passed and remains in effect today.[8]

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[6] The OECD introduced the terminology "hard core cartels" to refer to private cooperative agreements to set prices or allocate markets. *See* Organization for Economic Co-operation and Development (OECD), RECOMMENDATION OF THE COUNCIL CONCERNING EFFECTIVE ACTION AGAINST HARD CORE CARTELS, C(98)/35/FINAL (May 1998).

[7] 15 U.S.C. §§ 61-66 (2001).

[8] STAFF REPORT TO THE FEDERAL TRADE COMMISSION, WEBB-POMERENE ASSOCIATIONS: A 50-YEAR REVIEW, 1-7 (1967).

Over sixty years later, with U.S. firms facing increased competition in global markets, Congress expanded upon the antitrust exemptions provided in the WPA when it unanimously passed the Export Trading Company Act of 1982 (the ETC Act).[9] (At the time, there were 39 registered Webb Pomerene associations in existence.[10]) Congress was motivated in part by both the growing U.S. trade deficit and the perceived restrictiveness of U.S. antitrust policies[11] on the ability of U.S. firms to compete abroad.[12] Congress intended that the ETC Act would "… increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers…"[13] According to Spencer Weber Waller, Congress anticipated that the ETC Act would:

> 1) encourage the formation of well financed vertically integrated general trading companies along the line of Japanese general trading companies ("sogoshosas") to assist United States exporters with all aspects of the exporting process; 2) allow competitors to jointly exploit market power abroad to offset the power of private cartels and foreign government enterprises; and 3) unleash a wave of export activity by small and medium sized firms previously restrained by uncertainty over the application of U.S. antitrust laws. [14]

After World War II, other countries around the world adopted stronger provisions against domestic price-fixing; the number of countries with provisions for antitrust exemptions for export activities also increased. For example, Germany's 1958 antitrust law (amended since, as discussed below) required pure export cartels to go through a notification process, but exempted them from scrutiny and prosecution "provided they are intended to strengthen the competitive position of the domestic firms vis-à-vis their foreign competitors."[15]

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[9] Waller, *The Failure of the ETC Program, supra* note 2, at 243. The ETC does not supersede the WPA; both continue to exist. A handful of Webb-Pomerene associations have also been granted ETCs, such as the California Dried Fruit Export Trading Co. and Northwest Fruit Exporters. *See* James V. Lacy, *The Effect of the Export Trading Company Act of 1982 on U.S. Export Trade*, 23 STAN. J. INT'L L. 177, 185 (1987).

[10] Victor, *supra* note 1, at 573. There are currently 12 Webb-Pomerene associations registered with the Federal Trade Commission. *See* www.ftc.gov/os/statutes/webbpomerene (last visited June 19, 2004).

[11] 15 U.S.C. § 4001(a) (2003).

[12] Waller, *The Failure of the ETC Program*, *supra* note 2, at 239-240.

[13] 15 U.S.C.A. § 4001(b) (1982).

[14] Waller, *The Failure of the ETC Program*, *supra* note 2, at 240.

[15] Victor, *supra* note 1, at 576.

Australia also adopted (and maintains) an explicit exemption with notification. Australia's law recognizes that firms might want to collaborate in order to promote or facilitate exports, but is concerned about potential harm to domestic consumers: "Most nations exempt export agreements or export associations from competition regulation, and Australia is no exception. Some countries (including the United States and Australia) are, however, concerned that competition-reducing spillover effects be avoided in domestic markets, and require some sort of registration and disclosure of the arrangement."[16] Australia's guidelines justify these exemptions by noting that, "While size may not be necessary to enhance export opportunities, correct and complete market information is crucial."[17] For example, the Australian Competition and Consumer Commission is "open to arguments that an export consortium has been structured in a way such that domestic competition will not be substantially lessened, so that coordination of supply to overseas markets and information exchanged in an export consortium is quarantined from activities undertaken on the domestic market."[18]

Overall, export exemptions are only present in countries that have strong antitrust laws. They are motivated in part by mercantilist arguments in favor of increasing exports, even if this is at the expense of other countries, and by fairness arguments related to small firms that would otherwise be disadvantaged in overcoming the hurdles of entering international markets.

B. PREVALENCE OF EXPORT CARTELS

A few numbers can help to put the export cartel exemptions debate in perspective. The best data come from the U.S., where registration and pre-certification are required. Table 1 presents the U.S. data, along with intermittent data from selected other countries. Immediately after passage of the ETC Act many export trade associations applied for certificates, however, the number of applications leveled out in the mid-1990s. As of 2002, there were 155 valid U.S. export trade

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[16] Exports and the Trade Practices Act: Guidelines to the Commission's approach to mergers, acquisitions and other collaborative arrangements that aim to enhance exports and the international competitiveness of Australian industry, § 3 (September, 1997) [hereinafter Exports and the Trade Practices Act], *at* http://www.apeccp.org.tw/doc/Australia/Decision/audec1c.html.

[17] EXPORT AND THE TRADE PRACTICES ACT, § 4.

[18] EXPORT AND THE TRADE PRACTICES ACT, § 3. Note that they have two separate categories of "export agreements" and "export consortia." From the discussion in the guidelines, it appears that they use the term "agreements" to talk about firm associations that involve pricing, versus "consortia" designed for product development and marketing strategies for export operations.

certificates. Among the explanations for the modest response by firms to the ETC Act are "the dramatic appreciation of the dollar relative to other currencies in the 1980s, the widening trade deficit, the fear of disclosure of confidential business information to the government in order to receive certification, and the lack of a definitive precedent interpreting the scope of the protection provided by antitrust certification."[19]

As discussed above, Australia, like the U.S., has an explicit exemption along with a notification requirement. The Australian Competition and Consumer Commission (ACCC) can authorize an exemption if it feels that there is a potential benefit that outweighs the potential harm. As in the U.S., the annual "authorizations" for export cartels have declined from a peak of 69 in 1975 to just 4 in 2002. As of 1997, the ACCC reported that "over the years" it had received approximately 400 export agreement notifications.[20] The story is similar in Japan, where exemptions in force declined from 180 in 1973 to 2 in 1998 and 0 in 1999. Germany shows a similar pattern in annual exemptions: 227 in 1972 to 36 as of December 1999.

These data provide, at best, only a partial answer to the question of how many export cartel exemptions are issued annually by antitrust authorities around the world. The available data suggest that such exemptions are still used, but that their number is rapidly declining. Since most countries do not require registration or notification, there is no way to measure whether the use of export associations themselves is declining or whether they are still prevalent in countries where registration is not required.

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[19] Waller, *The Failure of the ETC Program, supra* note 2, at 246.

[20] "Over the years around 400 export agreements have been notified to the Commission." Export and the Trade Practices Act, § 3.

III. THE POLICY DEBATE

A. ARGUMENTS AGAINST EXPORT CARTEL EXEMPTIONS

A growing number of policymakers argue that export cartel exemptions should be abandoned and replaced with cooperative, international antitrust enforcement.[21] There are four types of arguments in favor of harmonization and cooperation. The first we think of as a defense of positive comity. As articulated in 1996 by Sir Leon Brittan and Karel Van Miret, and repeated many times since, export cartel exemptions are especially problematic because they prevent those with the most information about the activities of export cartels from helping those who might be harmed by them.[22]

A second concern is that the intended beneficiaries are not those using these exemptions. It has frequently been argued that large international companies, not small and medium-sized ones, are taking advantage of export cartel exemptions, thus defeating the purpose of the exemptions.[23] At a 2003 meeting of the WTO working group on trade and competition policy, the Thai representative acknowledged that export cartels "could sometimes be pro-competitive or have efficiency-enhancing effects" but argued that these associations "should not benefit from a blanket exemption from competition laws, which would exclude them even from scrutiny under a rule of reason (case-by-case) approach."[24] Her concern was motivated by evidence suggesting

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[21] World Trade Organization, Report on the Meeting of 20-21 February 2003, WTO Doc WT/WGTCP/M/21, at 15 (May 26, 2003); World Trade Organization, Report on the Meeting of 26-27 September 2002, WTO Doc WT/WGTCP/M/19 (Nov. 15, 2002).

[22] European Commission, Communication Submitted by Sir Leon Brittan & Karel Van Miert, *Towards an International Framework of Competition Rules: Communication to the Counsel*, Com(96)284, at 16 (1996), *available at* http://europa.eu.int/comm/competition/international/com284.html. This argument was articulated recently by the representative from Switzerland at a 2003 WTO meeting: "With regard to export cartels, … the countries that would be competent to pursue these cartels, namely those in whose markets the cartels operated, often lacked the necessary tools and information since the participating firms were located abroad. These considerations were important for small countries that had not the ability to get information from firms with main offices abroad." World Trade Organization, Report on the Meeting of 20-21 February 2003, WTO Doc WT/WGTCP/M/21, at 16 (May 26, 2003).

[23] *See* World Trade Organization, Report of the Working Group on the Interaction Between Trade and Competition Policy to the General Council, WTO Doc WT/WGTCP/7, at 14 (17 July 2003).

[24] World Trade Organization, Report on the Meeting of 20-21 February 2003, WTO Doc WT/WGTCP/M/21, at 17 (May 26, 2003).

that most export cartels involved multinational companies, and therefore that the efficiency argument was suspect.[25]

In the 1950s and 1960s this claim had validity: a 1967 study of Webb-Pomerene associations found that, "[m]ost associations are medium- to large-sized firms with assets greater than $10 million."[26] A study from the same period by Larson (1970) found that between 1958 and 1962 almost seventy percent of Webb-Pomerene Associations were composed of firms with assets of about $1 million.[27] Only 75 of the 455 firms in the sample were classified as "small" and fifty-three of these firms exported agricultural goods. Furthermore, none of the "small firm" associations functioned as a single sales agency: "Thus, scale economies and cartel protection are irrelevant for this group."[28]

It is not clear that this characterization continues to hold. In his study of ETCs, Waller finds that "the ETC program has been used almost exclusively by small export intermediaries and by trade associations focusing on a small group of products, industries, or markets."[29] Waller also argues that the number of certificates of review issued by the Commerce Department has been small and declining.[30] There is precious little empirical work on the current composition of export cartels for the primary reason that government agencies either do not collect data on them or keep that data confidential. In general, even the data for countries that require notification "can be deceiving given the fact that there may be no requirement of compulsory notification when export agreements are abandoned and no requirements for reporting cartels or agreements which do not include any restrictions on domestic commerce."[31] Even when countries do report data on exemptions, it is often aggregated with data on other types of exemptions, making it impossible

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[25] The Thai representative claimed that "a vast number of studies had shown that most such cartels involved large companies and that there was little or no efficiency justification for their practices." *See* World Trade Organization, Working Group on the Interaction between Trade and Competition Policy: Report on the Meeting of 26-27 September 2002, WTO Doc WT/WGTCP/M/19, at 6 (Nov. 15, 2002).
[26] STAFF REPORT TO THE FEDERAL TRADE COMMISSION, *supra* note 8 at 44.
[27] David A. Larson, *An Economic Analysis of the Webb-Pomerene Act*, 13 J.L. & Econ. 461, 470 (1970).
[28] *Id.* at 472.
[29] Waller, *The Failure of the ETC Program*, *supra* note 2, at 250. *See also* Spencer Weber Waller, ANTITRUST AND AMERICAN BUSINESS ABROAD, §9:24 at 9-56 (2003). Similar conclusions have been drawn by William Nye, *An Economic Profile of Export Trading Companies*, 38 Antitrust Bull. 309 (1993) and J. Whitney, *The Causes and Consequences of Webb-Pomerene Associations: A Reappraisal*, 38 Antitrust Bull. 395 (1993).
[30] Waller, ANTITRUST AND AMERICAN BUSINESS ABROAD at §9-52 n.3.
[31] Spencer Weber Waller, *Symposium: Symposium in Honor of Professor James A. Rahl: An International Antitrust Challenge: The Ambivalence of United States Antitrust Policy Towards Single-Country Export Cartels*, 10 N.W. J. INT'L L. & BUS. 98, 110 (1989) (hereinafter Waller, *An International Antitrust Challenge*).

to disentangle information specifically about export cartels. From Waller's analysis, it appears that U.S. export cartels are no longer dominated by large multinational companies, or at least that a substantial number of ETCs are made up of relatively small firms. For other countries, we simply do not know.

Third, there is uneasiness about possible effects of these laws, and elimination of these laws, on developing countries. At recent WTO meetings, developing country delegates have articulated support for the elimination of export cartel exemptions in industrialized countries, while preserving this option for developing countries. At a 2002 meeting Thailand argued that most export cartels damage the economies of developing countries and should be illegal; but, they continued, developing countries should be exempt since small exporters might need to join forces to increase bargaining power.[32] One year later, WTO representatives from Egypt and China made the same point, citing the need to pool resources as necessary to promote international trade.[33]

Finally, export exemptions undermine international trade policies that promote greater market integration and freer international trade. Victor (1991) notes that the *Wood Pulp* case illustrates how "export cartels can cause significant trade friction."[34] The Canadian Bar Association commented in a 2003 submission concerning the Free Trade Area of the Americas (FTAA): "With respect to export cartels, the CBA Section has difficulty seeing how Canada, the U.S. or other jurisdictions could seek to preserve export cartel exemptions in the context of an FTAA with a meaningful competition policy component. The fact that this was not addressed in

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[32] World Trade Organization, Report on the Meeting of 26-27 September 2002, WTO Doc WT/WGTCP/M/19, at 6 (November 15, 2002).

[33] World Trade Organization, Report on the Meeting of 26-27 May 2003, WTO Doc WT/WGTCP/M/22, at 11 (July 2003). "Therefore, in order to take the developing countries' concerns on board, it was necessary to leave to them the right to assist their local firms either directly, for example by granting them subsidies, or indirectly by allowing for mergers, acquisitions, export cartels, resource pooling or otherwise as each country deemed appropriate for its policy objectives." *Id.* "If developed countries continued to permit the operation of export cartels, it would put developing Members at an even worse position in international trade. Given this, he shared the view that had been expressed by Thailand that the future multilateral framework on competition policy should incorporate restrictions on the maintenance of export cartels by developed country Members." *Id.* at 15. This point was made the year before by WTO representatives from Thailand and Indonesia, *see* World Trade Organization, Report on the Meeting of 26-27 September 2002, WTO Doc WT/WGTCP/M/19, at 24 (November 15, 2002). Several years before that, arguments were being made along these same lines regarding allowing export cartels for Thailand. See, for example, Nareerat Wiriyapong, urging "the government to relax the implementation of the Competition Law for export cartels in order to strengthen competitiveness of Thai exporters in international markets." *Easing of Competition Law Urged*, THE NATION (Thailand), August 31, 1999, no page number given.

[34] Victor, *supra* note 1, at 577. Aditya Bhattacharjea, *Export Cartels: A Developing Country Perspective,* 38 J. WORLD TRADE 331 (2004) analyzes this Soda Ash case extensively, and documents similar trade conflicts.

Chapter 15 of NAFTA is one of the many reasons why more vigorous provisions on export cartels need to be explored."[35]

The U.S. declined to repeal the WPA and ETC Act when asked to do so by trading partners in the mid-1990s.[36] Mexico specifically asked that these U.S. provisions be repealed, at least where intra-NAFTA exports were concerned. The United States rejected this request. The final version of NAFTA specifically preserves these "safe havens" from U.S. antitrust law:

> *No changes in U.S. antitrust laws, including the Export Trading Company Act of 1982 or the Webb-Pomerene Act, will be required to implement U.S. obligations under the NAFTA. These laws have contributed to the export competitiveness of U.S. industries and they remain appropriate in the context of a free trade area. Nothing in the Agreement requires any NAFTA government to take measures that would adversely affect such associations.*[37]

B. THE POLICY RESPONSE FROM THE UNITED STATES

In the context of this growing criticism of export exemptions and attempts to eliminate trade frictions and encourage competition within the European Union, the European Commission and many EU member states have eliminated explicit exemptions for export activity. In contrast, the United States has been one of the leading defenders of export cartel exemptions. However, these criticisms appear to have had an effect on the promotion of export exemptions by U.S. officials. The United States' joint FTC/DOJ International Antitrust Guidelines were changed between 1988 and 1995 to reflect the U.S. shift in policy toward more aggressive enforcement of antitrust laws against international cartels. Presumably reflecting the tension of this position with the unchanged U.S. law allowing export cartels, these exemptions now have a lower profile in the Guidelines' characterization of U.S. international antitrust policy.[38]

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[35] National Competition Law Section, Canadian Bar Association, Submission Concerning the FTAA Competition Chapter 2, at 2 (April 2003).

[36] This episode is discussed in detail in a 1997 report issued by the Coalition for Open Trade on the intersection of trade policy and competition policy. Coalition For Open Trade (COT), Addressing Private Restraints of Trade Industries and Governments Search For Answers Regarding Trade-And-Competition Policy, at 18 (1997) *available at* http://www.dbtrade.com.licit/licit.pdf.

[37] North American Free Trade Agreement, Dec. 8, 1993, U.S.-Can.-Mex., 19 U.S.C.A. § 3313, 103.

[38] Prominently featured in the first paragraph under "Enforcement Policy" in the 1988 Guidelines, the U.S. Department of Justice states that it "is not concerned with conduct that solely affects competition in foreign markets and could have no direct, substantial, and reasonably foreseeable effect on competition and consumers in the United States." Antitrust Guidelines for International Operations, 53 FR 21584, § B at 7 (1988). In the 1995 revision, the

The U.S. position has come under attack from abroad and within. Even the U.S. Council of Economic Advisors expressed disagreement with the official U.S. position: in the 1997 Economic Report of the President, the CEA "suggested that governments seek to eliminate 'safe harbors' under national legislation for export cartels."[39] Yet, the United States continues to defend the WPA and ETC Act against these policy arguments. At a 2003 World Trade Organization (WTO) meeting, the U.S. argued, "these arrangements typically were conceived as mechanisms for domestic entities that lacked the resources to engage in effective export activity acting individually. As such, they often had pro-competitive effects in that they added another player to the relevant markets and might bring innovation and lower prices. Moreover, they were not secret and therefore did not bear the hallmarks of what was traditionally considered to be a hardcore cartel."[40]

The U.S. position does reflect what little is known about the effects of current U.S. export exemptions on competition in world markets. Spencer Weber Waller's survey of the activities of ETCs concludes that most function as export intermediaries and service providers, not as horizontal agreements between competitors.[41] While arguing that the overall *positive* impact of these ETCs is limited, Waller also discounts the threat to competition posed by export exemptions.

> [T]he ETC Act does not create market power, nor does it create or maintain barriers to entry. It merely permits an industry, as a matter of U.S. law, to collusively exploit such market power abroad if it already exists. The history of the Webb-Pomerene Act suggests that few export associations will have sufficient global market power to exploit foreign markets.[42]

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first paragraph under the new Section 3 "Threshold International Enforcement Issues" states: "Just as the acts of U.S. citizens in a foreign nation ordinarily are subject to the law of the country in which they occur, the acts of foreign citizens in the United States are subject to U.S. law. The reach of the U.S. antitrust laws is not limited, however, to conduct and transactions that occur within the boundaries of the United States. Anticompetitive conduct that affects U.S. domestic or foreign commerce may violate the U.S. antitrust laws regardless of where such conduct occurs or the nationality of the parties involved." The "direct, substantial, and reasonably foreseeable effect" wording of the Foreign Trade Antitrust Improvements Act of 1982 can still be found in the guidelines, but it is placed instead at the end of the same paragraph. Antitrust Enforcement Guidelines for International Operations, FTC Today §3 (April 15, 1995) *available at* www.usdoj.gov/atr/public/guidelines/internat.htm.

[39] Coalition for Open Trade, Addressing Private Restraints of Trade Industries and Governments Search for Answers Regarding Trade-and-Competition Policy, at 34 (1997) (quoting from the 1997 Economic Report of the President, p. 271), *available at* http://www.dbtrade.com/licit/licit.pdf.

[40] World Trade Organization, Report on the Meeting of 20-21 February 2003, WTO Doc WT/WGTCP/M/21, at 15 (May 26, 2003).

[41] Waller, *The Failure of the ETC Program*, *supra* note 2, at 251-252.

[42] *Id.* at 251.

Andrew Dick (1992) came to a similar conclusion from his analysis of the Webb-Pomerene experience.[43] Global policy discussions and revisions, however, have continued despite our limited knowledge of the impact of export cartels based in the U.S. or elsewhere.

IV. STATUS OF EXPORT CARTEL EXEMPTIONS

A. CURRENT STATUS

We examine the current status of the law on export cartel exemptions for fifty-six countries, including the existence of reporting requirements where they exist (Table 2). This sample consists of all OECD countries, EU countries, and selected developing countries. Developing countries are noted with an asterisk.[44]

We classify the legal treatment of export cartels into three groups: explicit exemptions, implicit exemptions and no statutory exemption. *Explicit exemptions* are created when a statute explicitly excludes export cartels from the substantive provisions regarding the scope of the antitrust law. Of the countries covered in Table 2, seventeen have explicit exemptions. There are two types of explicit exemptions: those that require notification or authorization procedures and those that do not. The notification procedures generally require businesses to apply for and receive permission from the government before (or concurrent with) participating in practices that may otherwise violate domestic antitrust law. Of the seventeen countries with explicit exemptions, six require notification.

Canadian competition law provides a good example of an explicit exemption *without* a notification requirement.[45] Under Canada's statutory scheme, combinations relating solely to the export of products from Canada are exempted from antitrust liability.[46] However, Canadian exporters can lose the exemption if the arrangement results, or is likely to result, in a reduction or

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[43] Andrew Dick, *Are Export Cartels Efficiency-Enhancing or Monopoly-Promoting? Evidence from the Webb-Pomerene Experience*, RESEARCH IN LAW AND ECONOMICS 1992: 89-127.

[44] The categorization of developing countries is taken from the World Bank's website: http://www.worldbank.org/data/countryclass/classgroups.htm. The World Bank classifies developing countries in three groups: low income, lower-middle income, and upper-middle income; non-developing countries are classified as "high income" countries. Examples of "low income" countries are Armenia, India, and Vietnam; examples of "lower-middle" are Albania, China, and Thailand; and, examples of "upper-middle" are Argentina, Czech Republic, and Turkey.

[45] COMPETITION ACT, § 45(5) (1986).

[46] *Id.*

limitation of the "real value" of exports of a product.[47] The "real value" is distinguished from the "volume" of exports, thus allowing an export cartel to reduce output as long as it raises price sufficiently. Since there is no notification requirement, it is impossible to measure how many exporters have taken advantage of this exemption from antitrust liability. A similar case is Iceland, which also has an explicit exemption without a notification requirement: "…this Law shall not apply to agreements, terms or actions which are solely intended to have an effect outside of Iceland."[48] Iceland's law was passed in 1993 and amended in 2000, so these provisions are not simply a vestige of historical practice.

By contrast, Australia, like the United States, offers an explicit exemption for export cartels but requires that firms satisfy a notification requirement to receive immunity.[49] This exemption protects "any provision of a contract, arrangement, or understanding that relates exclusively to the export of goods from Australia, or to the supply of services outside Australia provided that particulars [of the agreement] are submitted to the [Australian Competition and Consumer] Commission ("ACCC") within fourteen days of the contract, arrangement or understanding…."[50] Australian competition law therefore provides for automatic immunity for export transactions on a transaction-by-transaction basis.[51] The ACCC explicitly excludes from exemption any agreement that relates to supply or pricing on the domestic market.[52] Between 1974 and 2004, approximately 234 notifications were made to the ACCC.[53]

Israel also has a reporting requirement, but has somewhat different criteria for issuing an exemption. Under its policy, engaging in export is a factor for consideration in applying for

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[47] *Id.*

[48] COMPETITION LAW, The Law Gazette A., No. 8/1993, as amended by Law No. 24/1994, 83/1997, 82/1998, and 107/2-0—(Ice.), Ch. I, Article 3, *available at* http://www.samkeppni.is.

[49] TRADE PRACTICES ACT, 1974, §§ 6-7. Australian exporters seeking an exemption from antitrust liability must first notify the government under the requirements detailed in section 51(2)(g) of the Export and Trade Practices Act of 1974. TRADE PRACTICES ACT, 51(2)(g) (1974).

[50] Export and the Trade Practices Act: Guidelines to the Commission's approach to mergers, acquisitions and other collaborative arrangements that aim to enhance exports and the international competitiveness of Australian industry §3 (Sept. 1997), *at* http://www.apeccp.org.tw/doc/Australia/Decision/audec1c.html.

[51] TRADE PRACTICES ACT, 1974, §51(2)(g).

[52] Exports and the Trade Practices Act Guidelines to the Commission's approach to mergers, acquisitions and other collaborative arrangements that aim to enhance exports and the international competitiveness of Australian industry, at 34 (Oct. 1997) *at* http://www.accc.gov.au/content/item.phtml?itemId=303813&nodeId=file40e37c9fdd44a&fn=Exports%20and%20the%20TPA.pdf.

[53] E-mail from Jaime Norton, Adjudication Branch, ACCC (June 2003). Section 51(2)(g) export agreements are not considered to be "authorizations," and therefore are not included in Australia's annual report statistics.

antitrust exemption, not a separate category of exemption.[54] When reviewing applications for exemptions, Israel's Antitrust Tribunal considers matters of the public interest, which include "[i]mproving the balance of payments of the State by reducing imports or reducing the price of imports or by increasing exports and their feasibility."[55]

Two of the countries whose laws provide for explicit exemptions with a reporting requirement apparently do not actually have any such exemptions in effect, at least at the present time. South Africa's 1998 competition law includes an explicit exemption with notification, but no export exemptions have yet been granted. Taiwan's 2000 law also permits firms to apply for an exemption from its ban on concerted actions. But as of July 2004, no such exemptions were in effect.[56]

Finally, United States antitrust law offers a wide-reaching exemption to businesses engaged in export. In 1982, the U.S. clarified the jurisdiction of its antitrust laws, amending the Sherman Act to make clear that it applies only to actions that harm the domestic market.[57] In doing so, the U.S. provided an implicit exemption, similar to those discussed below, for firms that engage in collusive conduct solely affecting the export market. Then Congress went further, creating a new explicit exemption: under the Export Trading Company Act of 1982, an exporter, group of exporters, or export intermediary can apply for a certificate of review stating that its export trade activity does not violate U.S. antitrust laws before they engage in cooperative activity directed at the export market.[58]

The ETC Act includes provisions for written antitrust pre-clearance: the Department of Justice reviews each request for an "export trade certificate of review" before such certificates are granted by the Department of Commerce.[59] The issuance of an ETC certificate essentially

[54] Restrictive Trade Practices Act, 1998, No. 5748, § 10(7).
[55] *Id.*
[56] The relevant section of Taiwan's Fair Trade Law 2000 is article 14(4). See http://www.ftc.gov.tw (Statistics: Applications for Concerted Action Approval).
[57] FOREIGN TRADE ANTITRUST IMPROVEMENTS ACT OF 1982, 15 U.S.C. §§ 6(a) & 45(a)(3) (1994) (exempting export commerce that does not cause effects in the United States from the Sherman Act and FTC Act). In its recent decision in the Empagran case the U.S. Supreme Court affirmed this interpretation of the FTAIA, refusing to consider cases in which firm conduct harmed foreign consumers. *See* F. Hoffman-La Roche Ltd. v. Empagran S.A.,124 S.Ct. 2359 (2004).
[58] EXPORT TRADE COMPANY ACT OF 1982, 15 U.S.C. § 4001-4016 (1982).
[59] Title III of the ETC Act, § 303, specifies the conditions for granting an export trade certificate of review. For example, there cannot be "a substantial lessening of competition or restraint of trade within the United States," and

eliminates the threat of governmental prosecution for antitrust violations. It shifts the burden of proof in any civil litigation to the litigant/accuser and limits any awards to single, rather than treble, damages in private antitrust actions.[60] The ETC Act also expanded the scope of U.S. exemptions beyond that provided in the Webb-Pomerene Act: it allows antitrust protection for export of services (rather than goods only), allows any person, partnership, or association to apply for a certificate of review (rather than associations only), and allows banks to participate as members in an export trading company. The ETC Act also differs from the WPA by establishing an office within the Department of Commerce both to oversee the granting of ETCs and to promote the formation of export trading companies in the United States. It is important to note that the ETC Act does not protect American export cartels from prosecution by other countries.[61] Firms are only eligible for an ETC exemption if their actions will have no effect on the domestic market.[62] The cooperative activity must not harm domestic competition or create unfair competition for domestic competitors. The ETC Act offers other benefits to certificate holders in civil litigation, including a shorter statute of limitations, presumption that certified conduct is lawful, and attorney's fees and costs for the prevailing party. [63] A total of 187 certificates have been issued since 1983. As of 2002, 155 certificates were still valid. As mentioned above, twelve Webb-Pomerene Associations remain in existence.

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the association cannot "constitute unfair methods of competition against competitors engaged in the export of goods…." 15 U.S.C. § 4013(a) (1982).

[60] Waller, *Failure of the Export Trading Company Program*, *supra* note 2, at 245.

[61] The FTC and DOJ jointly issued international antitrust guidelines in 1995 stating that an export trade certificate issued under the ETC Act "does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning the legality of such business plans under the laws of any foreign country." Joint FTC/DOJ Antitrust Guidelines for International Operations 1995, §2.7. FTC Today, April 5, 1995. For an extensive treatment of this issue, see Bhattacharjea, *supra* note 35. For a discussion of the *Wood Pulp* and *Soda Ash* cases, see *Id.* at 13-22. "In the 1988 *Wood Pulp* decision, the European Court of Justice had dismissed the American defendants' contention that their registration as a Webb-Pomerene association gave them immunity on the basis of the "act of state" doctrine. The Court rejected this defense, "asserting that Webb-Pomerene associations are only *allowed* and not *required* by U.S. law, and therefore the act of state non-interference principle did not hold". *Id.*at 13-14. In the case of the American Natural Soda Ash Corporation (ANSAC), formed under the WPA, Bhattacharjea traces events in Europe, India, South Africa, and Venezuela. See European Commission Decision (91/301/EEC), 19 December 1990, OJ L 152, 15.6.91. The firms then formed the American-European Soda Ash Shipping Association (AESASA) in order to satisfy the European Commission's requirements. See Bhattacharjea, *supra* note 35, at 15. But ANSAC continued to have problems in other countries, and was unsuccessful in convincing any competition authority that the efficiency benefits of the association outweighed the potential for exercising market power.

[62] 15 U.S.C. § 4013(a) (1988).

[63] Waller, *Failure of the Export Trading Company Program*, *supra* note 2, at 245.

An *implicit exemption* for export cartels exists when a national antitrust statute applies only to anticompetitive conduct affecting the domestic market. Most countries in our sample (59%), including almost all members of the European Union, have implicit exemptions. Such an exemption is granted by negative implication, since the scope of the antitrust law is limited and does not explicitly mention behavior affecting foreign markets.

Ireland's competition law provides a typical example of an implicit exemption for export cartels.[64] Under the Irish Competition Act of 2002, certain agreements that restrict or distort competition within the State of Ireland are prohibited.[65] Specifically, the Competition Act of 2002, § 4(1) provides: "[A]ll agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services *in the State or in any part of the State* are prohibited and void…" (emphasis added).[66] The Act does not refer to agreements that restrict or distort competition in other countries.

In some countries there is *no statutory exemption.* This occurs when price fixing is illegal, and there is neither an implicit exemption, because the antitrust statute simply does not define the geographic scope of the market, nor is there an explicit exemption allowing price fixing for export-oriented activity. This category includes Luxembourg, Russia, and Thailand. For example, under Luxembourg's "Loi du 17 mai rélative a la concurrence," cartels and other activities which limit competition "sur le marché" are banned, but no legal, economic, or geographic boundaries of "le marché" are explicitly delimited.[67] Finally, we include three countries in Table 2 that have no substantive antitrust laws: Egypt, which is currently drafting legislation, Hong Kong, and Singapore.

In summary, of the 56 countries surveyed, 33 have implicit exemptions, 17 have explicit exemptions, 3 have no statutory exemption, and 3 have no substantive antitrust laws. About one-third of those countries with explicit exemptions also have a notification requirement.[68]

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[64] COMPETITION ACT OF 2002, No. 14/2002, Part 2, § 4(1).
[65] *Id.*
[66] *Id.* (emphasis added).
[67] A- No 76 26 mai 2004, Loi du 17 mai 2004 relative a la concurrence at 1112, Journal Officiel du Grand-Duche de Luxembourg.
[68] In 1989, Spencer Weber Waller noted that for OECD countries, only Japan, Germany, the United Kingdom, and the United States had mechanisms for registering export agreements. Waller, *An International Antitrust Challenge*,

B. RECENT CHANGES IN EXPORT CARTEL EXEMPTIONS

As the preceding discussion illustrates, there is both a lack of consistency across countries in how export cartels are treated and a lack of information on who has received exemptions and what kinds of activities they have engaged in. There does seem to be one clear trend, however, namely the elimination of explicit exemptions. Several countries have recently amended their competition laws to eliminate explicit export cartel exemptions. Among the countries that have instituted such changes are Germany, Hungary, Japan, Korea, the Netherlands, Sweden, Switzerland, and the United Kingdom. Cyprus and Finland intend to do so soon.[69] Table 3 provides the dates when these reforms were (or will be) implemented, as well as the form of the exemption policy change for each country. We discuss each country in turn.

One important force behind this trend is the push for convergence in competition policies across the member states of the European Union. This is seen clearly in the recent modifications adopted by Cyprus, Finland, and Hungary, all new members of the EU as of May 1, 2004. Many of these countries had explicit exemptions in the past, but are now proposing to change or have changed their laws to parallel the European Union's legislative framework. Turkey, which had no competition law before 1994, and therefore no exemption for export cartels, has adopted a law that contains the same implicit exemption now common across EU countries.

The evolution of Germany's competition law is prototypical for European countries. Before a 1999 amendment, the Act Against Restraints of Competition (GWB)[70] allowed pure export cartel exemptions after the satisfaction of a notification requirement.[71] Between the original 1958 Act and the 1999 amendment, 130 exporters received an exemption under Germany's notification procedure.[72] In 1999, Germany amended the GWB to repeal the explicit exemption for pure

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supra note 32, at 109-10. Thus, the changes in the antitrust policies of Japan, Germany, and the United Kingdom are only recent.

[69] European Commission, Report of the Group of Experts: Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules (1995) http://europa.eu.it/comm/competition/international/strength_en.pdf.

[70] Act Against Restraints of Competition (GWB), §1 (6th Amendment, 1999).

[71] "Pure export cartels need only to be notified, after which they are valid, provided they are intended to strengthen the competitive position of the domestic firms vis-à-vis their foreign competitors." The pre-1999 GWB also allowed mixed export cartels in limited circumstances. Victor, *supra* note 1, at 576.

[72] German Cartel Authority; www.bundeskartellamt.de/competition_act.html; *See also* Joachim Schwalbach & Anja Schwerk, *Stability of German Cartels*, *in* COMPETITION, EFFICIENCY, AND WELFARE. ESSAYS IN HONOR OF

export cartels.[73] "The prohibition of concerted practices, found in § 25 of the old version of the GWB (o.v.), has been incorporated in § 1 in order to follow the wording of Art. 85 (1) EEC Treaty. … The exemptions for rebate cartels…export cartels…and import cartels….have been repealed."[74] Legislative comments made during the passage of the 1999 Amendments indicate that the export cartel exemption was repealed "due to worldwide efforts to combat cross-border restraints on competition."[75]

The United Kingdom has also amended its Competition Act to eliminate explicit cartel exemptions.[76] Until 1998 export cartels were permitted after notifying the Director General of Fair Trading. That exemption was eliminated as part of a general updating of the competition law, and the change was maintained in the 2004 amendments that criminalized hard core cartels that affect the UK market. The primary objective of the 1998 Amendments was to bring the United Kingdom's cartel exemption laws in line with those of the European Union. Several additional factors explain the adoption of the 1998 Amendments. One such factor was the existence of an "extreme number of [cartel] exemptions" under the Restrictive Trade Practices Act of 1973.[77] Practical enforcement of cartel prohibitions was virtually impossible under such a complicated framework of exemptions.[78] The British government recognized this problem in a Green Paper published in 1988.[79] There was also concern that the United Kingdom's former law was oriented towards the registration of anti-competitive cartels rather than the prevention of such cartels,[80] that the prior laws did not provide for any meaningful methods of enforcement,

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MANFRED NEUMANN, 101-128 (D.C. Mueller et al eds., 1999). *Available at* http://www.wiwi.hu-berlin.de/im/d/publikdl/98-2.pdf.

[73] *Id.*

[74] Joachim Rudo, *The 1999 Amendments to the German Act Against Restraints of Competition*, *at* http://www.rudo.de/new/main_ga_commentsonthe.htm. Note that Germany has not repealed all exemptions. Other categories of exemptions remain, e.g., agreements for uniform application of standards or types, specialization cartels, structural crisis or recession cartels.

[75] *Id.*

[76] COMPETITION ACT 1998, Chapter 41.

[77] John Pratt*, Changes in UK Competition Law: A Wasted Opportunity*, 15(2) EUR. COMPETITION L. REV. 89, 90 (1994)

[78] Id. at 91. See also, Aiden Robertson, *The Reform of UK Competition Law – Again*, 17(4) Eur. Competition L. Rev. 210, 211 (1996).

[79] REVIEW OF RESTRICTIVE TRADE PRACTICES POLICY: A CONSULTATIVE DOCUMENT, 1988, Cm.331 (pointing out 43 categories of exemption, with one of these categories containing "no less than 17 sub-categories").

[80] David Parker, *The Competition Act of 1998: Change and Continuity in U.K. Competition Policy*, J. Bus. L. 283, 290 (2000).

such as retroactive penalties, and, finally, that the prior United Kingdom law did not require registration of an export cartel if only one company in the cartel agreed to restrict its conduct.

Changes to competition law in the Netherlands and Sweden were also driven by the desire for European convergence, as was, apparently, Switzerland's decision to modify its law in 1995.[81]

But these changes are not driven solely by European convergence. Japan's policy has followed a similar path.[82] Like Germany, Japan has had a long history of encouraging cooperation among its exporting firms. Before 1997, Japanese law permitted pure export cartels to enter into agreements on price, quantity, quality, or design, by notifying the Minister of International Trade and Industry (MITI) within 10 days of conclusion of the agreement.[83] MITI could limit the export exemption if the agreement: 1) violated Japanese treaties with foreign governments; 2) injured the interests of importers or Japanese export trade; 3) contained unjustly discriminatory content; 4) unjustly restricted participation in, or withdrawal from, the agreement; or 5) unjustly injured the interest of Japanese enterprises of consumers. In the early 1990s, the Japanese Fair Trade Commission began to take "a tougher stance toward approving new exempted cartels, and tried to examine various legal requirements more rigidly so that no additional exempted cartels could be formed without convincing specific and urgent necessity."[84] Although cartels in general, and export cartels in particular, used to be thought of in Japan as a "useful tool to eliminate excessive competition," the Fair Trade Commission began a systematic overview of and elimination of its cartel exemptions.[85]

Between 1992 and 1995, according to a WTO Trade Policy Review of Japan, "17 of 28 export cartels [were] abolished while many others [were] reduced in scope."[86] By 1998 the number of

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[81] For the prior laws with antitrust exemptions for exports, see DUTCH ECONOMIC COMPETITION ACT, 1956, Stb. 413 (Neth.); THE SWEDISH COMPETITION ACT, 1982, 1982:729 (Swed.); FEDERAL ACT ON CARTELS AND SIMILAR ORGANISATIONS, 1985 (Switz.). For discussion of the antitrust exemptions of the Netherlands, Sweden and Switzerland, see OECD, Export Cartels: Report of the Committee of Experts on Restrictive Business Practices, 1974 ¶¶ 36, 42*; See also* Sideek Mohamed, *Competition Rules of Sweden and the European Union Compared*, 19(4) Eur. Competition L. Rev. 237, 237 (1998).

[82] For a concise overview of the history of cartel policy in Japan and the treatment of exemptions, see Hiroshi Iyori & Akinori Uesugi, THE ANTIMONOPOLY LAWS AND POLICIES OF JAPAN, Ch. 25 (1994).

[83] EXPORT AND IMPORT TRADING ACT, 1952, Law No. 299 (repealed 1997).

[84] Iyori & Uesugi, *supra* note 86, at 357.

[85] *Id.* at 354, 359.

[86] WTO Trade Policy Review, WTO Doc 95-0753 *at* http://docsonline.wto.org/ (to view document enter document number in search facility).

exempted export cartels had fallen to two.[87] These and related efforts culminated in the passage of the Omnibus Act to Repeal and Reform Cartels and Other Systems Exempted from the Application of the Antimonopoly Act under Various Laws ("Omnibus Act"), which repealed the previous explicit exemption for export cartels, as well as 29 of the 35 other criteria for receiving exemption from antitrust liability.[88]

Similarly, in 1999 Korea passed the Omnibus Cartel Repeal Act (the Act on Regulating Undue Concerted Activities from the Application of the Monopoly Regulation and Fair Trade Act) "in order to facilitate the market economy and keep up with international trends by repealing or improving cartels permitted under individual statutes."[89] By this time, Korea, like Japan, had already abolished most export cartels. In addition, Korea took steps toward a more general deregulation of import and export processes:[90]

> Until 1999, the Ministry of Commerce, Industry and Energy (MOCIE) had far-reaching authority to "maintain order" in the import and export market. In February 1999, the Omnibus Cartel Repeal Act limited MOCIE's co-ordinating power to exports of military equipment and compliance with inter-governmental agreements. Moreover, the same Act abolished the power of the Minister of Construction and Transportation to co-ordinate bidding in foreign markets (KFTC 1999*a*, §19).

This trend toward the elimination of explicit exemptions, as well as reductions in the number of exemptions granted, reflects an admirable attempt to make competition law and policy more internally consistent. Many countries have been taking a much more aggressive attitude toward both domestic and international cartels which harm domestic competition. Under such circumstances, policies to promote exactly the same kind of activities outside one's borders seem logically inconsistent and contrary to the spirit of international cooperation. These policy changes reflect the views of scholars such as Spencer Weber Waller, who wrote fifteen years ago

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[87] WTO Trade Policy Review, WTO Doc 98-0005 *at* http://docsonline.wto.org/ (to view document enter document number in search facility). "Nine of the 11 export cartels have been abolished since 1995. Remaining export cartels, related either to protection of quality or intellectual property, or to import monopolies in partner countries are to be abolished by end-1999." *Id.* at 17.
[88] The Japanese Fair Trade Commission; www.jftc.go.jp/e-page/press/1997/19970613.htm.
[89] The Global Competition Forum; www.globalcompetitionforum.org/asia.htm#korea (last visited February 9, 2004).
[90] OECD, Background Report on the Role of Competition Policy in Regulatory Reform, ¶ 85, (1999) http://www.oecd.org/dataoecd/3/44/2497300.pdf.

that, "The idea of the notification and registration of export cartels on an international basis is equally tempting but flawed. Transparency is a valued goal, but it is of use, first and foremost, as a tool in the detection and eradication of anticompetitive restraints and should not be used as a justification for their perpetuation. … the best hope [is] that the national export cartel will eventually join its discredited cousin, the traditional international cartel, as an improper distortion of competition in international trade subject to universal condemnation and prohibition."[91]

The impact of these policy changes, however, is less obvious. Because countries have converged on language which restricts enforcement to activities that harm *domestic* competition, the legal status of export cartels is now more, not less, ambiguous. In addition, we have less information about who participates in joint export activities and where their activities are targeted. The question, then, is what would be an ideal competition policy with respect to joint export activity and what kinds of enforcement mechanisms could move us toward such a policy? There are essentially two types of alternatives: the adoption of extraterritorial policies by national governments or increased international cooperation. In some ways, the most obvious resolution is the extraterritorial option: individual nation states could ban any activity for export that is already prohibited if targeted at the domestic market. But there are obvious problems with any extraterritorial solution, and we believe that increased international cooperation is likely to be the preferred and more effective solution. This cooperation could be informal, as is undertaken by the International Competition Network. It could also be supported by more information sharing among competition authorities so that those nations that are adversely affected by export cartels have the resources to respond. The strongest form of international cooperation would be an international competition authority with jurisdiction over collusive activity aimed at foreign markets.

On the one hand, as we move toward more fully integrated, global markets there is less reason to distinguish at all between domestic cooperative activity and the same sort of activity aimed at exports.[92] If we have general consensus that price fixing harms consumers, then export exemptions benefit a nation only to the extent that they harm foreign consumers. The policy is

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[91] Waller, *An International Antitrust Challenge*, *supra* note 32, at 111-113.

[92] This is the policy advocated, for example, by Bernard Hoekman & Petros C. Mavroidis, *Economic development competition policy and the World Trade Organization*, 37 J. WORLD TRADE 1, 19 (2003).

one of enriching oneself at the expense of one's trading partners. A multilateral agreement to eliminate these exemptions and treat price fixing the same wherever it occurs or whatever market is targeted would improve global consumer welfare.

On the other hand, international cooperation and truly effective competition policy require respect for both national sovereignty and differences in levels of development and the strength of domestic competition across nation states. The real problem with a global ban on "export cartels," whether achieved through international cooperation or through the harmonization of domestic laws, is that it ignores the unintended effects of such a policy. For many small firms, especially from countries that have historically been less involved in global markets, entry into global markets is an overwhelming challenge. Cooperation among firms that increases the number of participants in global markets makes competition more, not less, effective. Especially for smaller countries, where the alternative to a cooperative association is merger, elimination of cooperation as a legal possibility could lead to consolidation and the lessening of competition in the domestic market.[93]

We have seen exactly this kind of "unintended consequence" as a result of the increased prosecution of "hard core" international cartels.[94] For example, since the 1995 break up of a cartel among producers of seamless steel tubes, the industry has substantially reorganized. Every single former member of the cartel has either exited the industry altogether or joined in a merger or strategic alliance with another former cartel member. The industry is more consolidated, and it is hard to see how competition could be more intense under the current industry structure than the earlier, explicitly collusive, one.[95]

International cooperation provides an alternative that, if wisely implemented, could limit the negative effects of collusion on international markets without providing a regulatory incentive to

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[93] The impact of the elimination of export cartels on developing countries is discussed in more detail in Bhattacharjea *supra* note 35; Frederic M. Scherer, *Competition Policy Domestic and International* (2000); and Ajit Singh *Multilateral Competition Policy and Economic Development: A Developing Country Perspective on the European Community Proposals* (2003).

[94] *See* Margaret C. Levenstein & Valerie Y. Suslow, *Private International Cartels and Their Effect on Developing Countries*. Background paper for the World Bank's *World Development Report 2002,* and Margaret C. Levenstein & Valerie Y. Suslow, *Cartel Duration and Organization Then and Now* (presented to the National Bureau of Economic Research Development of the American Economy Summer Institute, July 2004).

[95] George Symeonidis, *The Effects of Competition: Cartel Policy and the Evolution of Strategy and Structure in British Industry* (2002) (provides a comprehensive study of an analogous period, when, he argues, the UK's adoption of a more systematic policy against collusion in the 1950s and 1960s led to increases in concentration in formerly collusive industries).

merger for small firms, especially in small or developing countries.[96] Such an agreement could require that competition officials meet a higher standard to show that the cooperative activity did in fact harm competition in some markets rather than the per se standard which has become more common in the national laws of most high income countries. This policy would recognize that export associations may provide essential resources to overcome barriers to entry to export markets and therefore increase the competitiveness of international markets.[97] Rules should be established to give firms guidance as to whether their activity is likely to meet international competition standards, as one of the benefits of national export exemptions has been to provide legitimate marketing associations assurance that they would not face domestic legal liability. A stronger policy would put the burden of proof on export associations to show that they need to cooperate to participate effectively in international markets and that their activities indeed do not undermine competition.

V. CONCLUSION

In an attempt to have more uniform pro-competition policies, many countries have eliminated or restricted the exemptions that they provide to export cartels. Seventeen of the 56 countries surveyed here do offer firms exemption from domestic antitrust laws for export activity. Thirty-three provide no exemption from antitrust laws for export activity, but exempt such activity implicitly because their competition laws are silent on restrictive activities that affect foreign markets. Within the last decade, at least ten countries have rewritten their laws, moving from explicit exemptions to this more passive policy of speaking only to the domestic market. However, the construction of domestic antitrust laws that only ban activity that harms domestic competition leaves a vacuum in which export cartels can continue to operate with no obvious or practical institution to provide oversight or prosecution of their activities. The elimination of

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[96] Victor, *supra* note 1, at 581. Victor proposes a number of provisions that one might include in a multilateral agreement on export cartels to allow for efficiency enhancing ventures, and yet create more elaborate checks and balances to anti-competitive ventures. For example, he recommends association registration, increased sharing of information across countries, and increased prosecution. Victor provides broader policy recommendations at 579-581. Bhattacharjea *supra* note 35 advocates a similar position, but suggests the use of existing anti-dumping rules at the WTO as the enforcement mechanism.

[97] Joel Davidow & Hal Shapiro, *The feasibility and worth of a World Trade Organization competition agreement*, 37 J. WORLD TRADE 49, 67 (2003) makes a similar argument.

reporting requirements has also reduced the information that we have about the activities of these cooperative ventures among firms.

However, this is not to argue that we should revert to national exemptions that seem to legitimize anti-competitive behavior that is strongly condemned if conducted in domestic markets. Instead, we suggest that international cooperation to regulate and prosecute cooperative activity affecting international markets could rationalize these policies and promote competition more effectively than the current haphazard set of national laws. Especially if it considered both market structure and barriers to entry into international markets, international cooperation could help competition authorities develop the capacity to both detect and prevent associations that undermine competition and provide assurance, reduced risk, and consistency for firms that cooperate but do not undermine competition. This would provide a more coherent set of rules for firms than the current patchwork of export exemptions. It could also provide flexibility reflecting the different needs and level of development of different countries without abandoning the principles of competition.

TABLE 1

Number of Export Cartel Exemptions in Effect – Selected Countries

YEAR	AUSTRALIA[a]	GERMANY	JAPAN	US (ETC)	US (WP)
1970					35
1972		227	175		
1973			180		
1974	15				
1975	69				
1976	29				
1977	7				
1978	4				30
1979	6				
1980	4	266			36
1981	7				
1982	6				
1983	8			11	
1984	13			40	
1985	4			59	
1986	0			69	
1987	6			83	
1988	3			96	
1989	2			109	
1990	1			120	22
1991	1			123	
1992	1	190	28	132	
1993	12			135	
1994	5			144	
1995	7		11	150	15
1996	2	234		153	
1997	2			151	

YEAR	AUSTRALIA[a]	GERMANY	JAPAN	US (ETC)	US (WP)
1998	2	36	2	149	
1999	0	36	0	148	
2000	6			152	11
2001	4			154	12
2002	4			155	13
2003	4 (to date)				12

[a] Australia's numbers are not strictly comparable to the other countries, because exemptions are given on individual transactions. Thus, these numbers represent the number of transactions exempted each year (a flow), not the number of export cartels in effect (a stock).

Sources:

1. Australia: data provided by the Australian Competition and Consumer Commission.
2. Germany: Joachim Schwalbach & Anja Schwerk, *Stability of German Cartels*, *in* COMPETITION, EFFICIENCY, AND WELFARE. ESSAYS IN HONOR OF MANFRED NEUMANN, 101-128 (D.C. Mueller et al eds., 1999). *Available at* http://www.wiwi.hu-berlin.de/im/d/publikdl/98-2.pdf. The number in effect in 1998 and 1999 are taken from OECD Competition Law and Policy, Annual Report, Germany 1998-1999, http://www.oecd.org/pdf/M00008000/M00008157.pdf and OECD Competition Law and Policy, Annual Report, Germany 1999-2000, http://www.oecd.org/pdf/M00008000/M00008069.pdf, respectively.
3. Japan: Data refer to number of exemptions in force in March of each year. Ajit Singh, COMPETITION AND COMPETITION POLICY IN EMERGING MARKETS: INTERNATIONAL AND DEVELOPMENTAL DIMENSIONS 6-7 (UNCTAD and Center for International Development Harvard University, G-24 Discussion Paper Series No. 18, 2002) (citing Japanese Fair Trade Commission, Staff Office, *The Antimonopoly Act of Japan* (1973, p.27). Reproduced from Caves, R. and M. Uekusa, *Industrial Organization in Japan*, 1976 Washington, DC: Brookings Institution. In 1998 it was reported that "Nine of 11 export cartels have been abolished since 1995. Remaining export cartels, related either to protection of quality or intellectual property, or to import monopolies in partner countries are to be abolished by end-1999." (1998 WTO Trade Policy Review, *available at* www.wto.org/english/tratop_e/tpr_e/tp69_e.htm, no page number given).
4. US: ETC data: U.S. Federal Register. Webb Pomerene data: Dick, *supra* note 44; STAFF REPORT TO THE FEDERAL TRADE COMMISSION, *supra* note 8; and www.ftc.gov/os/statutes/webbpomerene, *supra* note 10.

TABLE 2

Export Association Exemptions from National Antitrust Laws – Selected Countries (Developing Countries noted with *)

COUNTRY (Year of Most Recent Relevant Statute)	EXEMPTION CLASSIFICATION	NOTIFICATION REQUIREMENT
Argentina* (1980)	Implicit	No
Australia (1974)	Explicit	Yes
Austria (1988)	Implicit	No
Belgium (1991)	Implicit	No
Brazil* (1994)	Implicit	No
Canada (1986)	Explicit	No
Chile* (1973)	Implicit	No
China*	Implicit	No
Czech Republic* (2001)	Explicit	No
Cyprus	Implicit	No
Denmark (2002)	Implicit	No
Egypt*	No substantive antitrust laws	--
Estonia*	Implicit	No
Finland (1992)	Explicit (vis-à-vis non-EU member states)	No
France (1986, amended 1996)	Explicit	No
Germany (1999)	Implicit	No
Greece (2000)	Implicit	No
Hong Kong [1]	No substantive antitrust laws	--
Hungary* (1996)	Implicit	No
Iceland	Explicit	No
India* (2002)	Explicit	No
Indonesia*	Explicit	No
Ireland (2002)	Implicit	No

COUNTRY (Year of Most Recent Relevant Statute)	EXEMPTION CLASSIFICATION	NOTIFICATION REQUIREMENT
Israel (1988)	Explicit	Yes
Italy (1990)	Implicit	No
Japan (1947, amended 1997)	Implicit	No
Kenya* (1988)	Implicit	No
Korea (South) (1980)	Implicit	No
Latvia*	Implicit	No
Lithuania*	Explicit	No
Luxembourg	No statutory exemption	--
Malta	Implicit	No
Mexico* (1993)	Explicit	No
Netherlands (1998)	Implicit	No
New Zealand (1986)	Explicit	Yes
Norway (1993)	Explicit	No
Pakistan* (1970)	Implicit	No
Poland* (1990)	Implicit	No
Portugal (1993)	Implicit	No
Russia*	No statutory exemption	--
Singapore [2]	No substantive antitrust laws	--
Slovak Republic* (2001)	Explicit	No
South Africa* (1998)	Explicit	Yes
Spain (1989)	Implicit	No
Sri Lanka* (1987, 2003)	Implicit	No
Sweden (1994)	Implicit	No
Switzerland (1995)	Implicit	No
Taiwan (1992)	Explicit	Yes
Tanzania* (1994)	Implicit	No
Thailand*	No statutory exemption	--
Turkey* (1994)	Implicit	No
United Kingdom (1998)	Implicit	No

COUNTRY (Year of Most Recent Relevant Statute)	EXEMPTION CLASSIFICATION	NOTIFICATION REQUIREMENT
United States (1890)	Explicit	Yes
Uruguay* (2000)	Implicit	--
Venezuela* (1992)	Implicit	No
Zambia* (1994)	Implicit	No

Notes:

1. Though Hong Kong does not yet have a competition law, the government created an advisory group to review competition related issues. In May 1998, this Competition Policy Advisory Group (COMPAG) promulgated a Statement on Competition Policy. The policy creates a framework to promote competition. The Statement declares that COMPAG "will take action only when market imperfections or distortions limit market accessibility or market contestability, and impair economic efficiency of free trade, to the detriment of the overall interest of Hong Kong." The Statement further declares: "For Hong Kong, a small and externally-oriented economy which is already highly competitive, the Government sees no need to enact an all-embracing competition law." In 2003, COMPAG also developed a set of guidelines "to access Hong Kong's overall competitive environment; define and tackle anti-competitive practices; as well as to ensure consistent application of Hong Kong's competition policy across sectors." http://www.compag.gov.hk/policy/ (February 9, 2004).

2. There are no competition laws in Singapore. Instead, Singapore subscribes to the economic philosophy that domestic and international competition are both advantageous to its economy. The Global Competition Forum, www.globalcompetitionforum.org/regions/asia/singapore/SINGAPORE.pdf

TABLE 3

Recent Changes in Export Association Exemptions from National Antitrust Laws

COUNTRY	DATE OF AMENDMENT	OLD EXEMPTION POLICY	NEW EXEMPTION POLICY
Cyprus	2004 (proposed)	Explicit	Implicit
Finland	2004	Explicit	Implicit
Germany	1999	Explicit with notification	Implicit (explicit allowed in limited circumstances after government approval)
Hungary	2004	Explicit with notification	Implicit
Japan	1997	Explicit with notification	Implicit
Korea	1999	Explicit	Implicit
Netherlands	1998	Explicit	Implicit
Switzerland	1995	Explicit	Implicit
Sweden	1994	Explicit	Implicit
United Kingdom	1998	Explicit with notification	Implicit

APPENDIX

Sources for Table 1

Argentina	Comisión Nacional de Defensa de la Competencia (Argentina antitrust authority),*at* www.miniproduccion.gov.ar/cndc; Asociacion Argentina de Economia Politica, *at* www.aaep.org.ar.
Australia	Exports and the Trade Practices Act: Guidelines to the Commission's approach to mergers, acquisitions and other collaborative arrangements that aim to enhance exports and the international competitiveness of Australian industry, *at* www.apeccp.org.tw/doc/Australia/Decision/audeclc.html.
Austria	Theodor Taurer, Austrian Federal Economic Chamber - Advisor on Competition Policy, Competition law in Western Europe and the USA, Kluwer, October 2002 looseleaf release, A/C-3.
Belgium	James J. Garrett (ed.), *World antitrust law and practice: a comprehensive manual for lawyers and businesses*. 1995 (looseleaf releases). Section 29B.1
Brazil	Brazilian Secretariat for Economic Monitoring, *at* www.fazenda.gov.br/seae/english/index_english.html.
Canada	*Competition Policy Convergence: The Case of Export Cartels*, *at* www.dfait-maeci.gc.ca/english.
Chile	ABA Global Competition Forum, *at* www.globalcompetitionforum.org/s_america.htm.
China	Law of the People's Republic of China for Countering Unfair Competition, (1993) (P.R.C.), APEC Competition Policy and Law Database, *Questions and Answers: People's Republic of China*, *at* http://www.apeccp.org.tw/doc/China.html#QA. Chinabig.com, at http://www.chingabig.com/en/law/business/price.htm. Article 14(1) of the "Price Law of the People's Republic of China." Last accessed June 21, 2004.
Cyprus	Protection of Competition Law of 1989 (1989) (Cyprus), *at* http://www.competition.gov.cy/competition/competition.nsf/0/F4BFF0B315A2D8DAC2256C8E003C0C2C/$file/L.%20207-89eng..pdf?OpenElement.
Czech Republic	Czech Republic, Office for the Protection of Competition, Legislation, *at* www.compet.cz/Titulni_eng.htm.
Denmark	Danish Competition Authority, Konkurrencestyrelsen, *at* www.ks.dk/intomr/index.htm.

Egypt	As stated during a 2002 WTO meeting, Egypt "has never had comprehensive competition legislation, although various provisions in different legislation address basic anticompetitive behavior. However, there is a draft under discussion. Working Group on the Interaction Between Trade and Competition Policy, World Trade Organization, Communication From Egypt, WT/WGTCP/W/187 (May 29, 2002) at 6. The law is still under debate, see Paul Schemm, Egypt Debates an Antitrust Law, The Daily Star, June 16, 2004 (no page number given), *available at* http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=3&article_id=5316.
Estonia	Competition Act, (2003) (Est.), *at* http://www.legaltext.ee/en/andmebaas/ava.asp?m=026.
EU	Competition Directorate General, European Union, at www.europa.eu.int/comm/competition/legislation/treaties/ec/art81_en.html. (Note: EEC Treaty signed in Rome, March 25, 1957. Article 85 of the treaty was implemented in 1962 (EEC Council: Regulation No. 17: First Regulation implementing Articles 85 and 86 of the Treaty, Official Journal p. 013, 21/02/1962, p. 0204-0211.)
Finland	Finnish Competition Authority, Legislation, Act on Competition Restrictions, *at* www.kilpailuvirasto.fi/english/index.html.
France	Nina Hachigian, *Essential Mutual Assistance in International Antitrust Enforcement*, The International Lawyer, Spring 1995, 29 Intl Law. 117; Julian von Kalinowski, *World Law of Competition* (1987) 2.06 at FRA 2-36.
Germany	(a) German Cartel Authority, at www.bundeskartellamt.de/competition_act.html; Joachim Schwalbach and Anja Schwerk, *Stability of German Cartels*, in D.C. Mueller, A. Haid and J. Weigand (eds.), COMPETITION, EFFICIENCY, AND WELFARE. ESSAYS IN HONOR OF MANFRED NEUMANN, Kluwer, 1999, pp. 101-128. Also available at http://www.wiwi.hu-berlin.de/im/d/publikdl/98-2.pdf. (b) 1999 Amendments to German Act against Restraints of Competition, Joachim Rudo, at www.antitrust.de/gwb-amendment.htm.
Greece	International Bar Association, Global Competition Forum, Greece national antitrust legislation, *at* www.globalcompetitionforum.org/europe.htm#Greece.
Hong Kong	The Global Competition Forum, *at* http://www.globalcompetitionforum.org/asia.htm#HongKong (February 9, 2004).
Hungary	Hungarian Competition Authority, Gazdasagi Versenyhivatal (GVH), *at* www.gvh.hu/index.
Iceland	Competition Law, The Law Gazette A, No. 8/1993, as amended by Law No. 24/1994, 83/1997, 82/1998, and 107/2000, (2000) (Ice.) *at* http://www.samkeppni.is.

India	Department of Company Affairs, at http://dca.nic.in/. *See also* Pradeep S Mehta and Nitya Nanda, C*hanging Competition Regime in India* (noting differences between the Competition Act of 2002 and the older Monopolies and Restrictive Trade Practices Act of 1969) *available at* http://www.ciroap.org/apcl/conf/documents/competition/Changing%20Competition%20Regime%20in%20India.doc.
Indonesia	Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 5, (1999) (Indon.). *at* http://www.dprin.go.id/regulasi/english/1999/uu50399.pdf
Ireland	The Competition Authority of Ireland, Competition Act of 2002, at www.tca.ie.
Israel	Israel Antitrust Authority, Antitrust Legislation, *at* www.antitrust.gov.il/.
Italy	Law no. 287 of October 10th, 1990; Autorita Garante della Concorrenza e del Mercato, *at* www.agcm.it/eng/index.htm.
Japan	www.apeccp.org.tw/doc/Japan/Competition; Geralyn Trujillo, *Mutual Assistance Under the International Antitrust Enforcement Assistance Act: Obstacles to a United States-Japanese Agreement*, 33 Tex, Intl L.J. 613 (1998). The "Omnibus Act to Repeal and Reform Cartels and Other Systems Exempted from the Application of the Antimonopoly Act under Various Laws" (1997) (see: www.jftc.go.jp/e-page/press/1997/19970613.htm). WTO Trade reports:1995: www.wto.org/english/tratop_e/tpr_e/tp5_e.htm; 1998: www.wto.org/english/tratop_e/tpr_e/tp69_e.htm; 2000: www.wto.org/english/tratop_e/tpr_e/tp142_e.htm; 2002: www.wto.org/english/tratop_e/tpr_e/tps107-3_e.doc;.Ajit Singh, COMPETITION AND COMPETITION POLICY IN EMERGING MARKETS: INTERNATIONAL AND DEVELOPMENTAL DIMENSIONS 6-7 (UNCTAD and Center for International Development Harvard University, G-24 Discussion Paper Series No. 18, 2002) (citing Japanese Fair Trade Commission, Staff Office, The Antimonopoly Act of Japan (1973, p.27). Reproduced from Caves, R. and M. Uekusa 1976 Industrial Organization in Japan, Washington, DC: Brookings Institution.).
Kenya	The Monopolies and Prices Commission of Kenya, *at* http://www.treasury.go.ke/monopolies.html.
Korea (South)	James J. Garrett (ed.), *World antitrust law and practice: a comprehensive manual for lawyers and businesses*. 1995 (looseleaf releases), Section 36.
Latvia	Law on Competition (2001) (Lat.), *at* http://www.competition.lv/Alt/ENG/EFS.htm.
Lithuania	Law on Competition (1999) (Lith.), *at* http://www.konkuren.lt/english/antitrust/legislation.htm
Luxembourg	Law of 17 June 1970, (1970) (Lux.)

Malta	Chapter 379 Competition Act (1995) (Malta), *at* http://docs.justice.gov.mt/lom/legislation/english/leg/vol_10/chapt379.pdf
Mexico	Ley Federal de Competencia (1993), Capitulo 1, Articulo 6(I); Comision Federal de Competencia, *at* www.cfc.gob.mx.
Netherlands	Dutch Competition Authority, (Nederlandse Mededingingsautoriteit), *at* www.nmanet.nl/en/Wet_en_regelgeving/default.asp.
New Zealand	New Zealand Commerce Commission, "Anticompetitive Practices under Part II of the Commerce Act", www.comcom.govt.nz/acts/index.cfmJames J. Garrett (ed.), *World antitrust law and practice: a comprehensive manual for lawyers and businesses*. 1995 (looseleaf releases), Section 41.
Norway	Norwegian Competition Authority (Konkurransetilsynet), Legislation, *at* www.konkurransetilsynet.no/internett.
Pakistan	http://www.paksearch.com/TOC/MONOPOLY.html.
Poland	Commercial Law Center Foundation, *at* www.prawo.org.pl/clcf/statutes/stat37.html.
Portugal	Direccao-Geral do Comercio e da Concorrencia, Legislacao Nacional, *at* www.dgcc.pt/16.htm.
Russia	"Competition Law and Policy in Russia – An OECD Peer Review," 2004 ("The Law on Competition in its current version specifically prohibits (Article 6.1) horizontal agreements concerning prices or any element of pricing behaviour (mark-ups, discounts), market division, restriction of market access, elimination of participants from the market, or boycott." (p. 22) and "There are no block exemptions in the Law on Competition and the law does not envision a process for the creation of such exemptions." (p. 23)
Singapore	
Slovak Republic	Antimonopoly Office of the Slovak Republic, Legislation in Force, *at* www.antimon.gov.sk/default_a.htm.
South Africa	The Competition Commission of South Africa, *at* http://www.compcom.co.za/, www.dti.gov.za/sacu/taiwan.htm.
Spain	Servicio de Defensa de la Competencia, Legislacion, *at* www.mineco.es/dgdc/sdc/.
Sri Lanka	Consumer Unity & Trust Society, *Pulling Up Our Socks*, *at* http://cuts.org/pulling.pdf.
Sweden	Ulf Bernitz, University of Stockholm, *Competition Law of Western Europe and the U.S.*, Kluwer, September 1999 Supplement, S/C-2; Swedish Competition Authority, Konkurrensverket, Competition Act, *at* www.kkv.se/eng_indexns.htm.

Switzerland	Swiss Competition Commission, *at* www.wettbewerbskommission.ch.
Taiwan	James J. Garrett (ed.), *World antitrust law and practice: a comprehensive manual for lawyers and businesses*. 1995 (looseleaf releases). Section 37.9.
Tanzania	Consumer Unity & Trust Society, *Pulling Up Our Socks*, *at* http://cuts.org/pulling.pdf.
Thailand	Trade Competition Act (1999) (Thail.) *at* http://www.apeccp.org.tw/doc/Thailand/Competition/thcom2.htm.
Turkey	Republic of Turkey Competition Authority (Rekabet Kurumu), Legislation, General Information, Fighting Cartels, *at* www.rekabet.gov.tr/ekartel.html.
United Kingdom	Office of Fair Trading, Competition Act 1998, *at* www.oft.gov.uk/Business/Legal+Powers/Competetion+Act+1998.htm.
United States	15 U.S.C. §§ 6a & 45(a)(3) (1994); 15 U.S.C. §§ 61–66 (1994); 15 U.S.C. § 4001-4016 (1982).
Uruguay	Sistema de Informacion sobre el Comercio Exterior (SICE), Competition, National legislation, *at* www.sice.oas.org/compol/natleg/Uruguay/17243.asp.
Venezuela	International Bar Association, Global Competition Forum; *see:* www.globalcompetitionforum.org/s_america.htm#venezuela; Procompetencia, www.procompetencia.gov.ve/lppelc-eng.html.
Zambia	Consumer Unity & Trust Society, *Pulling Up Our Socks*, *at* http://cuts.org/pulling.pdf; Zambia Competition Commission, *Competition Rules in Zambia*, http://www.zcc.com.zm/.