

Forum: Legal Committee (GA6)

Issue: Discussing the Legal Frameworks and current legislations in place preventing the cartelization of world trade markets

Student Officer: Emmanouil Spanos

Position: Chair

INTRODUCTION

The world trade market is the trade of goods and services between nations, and as one can imagine it is considered the backbone of the global economy nowadays. Our economy is meant to function in a competitive nature or in other words in healthy competition. Contrasting to that, cartel members, instead of competing with each other, rely on each other and in this nature, businesses have reduced incentives to create and promote new products at competitive prices. As a result, customers end up paying more money for lower-quality products. Under many laws, cartelization is illegal. Such laws are the Consumer and the Competition Act. In many instances, like the European Commission, cartel members are imposed heavy fines. Since cartels are illegal, one can imagine that they are very secretive. This is why programs like the Leniency program exist; for members of cartels to give inside information to possible cartels for full immunity if the information provided is sufficient to start a formal investigation.

The Organization of the Petroleum Exporting Countries (OPEC) is a cartel case study in the World Trade Market. OPEC is known for holding 81.5% of global oil reserves and is in control of 44% of the global oil production.¹ OPEC members understand the impact they have on the economy; since they are accountable for a great percent of production and exportation of oil, they aim to make correlative policies about production, thus leading to the formation of a cartel. A prime example of an organization that works against this malpractice is the World Trade Organization (WTO). Certain actions from these organizations have been taken in the past years, such as the formation and adoption of antitrust or anti-monopoly laws, which provide laws that cover actions of anti-competitive nature. For example, price-fixing, abuse of dominant position or monopolization, mergers that limit competition, and agreements between suppliers and distributors (vertical agreements), while these actions prevent the creation of new competition.

While the impact of cartels on economic efficiency is severe, customers often either avoid buying cartelized products, seeing the elevated prices, or decide subconsciously to give wealth to cartel operators by paying for the product. Thus, we need to take action and prevent it from happening in world trade markets.

¹ "What Is a Cartel: Cartel Definition." *GAN Integrity*, www.ganintegrity.com/compliance-glossary/cartel/.

DEFINITION OF KEY-TERMS

Cartel - Cartelization

“A cartel is an organization created from a formal agreement between a group of producers of a good or service to regulate supply in order to regulate or manipulate prices. In other words, a cartel is a collection of otherwise independent businesses or countries that act together as if they were a single producer and thus can fix prices for the goods they produce and the services they render, without competition.”²

World Trade

“World trade is defined as an agreement between two or more nations that may operate their business in different parts of the world. This business is done by importing and exporting goods and services. In short, buying and selling of products and services irrespective of national boundaries.”³

Economic efficiency

“Economic efficiency is when all goods and factors of production in an economy are distributed or allocated to their most valuable uses, and waste is eliminated or minimized.”⁴

World Trade Organization (WTO)

“In brief, the World Trade Organization (WTO) is the only international organization dealing with the global rules of trade. Its main function is to ensure that trade flows as smoothly, predictably, and freely as possible.”⁵

² Chen, James. “Cartel.” *Investopedia*, Investopedia, 8 Feb. 2022, www.investopedia.com/terms/c/cartel.asp.

³ “International Marketing - World Trade.” *Tutorials Point*, www.tutorialspoint.com/international_marketing/international_marketing_world_trade.htm#:~:text=World%20trade%20is%20defined%20as,services%20irrespective%20of%20national%20boundaries.

⁴ Team, The Investopedia. “Economic Efficiency Definition.” *Investopedia*, Investopedia, 7 Dec. 2021, www.investopedia.com/terms/e/economic_efficiency.asp.

⁵ “World Trade Organization.” *WTO*, www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm#:~:text=In%20brief%2C%20the%20World%20Trade,predictably%20and%20freely%20as%20possible.

Monopoly

“A monopoly is a dominant position of an industry or sector by one company, to the point of excluding all other viable competitors. Monopolies are often discouraged in free-market nations. They are seen as leading to price-gouging and deteriorating quality due to consumers'. They also can concentrate wealth, power, and influence in the hands of one or a few individuals. On the other hand, monopolies of some essential services such as utilities may be encouraged and even enforced by governments”.⁶

Free-market

“The free market is an economic system based on supply and demand with little or no government control. It is a summary description of all voluntary exchanges that take place in a given economic environment. Free markets are characterized by a spontaneous and decentralized order of arrangements through which individuals make economic decisions. Based on its political and legal rules, a country's free-market economy may range between very large or entirely illegal.”⁷

Consumers surplus

“Consumer surplus is an economic measurement of consumer benefits. A consumer surplus happens when the price that consumers pay for a product or service is less than the price they're willing to pay. It's a measure of the additional benefit that consumers receive because they're paying less for something than what they were willing to pay.”⁸

Immunity

“Immunity is an exemption from a legal requirement, prosecution, or penalty granted by government authorities or statute. The main types of immunity are witness immunity, public officials immunity from

⁶ Hayes, Adam. “What Is a Monopoly?” *Investopedia*, Investopedia, 10 Mar. 2022, www.investopedia.com/terms/m/monopoly.asp.

⁷ Team, The Investopedia. “Free Market Definition.” *Investopedia*, Investopedia, 12 May 2022, www.investopedia.com/terms/f/freemarket.asp.

⁸ Murphy, Chris B. “Consumer Surplus Definition.” *Investopedia*, Investopedia, 8 Feb. 2022, www.investopedia.com/terms/c/consumer_surplus.asp.

liability, sovereign immunity, and diplomatic immunity. The factors considered when granting immunity from prosecution for witnesses include the seriousness of the offense, reliability, and Involvement in criminal activity while governmental, sovereign, and diplomatic immunity are also granted for specific persons and circumstances".⁹

Per se violation

"Latin phrase meaning "by itself" or "in itself" or "inherently." The term is commonly used in criminal and anti-trust law as "Illegal per se" which means that the act is "inherently illegal", and in tort law as "Negligence per se" which means that the conduct automatically constitutes negligence under the provisions of a law"¹⁰

BACKGROUND INFORMATION

World Trade Markets and Cartelization in the past

"If you can walk into a supermarket and find Costa Rican bananas, Brazilian coffee, and a bottle of South African wine, you're experiencing the impacts of international trade."¹¹ Through commerce, states can have access to commodities and services that might not otherwise be accessible domestically and grow their markets. Market competition has increased as a result of global trade. This ultimately leads to more competitive pricing, which lowers the cost of the final product for the consumer.

Although cartels can be traced back to ancient years, it was only after World War I, that cartel formation grew massively on a global scale. They were the number one preference for businesses at the time, especially in Europe and Japan. While authoritarian states like Nazi Germany, Mussolini's Italy, and Franco's Spain used cartels to set up their corporatist economies in the 1930s. Through the effect of globalization, world trade has grown, and thus there are more chances for firms to collude and form a cartel. Through extensive legislation, many countries have achieved the mitigation of the effect. However, we need to find a transnational solution through cooperation.

⁹ Kenton, Will. "What Is Immunity?" *Investopedia*, Investopedia, 11 Apr. 2022, www.investopedia.com/terms/i/immunity.asp .

¹⁰ US Legal, Inc. "Find a Legal Form in Minutes." *Per Se Law and Legal Definition* <https://definitions.uslegal.com/p/per-se/>

¹¹ Heakal, Reem. "What Is International Trade?" *Investopedia*, Investopedia, 19 July 2022, www.investopedia.com/insights/what-is-international-trade/#:~:text=International%20trade%20is%20the%20exchange,countries%2C%20or%20more%20expensive%20domestically.

Impact of cartels

Welfare loss, allocative inefficiency, and market failure are some of the effects that cartels have on the economy. Contrasting to competition, cartels fail to achieve allocative efficiency. This happens due to the absence of competition, cartels are not incentivized to operate efficiently resulting in x-inefficiency; while also, cartels result in higher prices with lower output numbers resulting in welfare loss. The last reason is that firms in cartelized markets are less incentives to innovate thus leading to dynamic inefficiency. We can see that cartels show a loss of social surplus and that in a cartelized market the cartel under-allocated resources to the production of the given good thus, we can say that cartels may create a form of market failure. Moreover, through cartelization, there are higher prices and lower outputs of the cartelized goods. Welfare that is mentioned above, in reality, arises because of the lower output that cartels allow to be produced on top of the high prices of the goods; this once again shows that cartels are not working in favor of the consumers. Furthermore, the loss of consumer surplus to the cartelists should be mentioned. When charging a higher price than when we have perfect competition, a portion of consumer surplus is given to the cartelists. To put it simply, cartels gain at the expense of the consumers. In addition, cartels contribute to the unequal distribution of income. Since the cartels charge more than the competition, a redistribution of income is recorded, away from the consumers to the cartelists in the form of higher profits. Additionally, businesses in perfect competition are unlikely to engage in Research & Development (R&D). They have no abnormal profits in the long run with which they can finance R&D. They sell identical products and therefore are not interested in product development that would differentiate their products. They are unable to create barriers to entry as they are too small and so have no incentive to engage in R&D. Lastly, due to cartels there could be less innovation in the sector. While cartels have good reasons to pursue R&D for product development and innovation, the opposite may also occur. High barriers to entry, shielding cartels from competition could make them less likely to innovate.



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Antitrust laws/ Competition laws¹³¹⁴

Many states have extensive legal frameworks that safeguard consumers and regulate how firms conduct themselves. These laws are intended to give similar enterprises operating in a given industry a level playing field while preventing them from dominating their competitors. Originated from the United States of America, many governments create antitrust laws to safeguard consumers from exploitative company activities and promote fair competition. Numerous dubious commercial practices, such as market division, bid-rigging, price-fixing, and monopolies, are subject to antitrust laws. Numerous dubious commercial practices are subject to antitrust legislation, including but not limited to market allocation, bid rigging, price fixing, and

¹² Authority, Competition and Markets. "West Midlands Lawyers Asked to Help Competition Law Awareness." *GOV.UK*, GOV.UK, 19 Jan. 2016, www.gov.uk/government/news/west-midlands-lawyers-asked-to-help-competition-law-awareness.

¹³ Staff, the Premerger Notification Office, and DPIP and CTO Staff. *Federal Trade Commission*, 11 Feb. 2022, www.ftc.gov/.

¹⁴ "Sherman Anti-Trust Act (1890)." *National Archives and Records Administration*, National Archives and Records Administration, www.archives.gov/milestone-documents/sherman-anti-trust-act.

monopolies. Consumers would not benefit from a variety of options or market competition if these laws didn't exist. Additionally, there would be a restricted quantity of goods and services available to consumers while also they would be required to pay higher prices.¹⁵

In the US the Sherman Anti-Trust Act aimed to stop unjustified "monopolization attempted monopolization or conspiracy or combination to monopolize" and "contract, combination or conspiracy in restraint of trade." The Sherman Anti-Trust Act violations can result in harsh penalties, including fines of up to \$100 million for businesses and \$1 million for individuals, as well as jail sentences of up to 10 years. In the Federal Trade Commission Act, "Unfair tactics of competition" and "unfair or deceptive activities or practices" are prohibited by the Federal Trade Commission Act. The Federal Trade Commission Act and the Sherman Anti-Trust Act are both infringed upon, according to the Supreme Court. As a result, even though the Sherman Anti-Trust Act cannot technically be enforced, the FTC can still bring claims under the FTC Act against those who violate it. Specific practices that the Sherman Anti-Trust Act might not touch are addressed by the Clayton Antitrust Act. The Federal Trade Commission (FTC) lists these as prohibiting mergers and acquisitions that could "substantially lessen competition or tend to create a monopoly," prohibiting discriminatory prices, services, and allowances in business dealings, requiring major firms to inform the government of potential mergers and acquisitions, and giving private parties the ability to sue for triple damages when they have been affected by behavior that violates the Sherman and Clayton Acts.

In all countries that Antitrust laws apply their main goal is to maximize the welfare of consumers. More specifically in the US, the Federal Trade Commission Act, the Clayton Antitrust Act, and the Sherman Act's supporters claim that since their origin, these antitrust laws have secured consumers and competitors from market manipulation brought on by corporate greed. Antitrust laws aim to prevent price and bid-rigging, monopolization, and anti-competitive mergers and acquisitions through both civil and criminal enforcement.¹⁶

Leniency programmes

Companies that participate in cartels may face harsh penalties; however, under a leniency program, the company that discloses the existence of the cartel may be granted full immunity, while companies that do not qualify for full immunity may be eligible for fine reductions in exchange for providing insider information that assists the authorities in proving the infringement. In certain cases, informants or companies acting as informants are given full or in

¹⁵ Chen, James. "Understanding Antitrust Laws." *Investopedia*, Investopedia, 2 May 2022, www.investopedia.com/ask/answers/09/antitrust-law.asp#toc-the-big-three-antitrust-laws

¹⁶ *ibid*

other words, “blanket” immunity. This means that everything illegal that this company or individual has done in the case, is being disregarded and they are not charged with anything. This has one main advantage and one main disadvantage. The advantage is that people are more incentivized to whistleblow on cartels. However, the downside is that certain crimes are being “covered up” in order to stop these cartels and certain people go unpunished. As demonstrated by experience, both in the EU and the US, leniency programs by competition authorities are a critical instrument in dismantling cartels. The US created the first leniency program in 1993, while later, it was adopted by the European Commission (EC) in 1996. For the European Union until now, the EC is responsible for the application and function of said programs, while in the US, the Department of Justice (DOJ) is responsible for them.

These leniency programs seek to prevent firms from creating secret cartels as well as to identify them. However, some jurisdictions offer leniency for hub-and-spoke cartels (including both horizontal and vertical characteristics) and for Resale Price Maintenance (RPM), which are exceptions to the rule that leniency programs only apply to hard-core hidden cartels involving direct competitors. Horizontal agreements that are subject to these leniency programs in the EU and the US typically involve price fixing between rivals, bid rigging, capacity constraints, or market, customer, sale, or production allocation. The competition authorities do not need to demonstrate how these agreements have an anticompetitive effect because they are regarded per se or other kinds of violations. Purely vertical agreements are significantly less frequently covered by the scope of leniency programs; when they are, the coverage is typically restricted to the most serious vertical infractions, like RPM.

However, not all cartel-affiliated businesses may be eligible to gain from these initiatives. For instance, immunity or leniency is not accessible to undertakings that have taken actions to compel others to join the cartel under the ECN Model Leniency Programme (“MLP”), the Commission's 2006 Notice, or the U.S. DOJ Leniency Program. Even more stringently, the only ringleader or the instigator is not granted immunity in some EU jurisdictions. Additionally, for two key reasons, certain competition authorities offer individuals leniency programs, thus immunity applies here. The first benefit is that when someone blows the whistle on a cartel, they are shielded from any legal or financial repercussions for their role in the cartel. Second, it boosts the incentives for managers and staff to report misconduct. Some countries go even further in providing incentives for people by compensating whistleblowers economically. Immunity protection for individuals is becoming more and more popular since competition authorities view it as a crucial instrument for combating a decline in leniency requests. It is crucial to remember that in many jurisdictions, leniency programs only cover criminal fines and penalties; they do not cover other administrative punishments that a person might face or civil proceedings. For instance, a third party may file a lawsuit for follow-on damage against the leniency application in several EU and US jurisdictions. However, leniency applicants cannot be held liable for triple damages in the United States; only single damages are allowed.

The timeliness of a leniency application and the caliber and type of the evidence offered is crucial factors on the procedural side. First, whether an undertaking receives full immunity or a partial reduction of the fee depends on how quickly the application was submitted. Second, competition authorities will evaluate whether the information is adequate to permit them to open an investigation or to establish the existence of a cartel infringement when evaluating the quality and character of the evidence. When the proof adds "substantial added value" and supports the competition authorities' case for a cartel, they will then show leniency.

In order to qualify for the DOJ Leniency Program in the United States, an applicant must resign, assist with the DOJ's investigation, admit fault, and pay back any parties who were harmed as a result of their engagement in the cartel. The DOJ will also decide whether leniency would be unfair to others in cases where it already knows about the relevant conduct by taking into account several factors, including the applicant's involvement in the cartel, the nature of the cartel, and the applicant's timing in disclosing the cartel.

The Leniency Programme in Europe outlines several prerequisites for a candidate to receive immunity or leniency. The candidate must first cooperate completely, sincerely, quickly, consistently, and in a spirit of honest cooperation. Second, as of the application date, they must resign from the infringement. Third, the applicant must make sure no proof is lost. The applicant is also prohibited from disclosing the existence of the leniency application.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

Egypt

In Egypt, private enforcement has a very broad legal remit. Every person has the right to seek compensation for any loss they have suffered in accordance with the established rules of civil law. In other words, everybody who committed a mistake is responsible for making amends (Article 163 of the Egyptian Civil Code)¹⁷. In this regard, civil claims may be filed either independently or in conjunction with other claims. Due to the criminal aspect of the Egyptian Competition Law (the "ECL"), civil claims may be taken directly before the criminal court or a civil court.¹⁸ In this way, the Egyptian government is tackling the cartelization of both domestic and world trade markets by preventing the formation of cartels. Furthermore, the Egyptian

¹⁷ Medhat. "Newsletter Article: In-Depth: Tortious Error and the Draft Medical Liability Law in Egypt." *Hegazy and Partners*, 15 Sept. 2021, www.hegazylaw.com/in-depth-tortious-error-and-the-draft-medical-liability-law-in-egypt/#:~:text=The%20cornerstone%20of%20tortious%20liability,compensation%20from%20the%20liable%20party%E2%80%9D.

¹⁸ *Global Guide to Competition 2016 Litigation - Baker Mckenzie*. www.bakermckenzie.com/-/media/files/expertise/antitrust/global_guide_to_competition_litigationfinal.pdf?la=en.

government has recently launched leniency programs that, as it is already mentioned, prevent cartelization by disincentivizing their creation.¹⁹

France

In France, businesses and individuals may both file civil claims for loss brought on by violations of the laws regulating competition. In reality, these actions are typically brought against businesses. In France, several different legal claims might be filed, an action that may be supported by contractual, tortious, or criminal law. Many measures under French law deal with competition law violations in addition to EU legislation. The French Commercial Code's Articles L. 420-1 and L. 420-2 correspond to TFEU Articles 101 and 102. Also, a violation of competition law may result in criminal charges under French Commercial Code Article L. 420-6 if an individual had a personal and significant role in its setup or operation. In addition, if one of the contract's clauses, for instance, breaches competition law, the parties may file a claim for damages based on breach of contract (whether EU or domestic law). If the claim is upheld, the claimant may ask that the relevant clause—or, if it cannot be severed—the entire contract—be deemed invalid. As we can see, the French government was taken a stance against cartels. Despite the reluctance of the French government to oppose cartels, in the last 20 years, it has clearly taken a stance on the issue. In this regard, businesses are not incentivized to form cartels thus, cartelization in the domestic and the world trade market is prevented.²⁰

Russian Federation

Certain market-dominant company behaviors, anti-competitive agreements and concerted practices, coordination, and unfair trade practices are prohibited by Russian competition law. Per se infractions and rule of reason, violations are different. For example, the following activities by market-dominant firms are regarded to be per se illegal: (i) setting monopolistically high or low prices; (ii) removing products from circulation if doing so results in a price increase for those products; (iii) compelling contracting parties to accept unfair contractual conditions; (iv) unreasonable output decrease due to economic or technological factors.²¹

USA (United States of America)

¹⁹ Tamer Nagy Ahmad Ashraf J. Mark Gidley. "Egypt Launches Cartel Amnesty Guidelines." *White & Case LLP*, 17 Aug. 2020, www.whitecase.com/publications/alert/egypt-launches-cartel-amnesty-guidelines.

²⁰ *ibid*

²¹ *ibid*

In the USA, a set of laws was developed that aimed to protect consumers from the effects of cartels. This set of laws is called Antitrust laws, these are enforced in a wide range of market activities, including market allocation, bid rigging, price fixings, and many more. They were created by three main pieces of legislation. The first one was the Sherman Anti-Trust Act of 1890, the second was The Federal Trade Commission, and the last was the Clayton Antitrust Act. In the USA, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) are responsible for enforcing Antitrust legislation.

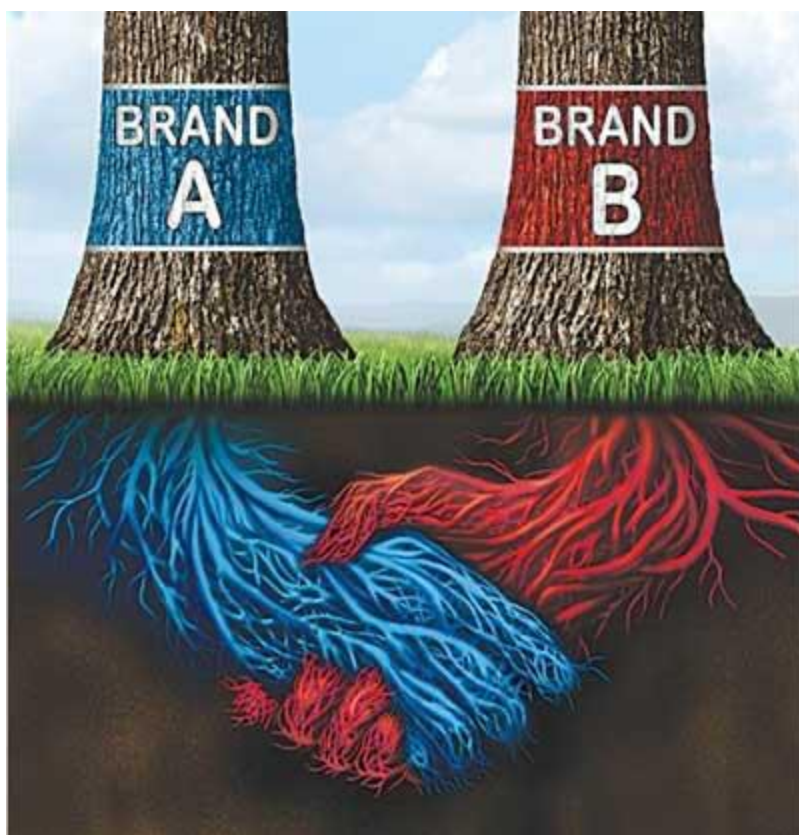
EC (European Commission)

Since 1996, the Commission has run a leniency program to give businesses the chance to admit their wrongdoing and avoid or minimize the potential severity of a sanction for violating the competition laws. The 2006 Notice on Immunity from Fines and Reduction of Fines in Cartel Cases (the "Leniency Notice") currently outlines the program's major features. The Leniency Notice addresses hard-core prohibitions between rivals, such as covert agreements and coordinated actions. Vertical restraints are not covered. In essence, the leniency program provides undertakings implicated in a cartel with either an entire exemption from fines or a reduction from the fines that the Commission would have otherwise imposed on them if they were to self-report and provide evidence.

International Competition Network (ICN)

An unofficial online network called the International Competition Network aims to promote international cooperation amongst competition law enforcement agencies. It was created in 2001 following the release of a Final Report to the US Attorney General and Assistant Attorney General for Antitrust by the International Competition Policy Advisory Committee (or the ICPAC report, for short). According to US competition law specialists, increased cooperation with foreign authorities could help with worldwide coordination of enforcement and information sharing on competition policy. It was made up of 132 member states from 120 competition jurisdictions that were solely focused on enforcing international competition.²²

²² Atomic. "Document Library." *ICN*, 8 Sept. 2020, www.internationalcompetitionnetwork.org/document-library/?keyword=&groups=15&types=12.



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TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
2 July 1890	The Sherman Anti-Trust Act was published. It was the law that allowed the rule of free competition amongst those engaged in commerce
26 September 1914	The Federal Commission Act was published. This supports that "Unfair tactics of competition" and "unfair or deceptive activities or practices" are prohibited.

²³ "The Process of Cartelization : Daily Current Affairs." *Dhyeya IAS® - Best UPSC IAS CSE Online Coaching | Best UPSC Coaching | Top IAS Coaching in Delhi | Top CSE Coaching, www.dhyeyaias.com/current-affairs/daily-current-affairs/the-process-of-cartelization.*

15 October 1915	The Clayton Anti-Trust Act was published. The new legislation established strikes, boycotts, and labor unions legal under federal law in addition to prohibiting price discrimination and anti-competitive mergers.
30 October 1947	The General Agreement on Tariffs and Trade (GATT), which was signed on October 30, 1947, was a legal agreement that reduced restrictions on international trade by removing or cutting back on quotas, tariffs, and subsidies while keeping other important guidelines in place. The GATT was designed to accelerate the post-World War II economic recovery by liberalizing and reorganizing international trade.
1996	The European Commission adopted the leniency program for the prevention and dissolution of cartels.
5 December 2014	The new EU Antitrust Damages Directive (the "Directive"), which was published in the Official Journal on December 5, 2014, regulates actions for losses brought under national law for violations of both EU and national antitrust law, with the exception of those that subject individuals to criminal penalties.

RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS

UN WORKING GROUP ON CROSS-BORDER CARTELS

A working group on cross-border cartels was established in 2020 by the Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. This group is open to the Member States voluntarily, without financial implications for the existing budget of the United Nations, to

illustrate best practices, facilitate data exchange and consultations, and report to the In 2020. The Working Group is available to government representatives with the necessary expertise (for instance, national competition authorities); interested international organizations and networks; and pertinent stakeholders from the private sector, civil society, and academia. The Working Group holds regular, informal teleconference meetings.²⁴

General Agreement on Tariffs and Trade (GATT)

Quantitative trade barriers like trade restrictions and quotas were the most expensive and unfavorable aspects of the prewar protectionist era, and the GATT was established to establish regulations to abolish or restrict them. The framework allowed for a series of multilateral discussions for the removal of tariff barriers, and the agreement also provided a structure for the arbitration of international commercial disputes. In the years following World War II, the GATT was viewed as a tremendous success. Trade without discrimination was one of the GATT's major accomplishments. Every GATT signatory member was expected to treat everyone equally. The World Trade Organization has included this idea, known as the most-favored-nation concept. As a practical result, once a country had agreed to reduce its tariffs with some other nations (typically its biggest trading partners), the reduction would immediately apply to all GATT signatories. There were escape clauses that allowed nations to negotiate special circumstances if their domestic producers would be disproportionately damaged by tariff reductions.

²⁴ *Working Group on Cross-Border Cartels* | Unctad. <https://unctad.org/Topic/Competition-and-Consumer-Protection/working-group-on-cross-border-cartels>



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PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

The Treaty on the Functioning of the European Union (TFEU)

All Member States of the European Union before entering the Union have to sign TFEU and thus comply with what it is said in the treaty. In this treaty, there are certain articles like Articles 101, 102, 103, 104, 105, and 106 that prohibit anti-competitive policies. These Articles don't only focus on national matters of each Member State but they focus on the Union as a whole.

Article 101: The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;

²⁵ "Home." Geneva Interdisciplinary Centre for Economics and Law, <https://gicel.ch/tp-course/competition-law/>

- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.²⁶

The Proposals for the Expansion of World Trade and Employment

This document was created in November 1945 by the US. Its main goal was for countries to open their markets to world trade in order to let economic growth take place. It was the time after WWII and as one can imagine it was a difficult time for everyone as all countries were still recovering from the devastating effects of the war. In this document the US supported that trade markets should move to an international level. Accompanying this proposal were the four main reasons besides the war that countries have not opened their markets yet. First there were restrictions imposed by governments, then there were restrictions imposed by cartels. Third on the list was fear of disorder in the market for certain primary commodities, while the last one was, irregularity and the fear of irregularity in production and employment. To conclude, this document was divided into five subsections that were explaining what exactly each reason met and how it can be crossed out of the list.²⁷

POSSIBLE SOLUTIONS

Limit government-based obstacles

Limiting and reducing government-based barriers in international trade would be a great disincentive in the formation of new cartels in world trade markets. In essence, there would be no reason for businesses to collude/ form a cartel with other firms. It would be pointless for any firm to have so much exposure against the law and in return have little to no benefit. Even

²⁶ "Competition Law Treaty Articles." *Competition Policy*, ec.europa.eu/competition-policy/antitrust/legislation/competition-law-treaty-articles_en.

²⁷ *Proposals for Expansion of World Trade and Employment - Fraser*. fraser.stlouisfed.org/files/docs/historical/eccles/036_04_0003.pdf.

nowadays trade obstacles exist between countries. There are two types of barriers, the first is tariff obstacles and the second one is non-tariff barriers. Tariff barriers are taxes placed on imported goods. While some examples of non-tariffs are embargoes, buy-national regulations, and exchange controls are some non-tariff barriers. However, this may seem inefficient as not many countries may want to limit their barriers for many reasons.

Establish an international fact-gathering agency for cartels

It would be a good solution to establish such an agency. Government officials from all around the world would have access to and assist in its operation, thus assisting in the detection and elimination of cartels. This agency can be informed by businesses or individuals in the form of whistleblowers while also governments provide it with all the information they have available. Furthermore, this agency will have the legal power to prosecute firms or individuals that have a role in said malpractices under international law, regardless of the country of their headquarters. Although practical it can be somewhat inefficient since the public interest would still not be protected against the abuse of cartel power, and such an agency would likely find it challenging to obtain all relevant information on cartel contracts and behavior.

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