

Copyright: The Last Trade Barrier in a Globalised World?

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Abstract

Even while most of the world's trading nations enjoy and actively vaunt the advantages of trade liberalisation and globalisation, they remain loath to lift restrictions on parallel imports of copyrighted products. This is all the more surprising in that these nations may have already abolished or eased other state backed protectionist measures such as quotas, tariffs and anti-dumping duties providing differential treatment for imported and internally produced products and thereby exposed their own home industries to the spectre, if not always the reality, of economic collapse in the event that their products are unable to compete with cheaper imports from lower cost economies. States nevertheless continue to single out copyright owners for affirmative action by allowing them to prevent the parallel importation of products that they have already put (or allowed others to put) on the market in another country. This paper takes up the question whether this form of state intervention creates artificial barriers to free trade in copyrighted goods, discriminates against businesses not reliant on copyrighted products and cuts across antitrust policy. It is true that competition law generally does not preclude copyright owners without market power from erecting market segmentation and price discrimination systems by establishing vertical exclusive dealing arrangements or imposing contractual restrictions on the secondary disposition of legitimate copies of their products but this does not mean that similar actions by those with market power should be free from regulatory scrutiny. Parallel importing restrictions distort the inquiry by privileging some forms of price discrimination over others. These themes are explored in the context of the increasingly convergent New Zealand and Australian parallel importation regimes, two economies which provide interesting examples that the sky need not fall for copyright owners when parallel importing restrictions on copyrighted products are lifted.