BEYOND GATT: DEVELOPING A FRAMEWORK FOR INTERNATIONAL COMPETITION LAW

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BACKGROUND

Since the 1940's, when the Havana Charter provided an ambitious proposal for an International Trade Organization, a number of attempts have been made to negotiate an international code regulating private business conduct. The United Nations Conference on Trade and Development, for example, sponsored negotiations to address the developing nations' concerns with the growth of multinational corporations. These negotiations resulted in the 1970's in a general code on restrictive business practices. At approximately the same time, the Organization for Economic Cooperation and Development promulgated a set of general antitrust guidelines counseling against cartels. Apart from generalities, guidelines and proposals, however, the regulation of private business conduct has been left primarily to national antitrust and competition laws.

Prompted by significant structural changes in the global economy -- including the movement to integrate markets in Europe, Asia, North and South America, and the emergence of free market economies in formerly communist states -- many commentators have proposed the development of an international antitrust or competition law. The proposals range from the development of a comprehensive international antitrust code to more modest attempts at harmonization of national competition laws.[1] Despite their

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[1]*See, e.g.*, Report of the American Bar Association Antitrust Section Special Committee on International Antitrust, 62 Antitrust & Trade Reg. Rptr. (BNA) 156, 161 (1992); Draft

significant differences in approach, all the proposals rest on the common premise that private restraints of trade and disharmonies among national competition laws must be addressed at an international level to promote the development of free markets and true global integration. In short, a consensus is developing that the time for an international framework for competition law has arrived. The question is no longer whether or when, but how.

A Global Economy in Transition

Although the Havana Charter never produced an international antitrust or competition law, it did form the basis for the primary institution governing international trade -- the General Agreement on Tariffs and Trade (the "GATT").[2] The GATT has focused almost exclusively on tariffs and other government-imposed restraints of trade. In response to changes in the global economy wrought by the expansion of the volume of trade among nations, the introduction of new leaders in that trade, and changes in the form of trade such as increasing trade in services, the GATT has periodically been renegotiated, modified and expanded, but its essential focus has remained constant on government-imposed restraints of trade.

The GATT's emphasis on government-imposed restraints of trade has been effective because economic interests have been defined largely along national lines. Although international trade has grown exponentially over the last forty years, for the most part the goods involved had identifiable countries of origin. United States-made automobiles, for example, were made on U.S. soil by U.S. workers using U.S. produced parts. International competition in markets for automobiles similarly could be identified by the country of origin of the automobiles, such as Germany or Japan. As a result, the primary barriers to free trade tended to be tariffs and other restraints imposed by national governments in an effort to protect industries and workers within their borders.

The global economy is now on the verge of becoming truly integrated. Integration means that many of the products involved in international trade can no longer be identified by reference to a single nation of origin. Robert Reich, currently the U.S. Secretary of Labor, has

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10, 1993), reprinted in 64 Antitrust & Trade Reg. Rptr. (BNA) S-1 (1993); Diane P. Wood, The Impossible Dream: Real International Antitrust, 1992 U. Chi. Legal F. 277 (1992).

[2] 61 Stat. pts. 5-6, T.I.A.S. No. 1700, 55 U.N.T.S. 187 (opened for signature Oct. 30, 1947).

illustrated the integrated nature of the global economy with the example of an American consumer purchasing an automobile from General Motors, once the quintessential domestic product:

> When an American buys a Pontiac Le Mans from General Motors, for example, he or she engages unwittingly in an international transaction. Of the $20,000 paid to GM, about $6,000 goes to South Korea for routine labor and assembly operations, $3,500 to Japan for advance components (engines, transaxles, and electronics), $1,500 to West German for styling and design engineering, $800 to Taiwan, Singapore, and Japan for small components, $500 to Britain for advertising and marketing services, and about $100 to Ireland and Barbados for data processing.[3]

The integration of the global economy has also meant an integration of the companies that produce products involved in international trade. For example, international rivals General Motors Corporation and Toyota Motor Corporation entered into a joint venture agreement in 1983 to manufacture subcompact cars for sale in the United States and Canada. The agreement called for a new business entity equally owned and controlled by General Motors and Toyota that would manufacture automobiles designed by Toyota in consultation with General Motors, and sold to General Motors.[4] This joint venture between two automotive giants resulted in an international car manufactured by an international company.

In the decade since that precedent-setting joint venture, the number of joint ventures, mergers and other combinations and agreements among companies from different nations has expanded dramatically.[5] This integration of the products and companies involved in international trade represents a fundamental shift in the structure of the global economy. It is a transition from a global economy based on the trade of goods produced in distinct nations, to an integrated global economy where the goods involved in international trade -- as well as the companies that produce them -- are truly international.

The impetus for integration of the global economy has come from a number of sources. Integration has been promoted in part by private business entities attempting to avoid trade tensions and barriers by producing goods

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[3]Robert Reich, THE WORK OF NATIONS: PREPARING OURSELVES FOR 21ST CENTURY CAPITALISM 113 (1991).

[4]*See* In re General Motors Corp., 103 F.T.C. 374, 375 (1984).

[5]*See, e.g.*, Joseph Katten, Antitrust Analysis of Technology Joint Ventures, 795 PLI/Corp. 619 (1992).

in the markets where they are sold. In the General Motors/Toyota joint venture, for example, the joint venture was a means of increasing Japanese participation in U.S. markets despite restrictions on Japanese imports and growing political pressure within the United States to counteract a balance of trade deficit with Japan.[6]

A number of recent developments suggest that the process of integration is likely to continue at a rapid pace. First and foremost is the integration of economies and economic actors prompted by regional associations such as the European Economic Community and the North American Free Trade Agreement. Early cases show that at first competitors within the European Community tended to develop into market division cartels along historical and national lines.[7] However, aggressive enforcement of the anti-cartel provisions of the Treaty of Rome, the integration of markets in 1992, and the eagerness of private business entities outside the Community to gain a share of newly unified markets resulted in efforts by business entities within the Community to become part of a truly integrated economy.

Another impetus for economic integration has been the emergence of free market economies in former communist nations. The fall of communism came as a result of both repression of political freedom and the failure of state-controlled monopolies to deliver the promised economic prosperity. To succeed as free states with free market economies, these nations must do more than merely place ownership of state monopolies into private hands. Quality control and production techniques must be improved to meet the standards of consumers in more advanced Western free market states. New private business entities must have access to capital and must develop an understanding of accounting methods and financial controls to make effective use of that capital. Significantly, the transition to a free market economy must occur swiftly lest the forces within these nations who oppose recent political developments use the failure of free markets to deliver a decent standard of living as an excuse to reverse the trend towards political and economic freedom.

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[6]In re General Motors, 103 F.T.C. at 387.

[7]*See, e.g.*, Imperial Chem. Indus. Ltd. v. Commission, 1972 E.C.R. 619 [1972]; Suiker Unie v. Commission, 1975 E.C.R. 1663 [1975]; *see* generally George A. Bermann, Roger J. Goebel, William J. Davey & Eleanor M. Fox, Cases and Materials on European Community Law, at 661, 673 (1993).

Joint ventures with foreign companies are often the ideal solution to these needs. Like General Motors anxious to enhance its competitive posture by learning efficient Japanese manufacturing and management techniques in the early 1980's, nascent private enterprises in formerly communist states are looking, and will continue to look to joint ventures with foreign partners to make the transition from a state-controlled to free market economy. Such joint ventures provide the new enterprises with instant access to capital, advanced technology, modern production techniques, marketing and distribution methods, quality control, and accounting methods.

Thus, the formation of joint ventures and other combinations and agreements among business entities from different nations is not only inevitable but necessary to effectuate the integration of national economies within the European Community and the development of free market economies in formerly communist nations. For the foreign partner, joint ventures provide immediate access to new markets that they might not easily enter without a native partner. They are also the quickest means of obtaining distribution channels and marketing expertise. For the domestic partner, joint ventures allow for integration without duplicative investments in plant and equipment. Joint ventures that can be structured to achieve limited goals during a limited time frame also provide an attractive alternative to permanent mergers with foreign entities.

In large measure the integration of private business entities through joint ventures is a beneficial development. In the context of the EC, NAFTA, and other regional agreements, the integration of private business entities can ensure that the substance of true integration takes precedence over form. In the new free market economies developing in Eastern Europe (and, even to some extent, the Peoples' Republic of China) joint ventures provide newly independent enterprises access to expertise and capital necessary to make a swift transition to free market economies.

Perhaps most importantly, when nations are integrated economically they are less likely to impose the types of trade barriers that the GATT is designed to eliminate. Although the General Motors/Toyota joint venture involved an agreement between automotive giants and provided the Japanese auto maker with expanded access to the U.S. market at a time of trade tensions between the two countries, in approving the joint venture the U.S. Federal Trade Commission was persuaded that it also offered "a valuable opportunity for GM to complete its learning of more efficient Japanese manufacturing and management techniques."[8] It also found that consumers would benefit because the joint venture car would cost less to produce than if GM were forced to develop other production sources.[9] As Robert Reich points out, under these circumstances it is difficult for nations to erect trade barriers because the competitive harm is felt on both sides of the nation's borders.[10]

As discussed below, however, the development of integrated global markets raises concerns over private restraints of trade and the need to address disharmonies in national competition laws to avoid gaps in enforcement.

The Need for a Framework for International Competition Law

The trend towards private economic integration on a global scale is not without its pitfalls. Joint ventures, mergers, and other forms of combinations and agreements among business entities may result in undesirable aggregations of market power and private restraints of trade such as agreements to fix prices or allocate markets. At present, the GATT does not address such private restraints of trade. While national and regional laws exist to prohibit private restraints of trade and promote competition, jurisdictional limitations and differing enforcement policies leave gaps that may be exploited when private business entities join forces on an international scale.

The growing trend of integration of private business entities from different nations in joint ventures, mergers, and other combinations and agreements therefore justifies an effort to harmonize and coordinate enforcement of national antitrust and competition laws to address private restraints of trade that are beyond the scope of the GATT. Although the United States, the European Community and its member states, Japan, and even the former communist nations in Eastern Europe have all adopted similar antitrust or competition laws, gaps in the enforcement and jurisdictional reach of these laws have led to the perverse result that some

[8]In re General Motors, 103 F.T.C. at 375.

[9]*Id.*

[10]Robert Reich, *Who is Us?*, HARV. BUS. REV. 53 (Jan./Feb. 1990). This is not to suggest that the GATT is on the verge of becoming obsolete. Many markets remain local, national or regional markets and, as a result, political incentives remain for the imposition of discriminatory tariffs and other government-imposed barriers to free trade to protect domestic industries. In addition, trading blocs such as the EC, NAFTA, and proposed Pacific Rim groups cannot be allowed to deteriorate into discriminatory and exclusionary groups.

conduct that is universally condemned by national competition laws is beyond the reach of effective enforcement, while other pro-competitive conduct is deterred by the costs associated with enforcement by different agencies in multiple jurisdictions.

Joint ventures are instructive of the opportunities presented by an increasingly integrated global economy as well as the need to address antitrust and competition law on an international level. As discussed above, joint ventures can have beneficial pro-competitive effects. By sharing research and development or technological advances joint ventures may result in improved products and lower prices.[11] Joint ventures can also expedite the introduction of a product into a market by making available existing production facilities that would take time to duplicate without the joint venture.[12] They can also lead to the development of a more efficient and competitive industry through the sharing of manufacturing and management techniques.[13] The economies of scale, the synergies from the pooling of expertise and resources, and the sharing of risks are elements of joint ventures that facilitate entry into new markets and thus promote competition.[14]

However, joint ventures can create concentrations of market power and may tend to foreclose competition between existing or potential competitors.[15] Since a joint venture entails ownership by two or more business entities, it requires close, continuing communication and cooperation. There is a threat that through this communication and cooperation, the joint venture may be used as a cartel for illegitimate purposes.[16] It may be used to block competitors of the joint venture from access to markets.[17] The joint

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[11]*See, e.g.*, Olivetti/Canon, O.J. 1988, L 52/51; Comm. Mkt. Rep. (CCH) 10, 961.

[12]*See, e.g.*, In re General Motors, 103 F.T.C. at 387.

[13]*See id.*, at 388.

[14]See, e.g., Broadcast Music, Inc. v. CBS, 441 U.S. 1, 20-23 (1979); Brunswick Corp., 94 F.T.C. 1174, 1265 (1979), aff'd in part and modified in part sub nom. Yamaha Motor Co. v. FTC, 657 F.2d 971 (8th Cir. 1981), cert. denied, 456 U.S. 915 (1982).

[15]*See, e.g.*, United States v. Penn-Olin Chem. Co., 378 U.S. 158 (1964); Vacuum Interrupters, O.J. 1977, L 48/32, [1977] 1 C.M.L.R. D67, Common Mkt. Rep. (CCH) 9926.

[16]*See, e.g.*, United States v. Imperial Chem. Indus., 100 F. Supp. 504 (S.D.N.Y.) (jointly owned companies used to facilitate divisio of world markets among competitors), modified, 105 F. Supp. 215 (S.D. N.Y. 1951).

[17]*See, e.g.*, Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263 (2d Cir. 1979), cert. denied, 444 U.S. 1093 (1980).

venture agreement may include ancillary restraints of trade by including agreements on price, output, operating costs, territories, and customers.[18]

Existing national antitrust and competition laws are inadequate to address the opportunities and challenges presented by joint ventures in an integrated global economy because they often do not apply to conduct when the effects of that conduct are felt entirely in a foreign state. In the European Community, for example, anti-competitive activity that does not have an effect within the Common Market and upon interstate trade does not satisfy the jurisdictional prerequisites of Article 85(1) of the Treaty of Rome. Similarly, in the United States the Foreign Trade Antitrust Improvements Act limits jurisdiction under the primary antitrust statute, the Sherman Act, and provides that it will not apply to conduct, whether occurring in the United States or abroad, where the effects are felt only in foreign markets.[19]

Some nations also grant express statutory exemptions for conduct causing harm in foreign states that would be illegal if the effects were felt within the state. In the United States, for example, the Webb-Pomerene Act immunizes export cartels from U.S. antitrust liability as long as the restraint of trade imposed by the cartels do not have any spillover effect on the domestic or export trade of the United States.[20] Similar exemptions exist under the laws of Great Britain, Germany, Japan, Canada, France and The Netherlands.[21]

Even when anti-competitive conduct falls within a nation's jurisdiction and is not exempted by statute, enforcement efforts vary from state to state. Although every major industrialized state has some form of prohibition against cartel conduct such as price fixing, only the United States has a very aggressive enforcement record. In Japan, for example, where existing laws provide both criminal and civil remedies for cartel conduct, there have been only two criminal prosecutions -- and no successful private actions -- in the forty-four years since the law was adopted.[22]

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[18] *See, e.g.*, United States v. Columbia Pictures Indus., 507 F. Supp. 412 (S.D.N.Y. 1980), aff'd mem., 659 F.2d 1063 (2d Cir. 1981).

[19] *See* 15 U.S.C. §§ 6(a), 45(a)(3) (1988) (jurisdiction under the Sherman Act limited to conduct that has a "direct, substantial, and reasonably foreseeable" effect on U.S. commerce).

[20] *See* 15 U.S.C. 61-66 (1988).

[21] *See* generally A. Paul Victor, Export Cartels: An Idea Whose Time Has Passed, 60 ANTITRUST L.J. 571, 575-76 (1992).

[22] *See* Ramseyer, The Costs of the Consensual Myth: Antitrust Enforcement and Institutional Barriers to Litigation in Japan, 94 YALE L.J. 604, 616-617 (1985).

Limitations on jurisdiction, statutory exemptions, and a reluctance to prosecute when the effects of that conduct are felt only in foreign markets may result from innocent decisions concerning the most productive allocation of enforcement resources. Or they could result from political pressures to ignore anti-competitive activity that harms only the competitors of the enforcing state. Whatever the cause, any suggestion that one country will benefit at the expense of another based on its enforcement policies or exemptions is misguided. Any attempt to gain a competitive advantage through selective enforcement or exemptions in national antitrust and competition laws invites retaliation and creates conflicts among nations. Moreover, cartel behavior that affects a foreign state may cause the affected state to resort to extraterritorial application of its own antitrust or competition laws, which leads to a whole series of problems and concerns.[23]

Extraterritorial application of national antitrust and competition laws is very inefficient and often leads to conflicts and tensions among the nations involved. When anticompetitive conduct occurs outside the affected state, the conduct may go undiscovered and, even when discovered, may be difficult to prove. Discovery of necessary documents and the unavailability of witnesses may hamper enforcement efforts in the affected state. There are also problems of jurisdiction and the formulation of effective remedies. These impediments to effective enforcement are unacceptable, especially when one considers that cartel activity is condemned by every state with an antitrust or competition law.

In addition to allowing for gaps that may be exploited by governments and private business entities, a patchwork of national antitrust and competition laws and enforcement mechanisms also creates uncertainty that may deter legitimate, beneficial joint venture activity. For example, since joint ventures involve both beneficial and problematic conduct, they often require complicated balancing by enforcement agencies of pro-competitive benefits against resulting concentrations of market power or ancillary restraints of trade. First, the enforcement agency must determine whether the joint venture will result in a concentration of market power. This analysis necessarily involves an examination of both existing and potential competitors.[24] Second, the enforcement agency must determine

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[23] *See, e.g.*, A. Ahlstrom Osakeyhtio v. Commission (Wood Pulp), 1988 E.C.R. 5193 [1987-1988 Court Decisions] Common Mkt. Rep. (CCH) 14,491; Hartford Fire Ins. v. California, 61 U.S.L.W. 49 (U.S. June 28, 1993).

[24] *See, e.g.*, United States v. Penn-Olin Chem. Co., 378 U.S. 158 (1964); Vacuum Interrupters, O.J. 1977, L 48/32, [1977] 1 C.M.L.R. D67, Common Mkt. Rep. (CCH) 9926.

whether there are ancillary restraints of trade and, if so, whether those ancillary restraints are necessary to obtain the pro-competitive objectives of the joint venture. Third, the enforcement agency must balance the pro-competitive benefits offered by the joint venture against the concentration of market power and ancillary restraints.

The process of analyzing joint ventures is difficult enough when only one enforcement agency is involved. In an integrated global economy where joint ventures may be comprised of business entities from more than one national jurisdiction, the combination of analyses by multiple enforcement agencies only increases uncertainty. Moreover, the analysis of joint ventures requires that extensive information be submitted to each enforcement agency. The costs of complying with varying reporting requirements of multiple enforcement agencies, the delays caused by extensive reviews and analyses, and the possibility of conflicting determinations stand as obstacles to legitimate joint ventures.

Thus, the irony and the challenge is that disharmonies in international enforcement of national antitrust and competition laws tend to exempt from review or enforcement mechanisms blatant cartel conduct that is prohibited by virtually every national law, while deterring potentially pro-competitive and otherwise beneficial joint ventures.

A Framework for International Competition Law

Many leading commentators, government officials and practitioners in the field of international competition law have developed proposals for an international framework to address the problems posed by private restraints of trade and disharmonies in national antitrust and competition laws. At one extreme these proposals include ambitious plans to promulgate an international antitrust code, to expand GATT to include competition and private restraint of trade issues, and to form a separate International Antitrust Authority that would enforce international standards and resolve disputes among nations.[25] At the other extreme are minimalist proposals to encourage bilateral or multilateral agreements among enforcement agencies

[25]*See, e.g.*, Draft International Antitrust Code as a GATT-MTO-Plurilateral Agreement (Munich, Germany, July 10, 1993), reprinted in 64 Antitrust & Trade Reg. Rptr. (BNA) S-1 (1993).

to consult on transnational competition and private restraint of trade issues.[26] I join in the latter group.

While the problems noted above certainly favor of some form of framework for international antitrust or competition law, a comprehensive international antitrust code is neither desirable nor workable. The regulation of private business conduct within a nation's borders remains primarily a national concern. Individual nations at different stages of political and economic development have diverse needs that may change over time. In Eastern Europe, for example, allocative efficiency is not a primary concern. Instead, these nations are concerned mainly with dismantling formerly state-controlled behemoths and opening the economy to participation by the masses. Economic success and political stability depend upon the growth and development of small and medium-sized firms – in other words, the competition laws must protect competitors, not merely competition. These concerns are reflected in the antitrust laws adopted in nations such as Bulgaria, Hungary, Poland and Russia, where protection against the exploitation, coercion or undue foreclosure of small and medium market participants is emphasized.

The Eastern European emphasis on protecting small and medium-sized competitors is in stark contrast to antitrust theory in the United States where the emphasis has been on allocative efficiency. Indeed, the battle cry of antitrust theorists aligned with the Chicago School of Law and Economics has been that "it is competition, not competitors, which the [Sherman] Act protects."[27] Under the allocative efficiency theory, it is acceptable for less efficient, smaller competitors to be driven out of business by more efficient, larger competitors so long as the resulting efficiencies are passed along to consumers in the form of lower prices.

Given the fundamental difference in underlying goals, the notion that a single international antitrust or competition law could be adopted to meet every nation's needs is fantasy. Eastern European nations and many developing economies elsewhere in the world are not interested in allocative efficiencies as a goal in itself. Rather, their primary goal is to provide for fair and open competition, and to prohibit exploitation, coercion

[26] *See, e.g.*, Report of the American Bar Association Antitrust Section Special Committee on International Antitrust, 62 Antitrust & Trade Reg. Rptr. (BNA) 156 (1992).

[27] Brown Shoe Co. v. United States, 370 U.S. 294, 344 (1962).

and undue foreclosure of entrepreneurs and small business competitors.[28] These laws are concerned as much with developing a stable political system as they are with the efficient use of resources.[29]

Another argument against a uniform international antitrust or competition law is that the underlying goals of these laws may change as economies and political systems change. The current prominence of the Chicago School in U.S. antitrust law notwithstanding, antitrust and competition law have historically been intrinsically intertwined with national economic and political goals. Allocative efficiency did not rise to the level of dogma, even in the United States, until fairly recently. Rather, the U.S. antitrust laws have always had a measure of populism and economic democracy. It is ironic indeed that the Chicago School has chosen as its mantra a quotation from the famous Brown Shoe merger case because Chief Justice Earl Warren cautioned in that case that courts should not "fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization."[30]

Since no single international competition law can be expected to address the needs of both developed and developing free market economies, I propose the adoption of a modest framework consisting of: (1) fundamental principles that each nation would adopt as national law; (2) agreements on access to nondiscriminatory enforcement mechanisms; (3) the development of common reporting requirements through consultation and agreements among enforcement authorities; (4) the promulgation of guidelines and a commitment to prompt reviews; and (5) consultation among enforcement agencies to avoid potential conflicts in enforcement.

The framework of fundamental principles that each nation would agree to adopt as national law should consist of both prohibitions and affirmative freedoms to compete. First, nations should agree to enact prohibitions on export cartels and other consensus wrongs, such as price fixing, market division, and boycott agreements by removing existing

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[28]Eleanor M. Fox, 1993 Annual Handler Lecture at 2; Eleanor M. Fox & Janusz A. Ordover, Free Enterprise and Competition Policy for Central and Eastern Europe and the Soviet Union in Privatization in Central and Eastern Europe 88 (Stephen A. Rayner, et al., eds. 1992).

[29]Eleanor M. Fox, Handler 3.

[30]Shoe Co. v. United States, 370 U.S. 294, 344 (1962).

exemptions and extending jurisdiction to conduct that occurs within a nation's borders, even of the effects of that conduct are felt elsewhere.

Second, the agreements should provide for access to non-discriminatory enforcement mechanisms. As a first measure, agreement on procedures for requesting enforcement by the conduct state. A further step may be giving affected foreigners standing to sue based on injuries that would be cognizable if suffered by citizens of the enforcing state.

Finally, an international agreement should promote freedom of access to markets and freedom to compete. This would entail the development of universal reporting requirements. In addition, individual enforcement agencies should promulgate guidelines and make a commitment to rapid decisionmaking. There should also be forums for pre-decision consultations among enforcement authorities before review or enforcement action to agree on which agency will take a lead role and which may await their decision.

Some commentators have suggested as an additional element to harmonize international competition law either expansion of the GATT or the formation of an International Antitrust Authority to resolve conflicts among enforcement agencies. This is a proposal that I am reluctant to adopt because it would raise the types of concerns over the derogation of sovereignty and the formation of another international bureaucracy that might cause nations to resist implementation of the basic framework described above. In addition, there may be no need for such an international enforcement authority. Cooperation among nations and regions thus far has been successful where attempted.

Moreover, the trend is toward increasing bilateral and multilateral agreements such as the agreement between the U.S. and the EC on competition law. Individual Eastern European nations including Poland, the Czech & Slovak Republics, Hungary and Romania have negotiated bilateral agreements on economic activity and political dialogue. These agreements contain competitive rules that correspond with Articles 85 and 86 of the Treaty of Rome and they may lead to EC membership for the Eastern European nations after a transition period. Many of the nations that belong to the European Free Trade Association ("EFTA"), Austria, Finland, Norway and Sweden have already applied for membership in the EC. The EFTA and the EC have also attempted to harmonize economic relations by negotiating a European Economic Area agreement which contains trade regulation rules similar to those found in the Treaty of Rome. Given these promising developments in bilateral agreements and the problems associated with a uniform international regime, it is too soon to supersede these efforts with a supranational law.