Federal Trade Commission

PERSPECTIVES ON U.S. INTERNATIONAL ANTITRUST ENFORCEMENT

PREPARED REMARKS OF
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BEFORE THE

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The views expressed herein are those of Chairman Janet D. Steiger and do not necessarily reflect the views of the Commission or any individual Commissioner.

Good morning. I am pleased to have this opportunity to address the Fordham Corporate Law Institute's Conference on Antitrust in a Global Economy. In my remarks I will review the major enforcement initiatives of the Federal Trade Commission in the international arena, discuss the increasing role of procedural and substantive harmonization, and then close by discussing some aspects of the North American Free Trade Agreement ("NAFTA"). Let me preface my remarks by noting the usual disclaimer that the views expressed are my own and are not necessarily the views of the Federal Trade Commission or the other Commissioners.

The Fordham Corporate Law Institute has been a beacon to those of us interested in international antitrust, and I feel privileged to offer these comments on the twentieth anniversary of the Institute. It is precisely in this type of forum that we are able to share information and perspectives with our counterparts in other countries to the benefit of all concerned.

Today we all recognize the ever-increasing economic interdependence between the United States and the rest of the world. This interdependence makes convergence in antitrust and trade regulation increasingly important. A number of ideas and proposals for increasing and formalizing such convergence have been put forward that will serve as vehicles for further discussion and progress in this area. But I believe it is important to recognize that convergence is already occurring -- in incremental, but positive steps -- in part because antitrust enforcement agencies are cooperating and communicating to an

unprecedented degree. Although the statutory frameworks and economic conditions differ from nation to nation, we are witnessing increased consensus on the goals and the tools of antitrust analysis.

Recent International Enforcement Actions

Given today's global economy, it is not surprising that both foreign and domestic companies have been the focus of the Commission's antitrust investigations and enforcement actions. We do not target either domestic or foreign firms for antitrust enforcement action, but evaluate the competitive effects of each matter on a case-by-case basis. To put matters in perspective, during the last two years the Commission has taken enforcement action against over 20 foreign firms or U.S. subsidiaries of foreign firms. These represent roughly 20% of all antitrust enforcement actions taken during that time period.

In the merger area, the Commission frequently finds itself confronted with acquisitions involving foreign companies. Our merger analysis focuses on whether the proposed transaction would likely lead to the exercise of market power or facilitate collusive activity to the detriment of U.S. consumers. The most prominent recent case in the international merger area is the transaction between Imperial Chemical Industries (ICI) PLC, a British firm, and Delaware-based E.I. duPont de Nemours and Company (duPont). The transaction was structured as an exchange of ICI's nylon assets and business for duPont's acrylic-plastic

assets and a cash payment, and raised competitive concerns both in the European Community ("EC") and the U.S. Indeed, this was the first merger case since the adoption of the U.S.-EC Cooperation Agreement[1] to be taken into second stage proceedings in the EC and also be subject to an enforcement action from U.S. antitrust authorities. Under the Agreement, EC and FTC authorities were able to communicate, within the limits of confidentiality obligations, on issues of mutual concern, a topic I will address at greater length later in my remarks.

In September 1992, the European Commission issued its decision, clearing the nylon transaction subject to certain obligations to be undertaken by duPont in the nylon carpet fiber market.[2] The Federal Trade Commission's consent order is pending.[3] The FTC's complaint alleged that the transaction would substantially lessen competition in the U.S. market for the manufacture and sale of acrylic plastics. The proposed settlement would require ICI to divest a predetermined amount of acrylic-plastic manufacturing capacity by divesting one of the three U.S. plants it currently owns to a Commission-approved

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[1] Agreement between the Commission of the European Communities and the Government of the United States of America regarding the application of their competition laws, Sept. 23, 1991 (hereinafter "Agreement"), *reprinted in* 61 Antitrust & Trade Reg. Rep. (BNA), 382-85 (Sept. 26, 1991), and 4 Trade Reg. Rep. (CCH) ¶ 13,504.

[2] DuPont/ICI (Decision 93/9/EEC), 30 Sept. 1992, OJ 1993 L7/13 (13 Jan. 1993), *reprinted in* [1993] 1 CEC (CCH) 2,055.

[3] ICI/duPont, File No. 921-0099, 58 Fed. Reg. 37,944 (July 14, 1993) (Commissioner Owen dissented).

acquirer, and to provide the acquirer with technical assistance, if necessary to compete in the market.

Geographic market definition is an important issue in many merger investigations and merger proponents often argue that the relevant market for analysis is "worldwide" or, at a minimum, something larger than the United States. As the Horizontal Merger Guidelines explain, in defining the geographic market we seek to determine what alternative suppliers would be realistically available in response to a price increase.[4] Those alternatives may include foreign firms, and our analysis recognizes that imports can play a decisive role in keeping a market competitive. However, foreign firms may face problems in supplying the market that are not faced by domestic firms. The Merger Guidelines recognize that trade barriers, such as import quotas, may inhibit the ability of foreign competitors to participate in U.S. markets.[5] Thus, even where there are substantial imports, foreign producers may be unable to prevent the exercise of market power or collusive activities.

For example, in the Commission's decision in Olin Corp.,[6] which was affirmed by the Ninth Circuit earlier this year, we

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[4] Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) ¶ 13,104, § 1.2 (1992).

[5] Id. at § 1.43 ("Special Factors Affecting Foreign Firms"). The constraining effect of a quota on the importer's ability to expand sales is also relevant to our evaluation of the potential anticompetitive effects of the acquisition. Id. n. 16.

[6] 5 Trade Reg. Rep. (CCH) ¶ 22,857, at 22,540 (July 12, 1990), aff'd, Olin Corp. v. FTC, 986 F.2d 1295 (9th Cir. 1993).

considered whether Japanese competitors could increase their exports into the U.S. market for various swimming pool sanitizers. Although imports accounted for a significant amount of domestic consumption (between nine and nineteen percent depending on the product), the Commission discounted the significance of foreign entry for several reasons. First, the domestic producers were successful in obtaining anti-dumping relief against Japanese imports, and this relief had constrained the vigor of foreign competition.[7] These anti-dumping orders made it unlikely that there would be an increase in supply from Japan to the United States in response to a price increase.[8] Second, customers and foreign producers regarded exchange rate fluctuations as relevant in assessing the viability of foreign competition. An exchange rate fluctuation could have significantly raised the cost of imports. The threat of a change in the exchange rate lessened the probable future competitiveness of Japanese firms in the U.S. marketplace. Finally, the Japanese Fair Trade Commission had found that the two leading Japanese sanitizer manufacturers had engaged in price fixing. Thus, the Commission concluded that it was difficult to accept the argument that these firms would be the "guarantors of competition in the

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[7] Id. at 22,552. Although an anti-dumping order, unlike a quota, does not impose an absolute restriction on the amount of imports, in this case there was evidence that the anti-dumping order had restrained the vigor of import competition.

[8] Id.

United States market in the event of collusion among the domestic producers."[9]

Of course, trade barriers such as quotas and tariffs are not the only barriers faced by foreign competitors. Other factors, such as transportation costs and customer requirements, are also important factors. For example, in our recent decision in Occidental Petroleum,[10] the Commission rejected the respondent's claim that the existence of imports demonstrated that the geographic market for various types of thermoplastic resin was larger than the United States. The Commission found that imports were unlikely to restrain a domestic price increase, in part, because of the need for timely and frequent deliveries, consistent quality and technical support. Thus, purchasers declined to rely on imports as a regular source of supply.[11]

The Hart-Scott-Rodino premerger notification program,[12] which has existed for over 15 years, applies to foreign companies as well as domestic, where substantial sales or assets are in the U.S.[13] This point was brought home in a recent FTC consent order

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[9] Id.

[10] Occidental Petroleum Corp., Dkt. No. 9205 (Apr. 5, 1993).

[11] Slip Op. at 17-18.

[12] 15 U.S.C. § 18a (1988).

[13] Foreign persons who acquire the voting securities of a foreign corporation are subject to the Hart-Scott-Rodino ("HSR") Act unless the acquisition is exempt under the act or the HSR rules. Under section 802.51 of the HSR rules, the acquisition by a foreign person of the voting securities of a foreign corporation is exempt: (1) if, as a result of the acquisition, (continued...)

requiring a Swiss businessman to pay a civil penalty of almost $415,000 to settle charges in connection with his failure to notify U.S. antitrust agencies before acquiring, in separate transactions, two Swiss firms that do business in the United States.[14] This was the first time the Commission had brought an action against a foreign person for failing to make a timely report of its acquisition of another foreign company with significant sales or assets in the United States. Although the businessman notified the Commission when the violation was discovered, he did not file corrective notifications for more than 17 months. Parties must file promptly after discovering an inadvertent failure to file in order to allow the enforcement agencies to review the transaction quickly and take appropriate enforcement action, if necessary, thus, minimizing the potential for competitive injury to the public.

Activities affecting U.S. consumers with an international dimension have also been subjects of our non-merger enforcement program. In June, the Commission entered into a consent order with AE Clevite, Inc., a manufacturer of locomotive engine

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[13](...continued)
the foreign person does not gain control of an issuer that has sales or assets in the U.S. meeting certain specified amounts; or (2) if the acquired person is also foreign and the aggregate annual sales of both the acquiring and acquired persons in or into the U.S. are less than $110 million and the aggregate total assets of both the acquiring and the acquired persons located in the U.S. are less than $110 million. See 16 C.F.R. § 802.51 (1993).

[14] United States v. Anova Holding AG, Civ. No. 93-1852 (D.D.C. Sept. 7, 1993).

bearings and a wholly-owned subsidiary of an English company, T & N PLC.[15] The complaint alleged that the general manager of the respondent's bearings division spoke with an Austrian competitor and advised the competitor that its prices for locomotive engine bearings were lower than the respondent's and "as a result, they were ruining the marketplace."[16] Thereafter, the complaint alleged, the respondent sent its U.S. price lists to the competitor. Under the consent order, T & N, AE Clevite, and their subsidiaries are prohibited, among other things, from seeking to fix U.S. prices for locomotive engine bearings. This was the third case in the past year in which the Commission found that there was reason to believe that a violation of Section 5 of the FTC Act[17] had occurred based on an unaccepted invitation to collude.[18] Both foreign and domestic firms should recognize that attempts to injure U.S. consumers in this way can be reached by the FTC Act.

Let me conclude my review of recent FTC enforcement activity in the international arena by discussing some of the principles that guide our enforcement actions. First, as active participants in the United States economy, foreign firms must comply

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[15] Dkt. No. C-3429 (June 8, 1993) (consent order) (Commissioner Azcuenaga dissented).

[16] Complaint at ¶ 8.

[17] 15 U.S.C. § 45 (1988).

[18] See 60 Minutes with the Honorable Janet D. Steiger, Chairman, Federal Trade Commission, 62 Antitrust L. J. 225, 234-35 (1993).

with U.S. antitrust laws. It is only fair that those who wish to sell in our markets play by the same rules as domestic producers.

Second, Commission enforcement policy does not turn on the nationality of the parties, but on the nature of the conduct and its likely effect on competition in this country -- that is, whether the transaction or activity would create or increase market power or facilitate the likelihood of successful collusion, to the detriment of U.S. consumers. The U.S. antitrust laws, and the Commission's enforcement of those laws, are neutral as to the nationality of the actor. This is an important principle for antitrust authorities of all nations, I believe.

Third, we consider the interests of other nations when undertaking investigations involving foreign actors, in order to avoid conflicts. To facilitate investigations with an international dimension, the U.S. antitrust enforcement agencies have entered into bilateral agreements with a number of foreign countries providing for prior notification, consultation, and cooperation when taking enforcement action, including discovery, that may affect foreign interests.[19] We attempt to minimize

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[19] See, e.g., Memorandum of Understanding Between the Government of Canada and the Government of the United States of America as to Notification, Consultation and Cooperation with Respect to the Application of National Antitrust Laws, Mar. 9, 1984, *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,503. Within the realm of the OECD, we follow its 1986 Council Recommendation that provides for similar cooperative measures. See The 1986 Recommendation of the OECD Council Concerning Co-operation between Members and Countries on Restrictive Business Practices Affecting International Trade, OECD Doc. C(86) 44 (1986), *reprinted in* IA Barry E. Hawk, United States, Common Market and International Antitrust: A Comparative Guide (2nd ed. Supp. 1990), App. 35.

international controversy over foreign discovery by ensuring that such discovery seeks only information not readily available domestically, and by seeking voluntary cooperation in the first instance.

Cooperation in Developing Strong Competition Enforcement Worldwide

I would now like to turn to a review of what the Commission has been doing to promote antitrust laws and their enforcement in other nations, and what we have learned in the process. In the past year, we have seen our cooperative relationships with other competition regimes develop and accelerate. We have provided technical assistance to the emerging market economies in Central and Eastern Europe. We have consulted regularly with competition officials in the governments of some of our major trading partners -- including Canada, the European Community, Mexico, and Japan -- directly, as well as through international organizations such as the Organization for Economic Cooperation and Development. And we have discussed antitrust policy and contributed our expertise to officials from numerous other countries, from Australia to Zimbabwe.

We have witnessed the enactment or substantial modification of competition laws in a number of jurisdictions, including the Czech and Slovak Republics, Poland, India, Italy, Taiwan, Mexico and Venezuela. This trend reflects a growing acknowledgement around the world that the adoption and enforcement of antitrust

laws has many benefits. The preservation of vigorous competition fosters lower prices and increased output, all to the benefit of consumers.

Our technical assistance program in Central and Eastern Europe has, I believe, helped facilitate the transition to competitive market economies. Under the program, Commission and Department of Justice advisors work with representatives of the competition agencies of the countries in this region, sharing their respective experience in the areas of antitrust and consumer protection. Our advisors provide technical assistance, comment on draft competition and consumer protection laws, and explain the structure and administration of our agencies. We explain our investigative techniques and explore the economic analysis of competition issues, ranging from regulation of prices of dominant firms to alternative privatization plans.[20]

Later in my remarks I will comment on competition issues that arise under NAFTA. But I would note that important antitrust developments are already occurring in antitrust enforcement in Mexico, and in the relationships between U.S. and Mexican antitrust authorities. In December 1992, the Mexican

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[20] Commission and Justice Department representatives also attend and sponsor various conferences addressing competition issues. For example, in November, our advisors will attend an OECD-sponsored conference on topics such as market definition, market dominance, and horizontal and vertical agreements. Attendees include competition agency representatives from Central and Eastern Europe as well as the former Soviet states. In January, the Commission will sponsor its own Consumer Protection Conference in Vienna which will include representatives from Poland, Hungary, Romania, Bulgaria, the Czech and Slovak Republics and the Baltic States.

Congress approved a Federal Competition Law which created the Federal Competition Commission. I was pleased to attend a seminar in March 1993 commemorating the passage of the Law. The seminar offered us an opportunity to learn more about the Mexican approach to competition policy and to share our own experiences in this area. Earlier this month Commissioner Azcuenaga spoke at a conference sponsored by the Mexican competition authority.[21] I am gratified by the significant level of cooperation and communication between Mexico and the United States, particularly given the historically strong economic ties between our two countries. Mexico and the United States are among each other's most important trading partners, and the new Mexican competition law should provide important benefits to both of our economies.

Today you will also be hearing from Dr. Ana Julia Jatar, Superintendent for the Promotion and Protection of Free Competition ("Procompetencia") in Venezuela. Our program of technical assistance with Procompetencia began in September, 1992 and is composed of short term missions and internships. We have sent attorneys and economists to Venezuela to work with Procompetencia on particular concerns, such as market definition, exemptions regulations, and merger regulations. Interns from Procompetencia have studied at both the Commission and DOJ. Procompetencia's staff of attorneys and economists are enormously

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[21] Commissioner Mary Azcuenaga, "The Promotion of Competition in Mexico," before the Secretaria de Comercio & Formento Industrial, Monterrey, Mexico (Oct. 5, 1993).

committed to promoting market forces in Venezuela, and we have learned a great deal from them.

Indeed, we have learned much through the technical assistance program generally, not only about conditions in other countries that are developing or bolstering antitrust regimes, but also about our own work. In the process of explaining our legal and economic analysis to others, we inevitably reexplore the underpinnings of that analysis, reconsider our own investigative techniques, and develop a richer understanding of how antitrust works in various settings around the world. What conclusions can we draw from our experience to date? Broadly speaking, I would offer three observations.

First, we have found that the fundamental legal and economic principles that have developed over the course of over a century of antitrust in the United States do, for the most part, have general applicability to economies that are very different from ours. I have commented in the past on the trend toward consensus, both within the antitrust community in this country and abroad, about the essential tenets of antitrust analysis.[22] Our work with authorities in other countries has tended to confirm that these fundamental principles apply to the diverse economic conditions that exist in countries that have, or are developing, market economies.

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[22] See 60 Minutes with the Honorable Janet D. Steiger, Chairman, Federal Trade Commission, 62 Antitrust L. J. 225 (1993).

Second, our experience in providing technical assistance has made clear the importance of sensitivity to the specific conditions in a given economy before reaching conclusions about how those fundamental antitrust principles should be applied in a given case. Market conditions that generally prevail in this country prompt certain assumptions that may not hold in other economies. For example, in developing countries that have successfully relaxed restraints on the importation of goods, competition at the supplier level may be relatively robust; but barriers to entry may exist at the distribution level, for reasons ranging from lack of access to capital to government regulations, which would be less common in the U.S. economy. While our framework for analyzing issues like distributional restraints applies quite well to such diverse conditions, the assumptions we may bring to the table in terms of the areas of the economy where antitrust concerns are most likely to arise need to be adjusted to local conditions.

Third, we have gained a clearer understanding of the practical, if informal, progress that is being made in terms of convergence of international antitrust enforcement. This progress can, in significant part, be attributed to the communication among enforcers that takes place in the course of the technical assistance program. The more closely we work with our counterparts abroad, the more we develop common ground in both our procedural and substantive approaches to antitrust enforcement.

Our experience with the technical assistance program has reaffirmed the importance of developing effective competition enforcement, particularly for countries moving to market economies. Effective enforcement quickens the transition, since it helps avoid the problem of replacing state-run monopolies with private monopolies. Careful application of competition laws also may help some agencies to avoid widespread price regulation where development of competitive markets may make such regulation unnecessary. It is no coincidence that some of the most successful transitions have also been in countries in which the most sophisticated competition programs have been developed. As other countries follow suit, there develops a growing consensus concerning the appropriate goals and methods of antitrust enforcement, and the potential for increased trade worldwide.

International Cooperation, Coordination, and Harmonization

During the past year there have been significant discussions regarding international cooperation and coordination between antitrust regimes and substantive harmonization of antitrust laws. Earlier this year, the ABA Antitrust Section's Task Force on Competition Policy focused on each of these issues and recommended that the Clinton Administration continue efforts to harmonize the competition policies of the United States and its international trading partners.[23] The Task Force made three

[23] Report of the Section of Antitrust Law of the American Bar Association, Task Force on Competition Policy, 61 Antitrust L. J. 977 (1993).

recommendations which provide a useful outline for expressing my own perspective:

> 1. The Administration should continue and expand cooperation pursuant to the 1991 U.S.-EC Antitrust Cooperation Agreement.
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> 2. The Administration should help minimize the burdens that may result from multiple investigations, such as by coordinating premerger notification requirements with the European Community, Canada, Germany, the U.K., and other governments.
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> 3. The Administration should call on its foreign trading partners to enact and aggressively enforce competition laws, particularly anti-cartel laws, and to work together with the United States to harmonize the full range of international competition policies. Substantive harmonization of international antitrust laws should be a long term goal of the Administration.

Let me address each of these issues of cooperation, coordination, and harmonization, in turn.

Cooperation: the U.S.-EC Cooperation Agreement

As you know, a little more than two years ago, the EC and the United States entered into an Agreement designed to promote cooperation and coordination in the enforcement of their competition laws.[24] The cooperation envisaged by the Agreement is manifested in the following ways: notification, information sharing, and comity. Let me provide a brief review of what we have achieved to date.

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[24] Agreement between the Commission of the European Communities and the Government of the United States of America regarding the application of their competition laws, Sept. 23, 1991 (hereinafter "Agreement"), *reprinted in* 61 Antitrust & Trade Reg. Rep. (BNA), 382-5 (Sept. 26, 1991), and 4 Trade Reg. Rep. (CCH) ¶ 13,504.

Notifications. Since the Agreement went into effect, we have sent notifications to the EC involving about three dozen matters and have received notifications in about four dozen matters, about half of which were EC merger cases that involved U.S. companies. Approximately two dozen of the EC's merger cases have also been reviewed by U.S. antitrust authorities.

Information sharing. Information sharing is ongoing and involves a broad range of subjects. Regular, informal staff contact is maintained by our Coordinator for EC Affairs with members of the DG-IV and Merger Task Force staffs as well as with the U.S. Mission to the EC in Brussels. This level of contact helps us to understand not only each other's laws and procedures, but also the "significant interests" that form the basis of enforcement activity. On a more formal level, there are regular bilateral consultations involving agency principals, in addition to meetings in connection with OECD proceedings. In order to improve our understanding of each other's approaches to merger cases, we have conducted a workshop on investigative methods and economic analysis with DGIV. Finally, in specific cases, we have shared non-confidential information, such as briefs in litigated cases, about a variety of issues, including definition of product and geographic markets.

Comity. Comity is a guiding principle in the U.S.-EC Agreement. One of the innovative aspects of the agreement, positive comity, has been explored in several matters, but has not been invoked to date. Deference of one side to the other on

the basis of negative comity balancing factors has been a consideration in other matters.

Coordination

Under the U.S.-EC Agreement, the respective enforcement agencies may coordinate enforcement activities and consult with each other to resolve the conflicts that may arise from antitrust investigations of international transactions. Through the notification system we have coordinated our mutual investigations, to the extent possible, and determined whether there was a potential for conflicting remedies. As I mentioned earlier, ICI/duPont was the first case to go to second stage proceedings in the EC as well as result in enforcement action in the U.S. Despite the differences between the respective timetables of our investigations, FTC and EC staff were able to usefully consult one another about the progress of our respective investigations. Once the EC decided the course of action it would take on the nylon part of the transaction, we had the benefit of its decision in our own deliberations and further investigation before taking remedial action in the acrylic plastics market.

I believe that the U.S.-EC Agreement provides an excellent foundation for coordination. The question before us is whether we can build on this foundation to achieve even greater efficiency in our merger investigations. I believe we can.

First, in line with the ABA's suggestions, the U.S. and EC staffs have been comparing their respective merger information requirements -- premerger notification forms, second request questions, and the like. Improving the consistency of the merger review process can make merger review more efficient and less costly. Let me take this opportunity to invite suggestions from this audience; your experience in dealing with our respective procedures would be very useful to us in accomplishing our goal of greater procedural consistency.

Second, let me note one modest proposal that might assist the coordination process, expedite decision-making and reduce the cost of compliance. Each of these objectives might be enhanced if the parties simultaneously notify the separate jurisdictions of a proposed transaction, while voluntarily waiving confidentiality requirements. This would enable the jurisdictions to consult one another about the matter with a view toward avoiding conflict and expediting review. Simultaneous notification does not guarantee simultaneous decision-making, but simultaneous notification and waiver of confidentiality could increase the prospects of successful substantive coordination.

Substantive Harmonization

The ABA report suggests that the Administration should work with its foreign trading partners to encourage them to enact and aggressively enforce competition laws, particularly anti-cartel laws, and to work to harmonize the full range of international competition policies. The ABA report acknowledges that

substantive harmonization will take a long time to achieve, and that it should be a long term goal of the Administration.

This approach of gradual convergence of competition policies may be contrasted with what might be termed the more aggressive approach of seeking the adoption, through the General Agreement on Tariffs and Trade ("GATT"), of a world antitrust code, such as the recent proposal by what is being called the Munich Group.[25] As I mentioned earlier, I believe harmonization is already occurring in a gradual and evolutionary process. We have been making progress toward increased substantive and procedural harmonization in several areas: through our cooperation within the OECD, in our bilateral relations, and from our work with the evolving economies in Central and Eastern Europe and Latin America.

Let me attempt to put this issue in perspective. Although competition statutes vary, the fundamental norms of these laws are largely congruent. Generally speaking, they oppose price fixing and other horizontal agreements restricting supply or allocating markets. They oppose extending exempted monopolies beyond the boundaries of their legal exemption. They proscribe attempts to monopolize through predatory practices. The core element shared by the various approaches is a commitment to competition and open markets.

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[25] See International Antitrust Code Working Group, Draft International Antitrust Code, July 10, 1993, *reprinted in* 65 Antitrust & Trade Reg. Rep. (BNA) 259-60 & Supp. (Aug. 19, 1993).

Two years ago, The Economist reported my depiction of antitrust as "largely an American-made product" and one of our country's most successful exports.[26] At the time, we had just entered into our cooperation Agreement with the EC and were fully engaged in our work with the new democracies in Central and Eastern Europe. I am not so naive as to believe that ours is the only way of maintaining competition. Our antitrust statutes reflect our own experience. Thus, it is no surprise that there are differences in both substance and procedure among various nations' antitrust laws, which reflect differing experiences and, to some degree, differing objectives.

As my earlier discussion of our involvement with emerging market economies suggests, specific antitrust rules developed in the U.S. or elsewhere may not always fit in well with the economic structure of a Latin American or Eastern European country, for example. But irrespective of these differences, the tools of economic analysis do transfer, and the same basic antitrust language is increasingly being spoken in many regions of the world.

NAFTA

Let me close with some remarks about the North American Free Trade Agreement (NAFTA). If it is enacted by Congress, NAFTA would represent a further step toward the incremental convergence process I have spoken of today. NAFTA is scheduled to take

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[26] "Trustbusters, Inc.", The Economist, (Nov. 9, 1991) at 84.

effect January 1, 1994, and would abolish over a period of fifteen years virtually all current restrictions on trade and investment among the North American countries: the United States, Canada, and Mexico. NAFTA would link the United States with our first and third largest trading partners, creating the largest market in the world. NAFTA represents a long-term commitment to promote competition, market access, business efficiency, and consumer welfare within and between the United States, Canada, and Mexico.

Perhaps the most important impact of NAFTA is on the trade barriers that often inhibit the functioning of competitive markets. Under NAFTA, not only are virtually all tariff and non-tariff barriers on goods to be totally eliminated within 15 years, but significant new agreements have been undertaken involving government procurement, intellectual property and foreign investment. The parties are obligated to work toward non-discriminatory access to telecommunications services, insurance, financial markets and land transportation. U.S. firms would also be ensured of protection for their intellectual property rights under Mexican law.

Although NAFTA does not specifically mandate antitrust harmonization, it establishes a framework for each of the competition authorities to move toward that goal. Article 1501 of Chapter 15 of the Act provides that the signatories shall adopt or maintain competition laws and consult and cooperate with each other about enforcement. Article 1504 establishes a

"working group" whose mandate is to report on issues regarding competition law and policy and trade law in the free trade area. The expression of the intent to adopt or maintain competition law and to consult, cooperate and coordinate enforcement is a very positive one. The combination of lower trade and investment barriers and appropriate antitrust enforcement provides a framework for enhanced competition throughout North America. Moreover, NAFTA's provisions to maintain communications among competition authorities in the United States, Canada, and Mexico are consistent with the cooperation and coordination developing with Canadian competition officials and the newly formed Federal Competition Commission in Mexico.

Other regional trading groups, of course, have recognized the importance of harmonized antitrust laws in order to achieve the full benefits from free trade. Through the Treaty of Rome, the EC has adopted a common competition law for trade between its twelve member states and the new European Economic Area has chosen to harmonize competition laws for all interstate trade. As we gain experience with a new North American Free Trade Area, the United States, Canada, and Mexico will also have an opportunity through the new antitrust working group to address possible harmonization of antitrust enforcement in North America as an adjunct to unimpeded free trade.

CONCLUSION

Although it is difficult to predict what the world economy will be like 20 years from now, sound antitrust enforcement will continue to play a vital role in keeping markets open and competitive. Progress is being made in strengthening and coordinating antitrust enforcement around the world, and with your help, this progress will continue.