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Joseph P. Griffin

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REGULATION OF COMPETITION IN THE CANADA/U.S.
CONTEXT – EXTRATERRITORIAL REACH OF U.S.
ANTITRUST LAW – A U.S. PERSPECTIVE

Joseph P. Griffin^{*}

I am here, I think, as the guest villain. I normally try to make a living defending people against the rapacious U.S. government, but, today I am supposed to give you a view of what the rapacious U.S. government is up to. I can do that, I think, because I spend most of my time arguing against them. I will try to give you their views on a number of inflammatory issues. If I am going to keep you awake I have to stir you up. So I will say a number of things that ought to get you out of your chairs.

The strategic U.S. government policy these days has three aspects going on simultaneously. I am going to talk about each of these in turn. First, there is a real emphasis on cooperation and notification. Let us reason together, the United States says. Let us put a real emphasis on being nice to one another in the area of enforcement. That is the velvet glove, if you will. The iron fist inside that velvet glove is a very clear and unequivocal statement that, if you do not cooperate to our satisfaction, we will destroy you. We will come and get you, no matter where you are. We will seek you out. We will put you in jail, and we will bankrupt your company. The third of those policies is an unequivocal resistance to any type of binding dispute resolution, and hence a slow-down in negotiations on those topics. I will try to give you some examples of these.

Let us go through these in order. First is the “let us be nice” policy. I do not mean to suggest that the United States is not serious. There is a lot of evidence that, to a certain extent, cooperation works, at least in unimportant cases. The Organization for Economic Cooperation and Development (OECD) makes many recommendations about notification and cooperation. With Canada being among the first to enter into bilateral cooperation, notification agreements, you have had development over the last fifteen or twenty years of an ever-increasing number of cooperation agreements. They have all sorts of different styles. There are mutual legal assistance treaties. There is one with Canada. It applies to civil antitrust cases. There are not quite an

^{*} Joseph Griffin is the Manager of the International Section of Morgan, Lewis & Bockius, L.L.P. in Washington, D.C. After graduating from the University of Virginia, he received his J.D. from Georgetown University and a Diploma in Law from Oxford University in England.

infinite number, but there is a large number of notification, consultation agreements, either under the auspices of the OECD or bilaterally with a number of countries. More recently, we have begun to proselytize what we call "positive comity" agreements. The first one was with the European Union. The second one was with Canada in 1995. For those of you who are not steeped in this jargon, "positive comity" is meant to be distinguished from neutral comity. Neutral comity is what you learned in law school; the idea of common courtesy and deference among nations, the quotations from those cases that have to do with deference to foreign sovereigns. That is neutral comity. The idea of taking a step ahead and doing something positive because you wanted to be friends is an example of positive comity. It is enshrined in Article VI, section 2 of the 1995 Canada/U.S. Agreement on Competition Issues.¹ The United States can come to Canada and say that there are Canadians doing things in Canada which are harmful to U.S. interests. They can then ask Canada to stop them from doing those harmful things. And the Canadians will respond by saying, all right, we will take that seriously and launch an investigation. If we find that there has been wrongdoing under our law, we will undertake to apply appropriate sanctions and remedies. There is a reciprocal obligation; the Canadians can ask the Americans to do the same thing. The theory is that it is a way to avoid extraterritoriality so that we Americans do not have to come after those Canadians. Let the Canadians take care of their own.

The history of positive comity so far has not been very impressive. The 1991 agreement with the Europeans stalled for a while because of a challenge to that agreement by the French. That was eventually resolved, however, and a new agreement was made. Since 1991, there has been at least one public request by the United States for the Europeans to investigate European airline reservation practices. The allegation was that the European airlines reservation people were not informing customers about American flights and American fares. That investigation is ongoing. There has been no resolution. I am not aware of any public announcement of any request under the Canada/U.S. agreement. There are a lot of us who think positive comity, as I said, only works in unimportant cases. It is one thing to prosecute plastic dinnerware; it is something very different to prosecute oil or basic chemicals or another industry that is important. When you are asking a foreign government to punish its own people for doing something that is important for their

¹ Agreement Between the Government of the United States and the Government of Canada Regarding the Application of Their Competition and Marketing Practice Laws, art. VI(2), Aug. 1, 1995 <http://www.alca-ftaa.oas.org/cp_comp/english/cpa/cpa1_e.stm#uscan> (visited on June 25, 1998).

national economy, you should not hold your breath waiting for the foreign government to act.

The next level of agreement after positive comity is our current state of affairs. In 1994, our Congress enacted something we all like to call the "all-vowel statute." There is no acronym that really works, because the name consists of only vowels, the International Antitrust Enforcement Assistance Act (IAEAA).² What that says is that, if you enter into an agreement with us, we will both be entering into a reciprocal agreement. We will exchange a much more important kind of information. Under the old voluntary cooperation agreements, it was public information, stuff you could get out of the public record; annual reports, that sort of thing. Here we are talking about grand jury transcripts, reports of investigations, and interrogations by enforcement authorities, a whole new level of important information, private government information that is gathered through one source or another.

To date, not surprisingly, there have not been many countries lining up to sign up for this. The Australians are the only ones so far who have initialed a draft agreement. The Canadians withdrew a bill on this issue. But that is the current state of the art. In our terminology, the old voluntary "let us be nice" cooperation agreements were called first-generation agreements, and the IAEAA agreements are so-called second-generation agreements. This suggests we are moving ahead. That is a good summary on the first of the three policies of cooperation and information sharing. It is what I like to call collusion among enforcers.

The second policy reveals to Canadians the U.S. Government they know and have come to love and hate. If there ever was any doubt that our current administration believes in extraterritorial actions in a good, old-fashioned 1945 sense of no restraints at all, read the list of fines that have been imposed in the article in your materials.³ Now you have the antitrust enforcement authorities bragging about the new heights of fines they have reached (up to \$100 million in several different cases) against international cartels. Backing that up is the *Nippon Paper* decision of last year, which, for the first time, squarely addressed the issue of whether criminal extraterritorial enforcement of the Sherman Act was, in fact, constitutional.⁴ *Nippon Paper* was a case that involved collusion by fax-paper manufacturers who were all Japanese, carried on all their meetings in Japan, and sold their fax paper to other people

² 15 U.S.C.A. § 6201 *et seq.*

³ See Joseph P. Griffin & Donald Klawtier, *U.S. Court of Appeals Endorses Criminal Anti-trust Jurisdiction Over Price-Fixing Outside the United States*, 5 METROPOLITAN CORPORATE COUNSEL 1-3 (May 1997).

⁴ *United States v. Nippon Paper Indus. Co.*, 944 F. Supp. 55 (D. Mass. 1996), *rev'd* 109 F.3d 1 (1st Cir. 1997).

in Japan. They were indicted criminally in the United States for price-fixing. The lower court dismissed that case on jurisdictional grounds, saying that, whatever effect there was on U.S. commerce was indirect. The trial court was not sure if the Sherman Act was meant to extend that far. The Court of Appeals reversed using language that would become the new quotable language in the beginning of every lawyer's brief. The First Circuit Court of Appeals said:

[W]e see no tenable reason why principles of comity should shield the defendant from prosecution.⁵ We live in an age of international commerce where decisions reached in one corner of the world can reverberate around the globe in less time that it takes to tell the tale. Thus, a ruling in the defendant's favor would create perverse incentives for those who would use nefarious means to influence markets in the United States by rewarding them for enacting as many territorial firewalls as possible between cause and effect.

The layman's version of that is, we will come and get you no matter where you are. That is what has been happening in the cartel cases that came along at more or less the same time as *Nippon Paper* and continue to be prosecuted. The most famous ones are the citric-acid cartels involving Archer-Daniels and friends.⁶ There have been other cases in marine construction,⁷ graphite electrodes,⁸ and sodium glutamate.⁹ They are international price-fixing cartels, which involve substantial foreign participation. They have all been prosecuted, and virtually every one of them has plead guilty or settled for very large amounts of money. There has even been criminal prosecution of chief executives from fourteen different countries. Every one of them has plead guilty or entered into some sort of settlement. So people are learning that we will come and get you.

⁵ *Id.* at 8.

⁶ The Archer-Daniels-Midland Corporation was fined a total of \$100 million for violations of antitrust laws. *See* U.S. v. Archer-Daniels-Midland Co., 1988-96 Transfer Binder, U.S. Antitrust Cases (CCH) ¶ 45,096. Case No. 4253 (N.D. Cal. 1996).

⁷ *See, e.g.*, United States v Heeremac, 6 Trade Reg. Rep. (CCH) ¶ 45,343 (N.D. Ill. Dec. 22, 1997) (Case nos. 4323-4324) (assessing a \$49 million fine after guilty plea).

⁸ United States v Showa Kenko Carbon, Inc., 6 Trade Reg. Rep. (CCH) ¶ 45,098 (E.D. Pa. 1998) (Case No. 4327) (assessing a \$29 million fine after guilty plea); United States v. RCAR international, Inc., 6 Trade Reg. Rep (CCH) ¶ 45,098 (E.D. Pa. 1998) (assessing a \$110 million fine after guilty plea).

⁹ United States v Fujisawa Pharmaceutical Co., 6 Trade Reg. Rep. (CCH) ¶ 45,098 (N.D. Cal. 1998) (Case No. 4328) (assessing a \$20 million fine after guilty plea); Gary R. Spratling, Deputy Assistant Attorney General, Antitrust Division, Address to ABA National Institute on White Collar Crime: *Are the Recent Titanic Fines in Antitrust Cases Just the Tip of the Iceberg?* (Mar. 6, 1998).

That is what the government has been doing in the sense of the criminal enforcement, but that is not all. In the 1995 Department of Justice and Federal Trade Commission, Antitrust Enforcement Guidelines for International Operations, which was the last time that the Justice Department and Federal Trade Commission spoke jointly about their general policies on this issue, they took the unrestrained antitrust position. But, they also took some other positions. It is their view that, if they bring a case against someone outside of the United States, it is not for the U.S. courts to second-guess their prosecutorial decision. This means the courts should not inquire into jurisdiction and should not raise comity as a defense. The Executive Branch argues that they should make those decisions. If they bring a case, it is not for the courts to second-guess that. The courts must proceed without granting any jurisdictional or comity-related defenses. I have argued and I have written that that is plainly wrong.¹⁰ That is bad law. I would love to get a case where I could get that overturned, but nobody has the guts to challenge it.

Luckily, in *Nippon Paper*, the Court of Appeals at least indirectly refuted the Agencies' position by performing its own comity analysis in the context of upholding the assertion jurisdiction. The Court very clearly did not say that, just because the Justice Department brought this case, we have got to go ahead. In fact, it very clearly went through a rather detailed analysis of comity factors under the Restatement (Third). There is some hope that plainly overreaching acts by U.S. government authorities will not survive in the courts, and there are a number of precedents to explain why that would be true. On the other hand, some of you would be interested to know that, just last month, the Federal Trade Commission (FTC) negotiated the settlement of a merger case involving DuPont and the German company Degussa.¹¹ Degussa and DuPont entered into a transaction which was challenged by the Federal Trade Commission as a violation of the merger law.¹² Part of the settlement is an agreement by the parties that they will not conduct any acquisitions in Canada without prior approval of the Federal Trade Commission, even if those transactions are not reportable under the Hart-Scott Act.¹³ If you have a situation where, in the future, either Degussa or DuPont wants to engage in an acquisition in Canada, which is not reportable under the Hart-Scott law, they have agreed to seek the prior approval of the U.S. govern-

¹⁰ See JOSEPH P. GRIFFIN, U.S. INTERNATIONAL ANTITRUST ENFORCEMENT: A PRACTICAL GUIDE TO THE AGENCIES' 1995 GUIDELINES, 53 CORP. PRACTICE SERIES (BNA) A-6 (2nd ed. 1996).

¹¹ *In re Degussa*, 5 Trade Reg. Rep. (CCH) ¶24,406 (FTC Mar. 12, 1998).

¹² See *Degussa to Buy DuPont H₂O₂ Plant in Streamlined Version of Original Plans*, CHEM. BUS. NEWSBASE, Mar. 13, 1998, 1998 WL 10604669.

¹³ Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C.A. §§ 15(c)-15(h), 18(a), 66.

ment even though that acquisition is in Canada, and is not required to be notified to the U.S. government. As far as I know, the Canadian government was not heard from on that settlement.

Another interesting example is the recent \$5.6 million fine assessed to Brazilian and German companies for merging without the prior approval of the Federal Trade Commission. That is the *Mahle* case.¹⁴ For those of you who follow competition issues, you will note that the European Union did exactly the same thing very recently with Samsung and AST,¹⁵ which are Japanese and American companies. They had the temerity to merge without getting it cleared by the European Union, so the European Union fined them 33,000 ECU, which is the first time they have ever fined anybody for anything in this area. So you see, the assertions of jurisdiction are going significantly beyond what most people would expect. All that I have been describing so far is government policy. Remember, only about five percent of anti-trust litigation in America is in fact government litigation; ninety-five percent is private.

Unfortunately, the courts have caught this bug as well. The landmark decision by the U.S. Supreme Court in the *Hartford Fire* case¹⁶ in 1993 raises significant issues here. *Hartford Fire* was a case that involved insurance and reinsurance in the United States. The part that is of interest is that one of the claims was against the English re-insures who decided, because American juries were making outrageous awards covered by insurance policies, that they simply would no longer write certain kinds of insurance and reinsurance in the United States. These were English companies acting in England in a manner lawful under English law. When a civil case was brought, the lower court denied jurisdiction because of no effects to the United States.¹⁷ The Supreme Court reversed the decision and said that there was jurisdiction in that situation.¹⁸ This dramatically limited what had been the developing defense based on international comity. That is, even if there is technical jurisdiction in the sense of some sort of effect, there could be some set of circumstances; nationalities, parties, location, conduct, that might outweigh the mere existence of an effect.

The Supreme Court, in the words used by the *Nippon Paper* court later, said that *Hartford Fire* "stunted the growth of comity" in the antitrust area. Allow me a minute of editorial digression, please. *Hartford Fire* is plainly a

¹⁴ *In re Mahle*, 5 TRADE REG. REP. (CCH) ¶ 24,2816 (FTC 1997). U.S. v. Mahle, GmbH, 1997-72 Trade Cas. (CCH) ¶ 71,868 (D.D.C. 1997).

¹⁵ European Commission Press Release, IP/98/166 (Feb. 18, 1998).

¹⁶ *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993).

¹⁷ 723 F. Supp. 464 (N.D. Cal. 1989), *rev'd* 938 F.2d 919 (9th Cir. 1991).

¹⁸ See *Hartford Fire*, *supra* note 16.

wrong decision. It was a five-to-four decision, clearly based upon faulty reasoning. The basis of the majority's decision was its reading of the Restatement of Foreign Relations Law.¹⁹ The author of that section of the Restatement has now written a law journal article where he rather charitably says that the majority "misunderstood" how the Restatement analysis works.²⁰ It was a plainly erroneous decision. Most judges do not read law journal articles, however. Since *Hartford Fire*, there has been no decision in the antitrust area where comity has been a successful defense absent a "true conflict" with foreign law.

There have been two cases, however, interestingly enough, picking up on *Hartford Fire* where complaints against foreign companies were dismissed, but on interesting grounds of taking *Hartford Fire* at its word. This is the lesson the Canadian legislators ought to take away from this. What *Hartford Fire* said was, there is a defense if, in fact, the conduct was required by the foreign government or the foreign government requires conduct inconsistent with American law. Most of us at the time read that as talking about what used to be called the "sovereign compulsion" defense. That is, if the foreign government compelled the conduct, then that was a defense. For anything less than compulsion, the court was saying, we do not want to hear about it.

The first of these two cases that picked up on *Hartford Fire* was the *Filetech* case,²¹ where the Court dismissed France Telecom as a defendant in the case on the grounds that France Telecom's refusal to supply the plaintiff was based on French law. The second case, the *Trugman-Nash* case,²² involved exports of New Zealand cheese. The argument there was that New Zealand cheese exporters were fixing their prices for sales in the United States. The court dismissed on the grounds that it was the New Zealand export board that set the prices; therefore they met the *Hartford Fire* test. Interestingly enough, just as a number of people predicted at the time of *Hartford Fire*, the lesson is, if you want to get away with it, get your government to make you do it. That does seem to work.

The third area of U.S. policy is our unalterable opposition to any diminution of sovereignty; we will be the last to go, and we will not go quietly. Just to give you a few examples, to remind you of a few things, this is not just a Clinton administration aberration, but, in fact, it has been around for while.

¹⁹ Specifically, the court relied on RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 403 (1987).

²⁰ Andreas F. Lowenfeld, Editorial Comment, *Conflict, Balancing of Interests, and the Exercise of Jurisdiction to Prescribe: Reflections on the Insurance Antitrust Case*, 89 AM. J. INT'L L. 42 (1995).

²¹ *Filetech S.A.R.L. v. France Telecom*, 978 F. Supp. 464 (S.D.N.Y. 1997).

²² *Trugman-Nash Inc. v. New Zealand Dairy Board, Milk Practice Holdings (North America) Inc.*, 954 F. Supp. 733 (S.D.N.Y. 1997).

You will remember that neither NAFTA nor the FTAA have any binding antitrust provisions in them. There is somewhat fuzzy language about objectives to prohibit restraints on anti-competitive conduct and so forth. In the latest statement from March 1998 about the objectives of the FTAA, the objectives under the competition chapter read as follows:

The objectives are to advance toward the establishment of juridical and institutional coverage at the national, sub-regional or regional level that prescribes the carrying out of anti-competitive business practices, and, secondly, to develop mechanisms that facilitate and promote the development of competition policy and guarantee the enforcement of regulation on free competition and within the countries of the hemisphere.²³

These are not hard-hitting binding obligations. You will remember that the WTO ministerial declaration in 1996 provided for the creation of a study group that would do a two-year study on the interface of trade and investment and antitrust policy.²⁴ Our take on that is that any negotiations of anything like a binding treaty, a binding code, any kind of binding dispute resolution, would be premature and could be counterproductive.

The U.S. Trade Representative, in talking about competition in the context of the WTO, said that what is critical is that we develop an international culture of competition and sound antitrust enforcement built on shared experience, bilateral cooperation, and technical assistance. From that base we should focus on the most egregious practices. Over the long run, and the emphasis is on long, that will provide a foundation for a more comprehensive regulatory framework for competition policy. That will not be in my lifetime.

Let me try to give you a few of the arguments the Americans are currently advancing against the concept of any diminution of sovereignty or any interference with our unilateral right to "come and get you." They fall under several different arguments made by a combination of the antitrust enforcers and the trade negotiators. To begin with, there is just not a sufficient consensus of antitrust policy. That is, if you take the WTO membership as a whole, about half do not have any kind of competition law at all, and half of them have some type of competition law, or any serious enforcement. There simply is nothing remotely like a consensus on what a world competition law would say and how it would work. That leads to the fear of what we in the United States like to call the "lowest common denominator." That is, if we

²³ Summit of the Americas, Fourth Trade Ministerial Joint Declaration, Mar. 19, 1998 (available at http://www.ftaa-alca.org/EnglishVersion/costa_e.htm) (visited on June 25, 1998).

²⁴ WTO Ministerial Conference Singapore, Final Declaration ¶ 20 (Dec. 13, 1996), reprinted in 36 I.L.M. 218 (1997).

go ahead and negotiate something with that background, what we are going to end up with is a weak and inefficient set of rules, at least compared to our own rules, and we certainly would not want that, would we?

There is another related issue. We cannot trust all of these countries. Why in the world would we create some body to which we would give highly sensitive, competitively important information, so the evil French could make money and trade on insider information.²⁵ That is another set of concerns. Joel Klein, the head of the Department of Justice's Antitrust Division, says, "if the WTO dispute settlement process were extended to individual decisions taken by national competition authorities – setting aside the question of how the WTO would acquire the (often disputed) evidence required for a proper competitive competition analysis – this would interfere with national sovereignty concerning prosecutorial discretion and judicial decision-making, and it could involve WTO panels and inappropriate reviews of witness credibility and highly confidential business information."²⁶ This is further evidence that this will not happen in my lifetime.

So what are the future prospects? What does all this mean from our perspective? In my lifetime, and I would say in the lifetime of everybody in this room, there will have been no diminution of U.S. sovereignty on this issue. We will not agree to anything remotely like a binding code, a binding law, or any kind of binding dispute resolution. We will insist on our right to act unilaterally to the full extent of our constitutional powers, whether or not those are deemed to be in violation of international law. If we are the only country left on the face of the earth that takes that view, that will not bother us at all.

The three-track strategy that I have outlined will continue the U.S. government's strategy. We will want to, on the other hand, be nice and promote convergence, cooperation, notification, and information-sharing, and all that sort of thing. We are participating willfully and constructively in an infinite number of areas for the OECD and WTO and all sorts of others working on various detailed projects, like a common merger notification form and common standards for anti-cartel activity.²⁷ In the long run, we actually do be-

²⁵ Ben McIntyre & Michael Evans, *French Spy on U.S. Business in New Secret War*, THE TIMES (London) June 17, 1998, at 15.

²⁶ Joel I. Klein, *Anticipating the Millenium: International Antitrust Enforcement at the End of the Twentieth Century*, Address at Fordham Corporate Law Institute (Oct. 16, 1997), at 13, 14 (transcript available from Dep't Justice Antitrust Division); see also Daniel Tarullo, *Wrong Lesson from Boeing*, FIN. TIMES, Aug. 13, 1997, at 12; Joel I. Klein, *No Monopoly on Antitrust*, FIN. TIMES, Feb. 13, 1998, at 2.

²⁷ OECD, Communique from Council Meeting at Ministerial Level, para. 33 (Apr. 28, 1998); OECD Recommendation of the Council Concerning Effective Action Against "Hard Core" Cartels (Mar. 30, 1998). For background, see *OECD Condemns Hard Core Cartelization, Calls for Concerted Crackdown*, 74 ANTITRUST & TRADE REG. REP. (BNA) no.

lieve that this kind of cooperation will lead to, first procedural convergence, and, eventually, to substantive law convergence, and that should be a long-term goal. My grandson may live to see the day when it actually means the U.S. government agreeing to be bound by a world code.

The other issue that is relevant here and relevant to this conference is the fight going on in the United States about the role of antitrust policy versus the role of international trade policy. You will remember that is part of the WTO agenda, and it is part of the OECD market access study. There are a number of different fora, a number of different governments, a number of different committees, lots of great and good people, looking at the general issue of the interface, or lack thereof, between trade policy and antitrust policy. How can you have predatory pricing and dumping and all that sort of thing?

The U.S. antitrust take on those issues is that antitrust must remain pure. It must, therefore, be focused only on issues of consumer welfare and economic good, whether it is to the Herfindahl index or some other model. That is how cases should be decided. It is important to keep those cases separate from trade policy negotiations about subsidization of your aircraft industry or whatever. There was a very interesting clash in *Boeing-McDonnell Douglas* when all of this came together. And you saw the antitrust people and the industrial policy people on both sides of the Atlantic desperately trying to use each other's language, trying to make it sound like it was not a problem when it clearly was a problem.²⁸

Now, you are having all of the players doing post-mortem analyses, saying that this was actually a wonderful opportunity, we learned a lot from each other, and we are going to be better in cooperating in the future because we almost killed each other this time. Where this really becomes important, in terms of antitrust enforcement policy, is the very strong political pressure in Washington, which Mr. Klein acknowledges, to make antitrust a weapon of trade policy.

1859, at 459 (May 7, 1998); Charles S. Stark, *International Cooperation in the Pursuit of Cartels*, 6 GEO. MASON L. REV. 533 (1998).

²⁸ *In re Boeing*, 5 Trade Reg. Rep. (CCH) ¶ 24,295 (FTC July 1, 1997); *Boeing/McDonnell-Douglas*, Case IV/M877 (1997), [1997] 5 C.M.L.R. 270. *Clinton Hints at WTO, Unilateral Actions Against EU on Boeing Merger*, 15 INSIDE U.S. TRADE 1 (July 18, 1997); *Clinton Steps Into Boeing Deal Row*, FIN. TIMES, July 18, 1997 at A1; *U.S. Gets Tough to Ensure Boeing, McDonnell Merger*, WASH. POST, July 17, 1997, at C1. See also Alexander Schaub, *International Cooperation in Antitrust Matters: Making the Point in the Wake of the Boeing/MDD Proceedings*, EC COMPETITION POLICY NEWSLETTER 2 (Feb. 1998); Joel I. Klein, *Anticipating the Millennium: International Antitrust Enforcement at the End of the Twentieth Century*, in 1997 Fordham Corp. L. Institute (B. Hawk ed. 1998).

You are going to see more and more pressure for an amendment to the antitrust laws to deal with market access as an antitrust violation, and, therefore, apply all the extraterritoriality precedents and the criminal law to the offense of denying access to U.S. exports.²⁹ That is a very serious issue in the United States right now, and the administration is completely conflicted on that for lots of reasons. It is where you and everybody else in the world ought to be concerned. If the people on the trade policy side of that, the frustrated Helmses, Burtons, and D'Amatos of the world, who feel we have not been tough enough on evil foreigners, get their way, by the end of the year you will see a new law holding that denial of access to American exports is a criminal violation of American law, and the full range of extraterritorial jurisdiction and FBI investigations and wire tapings, all the good stuff we did in those international cartels cases, will apply when U.S. firms are denied access to foreign markets.

²⁹ For background, see A. Douglas Melamed, *International Antitrust in an Age of International Deregulation*, 6 GEO. MASON L. REV. 437 (1998); Eleanor M. Fox, *Towards World Antitrust and Market Access*, 91 AM. J. INT'L L. 1 (1997); *The Borders of Competition*, THE ECONOMIST, July 4, 1998, at 69.

