

# Northwestern Journal of International Law & Business

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Volume 1  
Issue 1 *Spring*

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Spring 1979

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### Recommended Citation

David Lord Hacking, The Increasing Extraterritorial Impact of U.S. Laws: A Cause for Concern Amongst Friends of America, 1 Nw. J. Int'l L. & Bus. 1 (1979)

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# Northwestern Journal of International Law & Business



## The Increasing Extraterritorial Impact of U.S. Laws: A Cause for Concern Amongst Friends of America

*David Lord Hacking\**

As students of international law know, there has been a long standing dispute between the United Kingdom and the United States over the doctrines of jurisdiction and sovereignty in the practice of international law. In two parts our nations do not quarrel. First, we agree that every nation has the right to exercise jurisdiction over its nationals and over non-nationals within its territory. Second, we agree that every nation has the right to exercise personal jurisdiction over its nationals residing abroad.

There is, however, another part of the doctrine in which we disagree. American law students are taught that, when there has been a substantial and foreseeable effect from abroad upon a nation's persons or institutions (including the economy itself), then that nation has the right to exercise jurisdiction over those persons or corporations whose activities, albeit abroad, have had this effect. We have been aware for a number of years that you believe this to be a valid exercise of jurisdiction in international law. It was well put, however much we may disagree with it, in *United States v. Aluminum Co. of America (Alcoa)*,<sup>1</sup> when Judge Learned Hand noted that "any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its

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<sup>1</sup> 148 F.2d 416 (2d Cir. 1945).

borders that has consequences within its borders which the state reprehends . . . .”<sup>2</sup> We take a somewhat different view of the matter. In the words of Viscount Dilhorne, in *Rio Tinto Zinc Corp. v. Westinghouse Electric Corp.*,<sup>3</sup> “[f]or many years now, the United States has sought to exercise jurisdiction over foreigners in respect of acts done outside the jurisdiction of that country. This is not in accordance with international law . . . .”<sup>4</sup>

This disagreement is now one of increasing worry to us. I am bound to tell you, in a voice of friendliness, and not hostility, that we are disturbed for you, for us, and for international trade. We are disturbed that agencies of the United States government, over an ever-widening field of international commerce, are persistently making more and more attempts to impose domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States. I do not think it is an unfair question to ask how you [Americans] would respond if other nations attempted to do the same to you. Without putting it tritely, the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.

It would probably surprise you to learn how extensive is the application of U.S. law abroad. Without burdening you, allow me to provide a few examples in areas which give us much concern.

The field of antitrust law is of first and foremost concern. Refer-

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<sup>2</sup> *Id.* at 443. *Alcoa* is best known as the case in which the Aluminum Company of America was found to have monopolized the manufacture and sale of virgin aluminum ingot in violation of section 2 of the Sherman Antitrust Act. Sherman Antitrust Act, ch. 647, § 2, 26 Stat. 209 (1890) (current version at 15 U.S.C. § 2 (1976)). The original complaint, filed on April 23, 1937, however, named sixty-three defendants. Among these was Aluminum Limited, a Canadian corporation charged with having conspired with French, German, Swiss and British corporations to restrain trade in the United States. In 1936, Limited entered into an agreement with these corporations to restrict exports to the United States. Each corporation was granted a fixed free export quota, with royalties to be paid on exports exceeding the quota. Although the district court had found that the export quota restrictions had not materially affected the foreign trade or commerce of the United States, the court of appeals reversed, holding an agreement to withdraw a substantial part of the supply from the market as illegal per se. 148 F.2d at 421, 442-45.

<sup>3</sup> [1978] 1 All E.R. 434 (H.L.). In *Westinghouse*, a number of utility companies had instituted civil proceedings against Westinghouse for alleged breaches of contracts to supply uranium. Westinghouse contended in its defense that performance had been rendered impossible by the existence of a uranium cartel which restricted supply and fixed prices. To prove the existence of the foreign cartel, Westinghouse applied to the district court for the issuance of letters rogatory addressed to the High Court of England. In these letters, the district court requested the High Court to summon certain directors and employees of Rio Tinto Zinc Corporation to give oral testimony and provide written documents to an examiner in London. In the proceedings in England, a High Court master had issued an order giving effect to the letters rogatory. On appeal, however, this order was unanimously overturned by the High Court.

<sup>4</sup> *Id.* at 460.

ence has already been made to the *Alcoa* case. Similarly, *United States v. Imperial Chemical Industries Ltd.*<sup>5</sup> held that the Sherman Act extended extraterritorially to a British company which allegedly conspired with others to divide world markets.<sup>6</sup> *United States v. The Watchmakers of Switzerland Information Center*<sup>7</sup> provides classic illustration of the foreign policy implications of extraterritorial application of U.S. antitrust laws. In *Watchmakers*, the United States brought a civil antitrust action against two Swiss watchmakers. Following the entry of a final decree, the Department of Justice was forced to seek modification because of a resulting strain in U.S.-Swiss relations.

The encroachment of U.S. antitrust law abroad has been gradual but steady. We do not oppose the rationale of antitrust; on the contrary, we recognize the importance of these laws in the conduct of fair and good business within any free enterprise system. The United Kingdom has its own laws against monopolies and unfair trade practices.<sup>8</sup> We do, however, take exception to the belief that antitrust objectives can be achieved internationally only by the extraterritorial application of U.S. laws.

The United States Department of Justice in its *Antitrust Guide for International Operations*<sup>9</sup> put its case with admirable candor:

The application of U.S. antitrust laws to overseas activities raises some difficult questions of jurisdiction. . . . U.S. law in general, and the U.S. antitrust laws in particular, are not limited to transactions which take place within our borders. When foreign transactions have a substantial and foreseeable effect on U.S. commerce, they are subject to U.S. law regardless of where they take place. . . . Accordingly, considerations of jurisdiction, enforcement policy, and comity often, but not always, lead to the same conclusion: the U.S. antitrust laws should be applied to an overseas transaction when there is a substantial and foreseeable effect on the United States commerce; and consistent with these ends, it should avoid

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<sup>5</sup> 100 F. Supp. 504 (S.D.N.Y. 1951), *final decree issued*, 105 F. Supp. 215 (S.D.N.Y. 1952).

<sup>6</sup> Judge Ryan held that "the law is crystal clear: a conspiracy to divide territories, which affects American commerce, violates the Sherman Act." 100 F. Supp. at 592.

<sup>7</sup> [1965] TRADE REG. REP. (CCH) ¶ 71,352 (S.D.N.Y.). *Watchmakers* had an extensive pre-trial history. See 27 F.R.D. 513 (S.D.N.Y. 1961); 25 F.R.D. 346 (S.D.N.Y. 1960); 25 F.R.D. 347 (S.D.N.Y. 1960); 25 F.R.D. 203 (S.D.N.Y. 1960); 25 F.R.D. 197 (S.D.N.Y. 1959); 168 F. Supp. 904 (S.D.N.Y. 1958); 133 F. Supp. 40 (S.D.N.Y. 1955).

<sup>8</sup> See Resale Prices Act, 1976, c. 53, §§ 1-11; Restrictive Trade Practices Act, 1976, c. 34; Fair Trading Act, 1973, c. 41 (which replaced the Monopolies and Merger Act, 1965, c. 50, and the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, 11 & 12 Geo. 6, c. 66); Restrictive Trade Practices Act, 1968, c. 66; and Restrictive Trade Practices Act, 1956, 4 & 5 Eliz. 2, c. 68.

<sup>9</sup> ANTITRUST DIVISION, U.S. DEP'T. OF JUSTICE, ANTITRUST GUIDE FOR INTERNATIONAL OPERATIONS (1977), reprinted in [1977-1978 Extra Edition] TRADE REG. REP. (CCH), No. 266.

unnecessary interference with the sovereign interests of foreign nations.<sup>10</sup> It is at this point that the authors of the Guide glide so smoothly over the troubled waters:

For example, to use the Sherman Act to restrain or punish an overseas conspiracy whose clear purpose and effect is to restrain significant commerce in the U.S. market is both necessary and appropriate to effective U.S. enforcement. . . .

. . . .  
. . . The general trend of modern history has been to expand the personal jurisdiction of our courts to reach those who transact business in a certain place, even if they are not "found" there in a traditional jurisdictional sense. The Department will utilize these principles to seek to exercise the fullest permissible jurisdiction over those who illegally cartelize our markets.<sup>11</sup>

A second area in which extraterritorial application of U.S. laws provides concern is in securities law. It has long been held that if these laws are to be effective within the United States, there must be some extraterritorial application. Although section 30(b) of the Securities Exchange Act of 1934<sup>12</sup> seems to exempt transactions conducted outside the territorial limits of the United States,<sup>13</sup> the United States Court of Appeals for the Second Circuit has concluded otherwise:

We believe that Congress intended the Exchange Act to have extraterritorial application in order to protect domestic investors who have purchased foreign securities on American exchanges and to protect the domestic securities market from the effects of improper foreign transactions in American securities. In our view, neither the usual presumption against extraterritorial application of legislation nor the specific language of Section 30(b) show Congressional intent to preclude application of the Exchange Act to transactions regarding stocks traded in the United States which are effected outside the United States, when extraterritorial application of the Act is necessary to protect American investors.<sup>14</sup>

One of the most recent examples of proposals to increase the extra-

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<sup>10</sup> *Id.* at 6-7 (footnotes omitted).

<sup>11</sup> *Id.* at 7-8 (footnotes omitted).

<sup>12</sup> 15 U.S.C. § 78dd(b) (1976) (originally enacted as Securities Exchange Act of 1934, ch. 404, § 30(b), 48 Stat. 881).

<sup>13</sup> Section 30(b) provides:

The provisions of this chapter or of any rule or regulation thereunder shall not apply to any person insofar as he transacts a business in securities without the jurisdiction of the United States, unless he transacts such business in contravention of such rules and regulation as the Commission may prescribe as necessary or appropriate to prevent evasion of this title.

*Id.*

<sup>14</sup> *Schoenbaum v. Firstbrook*, 405 F.2d 200, 206 (2d Cir.), *rev'd on other grounds en banc*, 405 F.2d 215 (2d Cir. 1968), *cert. denied*, 395 U.S. 906 (1969). Courts in the Third, Eighth, and Ninth Circuits have followed *Schoenbaum*. See *Des Brisay v. Goldfield Corp.*, 549 F.2d 133 (9th Cir. 1977); *Travis v. Anthes Imperial Ltd.*, 473 F.2d 515 (8th Cir. 1973); *Recaman v. Barish*, 408 F. Supp. 1189 (E.D. Pa. 1975).

territorial application of U.S. securities law lies in a 1977 release issued by the Securities and Exchange Commission.<sup>15</sup> The Commission proposed to put upon foreign private issuers the same reporting requirements as those imposed upon domestic private issuers. As Richard Roeder said in a speech before the Los Angeles County Bar Association:

The release also contains comments setting forth the SEC's view as to the need for the free flow of information in the international capital markets. The specific proposals are stated to reflect the Commission's opinion that new foreign issuer registration and reporting forms are necessary to further the goals of the federal securities laws, and that dual systems of reporting for foreign issuers and domestic issuers are contrary to the best interests of the investors.<sup>16</sup>

No one can doubt the bona fide need, but many may have concern over the consequences.

In the field of international boycotts the United States has again found it necessary to seek extraterritorial application of domestic laws. Unlike the United States, the United Kingdom has not believed in the use of boycotts as an instrument of foreign policy. American trade embargoes, imposed under the Trading with the Enemy Act<sup>17</sup> against Communist China, Cuba, Vietnam and other countries, have over the years caused difficulties to British ships, which for various lawful and proper reasons have entered the harbors of these boycotted countries.

The same problems have faced several other countries friendly to the United States. In December, 1964, for example, it was unlawful in the United States to trade with the People's Republic of China. France, on the other hand, who did not have such an embargo, was anxious to increase its exports, and in particular wanted to increase its trade with the Chinese mainland. When a French exporter approached Fruehauf-France, which was a French corporation, and offered to purchase sixty of its trailers for delivery to the People's Republic of China, the exporter was providing an attractive offer to the French company. However, the French company was two-thirds owned by Fruehauf-International, which was a United States company. Hence, when the United States government began to investigate the transaction, Fruehauf-International instructed Fruehauf-France to cancel the contract. The minority shareholders of Fruehauf-France went to a French court

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<sup>15</sup> Exchange Act Release No. 14,128 [1977-1978 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 81,361 (Nov. 2, 1977).

<sup>16</sup> Address by Richard K. Roeder, Los Angeles County Bar Association Luncheon Address (May 26, 1978).

<sup>17</sup> 50 U.S.C. app. § 1 *et seq.* (1970) (originally enacted as Trading with the Enemy Act of 1917, ch. 106, 40 Stat. 411).

and, using a concept in French law called *abus de droit* (an abuse of a legal right), had the court appoint an officer to run the company and complete the sale.<sup>18</sup> The grounds for this decision of the French Court were strong. The trailers were being manufactured in France, finance was being provided by French creditors, and if Fruehauf-France had not supplied the trailers, they would have lost the contract to other French competitors. Moreover, the French court was concerned that the rescission of the contract by Fruehauf-France could have resulted in reparation damages being granted to the French exporter in excess of five million francs. This in turn could have driven Fruehauf-France into bankruptcy and deprived its employees of their jobs. Whatever may have been the merits of the U.S. foreign policy towards Communist China and whatever may have been the merits of this policy in the interests of the free world, the attempted extraterritorial application of U.S. laws would have had, if not resisted, serious consequences upon persons and a corporation operating inside the jurisdiction of another nation.<sup>19</sup>

While U.S. allies took pleasure in the stand taken against boycotts in the most recent Export Administration Amendments,<sup>20</sup> we unfortunately encountered the same jurisdictional problem. These amendments prohibit any participation with, or support of, those who are imposing boycotts against countries friendly to the United States and provide the power for seeking information on these boycott activities.<sup>21</sup> Thus Congress seeks jurisdiction, worldwide, against any "United States person."<sup>22</sup> These include not only present residents in the United States but also "any domestic concern (including any permanent domestic establishment of a foreign concern) and any foreign sub-

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<sup>18</sup> *Fruehauf Corp. v. Massardy*, [1968] D.S. Jur. 147, [1965] J.C.P. II 14,274bis (Cour d'appel, Paris). This case is discussed more thoroughly in Craig, *Application of the Trading with the Enemy Act to Foreign Corporations Owned by Americans: Reflections on Fruehauf v. Massardy*, 83 HARV. L. REV. 579 (1970).

<sup>19</sup> See generally Craig, *supra* note 18; Fortenberry, *Jurisdiction over Extraterritorial Antitrust Violations—Paths through the Great Grimpen Mire*, 32 OHIO ST. L.J. 519 (1971); Nothstein, *Multinational Corporation and the Extraterritorial Application of the Labor Management Relations Act*, 10 CORNELL INT'L L.J. 1 (1976); Comment, *An Interest Analysis Approach to Extraterritorial Application of Rule 10b-5*, 52 TEX. L. REV. 984 (1974); Comment, *Offshore Mutual Funds: Extraterritorial Application of the Securities Act of 1934*, 13 B.C. IND. & COM. L. REV. 1225 (1972); Note, *American Adjudication of Transnational Securities Fraud*, 89 HARV. L. REV. 553 (1976); Note, *The Conflict of Laws and the Extraterritorial Application of the Sherman Act*, 4 CASE W. RES. J. INT'L L. 164 (1972); Note, *Extraterritorial Application of Section 10(b) and Rule 10b-5*, 34 OHIO ST. L.J. 342 (1973); and Note, *Extraterritorial Application of United States Laws: A Conflict of Laws Approach*, 28 STAN. L. REV. 1005 (1976).

<sup>20</sup> Pub. L. No. 95-52, tit. II, 91 Stat. 235 (1977) (amending 50 U.S.C. § 2401 *et seq.* (1970)).

<sup>21</sup> *Id.* sec. 201, § 4A(b).

<sup>22</sup> *Id.* sec. 204, § 11(2).

sidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern . . . .”<sup>23</sup>

While we all may wish to outlaw boycotts, there will sometimes be good reasons for U.S. allies to impose, or cooperate with, boycotts of which American foreign policy makers disapprove. More than that, in the fertile and troubled Middle East, which was the very area in the world in which Congress in passing the Export Administration Amendments directed its attention,<sup>24</sup> enormously difficult decisions face traders who find themselves caught between rival factions. With the Arab countries on one side saying to a trader “if you do business with Israel then you will face penalties,” and with the United States saying to that same trader “if you cooperate with their demands you will face penalties,” that unfortunate trader is in a fair quandary. Viewing the labyrinth of national and international corporate structure I venture to suggest that the assumption of jurisdiction over “any foreign . . . affiliate . . . of any domestic concern which is controlled in fact by such domestic concern”<sup>25</sup> could have very wide implications. In a sense these provisions are “anti-boycott” boycotts carrying with them many of the problems of the former beasts.

Again, it is not over the substance of these laws that we complain, but over the means by which Congress and the courts seeks enforcement extraterritorially. Of all activities, therefore, the most conspicuous and the greatest source of trouble has been with the attempts to apply U.S. discovery procedures abroad. This was at the heart of the problem in the *Westinghouse*<sup>26</sup> proceedings in England. I know of no country with more extensive advocacy proceedings. In the United Kingdom, only very limited powers can be exercised against persons who are not parties to actions. Further, there are no means by which such parties can be compelled to give upon oath pre-trial evidence or to hand over all the files in their office for inspection by parties to an action. The problems resulting from the discovery procedures of the United States were considered at the Hague Convention on Taking Evidence Abroad.<sup>27</sup> In the end it was agreed that a contracting state to

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<sup>23</sup> *Id.*

<sup>24</sup> See H.R. REP. NO. 95-190, 95th Cong., 1st Sess. 4-6, *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 362, 365-67.

<sup>25</sup> Export Administration Amendments of 1977, Pub. L. No. 95-52, tit. II, sec. 204, § 11(2), 91 Stat. 235.

<sup>26</sup> *Rio Tinto Zinc Corp. v. Westinghouse Electric Corp.*, [1978] 1 All E.R. 434 (H.L.). See note 3 *supra*.

<sup>27</sup> Convention on Taking Evidence Abroad in Civil or Commercial Matters, *opened for*

this convention may declare, "that it will not execute Letters of Request for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries."<sup>28</sup>

Associated with discovery procedures, another weapon which has caused difficulty abroad is the use of Civil Investigative Demands (CID's) by the Justice Department.<sup>29</sup> When, for example, the Justice Department used CID's for investigating the activities of North Atlantic shipping companies in 1976, our Under-Secretary of State for Trade, Mr. Stanley Clinton-Davis, stated in our Parliament that the disclosure of the documents then being sought from British companies would constitute an infringement of the jurisdiction which, under international law, belongs to the United Kingdom. It has, therefore, been the inevitable response of other nations, who should be assisting you and not hindering you, to put up barriers. Indeed, a number of countries and states, in direct response to U.S. discovery procedures, have enacted laws with criminal penalties to prohibit the extraterritorial removal or other disclosure of commercial documents.<sup>30</sup>

As this ardent fight over the rights to see and obtain documents has raged between America and her allies, the last laugh has by no means been with us. In *In re Ampicillin Antitrust Litigation*<sup>31</sup> for exam-

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*signature*, Mar. 18, 1970, T.I.A.S. No. 7444, [1972] U.S.T. 2555. The convention was adopted at the Eleventh Session of the Hague Conference on Private International Law on Oct. 26, 1968. The United States signed the convention on July 27, 1970, and ratified it on July 15, 1972.

<sup>28</sup> *Id.* art. 23.

<sup>29</sup> Civil Investigative Demands are issued pursuant to section 3 of the Antitrust Civil Process Act, 15 U.S.C. § 1312 (1976). Section 3(a) provides:

Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

*Id.* § 1312(a). Section 3(d) of the act purports to extend service to non-nationals "[t]o the extent that the courts of the United States can assert jurisdiction over such persons consistent with due process." *Id.* § 1312(d).

<sup>30</sup> See Business Concerns Records Act, QUE. REV. STAT. ch. 278, § 2 (1964); Loi fédérale modifiant la loi sur les banques et les caisses d'épargne, art. 47, [1971] I Feuille Fédérale 557, 568 (Switz.); Shipping Contracts and Commercial Documents Act, 1964, c. 87, § 2; Uranium Information Security Regulations, § 2, 110 Can. Gaz. 2747 (1976) (issued pursuant to section 9 of the Atomic Energy Control Act, CAN. REV. STAT. ch. A-19, § 9 (1970)); and Wet Economische Mededinging, § 42 [1956] Staatsblad vor het Koninkrijk der Nederlanden [Stb.] No. 401, *as amended by* [1971] Stb. No. 774, [1971] Stb. No. 96, and [1958] Stb. No. 413, *translated in* 5 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, GUIDE TO LEGISLATION ON RESTRICTIVE BUSINESS PRACTICES (NETHERLANDS) § 1.0, at 1 (1960).

<sup>31</sup> M.D.L. No. 50 (D.D.C. November 22, 1978) (final decree approving settlement and award

ple, Beecham Group Limited, one of the leading British pharmaceutical companies, argued that compliance with a U.S. discovery order would have meant producing documents which Beecham was prohibited from producing under United Kingdom law. The district court, however, found that Beecham had made no effort to seek reconsideration of the United Kingdom-imposed prohibition and had failed to negotiate with the British government to achieve compliance with the U.S. court order.<sup>32</sup> It then proceeded to enter an order resolving all facts against Beecham on all issues upon which Beecham had, by not producing the documents, failed to comply. The United Kingdom Department of Trade, possibly now being rather harder pressed by Beecham, relented and permitted the production of all the documents, except for thirty-six which were treated as confidential.

What conclusions can be drawn? First and foremost, one can conclude that it is in the interests of the whole world that there should be international "fair play" in the conduct of our commercial affairs. Indeed, in the conduct of all activity which bears upon the interests of sovereign nations, it is in the interests of the world that there should be a binding international code in the conduct of trade which enforces the concept of fair competition. This is, of course, what antitrust is all about.

Secondly, it should be recognized that every country has the right to protect its own interests and the right to ask other countries to assist in the protection of those legitimate interests. It has long been recognized by many countries that criminals (who do not succeed in placing themselves into the category of political refugees) should be extradited from one country to another when they have committed crimes within the requesting country. Given international recognition of this principle, a country should be entitled to protect its own interests and to seek cooperation from other countries for that purpose.

The United States has more cause than any other country in the free world to ask for cooperation from friends and allies. The extent to which the rest of the world relies upon the United States for its political

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of attorneys' fees). Extensive pre-trial maneuvering preceded the final decree. The published history of the *Ampicillin* litigation includes: [1978] 1 TRADE REG. REP. (CCH) ¶ 62,105 (D.D.C. May 8, 1978); [1978] 1 TRADE REG. REP. (CCH) ¶ 62,043 (D.D.C.); [1977] 1 TRADE REG. REP. (CCH) ¶ 61,434 (D.D.C.); 55 F.R.D. 269 (D.D.C. 1972); [1971] TRADE REG. REP. (CCH) ¶ 73,449 (D.D.C.); [1971] TRADE REG. REP. (CCH) ¶ 73,475 (D.D.C.); and 315 F. Supp. 317 (Jud. Panel Mult. Lit. 1970).

<sup>32</sup> *In re Ampicillin Antitrust Litigation*, M.D.L. No. 50 (D.D.C. 1973). This finding of the district court is unreported. A background summary of some of the objections raised by Beechams to plaintiffs' requests for discovery is provided in [1978] 1 TRADE REG. REP. (CCH) ¶ 62,043 (D.D.C.).

and economic well-being is enormous. In 1977, U.S. investments abroad reached \$149 billion.<sup>33</sup> The number of people in the world who are directly or indirectly supported by the United States economy is also of high proportions.<sup>34</sup> In short, the United States does not lack justification in seeking extraterritorial application of its laws. When modified as necessary and implemented with the consent of other nations, these laws could and should be welcomed by the international community. Regrettably, Congress and agencies of the United States government have chosen to take unilateral rather than universal action. But as I have tried to illustrate, unilateral action is wrong for the United Kingdom, wrong for the United States, and wrong for the world at large. It offends America's allies and usually deprives her of her objectives.

I view international conventions, while useful for public debate, as a clumsy means of enabling nations of the world to join together for coercive and effective action. The answer will lie in separate treaties between nations. I suggest, therefore, that if our governments are not yet engaged in negotiating a treaty on the law of international competition, we should urge them to do so.

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<sup>33</sup> THE WORLD ALMANAC AND BOOK OF FACTS 94 (1979).

<sup>34</sup> It is possible to roughly estimate the number of people supported world-wide by U.S. industry. In 1973, Anthony Sampson reported the number of people employed by ITT throughout the world at 400,000. A. SAMPSON, THE SOVEREIGN STATE OF ITT 18 (1973). Well over half of the first 200 corporations listed in *The Fortune Directory of the 500 Largest U.S. Industrial Corporations*, FORTUNE, May 1978, at 238, have substantial operations overseas. It would probably not be unreasonable to multiply the ITT figure by fifty to bring the world-wide total of people employed by American owned companies to 20,000,000. If every employee supports four others, industry abroad supports approximately 80,000,000 people.