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Most of the developed nations outside the Communist bloc profess competition and antitrust as basic features of economic policy. But faith in the value of competition, vigorous though it may be in protection of the domestic economy, weakens or disappears entirely when nations face outward in their exports and sales in foreign markets.

The contrast between domestic and international policy is extreme. The United States, the European Economic Community ("EEC"), and most other developed nations are committed to doctrines of extraterritorial antitrust application to conduct abroad when restraints of competition are aimed by foreigners at their domestic supplies and prices. The same foreigners who thus find another regime's antitrust law to be part of the law they must sometimes obey may encounter restraints of competition aimed at their markets that operate under antitrust immunities granted by the same jurisdiction that claims extraterritorial jurisdiction over them.

The United States has three different, overlapping statutes that largely neutralize the Sherman Act's broad "foreign commerce" clause where exports are concerned. The EEC and most other nations find the way out much simpler. Having no foreign commerce clause at all, their laws simply do not reach outbound restraints. An exception always to be found in all the laws, of course, is that the restraints become illegal if, by "spill-over" or other means, they are not confined to restraining foreigners abroad, but have adverse domestic consequences as well.

The foreign target of outbound restraints may seek protection under its own jurisdiction's extraterritorial antitrust doctrine. Except in the United States, where private suits may be possible, this requires persuad-

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ing the target's governing authorities to act. Occasionally they do act, but usually they do not. This is partly because if they attack a foreign cartel, they may precipitate a retaliatory attack on their own cartels. The result appears to be something of a "stand-off," with antitrust policy one of the victims.

Worse, cartels beget other cartels. Thus, buying cartels may form under legal protection to offset export selling cartels. Further, legal export cartels of given nations in a given industry may have incentive to join their activities in an international cartel. The idea of course will occur to them. While such international cartels may attract application of extraterritorially applied antitrust laws that are otherwise dormant internationally, individual nations may be reluctant to act alone when several nations are involved. Consultation and cooperation may occur through the Organization for Economic Co-Operation and Development ("OECD") or bilateral channels, but there is no mechanism for joint enforcement—no such thing as a suit entitled *European Economic Community, Japan, United States et al. v. Cartel X.*

The situation appears to be especially dangerous for less-developed countries who have no effective antitrust laws of their own. U.S. and other antitrust laws, lacking application to outbound restraints, often would not reach international cartels that are limited to sales to developing countries.

It is often claimed that international cartels are old-fashioned and have waned in importance. While this may be true to some degree, the real degree is unknown, and the idea itself flies in the face of a great deal of experience and theory. With markets becoming increasingly international and competitors of different nations increasingly meeting each other around the world, it is reasonable to ask whether more, not less, internationally organized restrictive activity is to be expected. The question is a serious one when we take into account the growth of governmental encouragement, sponsorship, and actual compulsion of internationally applied restraints of competition, often connected with a nation's foreign trade policies. We should face the fact that we are inviting governments to arrange such restraints through our exculpatory doctrines of sovereign compulsion, sovereign immunity, act of state, and comity, as well as through our own respective trade practices and policies.

If competition does not have the virtues usually claimed for it, perhaps there is no cause for alarm at the sight of this seemingly menacing bundle of two-faced policies. Otherwise, should we not begin to try to appraise the costs to the world? There are obvious intellectual and moral penalties in present courses of national and international conduct, demanding at least some serious rationalization, and better, some solutions. And what are the economic costs? If it is true, as we keep saying, that cartels and single-firm dominance reduce output, raise prices, and lead to misallocation, are these effects somehow not present on the international level?

International cooperation through OECD and other channels has not proved to be enough in itself to deal with these problems. Is a truly international law approach too much to seek? It was thought possible after World War II in the drafting of the Havana Charter, but the effort failed. In 1980, the United Nations General Assembly adopted what is popularly called the "U.N. Restrictive Business Practices Code," urged by the United Nations Conference on Trade and Development on behalf of the developing nations, and negotiated at great length by representatives of the Western bloc, Communist bloc, and the developing nations. The "Code" provides a set of rules and principles on restrictive practices and abuse of dominant power that could go far in dealing with the problems described above. But the first two things one usually hears about the "Code" whenever it is mentioned are that it is non-binding, and that there is no enforcement mechanism.

The "Code" obviously is roundly ignored by the principal powers. The history of its negotiations does not inspire great confidence that an international law solution is near at hand. What is to be done?