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AFTERWORD

INTERNATIONAL COMPETITION RULES FOR THE 1990s

Joel Davidow*

It is both timely and appropriate that domestic and foreign law journals review the development of international competition rules for the coming decade. There are several reasons for this: First, the world is entering an era in which major power conflicts will be less dominated by military threats and ideological differences and will center more on economic competition.¹ Arguably, one can characterize even the "Crisis in the Gulf" as an antitrust/merger control issue: Iraq, which previously controlled ten percent of the world's oil reserves staged a hostile takeover of Kuwait, thereby doubling its control to approximately twenty percent of the world's known oil reserves,² and consumer nations sought and achieved prompt divestiture to prevent such market power from being permanently acquired and abused. Iraq resorted lastly to predatory conduct, destroying the Kuwaiti oil fields that it was in imminent danger of losing. This extreme example highlights why creation and harmonization of competition rules and principles is such a pervasive issue.

Second, the transformation of eastern Europe and the deregulation/privatization trends occurring in western Europe seem to indicate that

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1. See Reasoner, *The State of Antitrust*, 59 ANTITRUST L.J. 63, 65 (1990) (asserting that United States antitrust policy will become increasingly important as world economic competition increases).

2. *Persian Gulf Crisis: Hearings Before the Senate Committee on Armed Services*, 101st Cong., 2d Sess. 10 (1990) (Statement of Hon. Richard Cheney, Secretary of Defense).

the majority of future world trade and competition will be among countries with capitalistic systems. These systems will likely feature free competition among investor-owned enterprises internally, and operate under the rules of the General Agreement on Tariffs and Trade³ (GATT) externally. Poland, for example, adopted an antitrust law and created an enforcement agency that is busily engaged in privatization.⁴ Likewise, Hungary enacted a series of competition laws addressing both internal and external economic activity in November 1990.⁵ Even the Soviet Union is considering enactment of competition laws.⁶

Third, some advanced market economy countries are in the process of strengthening and harmonizing the finer points of their antitrust and international trade laws.⁷ Italy passed its first antitrust law in February 1991. Canada and the European Community (EC) adopted merger notification and control systems in the late 1980s.⁸ Free market countries have been developing common standards through antitrust legislation and international trade legislation since the middle 1970s.⁹ The Organization for Economic Co-operation and Development (OECD) adopted guidelines for transnational corporations in 1976 that included competi-

3. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. 5 A3(6)1365, 55 U.N.T.S. 194, T.I.A.S. 1700 [hereinafter GATT]. The GATT was created in 1948 to serve as the vehicle for the reduction of tariffs between nations; K. DAM, *THE GATT: LAW AND THE INTERNATIONAL ECONOMIC ORGANIZATION* 11 (1970).

4. See *Poland, Law of 24 February 1990 on Counteracting Monopolistic Practices*, reprinted in U.N. Doc. TD/RBP/CONF. 3/5, at 47 (1990) (establishing the laws designed to govern monopolistic practices by individuals or associations in the Republic of Poland).

5. See *Review of the Work of the Second Five Year Review Conference on Control of Restrictive Business Practices*, U.N. Doc. TD/RBP/CONF.3/L.1/Add. at 3, 9 (1990) (summarizing the Hungarian representative's statement at an UNCTAD meeting). The representative explained that the Hungarian Act of 1988 on Economic Associations established that the Hungarian government ended the State monopoly on foreign trade. *Id.* The representative also explained that Hungary passed the Act on Unfair Economic Activity which encouraged free competition, lifted abuse of dominant economic position, and established harsher sanctions and fines. *Id.*

6. *Annual Report on Restrictive Business Practice Developments*, U.N. Doc. TD/B/1261/, TD/B/RBP/76 ¶ 6-66 at 15 (1990).

7. See 1 *ANTITRUST AND RESTRICTIVE BUSINESS PRACTICES* vii (J. Marke & N. Samie eds. 1982) (providing primary source materials necessary for an understanding of international antitrust issues).

8. See *id.* (listing a number of bilateral treaties, proposals, and agreements relating to international antitrust or restrictive practices).

9. See Trade Act of 1974, 19 U.S.C. § 2101 (1975); Codified Text of the Andean Foreign Investment Code, Decision No. 24, adopted Dec. 31, 1970 by the Commission of the Cartagena Agreement, as amended by Decision No. 37 dated June 24, 1971, Decision No. 37-A dated July 17, 1971, Decision No. 70 dated Feb. 13, 1973, Decision No. 103 dated Oct. 30, 1976, and Decision No. 109 dated Nov. 30, 1976, reprinted in BARTON & FISHER, *INTERNATIONAL TRADE AND INVESTMENT: SELECTED DOCUMENTS*, 88, 388 (1986) (reprinting regulatory and legislative agreements on trade and antitrust issues).

tion principles.¹⁰ In 1980, the United Nations General Assembly unanimously endorsed the Set of Principles and Rules for the Control of Restrictive Business Practices.¹¹ This code urged nations to adopt a domestic law, endorsed the principle of national treatment for foreign enterprises, expounded a list of cartel or dominant firm practices that should be curtailed by governments and avoided by enterprises, and set a timetable for further work and study to harmonize national approaches to this issue.¹² Finally, a ten year review conference was held in Geneva in November and December 1990, and ended with further exhortations that nations should adopt and strengthen laws for the control of restrictive business practices.¹³

In addition to national changes in competition policy, there have been several modifications in international trade rules. For example, GATT members agreed in 1979 on a code of conduct that further harmonized rules for the control of international dumping.¹⁴ Furthermore, members agreed to additions to the code of conduct prohibiting export subsidies and some domestic subsidies, and standardizing national approaches to the imposition of countervailing duties.¹⁵ A round of GATT negotiations has been ongoing since 1986 in Uruguay.¹⁶ Negotiations broke down in December 1990 because of disagreement over the extent to which agricultural subsidies should be reduced and trade liberalized

10. See ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, SECRETARY-GENERAL'S 1976 REPORT, ANNEX TO THE DECLARATION OF 21ST JUNE, 1976 BY GOVERNMENTS OF OECD-MEMBER COUNTRIES ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES: GUIDELINES FOR MULTINATIONAL ENTERPRISES, Annex 4 (rev. ed. 1979) (providing an overview of the policies underlying the guidelines and emphasizing the potential harm multinational enterprises may cause because of their economic power).

11. U.N. Doc. TD/RBP/CONF./10 at 1 (1990).

12. *Id.*

13. U.N. Conference Urges States to Improve Control of Restrictive Business Practices: Adopts Measures to Strengthen International Co-operation, U.N. Doc. TAC/1609 (1990).

14. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, GATT, BISD, 26th Supp. 171 (1980).

15. Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade of 1979, GATT, BISD, 26th Supp. 56 (1980).

16. The "Uruguay Round" of talks began in September 1986 in Punta del Este, Uruguay. Bradley, *Intellectual Property Rights, Investment, and Trade in Services in the Uruguay Round: Laying the Foundations*, 23 STAN. J. INT'L L. 57, 57 (1987). Representatives for 24 nations met to consider a new set of trade regulations. *Id.* at 59. Among the most ambitious programs on the agenda were areas not previously addressed in prior trade rounds, such as investment, intellectual property rights, and trade in services. *Id.*

in regard to agricultural products, but resumed in February 1991.¹⁷ If the Uruguay Round succeeds, the result will likely be more liberal rules regarding trade, services, and treatment of foreign investments, as well as greater protection against unfair competition by world traders who pirate intellectual property. Even if the negotiation fails, progress toward harmonization of competition and trade rules will undoubtedly continue within the context of regional agreements such as the expanding EC 1992 program¹⁸ and the proposed United States-Mexico (and perhaps Canada) free trade agreement.¹⁹

Returning to the subject of national antitrust policies, between 1945 and 1965, a consensus developed that modern market economy countries needed laws that, at a minimum, prohibit private cartel arrangements and exclusionary conduct by market-dominating firms.²⁰ In the late 1950s, only eight of the twenty-four OECD member states had a sufficiently developed interest in antitrust to participate in the OECD Committee on Control of Restrictive Business Practices;²¹ by 1975, twenty-two of the twenty-four member states participated.²² While

17. The Round was scheduled to end in December 1990 but to date has not been completed. See *Uruguay Round to be Extended Due to Deadlock in Agricultural Talks*, INSIDE U.S. TRADE, Dec. 10, 1990, at S-1 (announcing a deadlock in the talks due to the lack of progress in agreeing to farm reforms). The EC is generally viewed as the reason for the suspension of talks, as it refuses to offer reductions in export subsidies and border protection. *Id.* See generally *International Consumer Groups Stress Need for Strong Agreement to End Uruguay Round*, [July-Dec.] Int'l Trade Rep. (BNA) No. 7, at 1806-07 (Nov. 28, 1990) (noting consumer groups' interest in the outcome of the Uruguay Round).

18. Treaty Establishing the European Economic Community, Mar. 25, 1957, arts. 12-29, 298 U.N.T.S. 11; see Davidow, *Competition Policy, Merger Control and the European Community's 1992 Program*, 29 COLUM. J. TRANSNAT'L L. ____ (1991) (providing an in-depth discussion of recent developments in European Economic Community competition policy).

19. See *Bush Meets with President Salinas in Mexico, Talks Include FTA Proposal*, [July-Dec.] Int'l Trade Rep. (BNA) No. 7, at 1793 (Nov. 28, 1990) (discussing the meeting between United States President Bush and Mexican President Carlos Salinas de Gortan). The Presidents expressed hope that they could begin negotiations on the establishment of a United States-Mexico free trade zone as soon as spring, 1991. *Id.* The Bush Administration favors including Canada in the United States-Mexico agreement and creating a North American free trade area. *Id.*

20. See Hawk, *The International Application of the Sherman Act in Its Second Century*, 59 ANTITRUST L.J. 161, 164-65, (1990) (discussing international antitrust policy in general and exploring the role that United States antitrust law will play in its further development). The author states that more foreign governments are moving toward noninterventionist, market-oriented economies and that there is growing worldwide consensus that cartels must be limited. *Id.* at 165.

21. See Zisler, *Work of the OECD Committee of Experts on Restrictive Business Practices*, 19 ANTITRUST BULL. 289, 291 (1974) (reviewing the consultation and conciliation recommendations adopted by the OECD council).

22. See generally 4 OECD GUIDE TO LEGISLATION ON RESTRICTIVE BUSINESS PRACTICES (Supp. 1978) (listing antitrust legislation adopted by OECD member

there is international movement toward antitrust regulation, there have been stragglers in this process. Italy, for example, only passed its first, basic antitrust law in 1990.²³

When drafting antitrust legislation, nations must make difficult and important policy decisions. One of the most basic policy questions facing major foreign market economy countries is the extent to which they should emulate the more stringent antitrust laws and enforcement measures developed in such nations as the United States. These measures include stiff penalties, private damage enforcement, and merger control. The EC adopted a "ten percent of turnover rule"²⁴ and recently used it to impose more than \$40 million in fines on British and Belgian companies for a cartel agreement.²⁵ European nations, however, generally have shied away from expressly authorizing private antitrust damage actions.²⁶ Japan, on the other hand, pursuant to the 1990 Structural Impediments Initiative (SII) talks with the United States, agreed to alter previous policies and make private actions easier to bring and win.²⁷ The Japanese will now allow rulings of the Japanese Fair Trade Commission to be used as prima facie evidence of guilt in

states); see also Zisler, *supra* note 21, at 291 (discussing the OECD's recommendations).

23. See *Italy Enacts First Statute to Establish Antitrust Regime*, [July-Dec.] Antitrust & Trade Reg. Rep. (BNA) No. 1485, at 518 (Oct. 4, 1990) (noting that Italy passed antitrust legislation on Sept. 27, 1990).

24. See *EC Commission Rejects Latest Bid by IBM to Settle Four-Year-Old Antitrust Case*, 20 Int'l Trade Rep. U.S. Export Weekly (BNA) No. 31, at 939 (May 8, 1984) (discussing the EC's consideration of the application of 10 percent of IBM's worldwide sales as a fine against the company).

25. See *EC Commission Imposes Largest Fines for Cartel Arrangement in Soda Ash Sector*, [Jan.-June] Antitrust & Trade Reg. Rep. (BNA) No. 1497, at 14 (Jan. 3, 1991) (quoting the European Commission's Directorate General IV who called the breach "serious" and fined Solvay ECU \$30 million and ICI ECU \$17 million).

26. See Jacobs, *Civil Enforcement of EEC Antitrust Law*, 82 MICH. L. REV. 1364, 1366 (1984) (discussing EC civil, rather than criminal, antitrust enforcement methods); see also Davidow, *The Worldwide Influence of U.S. Antitrust*, 35 ANTITRUST BULL. 603, 620 n.96 (1990) (explaining that there has been very little private antitrust litigation outside of the United States). European nations have litigated fewer than 12 antitrust cases in their histories. *Id.* at 620.

27. See *Key Elements of U.S.-Japan Structural Impediments Initiative Report Released by the Office of the USTR on June 28, 1990*, reprinted in [July-Dec.] Antitrust & Trade Reg. Rep. (BNA) No. 1443, at 28, 29 (July 5, 1990) [hereinafter *Key Elements*] (explaining Japan's agreement to enforce the Antimonopoly Act (AMA) by making private remedies for AMA violations effective).

private damage actions.²⁸ Japan also agreed to raise its monetary penalties for violations of its Antimonopoly Act significantly.²⁹

Several countries have adopted merger control rules patterned after United States antitrust laws. Canada adopted a premerger notification, automatic injunction system similar to that of the United States.³⁰ The EC adopted its first premerger notification, automatic injunction system at the end of 1989.³¹ Due to political constraints, however, the EC Commission has been granted authority only over transactions by giant companies (more than \$5 billion in assets) and may halt only those transactions involving creation or aggravation of market dominating positions.³² The United States, Germany, and Canada can prevent mergers that reduce the number of significant competitors to four or less (an oligopoly).³³ Therefore, the EC merger control system will have little practical significance unless it is strengthened by easing these requirements to allow it greater ability to prevent more average-sized mergers and ones not involving the threat of monopoly.

Another crucial obstacle countries face when formulating competition rules is that of assessing their potential impact on national economic interests. In 1970, Lester Thurow argued persuasively that suing

28. See *JFTC is Urged to Offer Help in Suing Antitrust Violators*, [Jan.-June] Antitrust & Trade Reg. Rep. (BNA) No. 1472, at 1026 (June 28, 1990) (discussing a recommendation made by a Japanese Fair Trade Commission (JFTC) study group to release information about an investigation by the JFTC to assist in bringing a court case).

29. See *Key Elements*, *supra* note 27, at 29 (explaining that Japan agreed to introduce legislation to increase AMA penalties to a level sufficient to deter violations); Joint Report of the U.S.-Japan Working Group on the Structural Impediments Initiative IV-3 (June 28, 1990) (United States Trade Representative) (discussing the joint report prepared by the Japanese and United States delegations intended to reduce the trade imbalances between the two countries).

30. Competition Tribunal Act, R.S.C. ch. C-23 (1970), *amended by* Can. Stat. ch. 26 (1986) is divided into two parts. Part I is the Competition Tribunal Act. Part II, the Competition Act, amends R.S.C. ch. C-23 (1970), *amended by* R.S.C. ch. 10 (Supp. 1, 1970), R.S.C. ch. 10 (Supp. 2, 1970), *further amended by* ch. 76, 1974-76 Can. Stat. and ch. 28, 1976-77 Can. Stat. This law was patterned after the Hart-Scott-Rodino Antitrust Improvements Act, which regulates pre-merger notification rules. 15 U.S.C. § 18(a) (1976).

31. See *Council Regulation 4064/89*, 32 O.J. EUR. COMM. (No. L 395) 1 (1989) [hereinafter *EC Merger Control Regulation*] (citing in its entirety the European Community's merger control regulation). Although the system was adopted at the end of 1989, it was not put into effect until Sept. 21, 1990. *Financial Times*, Sept. 20, 1990, at 24.

32. See *EC Merger Control Regulation*, *supra* note 31, at 1 (citing article 2 and article 3 of the regulation).

33. See generally B. HAWK, UNITED STATES, COMMON MARKET AND INTERNATIONAL ANTITRUST: A COMPARATIVE GUIDE (1979) (comparing United States and Common Market international antitrust policy generally, including merger control regulations).

to break up International Business Machines (IBM) was bad industrial policy that might sink one of the United States' most internationally competitive companies.³⁴ In 1990, Michael Porter authored an equally persuasive book arguing that nations with strong internal competition were the toughest internationally, and therefore that gutting the anti-trust laws would be counterproductive.³⁵ Conflicting yet persuasive arguments such as these illustrate the challenge nations face in trying to achieve the optimum balance in antitrust regulation.

In addition to finding the best competition policy to promote their own business opportunities, countries drafting antitrust legislation must consider the requirements for fairness in international agreements such as the GATT.³⁶ In 1990, the Bush Administration submitted legislation to Congress to encourage joint ventures to increase United States firms' competitiveness.³⁷ The United States House of Representatives passed a 1990 bill containing concepts similar to those that President Bush advocated, that exempts production joint ventures from United States antitrust prosecution.³⁸ House Democrats subsequently added a provision to the bill stating that foreign-owned firms in the United States

34. L. THUROW, *THE ZERO-SUM SOCIETY* 148 (1981); see Davidow, *Liberation of Trade Regulation as a Trade Strategy*, 1986 COLUM. BUS. L. REV. 83, 87 (discussing *The Zero-Sum Society* and the litigation against IBM).

35. M. PORTER, *THE COMPETITIVE ADVANTAGE OF NATIONS* 664 (1990).

36. GATT, *supra* note 3, arts. 1-8.

37. See Department of Justice, Thornburgh-Mosbacher Send Revision Legislation to Congress (Press Release) (May 7, 1990) (explaining that the goal of the legislation is protection of consumers through healthy competition, while allowing cooperative ventures that provide companies with the tools necessary to compete internationally). The EC has a similar law. *Commission Regulation No. 18/85*, 28 O.J. EUR. COMM. (No. L 53) 5 (1985) (EC Block Exemption Law), discussed in B. HAWK, *UNITED STATES, COMMON MARKET AND INTERNATIONAL ANTITRUST: A COMPARATIVE GUIDE* 336, 345-53 (1979).

38. National Cooperative Production Amendments of 1990, H.R. 4611, 101st Cong., 2d Sess. 136 CONG. REC. H1761 (Apr. 25, 1990) [hereinafter H.R. 4611]. H.R. 4611 would extend the notification system and reduce the damages that joint production ventures might face. *Id.* See *House Committee Clears Measures on Joint Ventures, Board Interlocks*, [Jan.-June] Antitrust & Trade Reg. Rep. (BNA) No. 1464, at 663 (May 3, 1990) (explaining H.R. 4611 and H.R. 29, the two joint venture proposals that passed out of the House Judiciary Committee). The Interlocking Directorate Act which increases the Clayton Act § 8 threshold figure, also passed out of the Judiciary Committee. *Id.* H.R. 4611 passed the House on June 5, 1990. *Official Actions*, [Jan.-June] Antitrust & Trade Reg. Rep. (BNA) No. 1469, at 902 (June 7, 1990).

Congress introduced several bills in an attempt to stimulate cooperation among United States firms. H.R. Rep. No. 516, 101st Cong., 2d Sess. 20 (1990), reprinted in [Jan.-June] Antitrust & Trade Reg. Rep. (BNA) No. 19, at 895 (June 7, 1990). The bills include H.R. 1025, introduced by Rep. Edwards; H.R. 2264, introduced by Rep. Fish; H.R. 423, introduced by Rep. Wyden; H.R. 1024, introduced by Reps. Boucher and Campbell; and H.R. 2287, introduced by Rep. Levine. *Id.*

could not shelter their activity under the new exemption.³⁹ Republicans opposed the amended legislation on the grounds it would violate the GATT rules and encourage imitation or retaliation abroad.⁴⁰ A dilemma is thus evident: it is difficult to induce Congress to amend the competition laws unless there is an obvious national advantage. Clear attempts to achieve national advantage, however, violate the international principles of fairness that the United States has supported and enforced for decades and under which the United States hopes its enterprises abroad will be allowed to operate.

The international trade rules used by the United States and the EC against import competition ideally should be part of a coherent legal regime of rules for international competition. Nevertheless, strong believers in free trade and in the purely economic theories of antitrust are quick to point out that dumping and countervailing duty laws restrain competition much more than do antitrust laws.⁴¹ The trade laws also contain numerous presumptions and procedural rules which have the intent and effect of protecting local industry from the full brunt of foreign competition.⁴² Thus, it is not likely that we will soon see a full synthesis of antitrust and international trade rules. The two systems will coexist, interact, and sometimes influence each other, but they are likely to remain quite separate and distinguishable in terms of content and goals.

In this constantly changing world of competition policy, it will remain important for scholars and policy-makers to write and comment on its implications. The articles featured in this special International Competition Rules and Policy issue of *The American University Journal of International Law and Policy* expound upon some of the themes I have just discussed. Senator Metzenbaum discusses whether restric-

39. H.R. 4611, *supra* note 38, § 7; see also H.R. Rep. No. 516, 101st Cong., 2d Sess. 20 (1990); reprinted in [Jan.-Jun.] Antitrust & Trade Reg. Rep. (BNA) No. 1469, at 895 (June 7, 1990) (explaining the limitation on foreign articles).

40. See, *House Passes Joint Venture Bill with Provision on U.S.-Canada FTA*, [Jan.-Jun.] Antitrust & Trade Reg. Rep. (BNA) No. 1469, at 873 (June 7, 1990) (providing a summary of the arguments raised by Republicans and the Bush Administration opposing the bill (H.R. 4611), especially its § 7 which prohibits foreign firms from participating in the antitrust protection extended to domestic firms).

41. See Sykes, *Countervailing Duty Law: An Economic Perspective*, 89 COLUM. L. REV. 199 (1989) (discussing the negative effects that imposing unilateral countervailing duties has on a nation's economic welfare).

42. See Caine, *A Case for Repealing the Antidumping Provisions of the Tariff Act of 1930*, 13 LAW & POL. INT'L BUS. 681 (1981) (examining United States antidumping laws and explaining that they remain unchanged since the enactment of the 1921 Antidumping Act). See also Barcelo, *The Antidumping Laws as Barriers to Trade-The U.S. and the International Dumping Code*, 57 CORNELL L. REV. 491 (1972) (positing that United States antidumping laws limit international trade opportunities).

tive or permissive antitrust regulation will make United States companies more internationally competitive. The Senator asserts that a relaxing of United States laws governing joint ventures will harm, rather than help, United States businesses. Current law, he states, provides a good balance which allows some joint ventures, but stimulates competition among businesses, thus benefitting the consumer and strengthening a company's ability to compete internationally.

Dr. James Langenfeld and Attorney Marsha Blitzer, both of the Federal Trade Commission, contribute an excellent article on evolving Eastern European competition law and policy. The authors have been observing the turbulent transitions in Poland, Czechoslovakia, Bulgaria, and Hungary as their agencies provide technical assistance to these countries on their competition policies and law enforcement regimes. From this unique position, the authors discuss the problems that these Eastern European countries are encountering in moving from command to market-based economies. Further, Dr. Langenfeld and Attorney Blitzer discuss specific technical advice that representatives of the Federal Trade Commission and the Antitrust Division of the Department of Justice were able to provide regarding competition issues.

A thoughtful article by Professor Daniel Gifford highlights the disparities between United States antidumping and antitrust laws. In his article, Professor Gifford analyzes United States regulation of international trade through its antidumping and antitrust laws and assesses the efficiency and effectiveness of these mechanisms. The author also examines the United States free-trade policy and how laws that attempt to regulate trade are necessary due to certain economic realities. To reduce inherent conflicts that exist between a free-trade theory and antidumping laws, the author recommends that courts construe restrictive trade legislation in such a way that balances congressional concerns with competitive market policies underlying antitrust laws.

Professor Marsha Huie examines the new EC merger control regulation. She explains the new regulation, discusses the potential dangers it might pose for U.S. firms, and then uses past EC Commission rulings on mergers to predict how the regulation will be applied under three different scenarios. Professor Huie concludes that the EC must administer the new regulation carefully and consistently to ensure economic harmony between the EC and its trading partners.

Tania Isenstein's Comment discusses treatment of joint ventures under United States antitrust law and compares United States rules with those of one of its trade rivals, South Korea. Ms. Isenstein suggests that the United States could improve its competitiveness by patterning its laws governing joint ventures after those of South Korea.

Ms. Isenstein concludes that the United States must recognize that its antitrust laws, aimed primarily at consumer protection, are a factor contributing to its diminishing ability to compete internationally and thus should be refocused to make global competition a major goal.

A casenote by Jacqueline Berman uses the recent *Consolidated Gold Fields* merger litigation⁴³ in New York to examine some international policy issues created by United States antitrust rules. She addresses the problems resulting from the judicial expansion of antitrust law in the areas of personal and prescriptive jurisdiction and target company standing in hostile take-over cases. Through an analysis of the *Consolidated Gold Fields* decision and a comparison of how other courts, legal institutions, and scholars address the problems presented by that ruling, Ms. Berman recommends the judiciary exercise restraint and not apply United States antitrust laws to foreign companies to the degree that the court did in *Consolidated Gold Fields*.

This symposium issue touches on some of the most important trends occurring today in international competition policy. United States, South Korean, and western and eastern European competition policies are all discussed. In addition, joint ventures, dumping, and antitrust policies are all discussed at length and from differing perspectives. As the world grows increasingly interdependent economically, it will be vital that policymakers, business leaders, and scholars maintain an open dialogue about the effectiveness of current national and international competition policy in order to develop the best, most effective, and most compatible systems.

43. *Consolidated Gold Fields, PLC v. Minorco, S.A.*, 871 F.2d 252 (2d. Cir. 1989).