EXTRATERRITORIAL APPLICATION OF ANTITRUST LAWS

During the past year discussions have been pursued between Canadian and United States officials concerning issues raised by United States antitrust enforcement in relation to conduct which took place in whole or in part in Canada. These discussions are the latest part in a long chain of bilateral consultations between Canada and the United States in relation to this question. Already in 1959 the Fulton-Rogers understanding provided for advance notification and discussions between Canada and the United States in sensitive cases. Bilateral consultations were taken a step further by the 1969 Basford-Mitchell understanding which provided for the exchange of information between Canada and U.S.A. antitrust authorities on activities in restraint of trade.

The discussions of the past year have been precipitated by Canadian concern that the United States Justice Department intended, in future enforcement activities, to assert jurisidction over activities outside the U.S.A. in compliance with or in response to foreign government policies. For its part, the United States was concerned over the use of "blocking" legislation by its traditional trading partners for the purpose of forestalling U.S. Justice Department investigations.

Canada, as a country in which United States based multinational corporations play a major role, perceives the issue as being whether the Canadian private sector will, in matters of Canadian economic policy, be more responsive to Canadian or to United States law and policy where the two policies diverge or even conflict. At the same time, Canada recognizes that the use of blocking legislation can only be partially successful if United States authorities are determined to exercise the far-reaching jurisdiction recently asserted. Moreover, both Canada and the United States have agreed at the highest level that any situation which creates confrontation in the regulation of multi-national corporations and which creates obstacles to cooperation in the regulation of restrictive business practices is cause for serious concern.

It is still too early to state what form the outcome of the discussions will take. The discussions have sought to identify principles which will guide the conduct of both Governments. It is recognized that the views of the two Governments concerning the application of these principles to specific cases may differ and that extensive consultations will therefore be required in sensitive cases to ensure that each side fully understands the concerns and interests of the other.

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