First, to return to the subject of restrictive business practices for a moment, a government's interest in providing limited monopoly or exclusive rights to intellectual property may come up against its interest in promoting competition. Intellectual property rights may be used in furtherance of market position. Many countries have responded, through the use of competition legislation, to restrain possible abuses of market power evidenced by terms or conditions in the transfer of intellectual property rights that unreasonably allocate markets, control re-exports or foreclose competition.

The conflict between intellectual property laws and competition laws may be more apparent than real, however. Both sets of laws have similar aims — to spur enterprise and innovation. Patent laws, for instance, achieve this goal by rewarding inventors with a limited exclusive use of inventions. Competition laws achieve the same end by preventing artificial restrictions of competition. In Canada and the United States, the notion of "patent misuse" denies relief against infringement where the patentee has sought to expand his monopoly right beyond the scope of the patent in a manner that unduly restrains competition.

Further, in the field of technology, certain antitrust measures themselves are considered by some as being anti-competitive. The best-known example of relaxed application of antitrust laws to research and development is the joining together of US firms in a major effort to produce the fifth generation "thinking" computer in competition with the Japanese. Firms increasingly see the need to form joint ventures to share technology, to engage jointly in research and development, manufacturing, resource exploration and sales and distribution. I note with particular interest that during the last days of its last session, the US congress passed the National Co-operative Research Act of 1984, changing the antitrust rules applicable to certain research and development ventures.

Export control legislation

I have devoted considerable time already to the impact of Canadian export control laws on the transfer of technology. Our luncheon speaker, Congressman Bonker, will speak in some detail on prospects for renewal of the US Export Administration Act. While I do not wish to dwell on the subject, I would like nonetheless to spend a few moments to outline long-standing Canadian concerns over provisions in the proposed legislation that would authorize the application of US foreign policy and national security controls in an extraterritorial manner.

Proposals that were before the House and Senate would have reasserted US authority to control the export activities of foreign subsidiaries of US multinational enterprises and nationals residing abroad, as "persons" subject to US jurisdiction. These proposals also reasserted the authority to control the export or re-export of US origin goods and technology, potentially including foreign-produced goods derived from US technology, even if in the possession of foreign licencees or others who are not subject to US jurisdiction.

In our view, under generally accepted principles of international law, corporations which are nationals of Canada and which produce goods and services in Canada are subject only to the laws of Canada in respect of their exports to third countries. Assertions of authority which displace Canadian jurisdiction