U.S., however, the antitrust legislation is generally silent on this issue, with the result that the Antitrust Division of the Department of Justice enjoys a certain discretion and may choose to proceed by way of criminal prosecution or civil litigation in response to a variety of technical and public policy factors. Enforcement by the Federal Trade Commission and private antitrust suits, of course, are all decided through administrative and civil litigation. In Japan, the Fair Trade Commission ("FTCJ") pursues primarily a civil-administrative process. Although criminal prosecution may be utilized for private monopolization and unreasonable restraints of trade (indeed the maximum fines have recently been raised from ¥5 million to ¥100 million), the agency appears to regard criminal indictment as a method of last resort. Moreover, this criminal-civil process distinction is not without impact on the eventual legal outcome, since the standard of proof to be met by the prosecution in criminal cases is substantially higher than that placed on the plaintiff/applicant in civil litigation. Although the assessment of legal treatment that follows will not place any particular emphasis on this issue, the effect of the criminal-civil process dichotomy should not be forgotten.

While the subject of comparative enforcement processes lies beyond the scope of this Paper, one significant feature of Japanese competition law that is not shared by the other regimes examined should be noted. Article 6 of the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade ("AML") specifically provides for the regulation of international contracts. Both entrepreneurs and trade associations are prohibited from entering into an international contract "which contains such matters as constitute unreasonable restraint of trade or unfair business practices". Furthermore, entrepreneurs who have entered into an international agreement of a type prescribed by the FTCJ are required to file a notification with the Commission with a copy of the agreement within thirty days. Although the term "international contract" is not defined, the FTCJ prescribes the treatment of notifiable international contracts. On 30 March 1992, this prescription was amended, the effect of which is to substantially reduce the number of such contracts notified in fact.

It must be emphasized that the authors have no quarrel with a substantive policy that proscribes agreements, both domestic and international, that violate competition law. The aforementioned asymmetrical Japanese notification requirement, however, means that, as a matter of enforcement practice, certain international contracts will automatically be brought before the FTCJ for scrutiny and, if found problematic, for administrative resolution, whereas domestic contracts will not. The concerns raised by this enforcement policy are exacerbated in view of the position adopted by the FTCJ regarding the nexus between competition policy and the exercise of intellectual property rights. In 1989, the FTCJ issued its *Guidelines on the Regulation of Unfair Business Practices in Patent and Know-how Licensing Agreements.* These Guidelines indicate which otherwise anti-competitive practices incidental to the exercise of intellectual property rights would be regarded as not unlawful in principle, which may be held unlawful and which are likely to be held unlawful. For example, while some vertical