- The North American competition guidelines should explicity recognize the relevance of efficiency gains resulting from a firm's action that is under investigation, including the impact on innovation.

- The North American competition guidelines should also include access to an effective dispute settlement mechanism, in order to assist in the disciplining of governments in the implementation and administration of these obligations. NAFTA's Chapter 20 provides such a mechanism. Further research might suggest that other, separate instruments are more appropriate.

Finally, from a Canadian perspective, we would want to be careful to exclude from any eventual continental guidelines certain aspects of U.S. antitrust law that actually work against the effective functioning of the market place. With regard to merger policy, for example, these elements include: private suits seeking injunctive relief (including the discriminatory awarding of costs); treble damages for injury through private suits; the parallel enforcement initiative of State Attorneys General; safehavens that are less generous than in Canada; and merger notification thresholds that are also lower than in Canada. To do otherwise would undermine the strengths of Canada's approach to merger control:

- A rapid and relatively efficient process managed by a single jurisdiction which avoids unnecessary and costly litigation.

- Recognition by law of the dynamic nature of competition.[34]

## 6. Afterthought

While important, it is, of course, one thing to identify the elements of an appropriate approach, and quite another to deliver the goods. Even if there were full consensus in Canada about the merits of moving forward on the antidumping track, how do we engage the U.S., in light of the strength of certain import sensitive industry lobbies in that country, the diffuse, transactional nature of Congressional politics and the more self-contained reality of the U.S. economy compared to Canada's?

[34] See Dimic, "Merger Control", pp.39-40.