

## EDITORIAL

*by*

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The present issue is largely devoted to the extensive efforts made presently in the United States in order to determine better rules for the extraterritorial application of the American laws, including the antitrust laws.

However impressive, the efforts cannot hide the fact that, in practice, the United States Government takes actions which are contrary to basic principles of respect of international law and international cooperation and assistance ; as clear illustration of this we publish herein the brief submitted, in the Marc Rich case, to the United States Court of Appeals by the Washington law firm Arnold & Porter, acting on behalf of the Government of Switzerland.

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<sup>1</sup> Dealing with the foreign hostility arisen by the extraterritorial application of their antitrust laws may be tough for the American. In cases they may have to ultimately mollify their position out of fear of an international diplomatic furor. Or be faced with blocking or retaliatory legislations. In such dealings however U. S. antitrust authorities enjoy the considerable advantage of meeting one by one totally disorganized opponents and confronting them with the strong American commitment to enforce their antitrust laws—expressing a quasi American constitutional principle—wherever they think their national interest warrants such enforcement. Whereas their opponents quite often have only to oppose their sheer displeasure, without any coherent view of their own on how to ensure competition in international markets.

This vacuum is dangerous. In the sense that American pressure—either in bilateral discussions or in multilateral negotiations or forums, as OECD and UNCTAD—produces much irritation, but few real fruitful debates due to the absence of any alternative legal theory. Some way or another, a differ-

ent school of thought should be developed by the major trading partners of the United States concerning international application of competition laws. Such development should originate with a major Western industrialized country having a strong commitment to competition—as Germany—or a country smaller but having high stakes in this area—as the Netherlands or Switzerland. The important thing is to start a trend in that direction.