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**U.S. ANTITRUST LAW — CLAYTON ACT — PRIVATE
TREBLE DAMAGE SUITS — STANDING OF
FOREIGN GOVERNMENTS TO SUE**

Pfizer, Inc. v. Government of India, [1976-1] TRADE CAS. (CCH) ¶ 60,892 (8th Cir. 1976), *aff'd on rehearing en banc*, [1976-2] TRADE CAS. (CCH) ¶ 61,175 (8th Cir. 1976), *cert. granted*, 45 U.S.L.W. 3685 (Apr. 18, 1977) (No. 76-749).

Antitrust suits were brought against six pharmaceutical firms¹ by four foreign governments² under Section 4 of the Clayton Act.³ The foreign states sought to recover treble damages for

1. The pharmaceutical companies involved were: Pfizer, Inc., American Cyanamid Company, Bristol-Myers Company, Squibb Corp., Olin Corp. and The Upjohn Company.

2. The Government of India, The Imperial Government of Iran, The Republic of the Philippines and The Republic of Vietnam. As to the latter government (the former government of South Vietnam), the court remanded the issue of the current validity of its suit to the district court. *Pfizer, Inc. v. Government of India*, [1976-1] TRADE CAS. (CCH) ¶ 60,892, at 68,877 n.2 (8th Cir. 1976). The Governments of Columbia, Korea, and Spain have brought similar suits, although the action involving Spain has been dismissed. Multidistrict Antitrust Actions Involving Antibiotic Drugs, 405 F. Supp. 1302 (J.P.M.D.L. 1976). The Federal Republic of Germany has also filed a similar action. *Pfizer, Inc. v. Government of India*, [1976-1] TRADE CAS. at 68,877 n.1.

3. Section 4 of the Clayton Act provides:

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court

injuries resulting from an alleged conspiracy among the drug companies to fix prices and to exclude competition in the sale of tetracyclin, a broad spectrum antibiotic, in contravention of Sections 1 and 2 of the Sherman Antitrust Act.⁴ The drug manufacturers moved to dismiss the suits on the ground that the foreign governmental plaintiffs lacked standing to sue under Section 4, claiming that foreign states are not "persons" within the meaning of the antitrust laws. The District Court for the District of Minnesota denied the motion⁵ and the defendants appealed. After a hearing before a three-judge panel, the Eighth Circuit Court of Appeals affirmed.⁶ Argument was heard before the Eighth Circuit sitting *en banc*, held: foreign governments are persons within the purview of Section 4 of the Clayton Act and are, therefore, entitled to sue for treble damages sustained by reason of a violation of the antitrust laws of the United States.⁷ Two judges dissented, on the grounds that the standing question should be left for legislative resolution.⁸

of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of the suit, including a reasonable attorney's fee. Clayton Act § 4, 15 U.S.C. § 15 (1970).

4. These consolidated cases are part of a group of over 160 separate actions known as the Antibiotic Antitrust Cases. These cases include suits against the defendants brought by hospitals, wholesalers, insurance companies, all fifty states and the United States.

For the background of this litigation, see *Pfizer, Inc. v. Lord*, 456 F.2d 532 (8th Cir.), *cert. denied*, 406 U.S. 976 (1972); *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971).

5. *Republic of the Philippines v. Pfizer, Inc.*, Order No. 74-31 (D. Minn. Jan. 16, 1974) cited in ANTITRUST & TRADE REG. REP. (BNA) A-23 (Jan. 21, 1975); *Government of India v. Pfizer, Inc.*, Order No. 75-48 (D. Minn. Dec. 27, 1975); *Republic of Vietnam v. Pfizer, Inc.*, Order No. 75-49 (D. Minn. Dec. 27, 1975). See also *Antibiotic Antitrust Actions*, 333 F. Supp. 315 (S.D.N.Y. 1971).

6. *Pfizer v. Government of India* [1976-1] TRADE CAS. (CCH) ¶ 60,892 (8th Cir. 1976). The parties had raised this same issue before the Eighth Circuit in earlier litigation. *Pfizer v. Lord*, 522 F.2d 612 (8th Cir. 1975), *cert. denied*, 424 U.S. 950 (1976), but the court remanded without deciding the question. The issue decided in *Pfizer v. Lord*, was whether the foreign sovereigns had standing *parens patriae* to sue on behalf of their respective citizens. For a discussion of this case see, 16 VA. J. INT'L L. 437 (1976).

7. The full court affirmed in a per curiam opinion adopting the opinion of the three-judge panel. *Pfizer, Inc. v. Government of India*, [1976-2] TRADE CAS. (CCH) ¶ 61,175 (8th Cir. 1976).

8. *Id.*

Section 4 of the Clayton Act provides a remedy to "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws."⁹ The word "person" is defined in Section 1 of the Act to include "corporations and associations existing under, or authorized by, the laws of any state or of any foreign country."¹⁰ The statute is silent, however, with respect to the standing of governmental entities to invoke the remedial provisions of the Clayton Act.

According to the Eighth Circuit, whether foreign governments are "persons" within the meaning of Section 4 is purely a question of statutory interpretation¹¹ and thus is well-suited for judicial, as opposed to legislative resolution. The court noted that the federal courts traditionally have been regarded as proper fora for foreign governmental plaintiffs in various other contexts.¹² In fact, Article III of the United States Constitution specifically imbues the federal judiciary with subject matter jurisdiction over civil suits brought by or against foreign states and their citizens.¹³

In reaching its conclusion the court of appeals was guided by two decisions of the United States Supreme Court which concerned the standing of the Federal Government and the domestic states to maintain treble damage suits under the former Section 7 of the Sherman Act.¹⁴ The first of the cited cases, *United States v. Cooper Corporation*¹⁵ was decided in 1941. In that case the

9. 15 U.S.C. § 15 (1970) (emphasis added). See full text at *supra* note 3.

10. 15 U.S.C. § 12 (1970).

11. [1976-1] TRADE CAS. ¶ 60,892 at 68,877. There is little, if any, legislative history that is helpful on this issue. See *Kuwait v. Chas. Pfizer and Co.*, 333 F. Supp. 315, 316 (S.D.N.Y. 1971).

12. [1976-1] TRADE CAS. ¶ 60,892 at 68,877. See also *The Sapphire*, 78 U.S. 164 (1880); and *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 408-412 (1964) in which the Supreme Court stated that foreign governments are permitted to bring suits in the courts of the United States as a matter of international comity.

The jurisdiction of the federal courts has also been extended to international organizations. See *e.g.*, *International Refugee Organization v. Republic S.S. Corp.*, 189 F.2d 858 (4th Cir. 1951); *Balfour, Guthrie and Co., Ltd. v. United States*, 90 F. Supp. 831 (N.D. Cal. 1950); and see, 22 U.S.C. § 288a (1970) which grants to international organizations the capacity to institute legal proceedings.

13. Article III, section 2 of the United States Constitution states: "The judicial power shall extend to all cases . . . [and] controversies . . . between a state, or the citizens thereof, and foreign states, citizens or subjects."

14. Section 7 of the Sherman Act, Sherman Act, ch. 647, sec. 7, 26 Stat. 210 (1890), Act of July 2, 1890, which was repealed in 1955, was substantially similar to the present Section 4 of the Clayton Act.

15. 312 U.S. 600 (1941).

Supreme Court held that the United States Government was not entitled to bring an action *in eo nomine* under Section 7. The Court reasoned that, while the United States is generally considered to be a "juristic person" for most common law purposes, the word "person," when used in federal statutes, had traditionally not been interpreted to include the sovereign.¹⁶ The Court listed two factors in support of its conclusion. First, the plain language of Section 7¹⁷ and the meaning of the term "person" in other sections of the antitrust laws indicated that the Federal Government was not intended to be included among the class of "persons" entitled to sue for treble damages under the section. Judicial decisions,¹⁸ legislative history and executive interpretations of the statutory language support this view.¹⁹ Secondly, the Court noted that the United States had been granted other more effective means of prosecuting violations of the antitrust laws. It appeared that Congress had not intended to permit the Federal Government to pursue the more indirect remedy afforded by Section 7 when the Government was specifically authorized to combat anti-competitive practices through the imposition of civil fines and criminal penalties.²⁰

A year after the *Cooper* case was decided, the Supreme Court considered in particular the question whether a state of the United States was a "person" within the purview of Section 7. In a brief opinion, the Court in *Georgia v. Evans*²¹ decided that a state was such a person, and distinguished *Cooper* on the grounds that

16. *Id.* at 604.

17. *Id.* at 605-606. Mr. Justice Roberts, writing for the majority, remarked:

[I]t is not our function to engraft on a statute additions which we think the legislature might or should have made [I]t is not for the courts to indulge in the business of policy making in the field of antitrust legislation. Congress has not left us at large to devise every feasible means for protecting the Government as a purchaser. It is the function of Congress to fashion means to that end

Id. at 606.

18. *See e.g.* *Tigner v. Texas*, 310 U.S. 141, 148 (1940) and cases cited at 312 U.S. 600, 610 n.14.

19. 312 U.S. at 611-614.

20. *Id.* at 614. Mr. Justice Black espoused the contrary view in his dissenting opinion:

It is, therefore, strange indeed that the Sherman Act, the greatest of all legislative efforts to make competition, not combination, the law of trade, should now be found to afford a greater protection against collusive price-fixing to every other buyer in the United States than is afforded the United States itself.

Id. at 616.

21. 316 U.S. 159 (1942).

there was nothing in the antitrust laws, the policies behind them or their legislative history to indicate an intent on the part of Congress to preclude domestic states from suing under Section 7 *in eo nomine*.²²

In holding that foreign governments are "persons" within the meaning of the Clayton Act, the Eighth Circuit in *Pfizer, Inc. v. Government of India* relied heavily on the *Evans* decision. The pharmaceutical companies had argued that the status of foreign states with respect to the antitrust laws was akin to that of the United States government in the *Cooper* decision. Consequently, the defendants contended that the rule in *Cooper* ought to control since that case dealt with the propriety of allowing a national sovereign standing under the antitrust laws.²³

The court of appeals rejected the defendants' reading of *Cooper*. Instead the court construed *Cooper* and *Evans* to require a court to focus on the range of remedies available to a plaintiff or class of plaintiffs in determining whether to grant private standing under the Clayton Act. The United States government need not be privileged to maintain treble damage suits since it already possessed a vast array of remedial options under the statute to combat anticompetitive conduct. On the other hand, domestic states and (in the court's opinion) foreign governments have only a single means of obtaining redress for injury caused by illegal restraints of trade. That is, of course, Section 4 of the Clayton Act. If domestic and foreign states were denied

22. The majority declared:

The State of Georgia, unlike the United States, cannot prosecute violations of the Sherman Law. Nor can it seize property transported in defiance of it If the State is not a "person" within [Section 7], the Sherman Law leaves it without any redress for injuries resulting from practices outlawed by the Act. *Id.* at 162. (per Frankfurter, J.).

In a passage reminiscent of his opinion in *Cooper*, *supra* note 17, Justice Roberts, dissenting, declared:

It is not our function to speculate as to what Congress probably intended by the words it used, or to enforce the supposed policy of the Act by adding a provision which Congress might have incorporated but omitted. *Id.* at 164.

The Supreme Court has also held that domestic states are "persons" entitled to sue for injunctive relief under § 16 of the Clayton Act, 15 U.S.C. § 16 (1970). *Georgia v. Pennsylvania R.R. Co.*, 324 U.S. 439 (1945); In *Hawaii v. Standard Oil Co. of Calif.*, 405 U.S. 251 (1972), the Court stated: "Hawaii plainly qualifies as a person under both sections of the statute [§§ 4 & 16], whether it sues in its proprietary capacity or as *parens patriae*." See also *In Re Multidistrict Vehicle Air Pollution*, D.L. No. 31, 481 F.2d 122 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973).

23. [1976-1] TRADE CAS. (CCH) ¶ 60,892 at 68,879.

standing, they would be deprived of their one opportunity to seek and obtain redress for harm caused by anticompetitive behavior in the marketplace.²⁴

On rehearing *en banc*, the Eighth Circuit Court of Appeals approved the rationale employed by the three-judge panel.²⁵ Two judges dissented.²⁶ The dissenters agreed with the drug manufacturers that the reasoning of *Cooper*, and not *Evans*, should dictate the treatment given to foreign government-plaintiffs under the antitrust laws. They argued that since Congress had not contemplated the inclusion of foreign sovereigns in the class of eligible plaintiffs under Section 4, "the judiciary ought not to add foreign governments to the 'person' class without a clear congressional intent to do so."²⁷ Finally, the dissenters observed that the standing issue raised complex questions of international trade policy and foreign relations which Congress, and not the courts, ought to assess and resolve.²⁸

The majority's use of the *Evans* rationale to justify its grant of standing in *Pfizer* seems sound from the standpoint of conventional statutory interpretation. The court correctly noted that the legislative history behind Section 4 and its predecessors was silent on the subject of foreign state plaintiffs. Like domestic states, it is certainly true that foreign governments would be stripped of their most effective remedies under the *American* antitrust laws were they denied standing under Section 4.

Upon deeper analysis, however, the analogy between domestic states and foreign powers breaks down. American states are political subdivisions of a single national sovereign regime. The populations of the several states comprise a constituency of common legal, historical and economic principles. The activity of local state economies is inextricably related to that of the national economic system.

Antitrust violations exert a direct and detrimental effect on the American public as a whole irrespective of state boundaries. The purpose of the antitrust laws is not only to preserve competition among businessmen but to ensure that the consuming

24. *Id.* at 68,878. Compare similar rationale invoked by Mr. Justice Frankfurter in *Georgia v. Evans*, *supra* note 22.

25. *Pfizer, Inc. v. Government of India*, [1976-2] TRADE CAS. ¶ 61,175 (8th Cir. Sept. 3, 1976).

26. Judges Bright and Henley dissented.

27. [1976-2] TRADE CAS. (CCH) ¶ 61,175 at 70,334.

28. *Id.*

public throughout the nation is accorded the benefits of lower prices, maximum choice among product varieties and unimpeded flow of goods and services.²⁹ It is this identity of interest between state and federal governments in the United States that distinguishes domestic states from foreign sovereigns insofar as the American antitrust laws are concerned.

An effective antitrust regime is an important element of national economic policy.³⁰ For this reason, domestic state governments are and ought to be vitally interested in the aggressive enforcement of the antitrust laws. In recognition of the important role played by the states in enforcing the antitrust laws and promoting antitrust policy in general, Congress has recently amended the Clayton Act to encourage state governments to bring treble damage suits *parens patriae*; that is, to sue on behalf of economically injured consumers residing within their respective jurisdictions.³¹ Significantly, the 1976 Antitrust Improvements Act did not afford a similar privilege to foreign governments.

The relationship of foreign governments to the United States economy is quite different. While United States economic policy decisions exert considerable effects on foreign economies, the goals and priorities of foreign regimes are, more often than not, at odds with those of the United States.³² Producer cartels like OPEC and the fledgling Bauxite Organization espouse policies diametrically

29. In its report on the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the House Judiciary Committee recently noted:

The economic burden of many antitrust violations is borne in large measure by the consumer in the form of higher prices for his goods and services All of these violations are likely to cause injuries to consumers, whether by higher prices, by illegal limitations of consumer choices or by illegal withholding of goods and services. They introduce illegal and artificial forces in the market place, thus undermining our economic system of free enterprise. Frequently antitrust violations injure thousands or even millions of consumers. H.R. REP. No. 94-499, 94th Cong., 2d Sess. (1976) at 4.

30. Levinson & Eckstein, *Staff Report on Employment, Growth & Price Levels* 431-440 (1960) in W. GLAMPP & E. WEILER, *ECONOMIC POLICY* 117-125 (3d ed. 1961). See also C. WILCOX, *PUBLIC POLICIES TOWARD BUSINESS* (4th ed. 1971).

31. Hart-Scott-Rodino Antitrust Improvement Act of 1976, Pub. L. No. 94-435, § 301, 90 Stat. 1383 (1976). It does not appear that these amendments could be construed to allow foreign governments to also bring such suits; at least Congress does not seem to have considered this question. SENATE COMM. ON THE JUDICIARY, THE ANTITRUST IMPROVEMENTS ACT OF 1976, S. REP. No. 94-803, 94th Cong., 2d Sess. (1976). This fact may indicate that Congress does perceive a difference in the status of foreign nations and domestic states with respect to their respective ability to bring treble damage actions.

32. See P. AREEDA, *ANTITRUST ANALYSIS* ¶ 188 (2d ed. 1974).

opposed to the principle of free enterprise which lies at the heart of American antitrust policy.³³

The difference between domestic and foreign states is also manifested in their relative ability to obtain redress for anti-competitive harm outside of the American antitrust regime. Domestic states are subject to substantial restrictions under the Constitution when it comes to regulating interstate commerce.³⁴ These limits to state economic power do not pertain to foreign governments. The latter have at their disposal a panoply of legislative and executive powers and immunities that can be brought against persons who engage in anti-competitive activities which work a deleterious effect on their local economies.³⁵ For example, a foreign state could absolutely bar an American antitrust violator from doing business within its borders. Alternatively, a foreign sovereign could impose fines and other penalties on United States-based multinationals who engage in price fixing conspiracies or exclusionary practices to the detriment of the foreign sovereign's citizenry. A company's property and other assets might even be confiscated for blatantly anti-competitive conduct. It is doubtful whether a domestic state could ever invoke any of the above-noted remedies in order to obtain redress for harm caused to itself or its citizens by companies engaged in illicit or unfair trade practices; the Constitution

33. *Pfizer v. Government of India*, [1976-2] TRADE CAS. (CCH) ¶ 61,175 at 70,334 (dissenting opinion).

34. Constraints on state economic regulatory power are imposed by several provisions in the U.S. Constitution, notably the Commerce Clause (art. I, § 8, cl. 3); the Supremacy Clause (art. VI). Privileges and Immunities Clause (art. IV, § 2, and amend. XIV, § 1), and the Due Process and Equal Protection Clauses (amends. V & XIV). See *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86 (1909) (States may properly regulate restrictive business practices, provided state antitrust legislation does not work a denial of fundamental rights or run afoul of specific constitutional provisions). It is well-established that federal antitrust laws do not preempt state attempts to control unfair trade practices. See e.g. *R. E. Spriggs Co. v. Adolph Coors Co.*, 37 Cal. App. 3d 653, 112 Cal. Rptr. 585 (1974); and see Note, *The Commerce Clause and State Antitrust Regulation*, 61 COLUM. L. REV. 1469 (1961). These are areas where a state regulatory power may be circumscribed. *Sears Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964); *Lear, Inc. v. Adkins*, 395 U.S. 653 (1969).

35. In recent years an increasing number of foreign states have enacted comprehensive antitrust statutes. The most sophisticated regulatory regimes are those of the Western European industrial states and the European Economic Community. For a discussion of the competition laws of the several European states and the Common Market and price conflict with the American antitrust regime, see, J. RAHL, *COMMON MARKET AND AMERICAN ANTITRUST — OVERLAP AND CONFLICT* (1970). See also, W. FUGATE, *FOREIGN COMMERCE AND THE ANTITRUST LAWS* § 15.1 (2d ed. 1973).

would forbid any such unilateral action.³⁶ The fact of the matter is that foreign states do have alternative remedies available to them to combat anticompetitive behavior and arguably, for that reason under the rationale of *Georgia v. Evans*,³⁷ ought not to have standing under Section 4 of the Clayton Act.

Proponents of standing for foreign governments note that, given the growing interdependence of national economies in the contemporary world market, restrictive business practices carried out in one part of the globe may have considerable harmful impact on consumers in geographically remote areas.³⁸ Thus, a price fixing scheme by drug manufacturers localized for the most part in the United States could be expected to have an injurious effect on purchasers of pharmaceuticals the world over, including consumers who are also political sovereigns. It has been said that, to be successful, modern monopolies must be able to dominate foreign as well as domestic markets.³⁹ Viewed from this perspective it would appear that the overall effectiveness of the United States antitrust laws depends on the ability of those laws to reach anticompetitive practices overseas. Consequently, there would be nothing extraordinary about granting foreign governments standing to prosecute violators of the antitrust laws of this country so long as "the maintenance of the action is essential to the effective enforcement of the antitrust laws."⁴⁰ The test of standing is functional and, according to the proponents of standing, should not depend on the status of the claimant. From the standpoint of enforcement policy, it makes little or no difference whether the prosecuting plaintiff is a foreign sovereign or a local druggist, provided the alleged anticompetitive conduct was causally connected to the economic injury sustained.⁴¹

Those opposed to standing urge forcefully that allowing foreign sovereigns to sue in United States courts will have a

36. See generally, L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 227 *et se.* (1972). See also *Zschernig v. Miller*, 389 U.S. 429 (1968). Cf. *Michelin Tire Corp. v. Wages*, 96 S. Ct. 535 (1976).

37. 316 U.S. 159 (1942).

38. W. FUGATE, *FOREIGN COMMERCE AND THE ANTITRUST LAWS* § 15.1 (2d ed. 1973).

39. *Kuwait v. Pfizer, Inc.*, 333 F. Supp. 315, 316 (S.D.N.Y. 1971). This case was also part of the Antibiotic Antitrust Litigation, *supra* note 4.

40. *Id.* at 316.

41. Velvel, *Antitrust Suits By Foreign Nations*, 25 *CATHOLIC U. L. REV.* 1, 7 (1975). The author argues effectively in favor of granting standing to foreign sovereigns.

detrimental effect on the ability of American enterprise to compete in foreign markets.⁴² It is argued that American businesses, already encumbered by the most stringent antitrust laws in the world, would be further disadvantaged with respect to their foreign competitors were they held accountable to foreign governments as well as domestic institutions and citizens.⁴³ Opponents observe that foreign states already possess potent weapons to combat undesirable restrictive business practices.⁴⁴ Armed with a full battery of governmental powers, foreign states can often deal with foreign investors and manufacturers with impunity. It would be unfair and unnecessary, say the opponents, for the American courts to endow foreign sovereigns with still further power under these circumstances.

Proponents maintain, on the other hand, that the existence of alternate remedies in favor of foreign governments is immaterial to the issue of antitrust standing.⁴⁵ Even assuming that foreign states have the legal machinery necessary to pursue monopolistic multinationals, it is difficult, if not impossible, for foreign tribunals to obtain jurisdiction over and conduct discovery upon American corporations accused of engaging in unfair business activities.⁴⁶ To encourage foreign nations to resort to extra-judicial self-help remedies, such as expropriation, might contravene United States foreign policy and jeopardize American economic interests overseas.⁴⁷

In the opinion of this author, the foregoing policy considerations make it clear that the question of granting antitrust standing to foreign sovereigns is not simply a problem of statutory interpretation, as the majority of the Eighth Circuit viewed it in *Pfizer, Inc. v. Government of India*.⁴⁸ The issue is not purely a

42. See *Hearings on S. 2754 Before the Subcomm. on Foreign Commerce and Tourism of the Sen. Commerce Comm.*, 92 Cong., 2d Sess. (1972) and *Int'l Aspects of Antitrust Laws, Hearings Before Subcomm. on Antitrust and Monopoly of the Sen. Comm. on the Judiciary*, 93d Cong., 1st and 2d Sess. (1973-1974) at 1416 *et seq.* But see *Testimony of Samuel Pizar, Id.* at 131 *et seq.*

43. *Id.*

44. See *Pfizer, Inc. v. Government of India*, [1976-2] TRADE CAS. (CCH) ¶ 61,175 at 70,033 (Bright & Henley, J.J., dissenting).

45. See Note, *The Capacity of Foreign Sovereigns to Maintain Private Federal Antitrust Actions*, 9 CORNELL INT'L L.J. 137, 143 (1975).

46. Brief for the United States as Amicus Curiae at 24, *Pfizer, Inc. v. Lord*, 522 F.2d 612 (8th Cir. 1975).

47. Velvel, *supra* note 41 at 10.

48. [1976-1] TRADE CAS. (CCH) ¶ 60,892 (8th Cir. 1976).

legal one. There is an important ideological dimension to the polemic: should American courts take it upon themselves to grant standing to foreign states which openly discourage or even suppress free competition in their home economies?⁴⁹ Would the *Pfizer* court have been willing to allow standing to the Soviet Union or some other Eastern Bloc state? It would appear that the internal economic and political policies and philosophies of a foreign government are irrelevant to the issue of standing, if the primary objective of allowing private plaintiffs to sue is to bolster the effectiveness of the American antitrust laws.

If a system of international free competition is a worthwhile goal, perhaps the best solution to the problems of unfair competition and anticompetitive conduct by multinational concerns will be attained not by means of conventional domestic judicial remedies, but rather through the medium of a comprehensive international antitrust agreement.⁵⁰ In any event, it is evident that the problem of standing for foreign governments under the American antitrust laws is far more complex than the Eighth Circuit in *Pfizer v. Government of India* would lead one to believe. To treat the question as a mundane exercise in statutory interpretation is to neglect the subtle but ever so important economic, political and ideological issues involved. These considerations require extensive debate and examination by the political branches of government, and Congress in particular.⁵¹

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49. It is not suggested that United States domestic law should distinguish between foreign governments on the basis of their internal antitrust policies. On this issue the dissenting opinion stated: "(w)e note that many foreign countries foster monopolistic practices as a matter of government policy Granting such sovereigns the right to sue American companies will not diminish their own restraint of trade." *Pfizer, Inc. v. Government of India*, [1976-2] TRADE CAS. (CCH) ¶ 61,175 at 70,334 (8th Cir. 1976).

50. See generally, Joelson and Voghis, *Groping for a Truly International Antitrust Law*, 42 VA. J. INT'L L. 75 (1973); W. FUGATE, FOREIGN COMMERCE AND THE ANTITRUST LAWS 460 (2d ed. 1973).

51. See Ross, J. concurring in *Pfizer, Inc. v. Government of India*, [1976-1] TRADE CAS. (CCH) ¶ 60,892 at 68, 879 (8th Cir. 1976).

I believe, however, that Congress gave no consideration nor did it have any legislative intent whatsoever, concerning the question of whether foreign governments are "persons" under the Act. In my opinion, it is time for Congress to reexamine this extremely important question and clarify it by legislation.