FOREIGN AND INTERNATIONAL

EXPORT TRADING COMPANY BILL ENACTED IN UNITED STATES

President Reagan signed the Export Trading Company Act on October 8, 1982.

The Act is designed to encourage the formation of export trading companies by providing them with a substantial degree of immunity from antitrust attack and by permitting banking institutions to own an interest in them. It is hoped that the measure will lead small and medium-sized firms which lack foreign trade expertise to join forces with similar firms and with foreign trade specialists to compete in foreign markets.

Foreign or American companies setting up joint exporting companies will, when certified by the Department of Commerce with the concurrence of the Department of Justice, be immune from federal antitrust attack in respect of their certified activities. Antitrust standards for certification are:

- no substantial lessening of competition in the United States
- no unreasonable upward pressure on prices in the United States
- no unfair methods of competition
- no resale or consumption of exported goods within the United States

Only the Department of Commerce will have the power to revoke a certificate.

Private antitrust suits alleging violation of the antitrust standards will be possible but difficult because:

- only actual rather than treble damages may be recovered
- the trading entity must have violated the specific antitrust standards enumerated in the Act
- a two-year statute of limitations applies to lawsuits
- a certificate creates a presumption of lawfulness
- a certificate holder who successfully contests a suit may be awarded costs including legal fees.

The Webb-Pomerene Act remains in force but it has never been used extensively. It provides a limited exemption from the antitrust laws for export associations which register under it with the Federal Trade Commission. Unlike the new legislation, the Webb-Pomerene Act does not prevent treble damage suits, does not provide for pre-clearance and does not cover exports of services.

In 1981 the House of Commons Special Committee on a National Trading Corporation recommended the formation of a Canadian Trading Corporation with forty to fifty percent federal equity participation. The proposal met with strong opposition from the private sector and was dropped. Subsections 32(4) and (5) of the Combines Investigation Act now provides a limited exemption for export agreements. The two amending bills which were introduced in 1977 but not enacted would have enlarged that exemption.

PRESIDENT REAGAN SIGNS BILL RELAXING BUS REGULATION: LIFTS BAR AGAINST CANADIANS

President Reagan signed into law the Bus Regulatory Reform Act on September 20, 1982. Then, on November 30 following negotiations with Canada, he lifted a two-year moratorium imposed by the Act on the granting of operating authority to Canadian truck or bus carriers.

The Act reduces the discretionary authority of the Interstate Commerce Commission in regulating inter-city bus operator entry and rates, overrides state rules under some conditions, and provides for a progressive narrowing of the existing exemption of the rate setting activities of the carriers from the antitrust laws. Beginning January, 1983, rate bureaus are prohibited from discussing rates charged for a service handled by one carrier. Beginning January, 1984, they are prohibited from discussing rates charged for a service handled by more than one carrier. A study commission is to report to Congress by January 1, 1984 on the need for continuing antitrust immunity for general rate and innovative rate changes.

The Act prohibits the ICC from granting operating authority to Canadian as well as Mexican carriers for two years but empowers the President to extend, lift or modify the moratorium. The provision was to meet complaints by American truckers that, following truck deregulation in the United States, Canadian truckers had easier access to U.S. routes than American truckers had to Canadian routes. On the other hand, the Interstate Commerce Commission found that provincial regulatory authorities were not discriminating against American truckers. The problem was resolved by an exchange of letters which,according to press reports, enunciated certain training principles and established a consultative mechanism to deal with complaints. The Ottawa Citizen of December 1 reports that Canada gave an implicit pledge to facilitate approvals by the Foreign Investment Review Agency of U.S. investments in Canadian trucking.

RECESSION AND IMPORT COMPETITION SPUR MASSIVE CONSOLIDATIONS IN EUROPEAN CONSUMER ELECTRONICS

The French and German governments were reported in November to be considering for approval a proposal whereby Thomson-Brandt, a huge French nationalized conglomerate, would acquire control of Germany's largest producer of television sets, Grundig. Philips of Holland, which has a 24.5 percent interest in Grundig, is an interested party because of joint video recorder production arrangements it has with Grundig. For its part, Grundig has been interested in acquiring a controlling interest in failing AEG-Telefunken's consumer electronics operations.

The acquisition of Grundig would raise Thomson-Brandt's shares of both the German and French television set markets to 35 or 40 percent, and more if the Grundig-Telefunken deal is concluded. Also, Grundig and Philips are the only European producers of video recorders, which are the most rapidly expanding consumer electronics product.

According to the London Financial Times of November 20, heavy penetration by Japan of the German video market has created difficulties for Grundig. European producers of consumer electronics apparently see rationalization as a means of achieving scale economics in order to meet Japanese competition.

Under German antitrust law a merger which would bring concentration to the level envisaged would require ministerial approval.

OECD TO STUDY FRONTIER BETWEEN COMPETITION AND TRADE POLICIES

The following paragraph appears in the communique of the ministerial meeting of the Council of the Organization for Economic Cooperation and Development on May 11, 1982:

> "29. Ministers recognized that, with the reduction of trade barriers and the growing internationalization of business activities, there is an increasing likelihood that private restrictive business practice arrangements in one country may adversely affect the interests of its trading partners. They noted that the coverage of the present international arrangements for dealing with issues which arise at the frontier between competition and trade policies should be studied further by the competent bodies of the Organization with a view to strengthening international co-opration in these matters."

An ad hoc working group under the chairmanship of Canada's Director of Investigation and Research, Mr. Lawson Hunter, has been formed by the OECD Committee of Experts on Restrictive Business Practices to conduct a study of the issues referred to by the Council. It is expected to hold its first meeting early in 1983, and the study will probably occupy two years or more.

UNITED NATIONS ANTITRUST GROUP CANCELS MEETING

The annual meeting of the United Nations Intergovernmental Group of Experts on Restrictive Business Practices (I.G.E.) which had been scheduled to be held in Geneva in October, did not take place. The next meeting is expected to be held in the autumn of 1983. Reasons cited by the Secretariat for not holding the meeting included pressure of work in preparing for the sixth session of the United Nations Conference on Trade and Development (UNCTAD VI) which is to be held early in the summer of 1983.

The formation of the I.G.E. within the framework of UNCTAD was among the recommendations in the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices which was adopted by the U.N. General Assembly in December, 1980. The first annual meeting of the I.G.E. was held in December, 1981. Its mandate is essentially to provide a forum for exchanges of views on matters related to the Principles and Rules and to make studies and recommendations. It has studies on a number of subjects underway, including collusive tendering, tied purchasing, and restrictive practices by consulting firms and others in relation to the design and manufacture of plant and equipment.