sponsoring the bill, said at the time that the government was still committed to it and it would be re-introduced during the session which began on December 7. However, no mention was made of it in the speech from the Throne at the opening of the new session.

The bill was introduced in the Senate in November 1982. It would prohibit any provincial government from owning more than ten per cent of the shares of any company that is engaged in an interprovincial or international undertaking involving transportation by air, water, rail or product pipelines other than for oil and gas. The bill was a response to concern by Ottawa and by the business community about the activities of the Quebec government's Caisse de Dépôt et Placement du Québec which is permitted to own up to thirty per cent of the shares of a company. The Caisse has an interest exceeding nine per cent in Canadian Pacific Investments Ltd. and there is fear that it might raise that interest to a level where it could obtain representation on the Board.

Mrs. Erola announced some amendments to the bill last month, but they were not of a kind to change its basic thrust, which is to preserve federal power over interprovincial and international transport against provincial encroachment. Opposition by Quebec interests, including that of the Quebec federal Liberal caucus, appears to have been the deciding factor in shelving the bill. Opposition Leader Brian Mulroney also expressed strong opposition to the bill during the question period on November 18.

The Toronto Financial Post editorialized on December 10:

> "The proposed bill, S. 31, vanished when Parliament was prorogued last week. And if the Tory leadership has its way, to say nothing of the Quebec Liberal caucus, it will never reappear.
>
> "That would be regrettable. Unless we want a predominantly state-run economy, now is the time to put some limits on how much of the private sector government funds can control. We would have thought the Conservatives, of all people, would appreciate this."

FOREIGN AND INTERNATIONAL

CANADIAN, U.S. OFFICIALS SHARE FORUM ON EXTRATERRITORIALITY ISSUES: NEGOTIATIONS ON NEW BILATERAL AGREEMENT ARE PROGRESSING

Mr. Lawson Hunter, head of Canada's Bureau of Competition Policy, and Mr. Charles S. Stark, Chief, Foreign Commerce Section of the United States Department of Justice Antitrust Division, both spoke on the subject of extraterritoriality on October 21 at the Annual Conference of the Canadian Council on International Law in Ottawa. Mr. Hunter, after recalling negotiations by the two governments which began in 1977 on a strengthened and more formal notification and consultation procedure, stated:

> "Those negotiations were resumed recently after a hiatus of a number of years and the results are most encouraging. We are hopeful of being able to reach an agreement in the near future to expand our cooperation in antitrust enforcement and to provide for an effective means to mitigate the adverse effects resulting from the types of conflicts which have arisen in recent years."

Mr. Stark described the jurisprudential development of the effects doctrine in the United States and the account it takes of principles of comity and of conflicts of national laws. He pointed out that the competition laws of many countries including Canada apply to some degree to foreign conduct which injures the home market and that they do not adhere to a strict observance of territorial jursidiction. He stated:

> "...one can defend the 'strict territorality' point of view by noting that in days gone by, govenrments didn't make it a practice to apply their laws to economic acts outside their borders - and that therefore anyone who does so today is acting outside the scope of well-established jurisdictional principles. That argument seems to miss the point... If at some time in the past governments were unconcerned about economic activity originating elsewhere, it was because they had less reason to be concerned. Economic activities and their consequences tended to be confined within national borders, and what flow there was of people, goods and messages from one country to another was dependent upon the strength of the winds and the stamina of the horses. But we live in a very different world today - a world in which international trade is a key factor in the economies of most nations, and in which people and products cross oceans in hours and communicate by telephone and computer almost instantaneously. Firms incorporated in one country have subsidiaries in others, and trade around the globe. The place where an act occurs or the nationality of the actor is more likely to be incidental than determinative of where its economic impact is felt. It is uncontroversial that any country has a legitimate interest in protecting against substantial harm to its economy, and it is anomalous to suggest that laws to protect that interest should never be applied where the harmful conduct originates in whole or in part somewhere else. Habits or traditions that developed in very different times may be intructive, but they are unlikely to be dispostive."

According to Mr. Stark, arguments over existing international law principles are unlikely to resolve differences when they arise, and other avenues of managing dispute settlement must be sought. He saw existing and additional international agreements on such matters as notification and consultation as one such approach. He also suggested a second and more far-reaching type of agreement which might be sought on a bilateral basis initially, stating:

"The second, more far-reaching, approach would be to seek agreement on a bilateral basis - perhaps, ultimately, multilaterally - on which country has the primary interest in regulating what conduct in what circumstances. An exercise of this nature would not be an easy one. It would require each party to make concessions, either giving up the option of taking enforcement action in situations in which, historically, it has sought at least to preserve that option; or giving up the option to object to enforcement action by the other in situations in which, historically, it has asserted objection on jurisdictional or other grounds. It would require realistic assessment to identify the real national interest served, and harmed, by particular categories of conduct. It is an exercise that would be intellectually difficult, and which undoubtedly would raise difficult domestic policy issues for both participants.

"I would not, however, write off the possibility of achieving some agreement along those lines. There are some generally accepted principles which might serve as a starting point. For example, as a general matter there is little debate over the proposition that private cartels, organized for the private enrichment of their members, are objectionable, and that countries whose economies are adversely impacted by their operations have a legitimate cause for concern. Equally, there is little debate over the proposition that governments have a proper interest in ordering their own economies, and that due regard to that interest should be given by other governments in deciding whether and how to apply their antitrust laws to conduct that directly implements the other's policies. A realistic assessment in this context of the interests implicated when conduct and policies of this nature present themselves, divorced from historical but narrow focus on any single factor such as the existence of effects, the geographical situs of the conduct, corporate nationality, and the like, might actually enable us to make some progress."

Mr. Hunter described some of the difficulties which the extraterritorial application of U.S. antitrust laws created for Canada. Having a smaller economy, a tradition of state intervention and a concern about regional disparities, Canada had often placed other interests ahead of competition. Some assertions of U.S. antitrust law jurisdiction had conflicted with Canadian economic policies, especially where those policies were being applied by means less interventionist than mandatory laws. Canada had in some cases responded by acting to prevent interference with its domestic policies, the end result being escalation rather than settlement of conflicts. Yet, Canada had never adopted a strict territorial jurisdiction approach in antitrust matters. Mr. Hunter stated:

"However, there is a degree of ambivalence in Canadian attitudes towards broad assertions of jurisdiction in antitrust matters. There is no doubt that some Canadians regard American jurisdictional claims as excessive and that we are seriously

concerned about the potential of American enforcement decisions and court decisions to have a distorting effect on Canadian economic and industrial policy. However, those of us involved in the enforcement of the Combines Investigation Act also recognize that effective antitrust enforcement on either side of the border requires some ability to, at least indirectly, impact on activity taking place in the other country.

"Furthermore, we recognize that traditional territorial jurisdictional rules are often unequal to the task of enforcing antitrust laws against restrictive business practices which are increasingly transnational in scope.

"Because of the great number of foreign controlled corporations operating in Canada, much of the anti-competitive conduct with which the Bureau of Competitio Policy is concerned originates outside the country. Canadian subsidiaries may be merely the means through which the anti-competitive policy is implemented. Where anti-competitive practices in Canada are the result of decisions taken outside the country, it would be useful if not essential to be able to use compulsory process requiring persons in Canada to produce documents and evidence from affiliated companies which are located in other countries. At present, our compulsory demands for information do not extend to information located outside the country. This can cause difficulty in investigations, such as the NHL inquiry, where decisions impacting Canada were clearly made outside our country."

REAGAN SIGNS BILL AGAINST EASING RESALE PRICE MAINTENANCE RULES: ANTITRUST CHIEF RESIGNS

President Reagan reluctantly signed an appropriatioins bill on November 28 which includes a provision barring expenditures by the Department of Justice on activities seeking to change the long standing jurisprudence that resale price maintenance is a per se offence under the Sherman Act. The resignation of William Baxter as Assistant Attorney General in Charge of Antitrust was announced on December 8.

Mr. Baxter has been strongly critical of the jurisprudence on vertical restraints including resale price maintenance and tying arrangements. In addition to not launching RPM cases, he developed a program of active participation as amicus in private suits designed to persuade the courts to adopt a rule of reason approach to such cases. One important RPM private suit in which the administration was planning to intervene early in December before the Supreme Court was in Monsanto Co. v. Spray-Rite Service Corp..

Whatever the reasons for his resignation, Mr. Baxter has been replaced by Mr. J. Paul McGrath who was formerly Chief of the Antitrust division's civil litigation division. According to the Wall Street Journal of

December 9, "Lawyers who have known him for years expect that he will place less emphasis than Mr. Baxter on economic analysis, and is more likely to defer to Supreme Court precedent."

U.N. ANTITRUST GROUP HOLDS SECOND MEETING

The intergovernmental Group of Experts on Restrictive business Practices held its second annual session from November 21 to 30 in Geneva under the auspices of the United Nations Conference on Trade and Development (UNCTAD). The session, which had been scheduled for last year, was not held at that time because of preparations for UNCTAD VI which were under way.

The climate at the meeting is reported to have been quite positive. The Group considered a number of draft studies relating to restrictive business practices and a draft Model Law or Laws on Restrictive Business Practices. Mr. D.H. Tucker of Canada's Bureau of Competition Policy continued to act as Coordinator for Group B (the developed countries). The following resolution was adopted at the end of the session:

> "The Intergovernmental Group of Experts on Restrictive Business Practices...
>
> 1. Expresses concern about the resort to restrictive business practices in international trade and underlines the importance of the adequate implementation of the Set;
>
> 2. Welcomes the participation of experts on restrictive business practices, who have made a valuable contribution to the discussion and exchange of views between States on their national experience and on matters related to the Set, and urges all States, to the extent feasible, to make possible greater participation by such experts at future sessions of this Group;
>
> 3. Decides, in the light of the persistent resort ot the use of restrictive business practices in international trade transactions and the need for countries to institute, within their competence, effective controls of restrictive business practices in international trade, to include in the agenda for the third session of the Group, scheduled to be held from 7 -16 November 1984, the formulation of proposals, as mandated by the General Assembly, for the improvement and further development of the Set of Principles and Rules for submission to the United Nations Conference on Restrictive business practices to be convened in 1985, and to this end, invites States to provide views to the Secretary-General of UNCTAD and requests him to compile such views and as appropriate to make suggestions;
>
> 4. Requests, in view of the complexity of the work of the Group, that all documents be issued, if possible, at least 12 weeks before the commencement ofthe Group's sessions;

5. Expresses regret that its invitation to the United Nations Development Programme and to States members for financial contributions to enable the establishment of technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries, as called for in Section F, paragraph 6, of the Set of Principles and Rules, has not produced the desired result and invites States members of UNCTAD to pursue in the Governing Council of UNDP the allocation of adequate resources for a viable technical assistance, advisory and training programme on restrictive business practices, since a multilateral programme should complement bilateral programmes;

6. Reiterates its invitation to the UNDP, taking into account the decision of the General Assembly that the necessary resources should be made available to UNCTAD to carry out the tasks embodied in the Set, to ensure that adequate resources are allocated for such technical assistance activities;

7. Reiterates, also, its request to the Secretary-General of UNCTAD, in furtherance of the invitation in the Set, to approach all States to make voluntary financial and other contributions for such activities with view to their early commencement;

8. Takes note of the bilateral and regional assistance given by States, details of which have been provided to the Group, as representing important additional measures towards achieving the goals of the Set;

9. Reiterates its request to the Secretary-General of UNCTAD to prepare the study on tied purchasing practices, as called for in paragraph 6 of resolution 1(I) of the Group;

10. Recognizes the adverse effects of collusive tendering, especially on the trade of developing countries, takes note of the report by the secretariat in this regard and the comments thereon at the Group's session, requests the secretariat to consider further developing of the study on collusive tendering, in the light, intra alia, of the additional information to be supplied by governments, within a reasonable time period after the second session of the Group, and their comments as expressed at that session, and calls upon States to adopt, improve and effectively enforce appropriate legislation and implementing judicial and administrative procedures for the control of collusive tendering;

11. Takes note also of the exploratory study on the effects on international trade transactions of restrictive business practices in the services sector by consulting firms and other enterprises in relation to the design and manufacture of plant and equipment and the comments made thereon at the second

session of the Group, and requests the Secretary-General of UNCTAD to identify on the basis of the provisions of the Set the restrictive business practices in that field, primarily those faced by prospective new exporters, in particular from developing countries, and decides that this Group will take up considereation of this study at its next session;

12. Welcomes the revised draft of the model law or laws on restrictive business practices and the comments thereon at the Group's second session and decides that the next steps in this work should be:

- to revise the model law or laws, taking into account the comments by Governments during the second session of the Intergovernmental Group and additional information to be supplied by Governments within a reasonable period of time after that session and to submit the new draft to the Group's third session, and

- to start to compile a handbook on restrictive business practices legislation, as set out in paragraph 6 (c) of Section F "International Measures" of the Set of Principles and Rules;

13. Takes note of the Annual Report on Restrictive Business Practices and the quarterly Information Notes provided by the UNCTAD secretariat which should be continued;

14. Calls upon all States to provide information referred to in paragraph 6 (d) of Section F of the Set and requests the secretariat to inform States, in an appropriate manner, of the information available."