The International Law Limits to the FTC's International Activity: Does the Law of Nations Keep the FTC at Home?

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"[A] great part of the commission's duty is to strike blows in behalf of the consumer."

I. Introduction

In 1914, Congress created the Federal Trade Commission (FTC) and vested it with substantial power to regulate commerce, both domestically and internationally. Many committees and commentators, however, feel that the FTC has accomplished little of what the 63rd Congress envisioned in 1914. In 1972, a United States senator accused the FTC of proceeding too meekly given the authority the commission possessed. The Senator's comments, however, were directed at the FTC as a whole without making any distinction between the FTC's conduct domestically as opposed to the FTC's conduct internationally. The failure to note this crucial distinction is one reason why the FTC appears to have accomplished less than expected considering its inherent powers. Although national policy concerns must direct the FTC's investigations outside the territorial boundaries of the United States, the agency's ability to per-
form internationally is not a wholly domestic consideration. To properly evaluate the FTC’s performance over its history, the international law limitations to the FTC’s conduct should be considered separately from the domestic limitations.

This Comment demonstrates that it is deceptive to evaluate the FTC’s conduct without distinguishing its domestic from its international activity because factors outside the FTC’s control often regulate its conduct internationally. First, this Comment discusses the FTC’s genesis with specific reference to the statutes which grant the FTC its international jurisdiction. Second, a significant criticism of the FTC’s accomplishments is noted. Finally, this Comment addresses the theoretical extent of the extraterritorial jurisdiction of the FTC and the existing international law limitations upon the FTC’s conduct.

II. The Broad Congressional Grants of Authority to the FTC

The Federal Trade Commission, more than any other governmental agency, is ideally situated to undertake and resolve the complex economic and legal issues which dominate antitrust litigation. Its broad investigatory powers, institutional expertise, and equitable remedies enable the FTC to locate, address, and curtail activities which have a negative impact upon commerce. This makes the FTC a very powerful enforcement agency.

A. The Creation of the FTC

The United States Supreme Court has held that a state has ple-

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8. See infra note 72 and accompanying text.
9. As developed in part V of this Comment, “international law limitations” will refer to state sovereignty principles, the act of state doctrine, judicial review of FTC’s action, and blocking statutes passed by individual sovereigns.
   [T]he Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation . . . . Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission . . . . may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.
In addition, the FTC Act, 15 U.S.C. § 46(h), authorizes the FTC “[t]o investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants or traders, or other conditions which may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.”
11. Kovacic, supra note 7, at 597.
nary power to make rules within its own territory. Exercising this plenary power pursuant to its Constitutional authority, Congress initially granted the FTC the jurisdiction to regulate commerce among the several states and the authority to regulate commerce with foreign nations.

Indirectly, the Supreme Court’s interpretation of the Sherman Act led Congress to create the FTC. In *Standard Oil Co. v. United States*, the Court held that the federal courts would decide on a case-by-case basis what conduct would violate the Sherman Act. Congressional intolerance for the *Standard Oil*’s ad hoc decision-making is illustrated by a statement from the “Cummins Report” which asserted that it was “inconceivable that in a country governed by a written Constitution and statute law the courts can be permitted to test each restraint of trade by the economic standard which the individual members of the court may happen to approve.”

Congress acted upon the “Cummins Report” with new legislation, and the Federal Trade Commission Act was conceived. Senator Newlands of Nevada, the principle sponsor of the FTC Act, described the functions and abilities of the new commission which Congress was about to charter:

[W]e will organize, as the servant of Congress, an administrative tribunal similar to the Interstate Commerce Commission, with powers of recommendation, with powers of condemnation, with powers of correction similar to those enjoyed by the Interstate Commerce Commission over interstate transportation.

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18. 221 U.S. 1 (1911) [hereinafter *Standard Oil*]. In *Standard Oil*, the United States Supreme Court adopted the “rule of reason” as a method of determining whether Standard Oil, Inc. was a monopolizer or not. The “rule of reason” is a judicial attempt to solve the problem of how to best interpret the Sherman Act, supra note 17. If left to the United States Supreme Court, illegal antitrust conduct under the Sherman Act would be conduct in restraint of trade which the court deemed to be unreasonable in the context of each particular case. See Averitt, supra note 16, at 231.

19. S. Rep. No. 1326, 63d Cong., 3d Sess. (1915) [hereinafter Cummins Report]. This report is named for its principle writer, Senator Cummins of Iowa, and originated in the Committee on Interstate Commerce which was authorized by Senate Resolution 98, 62d Cong., 1st Sess. (1911), to study the need for new antitrust legislation in the wake of the *Standard Oil* decision, supra note 18.


22. 47 CONG. REC. 1225 (1911).
Congress, in empowering its newest "servant," vested the FTC with the authority to prevent all "unfair methods of competition in commerce." Additionally, Congress granted the FTC international jurisdiction by broadly defining "commerce" to include "commerce among the several states or with foreign nations."

B. The Wheeler-Lea Act Amendments to the FTC Act

Congress has twice expanded the FTC's scope of authority by supplementing the original language of the initial enabling legislation with language granting greater jurisdictional reach. As a result, the FTC's scope over international activities has also been expanded.

The first expansion of the FTC's authority occurred in 1938 when Congress added the phrase "unfair or deceptive acts or practice" to section 5 of the FTC Act, which had prohibited only "unfair methods of competition in commerce" pursuant to the Wheeler-Lea Act. Congress, acting pursuant to the Wheeler-Lea Act, was responding to the United States Supreme Court interpretation that the FTC's regulatory authority was limited to those activities which actually hindered competition. The Supreme Court had defined the phrase "unfair methods of competition" so that it only applied to "competition" or conduct occurring between competing business entities. As a result, the FTC had no jurisdiction to control deceitful business practices aimed at consumers. After the Wheeler-Lea Act amendments, however, the FTC had the capability to prevent "unfair methods of competition in commerce as well as unfair or deceptive acts or practices in commerce."

C. The Magnuson-Moss Warranty—Federal Trade Commission Improvement Act Amendments to the FTC Act

Congress continued its renovation of the FTC's jurisdictional authority in 1975 with the enactment of the Magnuson-Moss War-
ranty Act under which Congress increased the FTC's jurisdiction for the second time by adding the words "affecting commerce" to section 5(a) of the FTC Act. Section 5(a) of the FTC Act now reads: "Unfair methods of competition in or affecting commerce, and unfair deceptive acts or practices in or affecting commerce, are declared unlawful." \(^3\) Section 5(b) continues:

> Whenever the commission shall have reason to believe that any . . . person . . . has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the commission that a proceeding by it . . . would be to the interest of the public, it shall issue and serve . . . a complaint stating its charges . . . . The person . . . so complained of shall have the right to appear . . . and show cause why an order should not be entered . . . requiring such person, . . . to cease and desist from the violation of the law so charged . . . . \(^3\)

With the 1975 increase in the FTC's jurisdiction, the commission was given more jurisdiction over international transactions than when the FTC Act was first introduced. \(^3\)

III. Significant Criticisms of the FTC\(^3\)

Although the FTC has enjoyed an expanded jurisdiction, it has been observed that the FTC has not always applied its power to the best advantage. For example, one report, the September 15, 1969 Report of the ABA Commission to Study the Federal Trade Com-

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\(^{32}\) Id. § 45(b) (emphasis added).
\(^{33}\) Maher, in his article, supra note 28, discusses the full implications of the latest amendments to the FTC Act.

Note: Section 5 of the FTC Act now addresses foreign commerce in terms of the "effects doctrine," see infra note 70.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives risk to a claim under the provisions of this subsection other than this paragraph.


34. The FTC has been the subject of many studies and criticisms. See generally, Kovacic, supra note 7; Auerbach, *The Federal Trade Commission: Internal Organization and Procedure*, 48 MINN. L. REV. 383 (1964); G. Henderson, *The Federal Trade Commission: A Study in Administrative Law and Procedure* (1924). These reports and others focused on the same themes, criticizing the FTC for failing to establish effective planning and workable priorities systems, for becoming involved in too many trivial cases, for proceeding too slowly and ponderously, and for employing an unproductive staff.
mission, proposed that the FTC devote its antitrust resources to economically significant problems in complex, unsettled areas of law and economics. The ABA Report recognized that the agency's ability to perform its role depended heavily upon the actions of institutions outside the agency. The ABA Report, however, was most concerned about the effects Congress and the President were having on the FTC's ability to act domestically; no recognition whatsoever was given to the possible international limitations acting against the FTC.

From the date of its release, the ABA Report became an accepted standard for measuring the FTC's antitrust performance. The ABA Report concluded that the FTC was proceeding too cautiously and urged the Commission to take the lead in dealing with the difficult and economically important antitrust problems. If the FTC were ever to proceed as the ABA Report suggested, much would depend upon the attitudes of Congress, the President, the nation at large, and upon the FTC's skill in pursuing those goals.

Not surprisingly, the ABA Report's proposals made no distinctions or specific recommendations for the FTC to pursue under its

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35. On April 18, 1969, President Nixon wrote to the President of the American Bar Association, William T. Gosset, asking that the ABA study and appraise the FTC and include recommendations for future activities and organization of the FTC. Gosset created a commission to study the FTC which would include the Chairman of the ABA Section of Antitrust Law, Miles W. Kirkpatrick as Chairman, two economists, five law professors specializing in antitrust or consumer protection, and nine practicing lawyers. Most of the Commission's members had extensive experience dealing with the FTC. See ABA Report, supra note 4, at 4.

Even though it is twenty years old, the ABA Report is still important to consider when evaluating the FTC. The ABA Report was a very serious endeavor, recommending that if the Report's findings were not followed, the FTC should probably be retired. Kovacic, supra note 7, at 601. To prevent the agency from ignoring its recommendations, the ABA warned that the appropriate alternative to serious reform was the Commission's abolition. ABA REPORT, supra note 4, at 3.

36. Kovacic, supra note 7, at 591.
37. Id.
38. Id.
39. ABA REPORT, supra note 4, at 64. In fact, the ABA Report considered the FTC's performance less than satisfactory. The cause of this poor performance, the ABA Report concluded, was the FTC's failure to take advantage of the unique strengths conferred upon it by Congress in 1914. Id. See also, supra note 4 and accompanying text.

Specifically, the report wanted the FTC to distinguish itself from the Department of Justice by prosecuting more cases with riskier outcomes. The ABA Report urged the FTC to move away from the economically trivial cases to the economically important; from the "simple" per se offenses to complex, unsettled areas of law and economics; from encouraging voluntary enforcement to hardline compulsory enforcement. Kovacic, supra note 7, at 628.

What this would mean is that the FTC would begin pursuing riskier prosecutions and losing more cases. Just as county district attorneys enjoy high rates of convictions, the FTC only pursued those cases it knew it could win. The ABA Report criticized this practice. But the ABA Report also realized the paradoxical position it was taking. The ABA Report was criticizing the FTC for not making riskier prosecutions. Yet, if the FTC were to follow these recommendations, then the FTC would inevitably be criticized for losing too many cases and not doing its homework, thus incurring the government's displeasure for being too avant garde.

Id.

40. Id.
international jurisdiction. This is because the FTC does not have a different strategy for pursuing domestic as opposed to international activities.\(^1\) Instead, as the recommendations in the ABA Report suggest, the FTC first determines what enforcement policies to pursue and then enforces them to the fullest extent of its jurisdictional authority, whether foreign or domestic.\(^2\)

Although the ABA Report voiced harsh criticism against the FTC, the criticisms pertaining to the FTC's international activity may not have been warranted,\(^3\) because, in some areas, the FTC is unable to act.\(^4\) Several of the domestic limitations on the FTC's ability to act internationally will be discussed in the following section.

IV. Domestic Limitations to the Extraterritorial Jurisdiction of the FTC

Although the Constitution gives Congress plenary power to regulate commerce with foreign nations, congressional power to regulate international antitrust is limited by international law and comity.\(^5\)

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\(^1\) Telephone interview with Ed Glynn, Assistant Director for International Antitrust, Federal Trade Commission (February 17, 1988).

\(^2\) But then if this is true, why maintain separate offices for international antitrust? See supra note 41. Aside from employing specialists in international law and economics, is there no difference between foreign and domestic FTC activity?

\(^3\) Glynn seems to think there is none. Part of this reason might be that the FTC has not had an international office for too long. In 1981, the Reagan administration set up the international office, and Ed Glynn has been its head ever since.

\(^4\) Indeed, the FTC's international activity probably was not even considered. But the times are changing. More world markets opening up may demand, subject to restrictions which this article highlights, a more active FTC in the international market.

\(^5\) Kovacic, supra note 7, discusses the major hurdles which trip up the FTC. But he makes no mention of the hurdles which might trip the FTC outside the purely domestic setting.

\(^6\) In the United States, the Constitution is omnipotent. No law is above the Constitution. The United States is considered to be a dualist country. Dualism respects international and domestic law as different systems that only interact with each other. Some states hold that international law takes precedence over domestic law, while other states hold the reverse. This philosophy is contrasted with the monist theory which considers international law and domestic law as part of a whole body of law, normally treating international law as superior to (and as delegating authority to) domestic law. Oliver, *International Law and Foreign Investigatory Subpoenas Sought to be Served Without the Consent or Cooperation of the Territorial Sovereign: Impasse or Accommodation?*, 19 SAN DIEGO L. REV. 409, 418 (1982) [hereinafter Oliver]. See generally, Sweeney, Oliver & Leech, *The International Legal System* (2d ed. 1981).

In the United States, an Act of Congress which violates a principle of international law is not automatically invalidated. The courts have the authority to say what the law is and whether a law is constitutionally valid. Marbury v. Madison, 1 Cranch 137 (1803). Nevertheless, up to now, no court has ever held that international law is superior to that of the Constitution. Oliver, supra at 420.

Yet, the United States does not ignore international law principles. President Eisenhower said it well in his inaugural address:

> Honoring the identity and heritage of each nation of the world, we shall never use our strength to try to impress upon another people our own cherished political and economic institutions.

Whitney, *Sources of Conflict Between International Law and the Antitrust Laws*, 63 YALE
The Supreme Court indicated this principle early in the history of the United States by recognizing that no state may exercise sovereign powers within the borders of another state without the latter's consent. Nevertheless, the United States Supreme Court has ratified a series of actions by the Department of Justice where the United States has asserted jurisdiction over agreements made outside the territorial limits of the United States governing trade and commerce. The jurisdictional nexus, according to the courts, has been found when some "effect" of the agreement has been felt within the United States itself.

A. Delegation of the Extraterritorial Authority to the FTC

As indicated earlier, Congress has delegated some of its authority to regulate commerce to the FTC. The FTC's authority to regulate international commerce originates in the FTC Act and the FTC's authority to enforce the FTC Act includes, as a jurisdictional feature of the statute, the authority to regulate "trade or commerce with foreign nations." Congress had authority to enact and the FTC has authority to enforce the Act only because the FTC Act is within the Constitutional delegation of authority to Congress "to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes."

B. FTC's Ability to Regulate Conduct of Citizens Abroad

After the Wheeler-Lea Act, the FTC's authority to regulate United States citizen's conduct occurring outside the territorial boundaries of the United States has never been seriously questioned. The scope and power of that authority was demonstrated in Branch v. FTC.

In Branch, the FTC issued a cease and desist order ordering

L.J. 655, 662 (1954) [hereinafter Whitney].
48. See supra note 23 and accompanying text.
49. Id.
51. Id.
53. See supra note 25 and accompanying text.
54. Nationality has always been a basis for a state to exercise jurisdiction. Restatement (Second), infra note 68, § 10.
55. 141 F.2d 31 (7th Cir. 1944).
Branch to discontinue soliciting a phony "diploma mill" in Latin America.\textsuperscript{57} Branch contested the order, complaining that the FTC had no jurisdiction over his "institute" because the advertising occurred outside the territorial boundaries of the United States.\textsuperscript{60} The United States Court of Appeals for the Seventh Circuit rejected Branch's appeal. The court reasoned that since the FTC was motivated to protect Branch's competitors engaged in foreign commerce, as opposed to protecting those residents of central America who may be injured by Branch's phony activities,\textsuperscript{69} the FTC had jurisdiction to order Branch to discontinue his practices. In so holding, the court remarked:

The Federal Trade Commission does not assume to protect the petitioner's customers in Latin America. It seeks to protect the petitioner's competitors from his unfair practices, begun in the United States and consummated in Latin America. \textit{It seeks to protect foreign commerce . . . .} The right of the United States to control the conduct of its citizens in foreign countries in respect to matters which a sovereign ordinarily governs within its territorial jurisdiction has been recognized repeatedly . . . . Congress has the power to prevent unfair trade practices in foreign commerce by citizens of the United States, although some of the acts are done outside the territorial limits of the United States.\textsuperscript{60}

The question then left for the court to decide was whether Congress had delegated to the FTC the power to regulate Branch's activity.\textsuperscript{61}

\textsuperscript{57.} Branch was offering diplomas and degrees from the Joseph G. Branch Institute of Engineering and Science. Branch maintained that his school was a correspondence school. Branch would send his students textbooks and lessons. After passing a final examination, the student would be awarded a degree or diploma. Branch's "institute" had no entrance requirements, no resident students, no library or faculty. The staff consisted of a day laborer, a messenger, eight translators, Branch's daughter, and a Mexican who had a Bachelor of Science degree from the University of Mexico.

Branch advertised his "institute" in Latin-American countries, maintaining that he operated an institute of engineering and science in Chicago. The institute posted an impressive curriculum, offering courses in agriculture, architecture, aviation, mechanical engineering, industrial chemistry, sugar chemistry, analytical industrial chemistry, dentistry, diesel engineering, radio and television engineering, automotive engineering, civil engineering, mechanical engineering, mining engineering, petroleum engineering, sanitary engineering, metallurgy, veterinary science, medicine, biology, bacteriology, law, pharmacy, and several other subjects.

He warranted that his institute was authenticated by the Secretary of State of Illinois, U.S.A. and was the only officially recognized university in accordance with the laws of United States for extension courses by correspondence. In fact, the Department of Education of the State of Illinois had disapproved the entire school. 141 F.2d at 33.

\textsuperscript{58.} \textit{Id.} at 34.

\textsuperscript{59.} If the FTC were attempting to protect Latin Americans living in Latin America, the FTC would be invading the sovereign territories of those Latin American countries. \textit{See infra} note 72 and accompanying text.

\textsuperscript{60.} 141 F.2d at 35.

\textsuperscript{61.} Without the benefit of the Federal Trade Commission Improvement Act, \textit{supra} note 30, the court first had to determine whether or not Branch's activity was commerce. Today, this determination would be whether or not the activity was commerce or affected interstate
The court found that Congress had granted the authority to the FTC in § 5(a) of the Federal Trade Commission Act.\textsuperscript{62}

\textbf{C. FTC's Ability to Regulate Foreign Nationals}

The Federal Trade Commission Act also allows the FTC to exercise jurisdiction over foreign nations located outside the territorial boundaries of the United States. The United States has consistently applied its own rules of conduct concerning anticompetitive acts of foreigners outside the territorial United States which produced deleterious economic effects within the territorial United States.\textsuperscript{63} The conflict with international law arises when the United States, through the FTC or the Department of Justice, attempts to punish a foreign national for acts which occurred outside the territorial United States but violated the United States' antitrust laws.\textsuperscript{64} It is not doubted that foreign nationals are liable for their acts which occur within the territorial United States. The question is whether an exemption exists to the principles of territorial sovereignty so that the United States may prosecute foreign nations for conduct committed outside the United States, and thus in another sovereign's territory.\textsuperscript{65}

The leading case supporting this exception to territorial sovereignty principles is \textit{The S.S. Lotus},\textsuperscript{66} in which the Permanent court of International Justice held that a state may punish a foreigner for his acts abroad if those acts "form a constituent element of a crime consummated within the territory of the State."\textsuperscript{67} In this case, a collision between a French and a Turkish ship had resulted in the sinking of the Turkish ship and the deaths of Turkish seamen. When the French ship later docked in Constantinople, the French officer in charge when the collision occurred was put on trial in Turkey and convicted of involuntary manslaughter. France protested the sentence, and both countries resorted to the Permanent Court of Inter-

\textsuperscript{62} At that time, § 5(a) provided: "Unfair methods of competition in commerce, and unfair or deceptive acts of practices in commerce, are hereby declared unlawful." See Maher, supra note 28 and accompanying text.

\textsuperscript{63} This result is reached on the principle of law which allows a state jurisdiction to apply its laws to a foreigner who, for example, shoots bullets into the state's territory, given the accused has been properly brought before the tribunals of the state. Oliver, supra note 45, at 421.


\textsuperscript{65} Id. at 643. Note that with the latest language in the FTC Act, the conduct necessary to trigger FTC action must have a direct, substantial and reasonably foreseeable effect on the foreign commerce of the United States, unless it is import commerce. See supra note 33; see also, supra note 70.

\textsuperscript{66} Case of the S.S. "Lotus," 1927 P.C.I.J. (Ser. A) No. 10/9 at 56 [hereinafter The S.S. Lotus].

\textsuperscript{67} Haight, supra note 64, at 644.
national Justice to resolve the question of whether Turkey had violated France's territorial sovereignty by prosecuting the French officer. The court determined that, because the crime had effected Turkish territory (the Turkish vessel), Turkey could exercise jurisdiction over the Frenchman notwithstanding the fact that the French officer had at all times remained on board the French vessel:

... [I]t is certain that the courts of many countries, ... which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offenses, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offense, and more especially its effects, have taken place there ... .

The S.S. Lotus now stands for the principle of international law that a state may exercise jurisdiction over a party if the party has in fact perpetrated conduct in a foreign country which effects the country asserting the jurisdiction. This measure of jurisdiction has now developed into the "effects doctrine" upon which the United States can reach out, through the FTC and its other regulatory agencies, to regulate conduct by actors who are not located within United States territory.

68. Haight, supra note 64, at 64. The part of the court's opinion holding that the Turkish ship was Turkish territory is generally no longer considered to be valid. See RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAWS OF THE UNITED STATES § 30 reporters' note [hereinafter RESTATEMENT (SECOND)].


70. United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945), is also widely cited to support the "effects" doctrine. In the case, the court of appeals held that Aluminum Limited, a Canadian corporation, had formed illegal agreements with other foreign producers of raw aluminum ingot in violation of United States antitrust laws. Judge Learned Hand explained a two-pronged test for exercising jurisdiction:

[I]t is quite true that we are not to read general words, such as those in this [Sherman] Act, without regard to the limitations customarily observed by nations upon the exercise of their powers; limitations which generally correspond to those fixed by the "Conflict of Laws." We should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States. On the other hand, it is settled law ... that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends; and these liabilities other states will ordinarily recognize.

Both agreements would clearly have been unlawful, had they been made within the United States; and it follows from what we have just said that both were unlawful, though made abroad, if they were intended to affect imports and did affect them.

Id. at 443-44 (citations omitted).

V. International Law Limitations to the FTC's Extraterritorial Jurisdiction

A. State Sovereignty

If the FTC were to exercise its jurisdiction internationally to the extent the ABA Report recommended, it would be perilously close to negating the independent sovereignty rights of nations. In the past, the United States has trespassed beyond its territorial jurisdiction and has been corrected by another sovereign. In U.S. v. Imperial Chemical Industries (ICI), Great Britain enjoined a British company from complying with the order of an American court. An American judge had chosen to exercise extraterritorial jurisdiction by ordering ICI, an English Company, to transfer the title to British patents in England to an American company. The American court's order was enjoined in Great Britain as an affront to the international legal principles of territorial sovereignty.

1. The Reserved Domain of Domestic Jurisdiction.—A state cannot usurp the territorial sovereignty of another state. Problems of trespass occur when one state, attempting to regulate activity within its reserved domain of domestic jurisdiction, ultimately regulates within another states' territory. Sovereignty, however, implies a limit to the offending states' activity: the territory, or reserved domain, of another state. Since the offended states' territory is off-limits to other states, only that state has the authority under international law to regulate its own domestic territory.

The United Nations Charter, Article 2, Paragraph 7, recognizes

72. Judgment by Upjohn, J., in the Vacation Court, August 13, 1952, upheld on appeal, British Nylon Spinners v. ICI, (1953) 1 Ch. 19. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287, 1288 (1979) [hereinafter I. BROWNLIE]. Sovereignty is a term of art used for several purposes including to describe a state's legal personality as well as the incidence of that personality. State sovereignty is the foundation of the law of nations from which a community of legally equal states are governed. Sovereignty may be better understood by explaining what it suggests than defining what it is. Describing state A as sovereign means (1) state A has equality with other states; (2) state A has jurisdiction over a territory and a permanent population to the exclusion of other states; (3) state A has a duty not to interfere with the exclusive jurisdiction of other states; and (4) state A has a duty to uphold international law and fulfill its obligations in accordance with that international law. One of the many narrow definitions of state sovereignty stresses that each state has absolute authority and an uncontrollable state will. Jessup, however, comments that such an interpretation of state territorial sovereignty to mean each state possesses individual and unchallengeable independence is the quicksand on which the foundations of traditional international law are built.

Until the world achieves some form of international government in which a collective will takes precedence over the individual will of the sovereign state, the ultimate function of law, which is the elimination of force for the solution of human conflicts, will not be fulfilled.


73. I. BROWNLIE, supra note 72, at 291.
the reserved domain of domestic activity wherein no outside interference is permitted:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter . . . . 74

The United States Congress, however, did not need to be concerned with international law limitations when it initially granted the FTC authority pursuant to the FTC Act to prevent the use of "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce"75 within the territorial boundaries of the United States. The United States is a sovereign nation with the right to the exclusive regulation of its domestic sector.76

On the other hand, when the FTC's authorization and resulting activity begins to reach outside the territorial boundaries of the United States of America and into the jurisdictions of other sovereign states, the government may be overstepping its limits. Furthermore, in view of the level of international trade between nations, it is not uncommon for an activity which begins and appears to operate completely within a state's domestic setting actually to have dramatic results outside the state's borders.77 Given the broad "effects" language in the FTC's enabling acts, the FTC's conduct as it seeks to fulfill the role given it by Congress can have broad international consequences.

2. Confusion Over International Jurisdiction.—In order to understand the conflict which arises between the American "effects" doctrine for asserting jurisdiction over foreign nationals and the affronts to territorial sovereignty, it is necessary to distinguish between: (1) a tribunal's jurisdiction over a person before it, and (2) a tribunal's jurisdiction over subject-matter which may not be before the court.

74. U.N. CHARTER art. 2, para. 7. The latter part of this paragraph concludes, "[B]ut this principle shall not prejudice the application of enforcement measures under Chapter VII." Chapter VII is titled "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."
76. See supra note 72.
77. As stated by Brownlie, it is widely accepted that no subject is irrevocably fixed within the reserved domain, but some jurists have assumed that a list of topics presently recognized as within the reserved domain can be drawn up, including categories such as nationality and immigration. This approach is misleading, since everything depends on the precise facts and legal issues arising therefrom. I. BROWNLIÉ, supra note 72, at 292 (footnote omitted).
Subject matter jurisdiction does not automatically occur when personal jurisdiction exists.\textsuperscript{78}

In international law the guiding rule is that State $A$ may assert personal jurisdiction over its own nationals for all purposes but over foreign nations only for their acts within its territorial jurisdiction. State $A$, in asserting jurisdiction over its own nationals for their acts within the territory of State $B$, must, however, refrain from ordering them to act within that territory in violation of the laws there prevailing. And if State $A$ seeks to extend its jurisdiction over an act in State $B$ to a national of State $B$, this will normally be a breach both of the law and of the comity of nations. It is in effect a form of aggression—judicial aggression.\textsuperscript{79}

Attempting to compare the FTC's conduct abroad with its conduct domestically has resulted in confusion about the authority and jurisdiction of the FTC. The FTC can exercise no more authority than Congress had to give it. While the Constitution grants Congress unlimited power to regulate commerce with foreign nations,\textsuperscript{80} the Constitution did not and could not grant Congress unlimited power with respect to the commerce of foreign nations.

On an international level, the United States does not have the same jurisdiction to prescribe laws as it does to enforce those laws. The Restatement (Second) of the Foreign Relations Law of the United States distinguishes these two kinds of jurisdiction.\textsuperscript{81} Having the capacity to prescribe a law does not mean that the state has the jurisdiction to enforce the law in all circumstances.\textsuperscript{82} If a state legislature or other government unit\textsuperscript{83} has jurisdiction to prescribe a rule of law, then the government unit has the authority to make a law or regulation which is to be observed and followed.\textsuperscript{84} Jurisdiction to enforce a law is the authority a government unit has to compel compliance with the rule of law.\textsuperscript{85}

A state cannot enforce a law unless it has the jurisdiction to

\textsuperscript{78} Whitney, \textit{supra} note 45, at 656.
\textsuperscript{79} \textit{Id.}
\textsuperscript{80} \textit{See supra} note 52 and accompanying text.
\textsuperscript{81} \textit{Restatement (Second), supra} note 68, §§ 6-7.
\textsuperscript{82} \textit{Id.} § 7. The Restatement offers this illustration:
X is a national of State A residing in State B. A has jurisdiction to prescribe a rule subjecting X to punishment if he fails to return to A for military service. X does not return. A has no jurisdiction to enforce its rule by action against X in the territory of B.
\textsuperscript{83} The FTC is an example of such a governmental unit.
\textsuperscript{85} \textit{Restatement (Second), supra} note 68, § 30 comment a.
\textsuperscript{86} \textit{Id.} A state exercises its prescriptive jurisdiction when it enacts a criminal code. The state exercises its enforcement jurisdiction when a police officer arrests a person for violating the criminal code.
prescribe the law. Within its territory, a state has jurisdiction to enforce a rule of law validly prescribed by it. Since each state has absolute and exclusive power to make rules within its territory, each state's territorial boundaries limit the exercise of another state's prescriptive jurisdiction. A modern exception to this rule is the "effects doctrine" where a state has prescriptive jurisdiction over conduct occurring outside its territory which has effects within the state's territory in addition to the state's conventional prescriptive jurisdiction over things or interests located within its territory.

The FTC must distinguish its abilities according to prescriptive and enforcement jurisdiction. Not only is the distinction important because of the consequences of an FTC action, but also because of the potential negative effects against the United States. This is a serious situation because if a state were to enforce a rule for which it had jurisdiction to prescribe, but no jurisdiction to enforce, any state adversely affected by the action would have a claim against the offending state in an international tribunal.

B. The Act of State Doctrine

The act of state doctrine is closely related to a state's inherent sovereign authority to regulate domestic matters occurring within its own borders. The FTC is hindered when it attempts to carry out its international responsibilities because each state has a right to conduct its economic activity in a manner which the state feels is in its own best interests. For the FTC, the conflict with international law occurs when the FTC wants a foreigner to discontinue a practice which is illegal in the United States, but legal in the foreign country where it occurred.

The FTC may confront the same problems with the act of state doctrine as did the plaintiff in American Banana Co. v. United Fruit
In this case, the plaintiff and defendant were both corporations organized under the laws of the United States and were involved in the banana industry outside the United States. The defendant had a monopoly in the banana market, and the plaintiff was trying to infiltrate that monopoly by establishing his own banana plantation and competing with the defendant.

To stop the plaintiff, the defendant persuaded the government of Costa Rica to seize part of the plaintiff’s banana plantation and later sell the plantation to the defendant. The plaintiff, in a private antitrust action, sued the defendant in American federal court, alleging a violation of the Sherman Act’s prohibition against monopolies. The United States Supreme Court, in an opinion written by Justice Holmes, affirmed the lower court’s dismissal of the plaintiff’s complaint on the fundamental principle that “the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done.”

The fact that economic conduct may be illegal in one nation and legal in another is consistent with principles of territorial sovereignty. Each state has a right to conduct its economic activity in its own best interest. According to the United Nations Charter of Economic Rights and Duties of States, Chapter II:

> Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form

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94. Id. at 356 (Citation omitted). Justice Holmes continued:

> For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent.

The foregoing considerations would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. “All legislation is *prima facie* territorial . . . .” In the case of [the Sherman Act] the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue . . . .

Id. at 356-57 (citations omitted).

The *American Banana* decision appears to be a holding contrary to FTC v. Branch, 141 F.2d 31 (7th Cir. 1944). The *Branch* court distinguished *American Banana* from the FTC’s proceeding in *Branch* because Branch’s conduct originated in the states and involved use of the mails. Therefore, Branch’s illegal conduct did not take place outside of U.S. territorial boundaries as did the actions complained of in *American Banana*. The *Branch* court concluded:

> The exercise by the United States of its sovereign control over its commerce and the acts of its resident citizens therein is no invasion of the sovereignty of any other country or any attempt to act beyond the territorial jurisdiction of the United States.

Id.
and

Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development.98

When the FTC investigates foreign activity, it uses American concepts of free market and restraints on competition to evaluate the foreign national’s actions.97 While promoting the free market and discouraging restraints on competition may be consistent with American principles of individual liberty, in foreign countries certain restraints of trade or anticompetitive conduct may be legal. Subsequently, pursuant to the act of state doctrine, the FTC should not be able to prosecute a foreign company for violating American laws if the foreign company was acting legally in its own country.99

The problem the FTC encounters when it attempts to exercise jurisdiction over this type of conduct is compounded when a state is inextricably involved and actively promoting the “illegal” conduct. In International Association of Machinists and Aerospace Workers (IAM) v. Organization of Petroleum Exporting Countries (OPEC), IAM asserted that OPEC was an illegal cartel conspiring to increase the price of oil sold to the United States98 by agreeing to limit the production of oil. Nevertheless, the act of state doctrine prevented the United States courts from exercising jurisdiction over “criminal” conduct.100 The United States Court of Appeals for the Ninth Circuit explained:

While conspiracies in restraint of trade are clearly illegal under domestic law, the record reveals no international consensus condemning cartels, royalties, and production agreements. The United States and other nations have supported the principle of supreme state sovereignty over natural resources. The OPEC nations themselves obviously will not agree that their actions are illegal. We are reluctant to allow judicial interference...

96. Id. art. 7.
97. See generally Kovacic, supra note 7. It is worth noting that the United States’ approach to these matters has not been entirely consistent.
98. See supra note 92.
100. Alas, “[a]ll legislation is prima facie territorial.” American Banana, 213 U.S. at 357.
in an area so void of international consensus. An injunction against OPEC's alleged price-fixing activity would require condemnation of a cartel system which the community of nations has thus far been unwilling to denounce.¹⁰¹

C. Judicial Scrutiny of FTC's Actions

The United States Circuit Court of Appeals for the District of Columbia addressed the international limitations of the FTC in *F.T.C. v. Compagnie De Saint-Gobain-Pont-A-Mousson (SGPM).*¹⁰² In *SGPM,* the court discussed the propriety of the FTC's authority to serve subpoenas abroad.¹⁰³ The court of appeals immediately recognized potential conflicts between the FTC's international activity and international law principles. The court refused to believe that the FTC had free, unlimited authority to subpoena anyone in the world via registered mail. The court stated:

We cannot, however, simply assume . . . that Congress intended to authorize regulatory agencies in general—and the FTC in particular—to employ any and all *methods* to serve compulsory process when conducting their investigations. When an American regulatory agency directly serves its compulsory process upon a citizen of a foreign country, the *act of service itself* constitutes an exercise of American sovereign power

¹⁰². 636 F.2d 1300 (D.C. Cir. 1980) [hereinafter SGPM].
¹⁰³. At the time, the FTC was engaged in a nonpublic antitrust investigation of the fiberglass industry to determine if certain fiberglass manufacturers and distributors were engaged in acts or practices in violation of section 5 of the FTC Act, 15 U.S.C. § 45 (1982 & Supp. IV 1986). One of the principle targets of the FTC investigation was Compagnie De Saint-Gobain-Pont-A-Mousson, a French Company with a subsidiary (Certainteed Corp.) based in New York City.
within the area of the foreign country's territorial sovereignty.\textsuperscript{104}

The court declined to find any statutory authorization permitting the FTC to subpoena SGPM's records through registered mail for two reasons.\textsuperscript{108}

First, the court could find no language in the FTC Act authorizing direct service of investigative subpoenas abroad by means of registered mail. Section 5(f) of the Act, expressly authorizing service by registered or certified mail, only applied to complaints, orders, and other commission processes under section 5 of the FTC Act. The FTC, however, was not proceeding under section 5 in this case but instead, pursuant to its authority to issue investigatory subpoenas under sections 6, 9, and 10 of the FTC Act.\textsuperscript{108}

The \textit{SGPM} court, searching for a statutory limit to the geographic range of the FTC's subpoena power, focused on section 9 of the FTC Act which limited the FTC's subpoena reach to witnesses and the production of documents containing information relating to an investigation from any place in the United States, at any designated place of hearing.\textsuperscript{107} Relying on this statute, and case law\textsuperscript{108}

\begin{footnotes}
\item[104] \textit{SGPM}, 636 F.2d at 1304. The court premised this conclusion upon a general rule that "[f]ederal courts have long acknowledged that the investigatory and regulatory reach of domestic agencies may, and often must, extend across national boundaries." \textit{Id.} (footnotes omitted). The court then cited two cases where this extraterritorial jurisdiction was permitted: \textit{CAB v. Deutsche Lufthansa Aktiengesellschaft}, 591 F.2d 951 (D.C. Cir. 1979); and Montship Lines, Ltd. v. FMB, 295 F.2d 147 (D.C. Cir. 1961). \textit{Id.} at n.3.
\item[105] \textit{Id.} The reader will note the dualist implications in the court's language. See supra note 45. The court said that had there been an express congressional authorization for the FTC to issue the subpoenas \textit{duces tecum}, the court would have found in favor of the FTC regardless of the international law ramifications.
\item[106] \textit{SGPM}, 636 F.2d at 1307.
\item[107] \textit{Id. Section 9 of the FTC Act, 15 U.S.C. § 49, empowers the Commission:

\begin{quote}
  to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation . . . .
\end{quote}

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

\textit{Id.} (emphasis added).

Circuit Judge Moore, dissenting in Federal Maritime Comm'n v. DeSmedt, 366 F.2d 464 (2d Cir. 1966), cert. denied, 385 U.S. 974 (1966), predicted the rationale of the \textit{SGPM} court. The \textit{DeSmedt} court was interpreting statutory language nearly identical to that of the FTC Act later discussed in \textit{SGPM}. Moore observed:

When Congress authorized the production of evidence "from any place in the United States," it is to be presumed that it was aware of the territory embraced within the United States. If Congress had intended to enact legislation authorizing such production "from any place in the world," it is again to be presumed that it had available sufficiently skilled draftsmen who could have used "world" instead of "United States"—a not altogether too difficult bit of draftsmanship. The real difficulty which seems to have faced the majority . . . is to demonstrate that the "plain" meaning of "United States" is "world." Even in this day, when these terms appear to be becoming congruous, I find the supposition that Congress could not understand the difference, and hence requires judicial legislation to express its real intent, quite incongruous.
\end{footnotes}
interpreting it, the court refused to hold that the FTC had authority to subpoena service upon a foreign citizen residing on foreign soil. Instead, the court decided that the cases[^100] "by no means suggested that Congress intended the FTC subpoena power to have no place or manner limits whatever."[^110]

Second, the court distinguished between service of notice and service of compulsory process. The *SGPM* court believed that the FTC's attempt to serve SGPM with the subpoena *duces tecum* was not merely notice of a pending lawsuit against SGPM but an exercise of compulsory process. The FTC subpoena ordered the SGPM company to produce documents and threatened immediate sanctions if SGPM did not comply.[^111]

The direct assault on international law principles is evidenced by the commission's potential sanctions against SGPM for failure to comply with the subpoena *duces tecum*. If SGPM ignored the FTC's subpoena, the full enforcement power of the FTC could immediately be brought against it, including action for enforcement, forfeiture or penalties, or criminal actions.[^112] This is a different result than what could happen if the FTC were merely notifying SGPM of a pending legal action against it. If the FTC were commencing a lawsuit, SGPM would have options available to defend itself and could eventually appeal the result.[^118]

[^100]: Id. at 474. Judge Moore added that the Senate had "recognized that the expansion of the FMC's subpoena power . . . in the face of the strongest possible objection from the State Department and explicit directives not to produce documents from numerous friendly maritime nations . . . 'would only muddy the waters and do violence to our foreign policy . . . ." Id. (citations omitted).

[^108]: Deutsche Lufthansa Aktiengesellschaft, 591 F.2d at 951; *DeSmedt*, 366 F.2d at 464.

[^109]: *Id.*

[^110]: *SGPM*, 636 F.2d at 1309.

[^111]: *Id.* at 1311.

[^112]: 16 C.F.R. § 2.13(a) (1980). The court of appeals discussed the consequences facing SGPM if it chose to ignore the FTC's subpoena *duces tecum*:

Summary proceedings may be begun under Fed.R.Civ.P. 81(a)(3), with a finding of contempt the ultimate penalty. In the event of continued noncompliance, a district court could presumably enforce its order by seizing the noncomplying respondent's assets wherever they might be found and lawfully attached, by holding the officers and agents of the corporation in contempt, or by otherwise exercising its discretion to punish a potential witness' recalcitrance. Unlike service of a summons and complaint upon a named defendant, delivery of the FTC's investigatory subpoena upon a witness carries with it the full array of American judicial power.

[^113]: *SGPM*, 636 F.2d at 1311-12 (footnote omitted).

[^114]: *Id.* at 1311. The court explained:

Once the respondent is served with a copy of the complaint and the proposed order, he then has the options of meeting with the Commission's counsel to negotiate a consent order or of proceeding to litigation, the result of which may always be appealed before any cease-and-desist order may issue. Not until the cease-and-desist order becomes final, through affirmance by a court of appeals or the Supreme Court . . . , will the coercive power of the court be directly brought to bear upon the respondent.
This distinction between service of notice and service of compulsory process has important consequences to all affected, including domestic citizens, but this distinction has added significance when the service involves another sovereign. The FTC's attempt to submit a foreign national to compulsory service of process, without the consent of the foreign sovereign,\textsuperscript{114} is a direct contravention of the international law principles of territorial sovereignty.\textsuperscript{116} Professor Wigmore has discussed the problems international territorial limitations present when a court, or the Federal Trade Commission, attempts to subpoena witnesses and documents from abroad:

[T]he forum court in the United States can notify the witness, requesting him to appear before the United States consul for deposing, and upon his failure there to appear or to answer can punish him for contempt (by fine or forfeiture), provided the witness is a citizen of the United States and otherwise is subject to a testimonial duty in the forum court; for his civil duty may extend to conduct abroad as well as at home.

But . . . the forum court cannot issue a subpoena to a witness commanding him to appear before the consul, for this would be an attempted exercise of state power within the territory of the foreign state—an intrusion impossible in legal theory and in international understanding.\textsuperscript{116}

Recognizing the international law implications, the court of appeals criticized the lower district court's enforcement order, noting that Congress did not expressly provide that the FTC could circumvent a foreign nation's judicial authority by sending compulsory processes through the registered mail.\textsuperscript{117} Reversing the lower court, the court of appeals concluded that "[i]n view of the significant sanctions conditionally imposed by the agency's subpoena and the

\textit{Id.} (footnote omitted).


\textsuperscript{115} The \textit{SGPM} court then borrowed from \textit{The S.S. Lotus}, 1927 P.C.I.J. (ser. A) No. 10/9, at 18. "[T]he first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its powers in any form in the territory of another State." \textit{Id.} May a court make \textit{The S.S. Lotus} case say whatever it wants?

At least this principle of international law cited in \textit{The S.S. Lotus} had the support of the French government. After the FTC sent its subpoena to \textit{SGPM} headquarters, the French embassy protested to the United States Department of State that the FTC's direct mailing of its subpoena to \textit{SGPM} without cooperation of the French government was "inconsistent with the general principles of international law and constitutes a failure to recognize French sovereignty [sic]." The French government urged that any similar actions in the future be pursued through the proper diplomatic channels. \textit{Note} to the U.S. State Department from the French Embassy Regarding the FTC Investigation of \textit{SGPM} (Jan. 10, 1980).

\textsuperscript{116} \textit{S.G.} \textit{Wigmore, Evidence} § 2195c, at 101 (McNaughton rev. ed. 1961).

\textsuperscript{117} \textit{SGPM}, 636 F.2d at 1315.
foreign sensibilities aroused by the mode of delivery used here, the district . . . [court] seems mistaken."

D. Blocking Statutes

Given the character of modern business transactions between companies based in foreign nations, it is no surprise that the FTC would be seeking to subpoena documents located outside the United States in the course of its investigations. As the SGPM case illustrates, a complete investigation of an antitrust incident involving non-U.S. residents may violate the law of nations. Some nations have reacted to U.S. regulatory agency attempts to secure foreign records pursuant to an antitrust investigation by enacting statutes which make it a criminal offense to remove business documents ordered by a foreign authority. These statutes, called "blocking statutes," are assumed to be a direct result of what foreign states have classified as an American invasion of the territorial integrity of foreign nations, or judicial aggression.

These blocking statutes are of two basic varieties. One kind provides that a government official on his own initiative may decide whether or not to comply with the request for documents. The other is a more general, comprehensive prohibition against the production of any documents requested by a foreign tribunal. The Canadian Province of Ontario enacted a general blocking statute following an order requiring Canadian paper companies to submit to a subpoena duces tecum. Even though the subpoenas were never issued, the Canadian statute still prevents the removal of the Canadian documents from Canada.

In a similar reaction to a grand jury investigation, Great Britain, the Netherlands, France, and Italy forbade their compliance with an American tribunal's orders for the production of documents issued to oil companies within their countries. At the urging of the United States National Security Council, the grand jury investiga-

118. Id. (footnote omitted).
119. The states that have enacted these statutes have done so pursuant to their inherent power to regulate domestic affairs. See Note, Foreign Nondisclosure Laws and Domestic Discovery Orders in Antitrust Litigation, 88 YALE L.J. 612 (1979).
120. Id. See also supra note 79 and accompanying text.
121. Id. Sometimes legislation designed to protect general business secrets from a probing tribunal also has the same result as a blocking statute. Id. Blocking statutes tend to frustrate American antitrust investigations, but they have also been enacted as a defense to other investigative probes by foreign tribunals. See id. at 614.
124. The subpoenas were withdrawn after a conference between those under investigation and the Department of Justice. Note, supra note 119, at 613 n.5.
tions were discontinued and the subpoena orders were quashed.\textsuperscript{126} Nevertheless, the Netherlands, in an effort to show its disapproval of the United States’ attempt to reach into the Netherlands’ territory, enacted new legislation which prohibited Dutch residents from disclosing any information to a foreign tribunal if the information sought involved the economic competition and performance of business located in Holland.\textsuperscript{127} In other words, the Dutch were telling the FTC to stay out.

State blocking laws are an attempt by one state to curtail the extraterritorial regulations of another state. International law principles of sovereignty guard the reserved domain of every state, and courts can prevent the FTC from meddling in the affairs of others. Until other countries agree to accept the FTC’s investigatory invasions, the FTC, like it or not, may have to restrict its international interference.

VI. Conclusion

International law can often keep the FTC from utilizing its international jurisdiction. Principles of state sovereignty also shield states from FTC interference. Additionally, one state may exercise its authority as a national sovereign and declare that an activity abhorred by the FTC is completely legal. Furthermore, courts may determine that the FTC is acting beyond its jurisdictional authority. Finally, the threat of future investigations has prompted some nations to make cooperation with the FTC a criminal offense.

Nevertheless, all international activity is not denied the FTC. The United States, as a sovereign state, also has a right to prevent a foreigner acting outside the United States from injuriously affecting the United States’ international and domestic commerce. If a foreigner intends to affect the commerce of the United States and succeeds in doing so, the FTC may exercise jurisdiction over the foreigner in harmony with international law.

As the ABA Report concluded, the FTC has its share of internal problems which may prevent it from striking its blows fast and hard on behalf of the consumer. Nevertheless, patrolling today’s commerce with foreign nations as thoroughly as Congress or others may desire, is not always possible. Therefore, as long as the FTC is

\textsuperscript{126} See generally, Note, supra note 119.
\textsuperscript{127} See Economic Competition Act of June 28, 1956 art. 39, stb. 401, amended by Act of July 16, 1958, stb. 413.
investigating foreign nations and nationals, any future evaluation of the FTC should recognize those limitations which often keep the FTC at home in the domestic forum.

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