

2007

Extradition as a Tool for United States Antitrust Enforcement: Implications of the U.K. Decision *Norris v. Secretary of State for the Home Department*

Jill Kaden Grant

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/bjil>

Recommended Citation

Jill K. Grant, *Extradition as a Tool for United States Antitrust Enforcement: Implications of the U.K. Decision Norris v. Secretary of State for the Home Department*, 33 Brook. J. Int'l L. (2007).

Available at: <https://brooklynworks.brooklaw.edu/bjil/vol33/iss1/4>

This Note is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Brooklyn Journal of International Law by an authorized editor of BrooklynWorks.

**EXTRADITION AS A TOOL FOR UNITED
STATES ANTITRUST ENFORCEMENT:
IMPLICATIONS OF THE U.K. DECISION
*NORRIS v. SECRETARY OF STATE FOR THE
HOME DEPARTMENT***

INTRODUCTION

Foreign executives who violate U.S. business laws can no longer seek refuge behind their own borders to avoid the U.S. criminal justice system.¹ In 2005, for the first time, the United States convinced a foreign court to order the extradition of a foreign national indicted on a U.S. antitrust charge.² Although extradition treaties are typically negotiated to aid law enforcement in prosecution of transnational crimes like terrorism and drug trafficking, extradition is increasingly being used to pursue white-collar criminals between the United States and the United Kingdom.³ The availability of extradition for a price fixing offense has the potential to expand the extraterritorial reach of U.S. antitrust laws and policies, and may have significant implications for international antitrust enforcement.

In *Norris v. Secretary of State for the Home Department*,⁴ the Queen's Bench Administrative Court of England (the "Court")⁵ upheld an order

1. See Scott D. Hammond, Deputy Assistant Att'y Gen. for Criminal Enforcement, Antitrust Div., U.S. Dep't of Justice, Speech at the Twentieth Annual National Institute on White Collar Crime: Charting New Waters in International Cartel Prosecutions 2 (Mar. 2, 2006), <http://www.usdoj.gov/atr/public/speeches/214861.htm> [hereinafter Hammond Speech]; Neal R. Stoll & Shepard Goldfein, *Crossing the Border: U.S. Antitrust Agencies Take Action Globally*, N.Y.L.J., Vol. 236, July 18, 2006.

2. See Hammond Speech, *supra* note 1, at 2.

3. See Joanne O'Connor, *Retired City Exec Fights Extradition to US as Lopsided Treaty Comes Into Play*, THE LAWYER, May 9, 2005 ("[S]ince the Extradition Act's inception, the US has filed 43 applications for extradition. And more than half of these—22—are for white-collar offences.").

4. The Queen on the Application of Ian Norris v. Sec'y of State for the Home Dep't, [2006] EWHC 280 (Q.B. Admin). The Bow Street Magistrates' Court presided over Norris's initial extradition hearing, and held that price fixing and obstruction of justice charges were extraditable offenses under the Extradition Act 2003. *Id.* para. 1. The Magistrates' Court is the United Kingdom's lowest level tribunal. See Her Majesty's Court Service, The Court Structure of Her Majesty's Court Service, <http://www.hmcourts-service.gov.uk/aboutus/structure/index.htm> (last visited Nov. 8, 2007).

5. The Queen's Bench Administrative Court is the High Court of the United Kingdom that hears appeals from extradition decisions of the Magistrates' Court. See Extradition Act, 2003, c. 41, §§ 103, 108 (U.K.). Further appeals are made to the House of Lords, the highest court of the United Kingdom, upon certification by the High Court. See Extradition Act, 2003, c. 41, § 114; see also House of Lords Briefing,

made under the Extradition Act 2003⁶ to extradite Ian P. Norris⁷ to the United States to face price fixing and obstruction of justice charges.⁸ As a result, Norris, the former CEO of the British corporation Morgan Crucible Company (“Morgan”), was confronted with extradition to the United States to face a 2003 indictment from the Eastern District of Pennsylvania for charges related to his involvement in an international cartel⁹ in the carbon products market.¹⁰ This ruling is a significant development in international antitrust enforcement,¹¹ particularly because the U.S. Department of Justice has placed high priority on the aggressive pursuit of international cartels.¹²

<http://www.parliament.uk/documents/upload/HofLBpJudicial.pdf> (last visited Nov. 9, 2007) (providing an overview of the House of Lords’ judicial functions). The Bow Street Magistrates’ Court presided over Norris’s extradition hearing, and held that price fixing and obstruction of justice charges were extraditable offenses under the Extradition Act 2003.

6. Extradition Act, 2003, c. 41 (U.K.).

7. Norris is a citizen of the United Kingdom. *See Norris*, [2006] EWHC 280, para. 1.

8. *Id.* para. 17. *See also* U.S. DEP’T OF JUSTICE, ANTITRUST DIVISION UPDATE, Spring 2006, <http://www.usdoj.gov/atr/public/216254.pdf> (discussing the *Norris* case and the Division’s use of extraditing foreign nationals in its year review of cartel enforcement).

9. J. Anthony Chavez, *The Carrot and the Stick Approach to Antitrust Enforcement*, at 537–38 (PLI Corp. Law & Practice, Course Handbook Series No. 8736, 2006).

The term cartel is increasingly used in countries with competition laws throughout the world to refer to a pattern of collusive behavior by competing firms that typically involves the following: participating in meetings and conversations to discuss prices and volumes; agreeing to fix, increase, and maintain prices at certain levels; agreeing to allocate among the corporate conspirators the approximate volume to be sold by them; exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements; issuing price announcements and price quotations in accordance with the above-described agreements; and/or selling at the agreed-upon sales volume allocations.

Id. A hard core cartel is a clear agreement among competitors to control the market, most commonly in the form of price fixing. Contrast a hard core cartel with a cartel characterized by ambiguous conduct that could potentially serve the market. *See* ELEANOR M. FOX, ET AL., U.S. ANTITRUST IN A GLOBAL CONTEXT 78 (2d ed. 2004).

10. *See Norris*, [2006] EWHC 280, para. 1.

11. *See* Julian M. Joshua, *Extradition: The DOJ’s New Foreign Policy Weapon*, COMPETITION LAW INSIGHT, June, 14, 2005, at 12.

12. Recently, the United States Department of Justice Antitrust Division has focused on bringing criminal enforcement proceedings against international cartels that affect U.S. commerce. *See* MARK R. JOELSON, AN INTERNATIONAL ANTITRUST PRIMER, A GUIDE TO THE OPERATION OF UNITED STATES, EUROPEAN UNION AND OTHER KEY COMPETITION LAWS IN THE GLOBAL ECONOMY 131 (2006); Hammond Speech, *supra* note 1, at 1–2. Current Department of Justice efforts emphasize individual accountability and “vigorous

This development concerns the U.K. business community.¹³ It also concerns Parliament that the United Kingdom's current extradition legislation gives the United States great freedom to extradite U.K. citizens, but no reciprocal arrangement exists to protect U.K. interests or to grant such latitude to the United Kingdom when seeking extradition from the United States.¹⁴ If the House of Lords, which has granted Norris leave to appeal, upholds the ruling that Norris should be extradited to the United States to face criminal antitrust charges, the United States will undoubtedly continue to pursue extradition to enforce its antitrust laws in the United Kingdom. This will certainly alter the landscape of international antitrust enforcement. If other countries follow the United Kingdom's lead, the United States will have the opportunity to impose American antitrust ideals across the globe. This Note argues that the High Court should have reversed the lower court's ruling in *Norris* because the statutory requirement of dual criminality was not satisfied. It will also consider the impact on global antitrust enforcement if the *Norris* decision is ultimately upheld by the House of Lords, and propose that the United States should not use extradition to broaden the reach of its antitrust law and policy.

Part I of this Note outlines the framework of U.S.-U.K. extradition law between the United States and the United Kingdom. Part II discusses the developments that gave rise to the *Norris* case, including the U.S. indictment and the U.K. extradition decision. Part III discusses the significance of international antitrust enforcement, compares cartel and extra-territorial jurisdiction policy in the United States and the United Kingdom, and considers arguments for and against extraditing antitrust violators. In conclusion, this Note explains why the *Norris* case was decided

prosecution of foreign nationals who violate U.S. antitrust laws." *Id.* The Department of Justice has several resources at its disposal for international cartel investigations—improved assistance and coordination with foreign authorities, border watches, Interpol Red Notices, and extradition requests. *Id.* at 7–12.

13. See Joanne Harris, *Analysis: Fair Trade?*, THE LAWYER, Apr. 17, 2006 (“[T]here is a rising tide of anger in the UK over the way that the Government handles extradition requests from the US and the fact that laws designed to combat terrorism are being used against businesses.”).

14. See, e.g., 673 PARL. DEB. H.L. (5th ser.) (2006) 402 (“Mr. Norris’s case is a good example of the U.S. government using the simplified extradition regime in the U.K. to extradite a U.K. citizen in circumstances that appear wholly unsatisfactory. The original price fixing charge would not stand up in English courts, due to the fact that this was made an offense in the U.K. only with the passage of the Enterprise Act 2002 and the allegations relate to the 1990s [N]ot only is the basis of the charges questionable, but the majority of the conduct complained of occurred in the U.K. and Europe and not in the U.S.”).

incorrectly and argues that the United States should limit its pursuit of extradition of foreign antitrust offenders as a matter of policy.

I. EXTRADITION BETWEEN THE UNITED STATES AND UNITED KINGDOM

The United States and the United Kingdom have a long history of extradition relations that dates back to 1794.¹⁵ Until recently, extradition procedure between the two countries was governed by the 1989 Extradition Act (“1989 Act”) in conjunction with the U.K.-U.S. Treaty of 1972 and a 1985 supplemental treaty (collectively, the “1972 Treaty”).¹⁶ In 2003, the United States and the United Kingdom signed a new Treaty on Extradition (“2003 Treaty”)¹⁷ to simplify the existing regime and accelerate extradition between the two countries.¹⁸ After more than two years, the 2003 Treaty was ratified by the United States Senate on September 29, 2006.¹⁹ Still, an imbalance exists because the evidentiary requirements for each country are not parallel.

Before the United States ratified the 2003 Treaty, the United Kingdom passed the Extradition Act 2003 (“2003 Act”), which repealed the 1989 Act.²⁰ The 2003 Act essentially implemented the terms of the 2003 Treaty by including the United States as one of the countries to which it will extradite.²¹ The 1972 Treaty was still in force even after the 2003 Act took effect, which complicated the extradition landscape between the United States and the United Kingdom.²² The evidentiary requirements

15. The first extradition treaty between the United States and the United Kingdom was the Treaty of Amity, Commerce, and Navigation, also known as Jay’s Treaty. *See* Treaty of Amity, Commerce, and Navigation, U.S.-Gr. Brit., Nov. 19, 1794, 8 Stat. 116; *see also* Norris, [2006] EWHC 280, para. 20 (discussing the history of extradition between the United States and the United Kingdom).

16. *See* Robert M. Osgood & Nathan J. Dunleavy, *U.K.-U.S. Extradition for Antitrust Offenses*, 2006 N.Y. ST. B.A. INT’L L. PRACTICUM 35, 35 (Spring 2006).

17. Extradition Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland, U.S.-U.K., March 31, 2003, S.TREATY DOC. No. 108-23 (2004) [hereinafter Extradition Treaty].

18. *See* Joshua, *supra* note 11, at 12; Roger Smith, *Rights & Wrongs: Going Over There*, LAW SOCIETY GAZETTE, June 16, 2005. Another objective of the 2003 Treaty was to update the bilateral relationship between the United States and United Kingdom to align its terms with the U.S.-EU Treaty, Agreement on Extradition, June 25, 2003, U.S.-EU, 2003 O.J. (L 181) 27. *See* Sean D. Murphy, *New U.S./EU and U.S./U.K. Extradition Treaties*, 98 AM. J. INT’L L. 848, 849 (2004).

19. *See* 152 CONG. REC. S1067 (daily ed. Sept. 29, 2006).

20. *See* Extradition Act, 2003, c. 41, sched. 4.

21. *See* 667 PARL. DEB. H.L. (5th ser.) (2004) 712.

22. *See* Norris, [2006] EWHC 280, para. 21.

of the 1972 Treaty were greater than those of the 2003 Act.²³ However, U.S. ratification of the 2003 Treaty has brought the bilateral agreement into conformity with the U.K. legislation.²⁴

The 2003 Act created new extradition procedures for all of the United Kingdom's extradition partners, including the United States.²⁵ Like the 2003 Treaty, the 2003 Act created a more flexible regime for extradition in response to the September 11, 2001 terror attacks in the United States.²⁶ A significant, and controversial, element of the 2003 Act is Order 2003 (S.I. 2003/3334).²⁷ The Order specially designates the United States as a territory for purposes of certain sections of the 2003 Act,²⁸ which effectively exempts the United States from the Act's requirement to provide prima facie evidence in support of an extradition request.²⁹ As a result of this special designation, the United States is merely required

23. Article IX of the 1972 Treaty provides that "[e]xtradition shall be granted only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested Party or to prove that he is the identical person convicted by the courts of the requesting Party." Treaty on Extradition between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, U.S.-U.K., Oct. 21, 1976, 28 U.S.T. 227, available at 2003 WL 23527406. This issue is central to Norris's argument in *Norris*. See *infra* Part III.C.1.

24. See *Norris*, [2006] EWHC 280, para. 35 ("If the 2003 Treaty is ratified by the United States, the inconsistency between the designation and the express terms of the extant Treaty would disappear and citizens of the United Kingdom would cease to have any enforceable right based on it.")

25. The Extradition Act 2003 is organized into two parts, Part 1 applying to Category 1 territories, and Part 2 applying to Category 2 territories. See JULIAN B. KNOWLES, BLACKSTONE'S GUIDE TO THE EXTRADITION ACT 2003 4 (2004). Category 1 territories are Belgium, Denmark, Finland, Ireland, Portugal, Spain, and Sweden. See Extradition, 2003, S.I. 2003/3333, art. 2, para. 2. Part 1 introduces new extradition procedures, including a statutory appeal process and reduced involvement of the Secretary of State. *Id.* A country may not be a Category 1 territory if it has the death penalty for criminal offenses. See Extradition Act, 2003, c. 41, § 1(3). Additionally, Part 1 of the 2003 Act implements the European Arrest Warrant. See KNOWLES at 6. The United States is one of over 100 Category 2 territories. See SI 2003/3334, art. 2.

26. See Joshua, *supra* note 11, at 12; Harris, *supra* note 13. In addition, the United Kingdom was motivated to revise its extradition legislation after Spain's attempt in 1998–2000 to extradite General Augusto Pinochet from the United Kingdom for crimes against humanity. See KNOWLES, *supra* note 25, at 3–4.

27. See Extradition, 2003, S.I. 2003/3334.

28. Statutory Instrument 2003/3334 paragraph 3 designates Category 2 territories for purposes of section 71(4), 73(5), 84(7), and 86(7) of the Act. *Id.*

29. *Id.* at Explanatory Note.

to provide “information,”³⁰ a low standard that facilitates a relatively simple and speedy United States extradition request from the United Kingdom.³¹ However, even with ratification of the 2003 Treaty, the United Kingdom is not afforded the same luxury when requesting extradition from the United States.³²

A critical reform of the 2003 Treaty was adoption of a dual criminality requirement, where an offense is extraditable only if the conduct is criminalized in both systems.³³ The reform replaced the “list” system, in which extraditable offenses were enumerated.³⁴ The 2003 Act also adopted a dual criminality requirement, requiring that the conduct for which extradition is requested is punishable with imprisonment for one year or greater in both the United Kingdom and the Category 2 territory.³⁵ Modern extradition treaties often adopt a dual criminality requirement to determine whether an act is an extraditable offense,³⁶ so this reform is not extraordinary in comparison to other extradition treaties. However, the broader definition of what constitutes an “extraditable offense” under the new regime complicated the Norris extradition.

A. Defining “Extradition Offense” Under the 2003 Act

The 2003 Act defines “extradition offense” differently for two contexts, one for persons not sentenced for the offense, and the other for persons so sentenced.³⁷ The defendant’s “conduct” is the essential concept

30. See Extradition Act, 2003, c. 41, § 71 (requiring “information” rather than “evidence”).

31. See Extradition Act, 2003, c. 41, § 84(7) (permitting the Secretary of State to exempt a territory from the need for prima facie evidence requirement of section 84(1)).

32. The United Kingdom must show “probable cause” in U.S. extradition requests. See Extradition Treaty, S.TREATY DOC. NO. 108-23, art. 8. In *Norris*, a central argument is that the evidentiary terms of the 1972 Treaty directly conflict with the evidentiary terms of the 2003 Act. See *Norris*, [2006] EWHC 280, para. 34. The Court rejected this argument. See *infra* p. 15.

33. See *Joshua*, *supra* note 11, at 12.

34. *Id.*

35. See *supra* note 25 for Category 2 territory definition; Extradition Act, 2003, c. 41, §§ 137–138; KNOWLES, *supra* note 25, at 12, 22.

36. See M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 466–67, 481 (Oceana Publications) (4th ed. 2002).

37. See Extradition Act, 2003, c. 41, §§ 137–138; KNOWLES, *supra* note 25, at 18. *Norris* was not sentenced, thus the applicable definition of “extradition offense” can be found in section 137. See *Norris*, [2006] EWHC 280, para. 2. This Note will address extradition between the United States, a Category 2 territory, and the United Kingdom under the 2003 Act. The definition of “extradition offense” for Category 1 territories may be found in part 1, sections 64–65 of the 2003 Act.

in section 137 of the 2003 Act.³⁸ Section 137 provides that conduct must meet a dual criminality requirement.³⁹ Different subsections of section 137 apply depending on where the conduct occurred in relation to the United Kingdom and the Category 2 territory.⁴⁰

1. Section 137(2)(a)—Where Did the Conduct Occur?

Section 137(2)(a) requires the conduct to have occurred in the Category 2 territory in order to constitute an extradition offense.⁴¹ The High Court of Justice Queen's Bench Division ("Queen's Bench"), in *Birmingham & Others v. The Director of the Serious Fraud Office*,⁴² interpreted section 137(2)(a).⁴³ The central issue in *Birmingham* was whether section 137(2)(a) is only met if the defendant's conduct targeted the Category 2 territory, yet did not exclusively occur there.⁴⁴ The defendants in *Birmingham* urged the Queen's Bench to find that 137(2)(a) was not met because their conduct caused no harm in the United States, only in the United Kingdom, and their conduct did not target the United States.⁴⁵ The Queen's Bench rejected this argument, and held that when the defendants' conduct took place outside the Category 2 territory and when the harmful effects were felt there, it qualifies as conduct that occurred in the Category 2 territory and therefore meets the requirements of

38. See *The Queen on the Application of Birmingham & Others v. The Director of the Serious Fraud Office* [2006] EWHC 200, para. 81 ("The critical concept in s.137 is the defendant's 'conduct.'").

39. See Extradition Act, 2003, c. 41, § 137.

40. See *id.*; KNOWLES, *supra* note 25, at 18. Section 137(2) applies when the conduct occurs in the Category 2 territory. Section 137(3) applies when the conduct occurs outside the Category 2 territory. Section 137(4) applies when the conduct occurs outside the Category 2 territory and no part of it occurs in the United Kingdom. This section will discuss section 137(2) because that is the relevant subsection for the *Norris* case.

41. See Extradition Act, 2003, c. 41, § 137(2)(a) ("The conduct constitutes an extradition offense in relation to the category 2 territory if these conditions are satisfied—(a) the conduct occurs in the category 2 territory . . .").

42. In *Birmingham*, the United States sought extradition of three British executives for fraud related to the affairs of Enron Corporation. See *Birmingham*, [2006] EWHC 200, para. 20. The executives were employed in London by the bank Greenwich NatWest, and they are each citizens and residents of the United Kingdom. *Id.* The executives challenged the extradition order from Bow Street, arguing that if they were to be tried at all it should be in England. *Id.* para. 57. The executives reasoned that the conduct that gave rise to the charge in the United States prosecutors' case occurred in the United Kingdom, and the victim of the alleged fraud was a U.K. institution, thus the requirements of section 137(2) were not met. *Id.* para. 83.

43. *Id.* para. 84.

44. *Id.* para. 83.

45. *Id.*

section 137(2)(a).⁴⁶ Thus, the Queen's Bench held that 137(2)(a) was satisfied because the defendants' "alleged conduct substantially took place . . . in the United States, as well as in the United Kingdom."⁴⁷

2. Section 137(2)(b)—Is Dual Criminality Met?

Section 137(2)(b) introduces the dual criminality requirement of an extradition offense.⁴⁸ Dual criminality is an essential principle, one that the House of Lords has said "lies at the heart of [the United Kingdom's] law of extradition."⁴⁹ Dual criminality may be satisfied even when the conduct complained of in the requesting territory does not have a "precise equivalent" offense in the United Kingdom.⁵⁰ The judge at the extradition hearing is not required to find a matching offense, but is required to consider the conduct that instigated the foreign charge and determine whether that conduct would constitute an offense in the United Kingdom, had it occurred there.⁵¹

B. The U.S.-U.K. Extradition Regime—Political Reaction and Legislative Response

The U.S. delay in ratification of the 2003 Treaty became a significant political issue in the United Kingdom.⁵² The primary objection to the

46. See *Birmingham*, [2006] EWHC 200, para. 84.

47. *Id.* para. 86.

48. See Extradition Act, 2003, c. 41, § 137(2)(b) ("The conduct constitutes an extradition offense in relation to the category 2 territory if these conditions are satisfied... (b) the conduct would constitute an offense under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom."). The "relevant part of the United Kingdom" is defined in section 137(8)(a) as "the part of the United Kingdom in which the extradition hearing took place, if the question of whether conduct constitutes an extradition offense is to be decided by the Secretary of State." See Extradition Act, 2003, c. 41, § 137(8).

49. *In Re Al-Fawwaz*, [2001] UKHL 69, para. 94.

50. See *Howard Welsh, Lee Hope Thrasher v. Sec'y of State for the Home Dep't*, [2006] EWHC 156 (Admin.), para. 24 (finding that dual criminality was satisfied when "the conduct which constitutes the US offense of mail fraud in relation to forged instruments would constitute the offense of forgery in England").

51. Unpublished decision by District Judge Nicholas Evans, *Gov't of the United States of America v. Ian P. Norris*, June 1, 2005 [hereinafter *Magistrates' Court Decision*] (on file with author).

52. See, e.g., 673 PARL. DEB. H.L. (5th ser.) (2006) 399; 667 PARL. DEB. H.L. (5th ser.) (2004) 711. The *Norris* case, as well as several other recent U.S.-U.K. extraditions for white collar criminals, have garnered substantial media attention in the U.K., particularly about the 2003 Treaty. See, e.g., Nikki Tait, *Norris Cartel Appeal Begins*, FIN.

2003 Treaty was the lack of reciprocity, that is, that the evidentiary standards were unbalanced.⁵³ A particular area of concern was that the U.K. government essentially waived its citizens' rights with the 2003 Act and potentially subjected them to "oppressive legal action" from foreign powers.⁵⁴ One commentator even urged that the United Kingdom "should tear up [its] signature" before the "one-sided treaty" was ratified by the United States.⁵⁵ Additionally, U.K. citizens were skeptical of the 2003 Treaty because it was negotiated and signed in secret, so there was no opportunity for parliamentary scrutiny.⁵⁶ Many voiced concerns that U.S. officials are unpredictable and, absent a requirement to provide evidence, will embark on "fishing expeditions."⁵⁷

Soon after the 2003 Act took effect, its critics urged Parliament to terminate the 2003 Treaty,⁵⁸ requested a new Order revoking the United States' special designation, and proposed amendment of Part 2 of the 2003 Act to permit refusal of extradition where the alleged offense was committed wholly or mainly in the United Kingdom.⁵⁹ Most recently, the House of Commons included 2003 Act amendments in proposed legislation.⁶⁰ As the bill progressed through Parliament, the House of Lords

TIMES UK, Oct. 18, 2006; Michael Binyon, *One-Sided Treaty Was Meant to Handle Terrorist Suspects*, LONDON TIMES, June 28, 2006.

53. See 673 PARL. DEB. H.L. (5th ser.) (2006) 404 (Lord Goodhart of the House of Lords stated that "[t]he 2003 treaty is unfair because it is not reciprocal"); Smith, *supra* note 18; Eoin O'Shea, *U.K. Businesses Need to Beware the Long Arm of U.S. Law*, THE LAWYER, August 14, 2006 ("[T]he effect in law is that Britons are uniquely vulnerable to extradition to the U.S., where they are likely to face lengthy delays before trial, high and irrecoverable costs, much higher sentences and an unfamiliar legal playing field."). In addition to the lack of reciprocity, Lord Goodhart set forth four reasons why the United Kingdom should not agree to extradition to the United States without evidence: (i) the variable standard of justice in the United States, i.e. fifty-one different jurisdictions with standards ranging from "good" to "very bad;" (ii) lack of adequate legal aid in the United States for those who can not afford a lawyer; (iii) excessive plea bargaining in the United States; and (iv) increasing use of extraterritorial criminal legislation by the United States, especially in fraud cases. See 667 PARL. DEB. H.L. (5th ser.) (2004) 713.

54. See 673 PARL. DEB. H.L. (5th ser.) (2006) 403.

55. Smith, *supra* note 18.

56. See 667 PARL. DEB. H.L. (5th ser.) (2004) 711; Joshua, *supra* note 11, at 12; O'Connor, *supra* note 3.

57. Smith, *supra* note 18.

58. Either state may terminate the treaty at any time pursuant to Article 24 of the 2003 Treaty, and termination becomes effective six months after receipt of notice. See Extradition Treaty, S.TREATY DOC. NO. 108-23, art. 24.

59. See 667 PARL. DEB. H.L. (5th ser.) (2004) 714.

60. The House of Commons introduced the Police and Justice Bill on January 25, 2006. The bill primarily contains police reform measures, and also includes miscellaneous items such as amendments to the Extradition Act 2003. See Police and Justice Bill,

voted to remove the United States as a designated Category 2 territory.⁶¹ The House of Commons disagreed with the Lords' proposed amendment,⁶² and the resulting legislation did not include such a provision.⁶³

The political melee in the United Kingdom surrounding the 2003 Treaty and the 2003 Act applied pressure on the United States to ratify the treaty.⁶⁴ The U.S. Senate Foreign Relations Committee ("Committee"), the group charged with reviewing treaties negotiated by the executive branch, met in July 2006 to hear testimony on the 2003 Treaty.⁶⁵ At that hearing, Paul J. McNulty, Deputy Attorney General, urged the Committee to approve the 2003 Treaty because of its law enforcement benefits.⁶⁶ He highlighted the advantage of exemption from showing prima facie evidence in extradition requests.⁶⁷ Additionally, McNulty cautioned the Committee that failure to approve the Treaty would have

2006, H.C. Bill [119] (U.K.) (originally introduced as H.C. Bill [119] on Jan. 25, 2006, upon first reading in House of Lords became H.L. Bill [104] on May 6, 2006, upon consideration it became H.C. Bill [230]). When major alterations are made to a U.K. bill, the complete text is reprinted and given a completely new number. The bill is again reprinted with a new number when passed to the other House for approval. JEAN DANE & PHILIP A. THOMAS, *HOW TO USE A LAW LIBRARY* 74 (2d ed. 1987). The complete chronology of the Police and Justice Bill is available at Lawtel UK.

61. See Lords Amendments to the Police and Justice Bill, H.C. Bill [230] (Oct. 19, 2006) (The House of Lords suggested that the following new clause be inserted: "[d]esignation of Part 2 territories: omission of United States of America. In the list of territories in paragraph 3(2) of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003/3334) 'the United States of America' is omitted.").

62. See Commons Amendments to Lords Amendments, H.C. Bill [230] (Oct. 25, 2006).

63. See Police and Justice Act, 2006, c. 48, sched. 13.

64. See *Hearing on the U.S.-U.K. Extradition Treaty Before the Senate Foreign Relations Committee*, 109th Cong. (2006) [hereinafter *Committee Hearing*] (statement of Samuel L. Witten) ("[O]ur delay in ratification has become a major political issue in the United Kingdom. The issue is being seen by the British media and public as a question of good faith on the part of the United States. Inaction on our part . . . is undermining British public opinion that we are a reliable ally."); Tim Reid, *Senate is Warned of Discontent Here*, *TIMES UK*, July 22, 2006.

65. See *Committee Hearing*, *supra* note 64 (statement of Sen. Richard Lugar). The Committee suggested several reasons as to why it had yet to approve the 2003 Treaty. There was concern that (i) the 2003 Treaty does not guarantee U.S. citizens their constitutional rights if tried in the United Kingdom, (ii) it potentially violates the International Covenant on Civil and Political Rights, and (iii) it permits waiver of the Rule of Specialty, which ensures that a fugitive surrendered for one offense is not tried for other crimes. *Id.* In addition, the Irish-American lobby objected to ratification because they felt the 2003 Treaty would make it easier to prosecute IRA suspects and sympathizers living in the United States. *Id.*

66. *Id.* (statement of Paul J. McNulty).

67. *Id.*

serious negative consequences, emphasizing the United States' relationship with the United Kingdom and pressure there on Parliament to correct the imbalanced extradition relationship.⁶⁸ Following this Committee hearing in July 2006, the Senate ratified the treaty on September 29, 2006.⁶⁹

II. THE NORRIS EXTRADITION

The *Norris* decision was one of the catalysts that brought discussion of the unbalanced evidentiary standards of the 2003 Act to the forefront of discussion in the United Kingdom, both in the legal community and among the citizenry.⁷⁰ This case lies at the intersection of extradition and antitrust law, and marks a significant step towards expanding the reach of United States antitrust enforcement globally. The recent change in the perception of price fixing in the United Kingdom, where it is now regarded as unequivocally criminal, has made extradition available, an avenue of cooperation only available in the realm of criminal law.⁷¹

A. *Norris's U.S. Indictment*

In 1999, a federal grand jury in the Eastern District of Pennsylvania initiated an investigation into U.S. federal antitrust offenses involving carbon products manufactured and sold by Morgan.⁷² Morgan was involved in an industry wide price fixing conspiracy to coordinate prices for carbon products sold in the United States.⁷³ Norris, a Morgan employee and company officer, allegedly conspired in organizing and operating the cartel.⁷⁴ Additionally, Norris allegedly interfered with the United States' investigation by organizing co-conspirators to provide false information, preparing a script for cartel participants to follow if

68. See *Committee Hearing*, *supra* note 64 (statement of Paul J. McNulty).

69. See 152 CONG. REC. S1067 (daily ed. Sept. 29, 2006).

70. See Anand Doobay, *Extradition and Mutual Assistance—A Changing Landscape*, THE CRIM. LAW., July/Aug. 2006, at 4.

71. Julian Joshua, *The European Cartel Enforcement Regime Post-Modernization: How is it Working?*, 13 GEO. MASON L. REV. 1247, 1269 (2006).

72. See *United States of America v. Ian P. Norris*, Criminal No. 03-632, Indictment, 1 (E.D. Pa. Sept. 24, 2003) [hereinafter *Norris Indictment*].

73. See *United States of America v. Ian P. Norris*, Criminal No. 03-632, Second Superseding Indictment, 1–2 (E.D. Pa. Sept. 20, 2005) [hereinafter *Norris Second Superseding Indictment*]; *Norris*, [2006] EWHC 280, paras. 5, 11. Three other Morgan executives were charged with obstruction of justice. Each pled guilty and served prison sentences in the United States. Subsidiaries Morgan Crucible and Morganite entered into a plea agreement with the U.S. Department of Justice. *Norris*, [2006] EWHC 280, paras. 11, 15.

74. See *Norris Second Superseding Indictment*, *supra* note 73, at 3; *Norris*, [2006] EWHC 280, para. 5.

questioned by the Antitrust Division of the Department of Justice or the federal grand jury, and destroying business files containing evidence of the anticompetitive agreement.⁷⁵

Morgan is headquartered in Windsor, England⁷⁶ and has two United States subsidiaries.⁷⁷ Norris was Chairman of the Carbon Division of Morgan from 1986 through 1998.⁷⁸ Subsequently, Norris was Morgan's CEO from 1998 through 2002.⁷⁹ While Norris was a Morgan employee, the company was a major global manufacturer of carbon and maintained a dominant market share in the United States.⁸⁰

Norris was indicted in the Eastern District of Pennsylvania in September 2003 for obstruction of justice and conspiracy charges.⁸¹ A superseding indictment was filed in October 2003, which added price fixing conspiracy charges.⁸² In September 2004, a second superseding indictment was filed which made reference to sentencing guidelines.⁸³

B. Norris's U.K. Extradition

English authorities issued an arrest warrant for Norris at the request of the U.S. Department of Justice on December 31, 2004, and Norris was arrested on January 13, 2005.⁸⁴ The Bow Street Magistrates' Court held the extradition hearing on May 10–12, 2005,⁸⁵ at which the District

75. Norris Indictment, *supra* note 72, at 3.

76. *Id.* at 1.

77. Morganite, Inc. is a subsidiary located in North Carolina, and Morgan Advanced Materials and Technology, Inc. is located in St. Mary's, Pennsylvania. *See Norris*, [2006] EWHC 280, para. 5.

78. *See* Norris Indictment, *supra* note 72, at 1.

79. *Id.*

80. *Norris*, [2006] EWHC 280, para. 5.

81. *See* Norris Indictment, *supra* note 72. The specific charges include: (i) violation of 18 U.S.C. § 37, conspiracy to commit offense or to defraud United States, (ii) violation of 18 U.S.C. § 1512(b)(1), knowingly . . . corruptly persuades another person . . . with intent to influence, delay, or prevent the testimony of any person in an official proceeding, and (iii) violation of 18 U.S.C. § 1512(b)(2)(B), to cause or induce any person to alter, destroy, mutilate, or conceal and object with intent to impair the object's integrity or availability for use in an official proceeding.

82. *See* United States of America v. Ian P. Norris, Criminal No. 03-632, Superseding Indictment (E.D. Pa. Oct. 15, 2003). The additional charge was violation of the Sherman Act, 15 U.S.C. § 1 ("every contract . . . in restraint of trade or commerce . . . with foreign nations, is declared to be illegal.").

83. *See* Norris Second Superseding Indictment, *supra* note 73.

84. *See Norris*, [2006] EWHC 280, para. 16.

85. *See* Extradition Act, 2003, c. 41, § 139(1)(a) ("The appropriate judge is, in England and Wales, a District Judge (Magistrates' Court) designated for the purposes of this Part by the Lord Chancellor . . .").

Judge concluded that no factors existed to properly bar Norris's extradition to the United States.⁸⁶ The case was sent to the Secretary of State of the Home Department ("Secretary of State") for a final extradition decision,⁸⁷ and on September 29, 2005, he ordered Norris's extradition.⁸⁸ Norris appealed the decisions of the District Judge and Secretary of State, but failed to persuade the Queen's Bench Administrative Court⁸⁹ to overturn the order for his extradition.⁹⁰ In January 2007, the High Court of the Queen's Bench Division rejected Norris's appeal.⁹¹ The House of Lords, the highest court in the United Kingdom, has granted Norris leave to appeal.⁹²

C. *The Appeal*—Norris v. Secretary of State for the Home Department

Norris appealed the Secretary of State's extradition order under section 108 of the 2003 Act.⁹³ The appeal encompassed two parts: (i) application for judicial review of the Secretary of State's decision to refuse Norris's request for removal of the United States as a designated territory⁹⁴ and

86. See *Norris*, [2006] EWHC 280, para. 16.

87. See Extradition Act, 2003, c. 41, § 70(1) ("The Secretary of State must issue a certificate under this section if he receives a valid request for the extradition to a category 2 territory of a person who is in the United Kingdom.").

88. See *Norris*, [2006] EWHC 280, para. 17. The Secretary of State makes the extradition decision based on the judge's decision from the extradition hearing. See Extradition Act, 2003, c. 41, §§ 70(1), 87(3), 93(4).

89. The Administrative Court is a division of the High Court Queen's Bench that exercises supervisory jurisdiction over inferior courts and tribunals. See Her Majesty's Court Service, <http://www.hmccourts-service.gov.uk/cms/admin.htm> (last visited Nov. 2, 2006).

90. See *Norris*, [2006] EWHC 280, para. 52.

91. *Norris v. United States of America*, [2007] EWHC 71 (Admin); see also Nikki Tait, *High Court Upholds Norris Extradition*, FIN. TIMES UK, Jan. 25, 2007 ("Two High Court judges dismissed arguments that the price-fixing charges of which Mr. Norris is accused were not a criminal offence in the UK at the time and could not be an 'extradition offence'").

92. Nina Goswami, *Norris Extradition Saga Goes to the Lords*, THE LAWYER, June 7, 2007.

93. Section 108 provides: "If the Secretary of State orders a person's extradition under this Part, the person may appeal to the High Court against the order." Extradition Act, 2003, c. 41, § 108(1). The Extradition Act 2003 created a statutory right to appeal to the High Court and provides for a right of appeal to the House of Lords. The Act creates separate rights of appeal against decisions of the judge and against an extradition order made by the Secretary of State. See *Birmingham*, [2006] EWHC 200, para. 11. This process replaced the traditional process where an extradition defendant appealed by way of an application for a writ of *habeas corpus as subjiciendum*. See KNOWLES, *supra* note 25, at 121–22.

94. See *Norris*, [2006] EWHC 280, para. 1.

(ii) statutory appeals regarding whether the offenses specified in the extradition request were “extradition offenses” under section 137 of the 2003 Act and whether any bars to extradition under the 2003 Act existed.⁹⁵ The Court issued an opinion on the judicial review issue, and postponed consideration of the statutory appeals as the issue was pending in the *Birmingham* case.⁹⁶

1. Should the United States Remain a Designated Category 2 Territory?

Norris argued that the United States should be removed from the list of countries designated under the Part 2 Order of the 2003 Act.⁹⁷ Norris’s position was that this designation, which exempts the United States from providing a prima facie case to extradite a U.K. citizen, was illegal and irrational because the designation under the 2003 Act contradicts the express terms of the 1972 Treaty.⁹⁸ Additionally, Norris argued that the Secretary of State’s refusal to remove the United States from this list of designated territories was also illegal.⁹⁹ The underlying substance of Norris’s argument was that the 1972 Treaty provided U.K. citizens with enforceable rights and protections, and that the Secretary of State’s designation of the United States as a Category 2 territory subject to a lower evidentiary standard violated those rights.¹⁰⁰

Additionally, Norris criticized the 2003 Act because the United Kingdom included the United States as a Category 2 territory based on the expectation that the 2003 Treaty would soon be ratified.¹⁰¹ Norris argued that the United Kingdom was misled and the Secretary of State’s Order was based on a misunderstanding.¹⁰² Interestingly, Norris’s argument echoes the political debate about the 2003 Act, and even implicates the criticism that there is a lack of reciprocity between the United States and the United Kingdom in extradition procedure.¹⁰³

95. *Id.* para. 2.

96. *Id.* para. 3.

97. *Id.* para. 18. The Order is S.I. 2003/3334. *See supra* notes 27–28 and accompanying text.

98. *See Norris*, [2006] EWHC 280, para. 35.

99. *Id.*

100. *Id.*

101. *Id.* para. 47.

102. *Id.* para. 47.

103. *Id.* para. 35. Norris argued that “[n]o sufficient effort has been made in the United States to seek ratification of the 2003 Treaty. The Government there had been ‘dilatory’, so that there is no immediate prospect of alleviating . . . a ‘glaring and continuing repugnance’ between the international obligations created by the 1972 Treaty, and the continuing application of s84(7) to the United States. Moreover, there is an imbalance and ‘lack

The Court rejected Norris's arguments, noting that the judiciary is not entitled to oversee the legislative process which led to the Order.¹⁰⁴ The Court focused on the legality of the Secretary of State's decision to refuse Norris's request for removal of the United States as a designated territory, and held that it was a legally sound decision.¹⁰⁵ Specifically, the Court stated that the 2003 Act grants the Secretary of State the power to make orders, which permitted the United Kingdom to grant other states greater assistance in the extradition process, and the 2003 Act does not restrict exercise of that power based on reciprocity.¹⁰⁶ The Court noted that nothing in the 2003 Act suggests that designation is dependent on a bilateral treaty between the United Kingdom and the requesting country.¹⁰⁷ In sum, the Court declined to compel the Secretary of State to remove the Order's designation to incite the United States to ratify the 2003 Treaty, and refused to impair the Secretary's powers under the 2003 Act by forcing him to remove the United States.¹⁰⁸ Moreover, part of Norris's argument is moot now that the 2003 Treaty has been ratified in the United States.¹⁰⁹

2. Is the Specified Offense an "Extradition Offense" Under Section 137?

The Court in *Norris* did not address whether or not the specified offense for which the United States was seeking Norris's extradition was an "extradition offense" under section 137 because the Queen's Bench was addressing its interpretation in *Birmingham*.¹¹⁰ At Norris's extradition hearing, the Bow Street Magistrates' Court found that the offenses specified in the United States' extradition request did in fact meet the requirements, and thus were "extradition offenses" as defined in section 137.¹¹¹ Norris challenged this finding in his appeal.¹¹² In *Birmingham*, the Queen's Bench discussed section 137 and its interpretation did not favor Norris. The Queen's Bench holding in *Birmingham* precludes Norris's argument that he should be tried in the United Kingdom for conduct that occurred there. Thus, Norris must rely on the argument that price

of reciprocity' in arrangements between the two sovereign states, which was never properly addressed." *Id.*; see *supra* Part I.B.

104. See *Norris*, [2006] EWHC 280, para. 45.

105. *Id.* para. 46.

106. *Id.* para. 45.

107. *Id.* para. 43.

108. *Id.* para. 52.

109. *Id.* para. 35.

110. *Id.* para. 3.

111. See Magistrates' Court Decision, para. 8.

112. See *Norris*, [2006] EWHC 280, para. 1.

fixing was not a crime in the United Kingdom when he allegedly participated in the carbon-products cartel, and the dual criminality requirement of section 137(2)(b) is not satisfied.¹¹³

Cartel participation was not a crime in the United Kingdom until enactment of the Enterprise Act 2002.¹¹⁴ The United States charged that Norris engaged in price fixing from 1986 until 2000.¹¹⁵ During this period, the Competition Act 1998 (“1998 Act”) took effect.¹¹⁶ The 1998 Act prohibited price fixing and market sharing agreements¹¹⁷ and imposed fines for violations,¹¹⁸ but did not impose a criminal penalty. Today, the Enterprise Act 2002 imposes criminal sanctions of up to five years imprisonment for individual cartel participation.¹¹⁹

The lack of a criminal cartel offense during the time of Norris’s alleged violations did not impede the U.S. Department of Justice from arguing in Norris’s extradition request that the dual criminality requirement was met.¹²⁰ Before the Enterprise Act 2002, the U.K. common law crime of conspiracy to defraud served to punish cartel participants where the agreement involved “dishonestly doing something prejudicial to an-

113. See Harris, *supra* note 13.

114. See Enterprise Act, 2002, c. 40, § 188. See also Julian M. Joshua, *The U.K.’s New Cartel Offence and Its Implication for EC Competition Law: a Tangled Web*, EUR. L. REV. 620, 620 (2003) [hereinafter Joshua, *Tangled Web*] (“[T]he U.K. government created a new criminal offense in the Enterprise Act 2002.”); Angus MacCulloch, *The Cartel Offence and the Criminalisation of United Kingdom Competition Law*, J. BUS. L. 616, 616 (2003) (“The introduction of the Cartel Offense in the Enterprise Act 2002 has been one of the more controversial elements of the U.K.’s recent competition law reforms.”).

115. See Norris Second Superseding Indictment, *supra* note 73, at 2.

116. Competition Act, 1998, c. 41. The Competition Act 1998 was created to harmonize U.K. competition law with EU competition law. See JOELSON, *supra* note 12, at 490. Prior to the 1998 Act, U.K. competition law was predominantly administrative, and “was perceived by many, although not all, to be toothless and ineffective.” MARK FURSE & SUSAN NASH, *THE CARTEL OFFENCE* 3 (2004).

117. See Competition Act, 1998, c. 41, § 2(2); JAMES FLYNN & JEMIMA STRATFORD, *COMPETITION, UNDERSTANDING THE 1998 ACT* 42 (1999).

118. See Competition Act, 1998, c. 3, § 36; FLYNN & STRATFORD, *supra* note 117, at 142.

119. See Enterprise Act, 2002, c. 40, § 190 (“(1) A person guilty of an offense under section 188 is liable- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both . . .”). Additionally, the Enterprise Act specifies that the cartel offense is an extraditable offense. Enterprise Act, 2002, c. 40, § 191.

120. See Magistrates’ Court Decision, para. 5. See also, Joshua, *supra* note 11, at 12–13 (“[T]he Crown Prosecution Service, representing the U.S. government, seized on the closing of this loophole to argue that the underlying hardcore cartel conduct alleged was punishable in England—not as price fixing, but as common law conspiracy to defraud.”).

other.”¹²¹ The 2003 Act applies to offenses that were committed both before and after it came into force.¹²² Thus, because the Magistrates’ Court found that conspiracy to defraud and the American price fixing charge met the dual criminality requirement, it deemed section 137(2)(b) satisfied and considered Norris’s conduct an extradition offense.¹²³

III. DISCUSSION

A. International Antitrust Enforcement

Antitrust enforcement was traditionally considered a domestic issue.¹²⁴ Today, the global economy demands that antitrust law and policy adopt an increasingly international perspective.¹²⁵ As globalization of markets and competition intensifies, anticompetitive practices by firms become international in scope, as do their negative economic effects.¹²⁶ However, there is no international law of antitrust¹²⁷ and several attempts at creating an international antitrust regime have failed.¹²⁸ Furthermore, despite

121. See Jeremy Lever & John Pike, *Cartel Agreements, Criminal Conspiracy and the Statutory “Cartel Offense”* (pt. 1), 26(2) EUR. COMPETITION L. REV. 90, 90.

122. See KNOWLES, *supra* note 25, at 21.

123. See Magistrates’ Court Decision, para. 8.

124. Lucio Lanucara, *The Globalization of Antitrust Enforcement: Governance Issues and Legal Responses*, 9 IND. J. GLOBAL LEGAL STUD. 433, 435 (2001–02) (“Until the 1980s, antitrust enforcement was perceived as an almost exclusively domestic issue.”).

125. See MAHER M. DABBAH, *THE INTERNATIONALISATION OF ANTITRUST POLICY* 13–14 (Cambridge University Press, 2003); Eleanor M. Fox, *Global Markets, National Law, and the Regulation of Business: a View From the Top*, 75 ST. JOHN’S L. REV. 383, 384 (2001) [hereinafter Fox, *Global Markets*] (“Because of spill-overs, nationalism, and lack of vision, national law may have a poor fit with transnational problems.”).

126. DABBAH, *supra* note 125, at 14; Fox, *Global Markets*, *supra* note 125, at 383 (“[M]arket problems that were once national are now of international dimension.”); Organisation for Economic Co-operation and Development, *Hard Core Cartels, Recent Progress and Challenges Ahead*, 30 (2003), available with a subscription at <http://www1.oecd.org/publications/e-book/2403011E.PDF> [hereinafter OECD *Hard Core Cartels*] (“Globalisation and the internationalisation of markets have had a profound effect on competition law enforcement.”).

127. See Joseph P. Griffin, *Foreign Governmental Reactions to U.S. Assertions of Extraterritorial Jurisdiction*, 19(2) EUR. COMPETITION L. REV. 64, 64 (1998). Spencer Weber Waller, *The Internationalization of Antitrust Enforcement*, 77 B.U. L. REV. 343, 344 (1997).

128. See Edward T. Swaine, *The Local Law of Global Antitrust*, 43 WM. & MARY L. REV. 627, 632 (2001); Waller, *supra* note 127, 349 (“There have been five great attempts to achieve a true international . . . competition law in the twentieth century. None has been successful.”); see generally William Sugden, *Global Antitrust and the Evolution of an International Standard*, 35 VAND. J. TRANSNAT’L L. 989 (2002) (“Efforts to globalize

the proliferation of competition law globally,¹²⁹ legislation varies significantly by nation, and no single model applies across borders.¹³⁰ Yet, international enforcement of antitrust remains at the forefront of discussion in the antitrust legal community.¹³¹

There is generally global consensus on prohibiting hard core cartels and agreement on the economic harm they cause.¹³² Nonetheless, criminal legislation against price fixing cartels is scarce across the world.¹³³ Criminalization of cartel behavior is critical to effective international antitrust enforcement.¹³⁴ Moreover, as the number of cartels that operate internationally increases, a global perspective is essential to successful enforcement.¹³⁵

Increased cooperation among worldwide antitrust authorities has led to recent success in international antitrust enforcement for national authorities.¹³⁶ Bilateral agreements are the most common form of antitrust cooperation.¹³⁷ Additionally, the United States has successfully convinced

antitrust have a long history. Unfortunately, that history is marked more by failure than success.”).

129. Over ninety countries, which account for almost eighty percent of world production, currently have competition laws in place. Diane P. Wood, *International Harmonization of Antitrust Law: The Tortoise or the Hare?*, 3 CHI. J. INT'L L. 391, 392 (2002).

130. JOELSON, *supra* note 12, at 6.

131. Scholars disagree about “the desirability and the feasibility of an international competition law system.” See Waller, *supra* note 127, at 345. On one hand, skeptics doubt the viability of an international antitrust code or even extensive harmonization of international laws. See, e.g., Wood, *supra* note 129, at 405. On the other hand, others advocate for an international antitrust regime and favor harmonization of competition law. See, e.g., Eleanor M. Fox, *International Coordination of Competition Policy: Does Global Antitrust Law Have a Future*, 43 VA. J. INT'L L. 911 (2003).

132. See Wood, *supra* note 129, at 395; Waller, *supra* note 127, at 404; OECD *Hard Core Cartels*, *supra* note 126, at 8–9 (“[T]he total harm from cartels is significant indeed, surely amounting to many billions of dollars [of affected commerce] each year.”).

133. Joshua, *Tangled Web*, *supra* note 114, at 2 n.1. (“To date, besides the US and Canada—and now the U.K.—France, Greece, Ireland, Israel, Japan, Slovak Republic, Norway, and South Korea have some type of criminal law enforcement [for hard core cartels]. . . . Only a limited number of countries provide for sanctions of imprisonment . . .”); OECD *Hard Core Cartels*, *supra* note 126, at 29.

134. See Joshua, *supra* note 11, at 13.

135. See OECD *Hard Core Cartels*, *supra* note 126, at 30.

136. See Terry Calvani, *Conflict, Cooperation, And Convergence in International Competition*, 72 ANTITRUST L.J. 1127, 1127 (“Cooperation is the order of the day.”); Laurence K. Gustafson, *Criminal Consequences of Anticompetitive Conduct*, 45 S. TEX. L. REV. 89, 90 (2003); Waller, *supra* note 127, at 360; OECD *Hard Core Cartels*, *supra* note 126, at 30–31.

137. Waller, *supra* note 127, at 362.

several governments to adopt enforcement policies similar to its own.¹³⁸ International organizations like the International Competition Network and the Organization for Economic Cooperation and Development (“OECD”) also assist coordination of global efforts and the sharing of best practices between participating nations.¹³⁹ Nonetheless, the recent trend towards cooperation has been embraced by some countries more enthusiastically than others.¹⁴⁰

B. U.S. Cartel Policy and Extraterritorial Jurisdiction

The United States has aggressively enforced antitrust law for over a hundred years.¹⁴¹ In the United States, collusion among competitors is viewed as the “supreme evil of antitrust.”¹⁴² Prosecuting cartels is a high priority for the United States, particularly international price fixing cartels.¹⁴³ In 2006, the Antitrust Division of the Department of Justice obtained fines of \$473 million and brought criminal cases against sixty-nine firms.¹⁴⁴ In fact, the United States has created a specialized criminal enforcement team that focuses on hard core collusive activity.¹⁴⁵ A Sherman Act section 1 violation is a felony punishable by fines up to

138. “Canada, the United Kingdom, Germany, France, and the European Union have adopted programs similar to the United States programs that encourage pleas and provide leniency for cooperating corporations.” See Gustafson, *supra* note 136, at 95.

139. *Id.* at 95–96. The International Competition Network is an international body that “by enhancing convergence and cooperation, . . . promotes more efficient, effective antitrust enforcement worldwide.” International Competition Network, <http://www.internationalcompetitionnetwork.org> (last visited Oct. 27, 2007).

140. For example, the developing world supports primary commodity cartels and opposes any foreign efforts to extraterritorially apply antitrust laws to limit such cartels. See SPENCER WEBER WALLER, *ANTITRUST AND AMERICAN BUSINESS ABROAD*, § 4:2 (2006) [hereinafter WALLER, *ANTITRUST ABROAD*]. *But see* Calvani, *supra* note 136, at 1130.

141. The Sherman Act was adopted in 1890. As amended, the Sherman Act is set forth in 15 U.S.C. §§ 1–7 (2004).

142. *Verizon Communications, Inc v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 408 (2004). See also ANTITRUST DIVISION UPDATE, *supra* note 8 (discussing the *Trinko* decision and noting that cartel enforcement is a high priority of the Antitrust Division).

143. Sheryl A. Brown, *Antitrust Violations*, 43 AM. CRIM. L. REV. 217, 251 (Spring 2006) (“In 1994, the Clinton Administration simplified cooperation in antitrust enforcement between the United States and foreign nations by signing the International Antitrust Enforcement Act. Consequently, aggressive international enforcement of criminal antitrust laws and the prosecution of international price-fixing cartels have become top priorities for the Antitrust Division.”).

144. Thomas O. Barnett, Assistant Att’y Gen., Antitrust Div., U.S. Dep’t of Justice, Speech at the Fordham Competition Law Institute’s Annual Conference of International Antitrust Law and Policy: Criminal Enforcement of Antitrust Laws: The U.S. Model, 1 (September 14, 2006).

145. *Id.* at 2.

\$100 million for corporations, and \$1 million or up to ten years of imprisonment for individuals.¹⁴⁶

The United States applied the Sherman Act extraterritorially as early as 1945. In *United States v. Aluminum Company of America (Alcoa)*,¹⁴⁷ the Second Circuit, sitting for the Supreme Court,¹⁴⁸ held a Canadian corporation liable for Sherman Act violations for conduct that occurred in Canada but had consequences within the United States.¹⁴⁹ The court acknowledged that imposition of liability upon non-citizens for conduct that occurs abroad but violates local law was “settled law.”¹⁵⁰ The *Alcoa* effects doctrine, as it came to be known, dominated transnational antitrust jurisprudence for many years.¹⁵¹

Over time, the extraterritorial reach of U.S. antitrust law flourished.¹⁵² The ability of domestic plaintiffs to bring American antitrust claims against foreign defendants,¹⁵³ and foreign plaintiffs to bring American

146. See 15 U.S.C. § 1 (“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”). These penalties were increased by a 2004 Amendment to the Sherman Act.

147. *United States v. Aluminum Company of America*, 148 F.2d 416 (1945).

148. See 322 U.S. 716 (1944) (transferring the case to the Second Circuit Court of Appeals for want of a quorum of qualified justices on the Supreme Court of the United States).

149. See *Alcoa*, 148 F.2d at 443–44. Aluminum Limited was a Canadian corporation that managed the Aluminum Company of America’s properties which were outside of the United States. *Id.* at 439. The court found that Aluminum Limited’s cartel agreements that fixed production quotas and later substituted the quota system for a system of royalties were violative of the Sherman Act. *Id.* at 442–43. See also *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 582 (1986) (refusing recovery under the Sherman Act for an alleged cartel in the Japanese market, because “American antitrust laws do not regulate the competitive conditions of other nations’ economies”).

150. See *Alcoa*, 148 F.2d at 443 (stating 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”). This approach is known as “objective territoriality,” a subset of territorial jurisdiction, one of the five generally accepted bases of international jurisdiction. The other four bases of international jurisdiction are nationality, passive personality, protective principle, and universality. See Ellen S. Podgor, “*Defensive Territoriality*: A New Paradigm for the Prosecution of Extraterritorial Business Crimes,” 31 GA. J. INT’L & COMP. L. 1, 9–10 (2002).

151. See JOELSON, *supra* note 12, at 49.

152. For a succinct summary of the evolution of extraterritorial application of U.S. antitrust laws, see S. Lynn Diamond, Note, *Empagran, the FTAIA and Extraterritorial Effects: Guidance to Courts Facing Questions of Antitrust Jurisdiction Still Lacking*, 31 BROOK. J. INT’L L. 805, 811–15 (2006).

153. In *Hartford Fire Insurance Company v. California*, the Supreme Court held that application of the Sherman Act against a London reinsurance broker that engaged in con-

antitrust claims against domestic defendants,¹⁵⁴ was only limited by the principle of international comity¹⁵⁵ and the Foreign Trade Antitrust Improvement Act.¹⁵⁶ When presented the opportunity to extend U.S. jurisdiction even further and allow foreign plaintiffs to litigate in the United States against foreign defendants for an injury suffered abroad, the Supreme Court, in *F. Hoffmann-La Roche Ltd v. Empagran S.A.*, declined to do so.¹⁵⁷

Still, the Antitrust Division of the U.S. Department of Justice exercises jurisdiction to the extent the law will allow.¹⁵⁸ Moreover, a United States decision to prosecute an antitrust action reflects an Executive Branch determination that the “importance of antitrust enforcement outweighs any relevant policy concerns.”¹⁵⁹ As such, the Department of Justice states, courts should not engage in a comity analysis as to “second-guess the executive branch’s judgment.”¹⁶⁰

When determining whether to assert jurisdiction in an antitrust action, the Antitrust Division accounts for international comity.¹⁶¹ In its analysis, the Antitrust Division will consider factors such as the “relative significance of the alleged violation within the United States as compared to conduct abroad,” “the nationality of the persons involved,” “the degree of conflict with foreign law or . . . economic policies,” and the “effec-

spiracies to affect the U.S. insurance market was proper. The court rejected the London reinsurer’s argument that jurisdiction was contrary to the principle of international comity, finding that “the London reinsurers’ express purpose to affect United States commerce and the substantial nature of the effect produced, outweighed the supposed conflict that required the exercise of jurisdiction in this litigation.” See 509 U.S. 764, 796 (1993).

154. See, e.g., *Pfizer, Inc. v. Gov’t of India*, 434 U.S. 308 (1978).

155. See U.S. Department of Justice and the Federal Trade Commission, Antitrust Enforcement Guidelines for International Operations (1995) § 3.2 [hereinafter Guidelines for International Operations], available at <http://www.usdoj.gov/atr/public/guidelines/international.htm>.

156. See *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 158 (2004) (“The Foreign Trade Antitrust Improvements Act of 1982 (FTAIA) excludes from the Sherman Act’s reach much anticompetitive conduct that causes only foreign injury.”).

157. *Id.* at 175.

158. See Guidelines for International Operations, *supra* note 155, § 3.1.

159. *Id.* § 3.2.

160. *Id.* This position has been criticized as a “broad assertion of power” that fails to “cite . . . precedent for applying one jurisdictional standard to government prosecutions and another to private suits,” fails to note that “Congress is given responsibility under the Constitution for regulating commerce with foreign nations,” and disregards the fact that a “court must construe the application of the antitrust laws to foreign commerce as Congress, not the executive branch, deems appropriate.” Joseph P. Griffin, *Extraterritoriality in U.S. and EU Antitrust Enforcement*, 67 ANTITRUST L.J. 159, 189–90 (1999).

161. See Guidelines for International Operations, *supra* note 155, § 3.2.

tiveness of foreign enforcement as compared to U.S. action.”¹⁶² The decision about whether to pursue a case is nonetheless highly discretionary, and ultimately if a foreign country’s antitrust regime does not align with U.S. policies, the factors outlined for consideration by the Antitrust Division weigh in favor of exercising jurisdiction.¹⁶³

C. U.K. Cartel Policy and Extraterritorial Jurisdiction

U.K. competition law aims to correct distortions to the competitive process within the United Kingdom.¹⁶⁴ In contrast with the United States, where private enforcement of antitrust laws is common, the United Kingdom only recently recognized a private right of action for violations of U.K. competition law.¹⁶⁵ Another significant difference between U.K. and U.S. cartel law is liability of corporations.¹⁶⁶ The U.K. Enterprise Act cartel offense does not provide for corporate criminal liability, whereas in the United States corporations may be held liable for any anti-trust violation.¹⁶⁷ In addition, as a member of the European Community (“EC”), the United Kingdom must enforce its competition policy within that of the EC, which itself has an active competition regime.¹⁶⁸

The United Kingdom also views cartels as criminal, but not until relatively recently with the enactment of the Enterprise Act 2002 (“2002 Act”). Deterrence was the main objective of introducing a criminal offense for cartel participation with the 2002 Act.¹⁶⁹ Creation of the crimi-

162. *Id.*

163. *Id.*

164. See Enterprise Bill, Bill [115], Research Paper 02/21, Apr. 4, 2002, 16.

165. See Barry Rodger, *Competition Law Litigation in the U.K. Courts: A Study of All Cases to 2004*, 27(5) EUR. COMPETITION L. REV. 241 (2006).

166. Compare Enterprise Act, 2002, c. 40. § 188 (“An individual is guilty of an offence if he dishonestly agrees . . .”) and Joshua, *Tangled Web*, *supra* note 114, 623 (stating that “[t]he offence can be committed only by an individual, not a company”), with Sherman Act, 15 U.S.C. § 7 (“The word ‘person’ or ‘persons,’ wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.”).

167. See Enterprise Act, 2002, c. 40. § 188; 15 U.S.C. § 7.

168. See FURSE & NASH, *supra* note 116, at 6.

169. See MacCulloch, *supra* note 114, at 616. Deterrence is a common aim of including criminal sanctions in cartel legislation, and one that is recommended by the OECD. See OECD *Hard Core Cartels*, *supra* note 126, at 27, 30; Patricia Hanh Rosochowicz, *The Appropriateness of Criminal Sanctions in Enforcement of Competition Law*, 25(12) EUR. COMPETITION L. REV. 752, 753 (2004).

nal cartel offense was a controversial element of the 2002 Act.¹⁷⁰ Some regard it as “one of the most significant developments in U.K. criminal justice policy in the last decade.”¹⁷¹ Indeed, it may demonstrate that the United Kingdom’s perspective on competition is converging with that of the United States, which is perhaps why the British government is willing to proceed with Norris’s extradition today.¹⁷²

Although the United Kingdom has taken steps towards aligning its competition policy with that of the United States, there are differences which may prove significant.¹⁷³ Specifically, the U.K. cartel offense incorporates a “dishonesty” requirement.¹⁷⁴ The drafters of the 2002 Act argue that the dishonesty requirement communicates the seriousness of the offense, but some critics maintain that because the term “dishonesty” is undefined,¹⁷⁵ it will lead to great difficulty in successfully convicting offenders.¹⁷⁶ This element of the cartel offense contrasts greatly with the U.S. Sherman Act, which is based on conspiracy, and likely will lead to greatly varied enforcement.¹⁷⁷

Historically, the United Kingdom was hostile to extraterritorial enforcement of American antitrust law.¹⁷⁸ In the 1960s and 1970s, the United Kingdom enacted retaliatory legislation known as “blocking statutes” in an effort to curb extraterritorial enforcement of U.S. antitrust law by American courts.¹⁷⁹ When the United States exercised jurisdiction

170. See Enterprise Bill, Bill [115], Research Paper 02/21, Apr. 4, 2002, 53, available at <http://www.parliament.uk/commons/lib/research/rp2002/rp02-021.pdf>. See e.g., MacCulloch, *supra* note 114, at 616.

171. Joshua, *Tangled Web*, *supra* note 114, at 620; see MacCulloch, *supra* note 114, at 616.

172. See Joshua, *supra* note 11, at 13 (“Ironically, it was not the U.K.’s criminalization of cartels as such but rather the change in official perceptions that led the US to request Mr. Norris’s extradition.”); MacCulloch, *supra* note 114, at 616 (“The Cartel Offence reflects a move within the U.K. regime towards a dual alignment adapting . . . elements from the US antitrust regime . . .”).

173. See Joshua, *Tangled Web*, *supra* note 114, at 625.

174. *Id.* at 624–25. See also Enterprise Act, 2002, c. 40, § 188 (“An individual is guilty of an offence if he dishonestly agrees with one or more other persons to make or implement, or to cause to be made or implemented, arrangements of the following kind relating to at least two undertakings (A and B).”).

175. “The definition of ‘dishonesty’ under English law largely stems from cases under the Theft Act 1968. Dishonesty is a matter of fact, not law, for the jury to decide in light of the particular circumstances of the case.” MacCulloch, *supra* note 114, at 621.

176. See Joshua, *Tangled Web*, *supra* note 114, at 626.

177. *Id.* at 625.

178. See MacCulloch, *supra* note 114, at 623.

179. See Anthony J. Carroll, *The Extraterritorial Enforcement of U.S. Antitrust Laws and Retaliatory Legislation in the United Kingdom and Australia*, 13 DENV. J. INT’L L. & POL’Y 377, 377 (1984) (discussing the British Protection of Trading Interests Act of 1980

over British citizens whose anticompetitive acts took place in the United Kingdom, the United Kingdom objected and refused to compel its citizens to cooperate with American pre-trial discovery.¹⁸⁰ Conflict ensued for many years because competition policy was considered an American ideal.¹⁸¹

The United Kingdom's approach to extraterritorial jurisdiction in the context of antitrust, particularly the effects doctrine, is markedly different from that of the United States.¹⁸² The United Kingdom has generally opposed the effects doctrine.¹⁸³ The United Kingdom expressed the view that jurisdiction may only be exercised in antitrust matters over foreign corporations on the basis of either the territorial principle or the nationality principle,¹⁸⁴ and even then it should be narrowly applied.¹⁸⁵ Specifically, with regard to the territorial principle, the United Kingdom stated that extraterritorial jurisdiction was justified only if conduct of the foreign national or foreign corporation took place within the state claiming jurisdiction.¹⁸⁶

D. Extradition for Antitrust Offenders

According to U.S. law, the United States may unquestionably exercise jurisdiction over Norris for his participation in a cartel that impacted American commerce.¹⁸⁷ But, is it prudent for the United States to inter-

and its retaliatory nature in response to United States prosecution of a uranium cartel); *see also* Lanucara, *supra* note 124, at 436 (“[T]he extraterritorial exercise of sovereignty by U.S. authorities, sanctioned by U.S. courts, was met by resistance from European partners, especially France and the United Kingdom.”).

180. *See, e.g.*, *Rio Tinto Zinc Corp. v. Westinghouse Electric Corp.*, [1978] A.C. 547 (H.L.) (addressing an American request for oral examination and production of documents from U.K. citizens in relation to the existence of an international uranium cartel).

181. *Calvani, supra* note 136, at 1130.

182. *See* Tapio Puurunen, *The Legislative Jurisdiction of States Over Transactions in International Electronic Commerce*, 18 J. MARSHALL J. COMPUTER & INFO. L. 689, 720 (2000) (illustrating British and American interpretations of the objective territorial principle with the effects doctrine).

183. *See* IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 315 (5th ed. 1998).

184. *See supra* note 149.

185. *See* Statement of Principles According to Which, in the View of the United Kingdom Government, Jurisdiction May Be Exercised Over Foreign Corporations in Antitrust Matters, *reprinted in* BROWNLIE, *supra* note 183, at 316–17.

186. *Id.* at 316–17.

187. *See* *United States v. Nippon Paper Indus.*, 109 F.3d 1, 9 (1st Cir. 1997) (reversing dismissal of a Sherman Act suit against a Japanese corporation where the price fixing activities took place entirely in Japan); *Hartford Fire*, 509 U.S. at 796 (“[I]t is well estab-

vene in the conduct of insulated foreign parties?¹⁸⁸ Domestic regulators and prosecutors have the discretion to exercise such jurisdiction,¹⁸⁹ which undoubtedly implicates foreign policy and may have economic ramifications. Moreover, using extradition to prosecute foreign nationals for U.S. antitrust violations may result in improper application of the law by courts eager to further their national competition policy. As seen in *Norris*, this may result in an unjust retroactive application of recently implemented competition policy.

The argument in favor of enforcing U.S. antitrust laws on foreign parties is based on the assumption that all parties that participate in U.S. markets, both domestic and foreign, benefit from the transparency of the U.S. market and openness of market information.¹⁹⁰ Furthermore, the United States has an interest in preserving market order.¹⁹¹ By enforcing its antitrust laws against hard core international cartels, the United States is arguably addressing a problem that concerns the international community as a whole.¹⁹² Still, there exists a tension between the benefits to be gained by global enforcement and jurisdictional norms within the international community.¹⁹³

One approach to extraterritorial jurisdiction over business crimes, including antitrust violations, is “defensive territoriality.”¹⁹⁴ The theory of defensive territoriality argues that the United States should exercise jurisdiction over business crimes on a limited basis, and should take a defensive approach. By this theory, the United States should only prosecute when it is necessary for protection, when a U.S. administrative agency controls the business entity, or when the business entity acted outside the United States to intentionally evade U.S. jurisdiction.¹⁹⁵ The rationale behind this principle is that prosecution of certain crimes is subject to the “whims of prosecutors” and political agendas, and extraterritorial prosecution is potentially limitless in the era of globalization.¹⁹⁶ Additionally,

lished by now that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States.”).

188. See S.W. O'Donnell, *Antitrust Subject Matter Jurisdiction Over State Owned Enterprises and the End of Prudential Prophylactic Judicial Doctrines*, 26 SUFFOLK TRANSNAT'L L. REV. 247, 261 (2003).

189. *Id.*

190. *Id.* at 259.

191. *Id.*

192. See Hannah L. Buxbaum, *Transnational Regulatory Litigation*, 46 VA. J. INT'L L. 251, 271 (2006).

193. *Id.* at 255.

194. See generally Podgor, *supra* note 150.

195. *Id.* at 28.

196. *Id.* at 24.

defensive territoriality argues that the uniqueness of business crimes, as distinct from other transnational crimes like terrorism, calls for limited application of U.S. law extraterritorially.¹⁹⁷ That is, because business crimes can be related to a legitimate entity, globalization has impacted business, and business crimes have both a criminal and civil dimension, the United States should limit extraterritorial prosecution of them.¹⁹⁸

On the other hand, one may argue that it is efficient for the United States, with a developed body of antitrust law and powerful remedies, to reach as far as the law may allow in order to stop anticompetitive practices that harm the global economy. This argument may be persuasive in the context of cartels, where the general consensus is that cartels should be eliminated. However, this position fails for several reasons. First, although many nations have competition laws, their attitude and policies about the aims of such legislation differ.¹⁹⁹ Even when a foreign jurisdiction has a viable antitrust regime, enforcement techniques may differ substantially.²⁰⁰ Second, many countries resent imposition of American economic policies and laws, and oppose aggressive enforcement against their citizens or businesses.²⁰¹ And finally, there may be economic implications such as hostility towards American business.²⁰² This rationale for limited exercise of U.S. antitrust jurisdiction, despite potential efficiency, weighs in favor of limited pursuit of extradition for antitrust violations.

CONCLUSION

In *Norris*, the Court properly held it was not a matter for the judiciary to determine whether the United States should be removed as a designated territory under the Extradition 2003. However, the Court should have decided that the dual criminality requirement was not met without awaiting determination of the *Birmingham* decision. When *Norris* allegedly engaged in the price fixing agreements, cartel participation was not a crime in the United Kingdom. The Court erred by allowing common law conspiracy to defraud to serve as the comparable U.K. offense. Moreover, the common law conspiracy to defraud has never been suc-

197. *Id.* at 15–16.

198. *Id.* at 16–18.

199. WALLER, ANTITRUST ABROAD, *supra* note 140, § 4:1.

200. *Id.*

201. *Id.*

202. *Id.*; see also O'Shea, *supra* note 53 (“[A]ttempting to manage a company in accordance with a less predictable legal environment will be costly for business in the short term and is likely to lead to increasing risk-aversion. It would be bizarre if a side-effect of internationalized law enforcement was a more defensive approach to overseas investment and a retreat from wider markets by U.K. businesses.”).

cessfully prosecuted in the United Kingdom where the underlying conduct was cartel participation.²⁰³

Although the U.S. Department of Justice may be enthusiastic about the potential to use extradition to reach antitrust violators,²⁰⁴ the United States should pursue extradition of foreign antitrust offenders only on a limited basis. The *Norris* case illustrates the potential consequences of the United States flexing its antitrust muscle in the United Kingdom. In light of the negative public reaction in the United Kingdom to the *Norris* extradition, there is a risk of history repeating itself with blocking legislation or other protective measures. Those consequences may amplify if the same efforts are directed towards a less friendly nation.

Extradition of antitrust offenders allows the United States to expand the global reach of its antitrust policy. It implicates significant foreign policy considerations and may also frustrate effective global antitrust enforcement.²⁰⁵ Further, there may be economic ramifications if foreign enterprises view the United States as a risky place to transact their business because of increased exposure to criminal antitrust prosecution. In sum, the United States should approach use of extradition to prosecute antitrust violations with caution and exercise limited discretion in determining when to pursue extradition as an avenue for enforcement.

*Jill Kaden Grant**

203. See Osgood, *supra* note 16, at 38; Husnara Begum, *BA Cartel Probe sees OFT Test Its Criminal Powers Post-Enterprise Act*, THE LAWYER, November 6, 2006.

204. See Hammond Speech, *supra* note 1, at 10.

205. See WALLER, ANTITRUST ABROAD, *supra* note 140, § 4:1. For example, countries that resent American involvement in their nation's business affairs may refuse to extradite and may not cooperate with American discovery requests. *Id.*

* B.S., Pennsylvania State University (1999); J.D., Brooklyn Law School (expected 2008). Thanks to the editors and staff of the *Brooklyn Journal of International Law*, especially Alida Lasker and Shannon Haley, for their assistance in the preparation of this Note. Additional thanks to Jean Davis and Victoria Szymczak, for without their research guidance this Note would not have been possible. Most of all, thanks to Michael, my husband, my family, and friends for their support throughout my education.