BE IT RESOLVED, that the American Bar Association recommends that the Federal Trade Commission amend §4.1(a)(1) of its rules of practice to grant the right to appear before it to foreign lawyers who are authorized to practice before a foreign competition law tribunal or agency that extends reciprocal rights to American lawyers.
The Section of Antitrust Law of the American Bar Association recommends that the Association urge the Federal Trade Commission ("FTC") to amend §4.1(a)(1) of its rules of practice to grant the right to appear before it to foreign lawyers who are authorized to practice before a foreign competition law tribunal or agency that extends reciprocal rights to American lawyers. The principal reason for this proposed amendment is to extend to foreign lawyers who practice competition law before the Commission of the European Community the same rights to practice before the Federal Trade Commission that the EC Commission extends to American Lawyers.

Section 4.1(a)(1) of the FTC's rules of practice currently reads:

"Members of the bar of a federal court or of the highest court of any State or Territory of the United States are eligible to practice before the Commission."

The Section of Antitrust suggests that the following sentence be added to this section:

"A foreign lawyer who is authorized to practice before a foreign competition law tribunal or agency that permits U.S. lawyers to practice before it shall be eligible to practice before the Commission; provided, however, that a foreign lawyer desiring to appear before the Commission may be required to show to the satisfaction of the Commission his acceptability to act in that capacity."

Article 9 of Regulation No. 99/63/EEC of the EC Commission provides that persons summoned before the EC Commission shall appear either in person or be represented by legal representatives and may be assisted by "lawyers or university teachers who are entitled to plead before the Court of Justice of the European Community in accordance with Article 17 of the Protocol on the Statute of the Court, or by other qualified persons." To date, the EC Commission has
interpreted "other qualified persons" to include foreign
counsel who are not admitted to practice in a Member State.
Thus, the EC Commission has traditionally permitted American
lawyers to appear before it on competition matters.

In extending reciprocal rights to foreign lawyers
authorized to practice before the EC Commission, or other
foreign competition tribunals or agencies that extend similar
privileges to American lawyers, the Federal Trade Commission
would be following the example of the U.S. International Trade
Commission ("ITC"). The ITC currently permits foreign lawyers
to appear before it, subject to a provision that they may be
required to demonstrate to the ITC's satisfaction their
acceptability to serve in that capacity. This has permitted
the ITC, for example, to deny non-English speaking lawyers the
right to appear before it where allowing them to do so would
have created serious administrative problems.

The proposed amendment, together with the
Commission's other rules, would give the Commission ample
authority to assure the responsible conduct of foreign lawyers
appearing before it. The proposed amendment would give the
Commission the right to require that a foreign lawyer show that
he is capable of adequately representing a client before it.
In addition, the Commission's existing disciplinary rules
permit the Commission, or an Administrative Law Judge, to debar
or suspend any lawyer, including foreign lawyers, from
appearing before it if they conduct themselves in a manner
inconsistent with the canons of ethics applicable to U.S.
lawyers practicing before the federal courts. This provision
would provide the Commission authority to discipline a foreign
lawyer who violated a protective order or any other order
issued by the Commission or an Administrative Law Judge in the
course of a proceeding before it.

Failure to amend the Commission's rules to grant
reciprocal rights to foreign lawyers may jeopardize the
continued ability of American lawyers to represent their
clients before the EC Commission. Accordingly, the Antitrust
Section recommends that the FTC approve this proposed rule
change.

Respectfully submitted,

Harry M. Reasoner
Chair

August, 1990
1. **Summary of Recommendation(s).**

The Section is recommending that the ABA recommend that the Federal Trade Commission amend §4.1(a)(1) of its rules of practice to grant the right to appear before it to foreign lawyers who are authorized to practice before a foreign competition law tribunal or agency that extends reciprocal rights to American lawyers.

2. **Approval by Submitting Entity.**

The Council of the Section of Antitrust Law approved the recommendation and accompanying report on August 5, 1990.

3. **Previous submission to the House or relevant Association position.**

None.

4. **Need for Action at This Meeting.**

Failure to amend the Commission's rules to grant the reciprocal rights to foreign lawyers may jeopardize the continued ability of American lawyers to represent their clients before the EC Commission.

5. **Status of Legislation.**

6. **Cost to the Association.**

N/A

7. **Disclosure of Interest.**

None.

8. **Referrals.**
9. **Contact Person.** (Prior to meeting.)

10. **Contact Person.** (Who will present the report to the House.)

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