

Section of Antitrust Law (Annual Meeting 1991)

BE IT RESOLVED, That the American Bar Association makes following recommendations with respect to international antitrust law:

1. Nations should adopt strong, clear laws against cartels. Nations should strengthen their anticartel enforcement offices, the procedures for enforcing the law and the penalties for infringing it.
2. Nations should eliminate exceptions from the anticartel principle, including: a. Export Cartels. Nations should enter into an agreement to repeal export cartel exemptions and should enforce their laws against export cartels. Exporting nations should cooperate with importing nations that seek to enforce the latter's laws against export cartels. Legitimate joint ventures should be distinguished and facilitated. b. Import Cartels. Nations should enforce laws against import cartels and should cooperate with law enforcement of exporting nations whose exporting businesses are harmed by exclusionary cartels.
3. Courts should be reluctant to dismiss cases involving cartels that target or disproportionately affect their nationals or people or firms in their territory where dismissal is sought on grounds of allegedly conflicting foreign law or policy.
4. In the enforcement of laws dealing with transnational mergers, nations should harmonize reporting and waiting requirements and enforcers should consult, lend aid in discovery, and in appropriate cases, defer in exercising their own enforcement jurisdiction so as to facilitate and not frustrate salutary transactions.