

Application for Grant

INSTITUTE FOR INTERNATIONAL
AND
FOREIGN TRADE LAW
Georgetown University Law Center
Washington, D. C.

INSTITUT FUER AUSLAENDISCHES
UND
INTERNATIONALES WIRTSCHAFTSRECHT
Johann Wolfgang Goethe Universitaet
Frankfurt/Main
Germany

1962

APPLICATION FOR GRANT

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I. Introduction

The Frankfurt and Georgetown Institutes have collaborated since 1947 on a joint program of research scholarship.

This joint research has concentrated on national and international trade regulation, coordinated with research on the historical background of pertinent legal institutions. (A partial list of the studies conducted by exchange students and professors within the scope of the joint program is attached hereto.) It grew out of a systematic program of exchange of professors and graduate students between Georgetown and Frankfurt, which began with the visit of Walter Hallstein, then of Frankfurt University, to Georgetown. The experience has demonstrated that an exchange program becomes really successful to the extent that it is conducted as part of a program of joint research, and that, at the same time, such cooperative research develops best through a planned and permanent coordination of the work of two or more institutions of higher learning.

The program has received the enthusiastic support and assistance of practitioners in the two countries, of businessmen, and of the respective governments. Operating under the auspices and guidance of the two Universities, the Institutes have been financed from the funds of the two Universities, by private grants, and from West German government support.

The Institutes, on the basis of this experience, propose to strengthen and expand their program. Relatively little by way of additional funds could have a far-reaching effect. The Institutes propose (a) to broaden their respective research facilities, (b) to extend the teacher and student exchange programs, (c) to conduct annual conferences on issues of current importance in the field of international trade law and (d) to arrange seminars and workshops with the law faculties and student bodies of their respective mother universities, all to be coordinated with the established teacher and student exchange and research activities. The financial support requested herein will make this expanded program possible.

II. The Institutes

The Institut fuer Auslaendisches und Internationales Wirtschaftsrecht (The Frankfurt Institute) was established by the Johann Wolfgang Goethe Universitaet in Frankfurt/Main for the purpose of special studies in the field of international trade law. Its staff comprises three directors, each with the status of full professor, two assistants, and five legal assistants. Financial support is extended by the Government of the Federal Republic of Germany, the State of Hesse, and the City of Frankfurt/Main. The Institute maintains close relations with the Max Planck Institutes for Public and Private International Law in Heidelberg and Hamburg and with universities in Switzerland, France and Italy. At various times, especially in 1958 and 1959, the chemical, coal and steel industries of Germany have evinced an interest in the Institute's work on current problems and have donated funds to further that work.

It maintains an extensive library, including a complete set of United States federal court reports and a substantial body of state court reports, and is able to make available a rich collection of German and international source materials. Its members are in

communication with lawyers, scholars and businessmen throughout Europe. As a consequence, the Institute enjoys an enviable reputation as a European center of careful, systematic research in various fields of international trade law.

Frankfurt University and Georgetown University began building the joint research program and scholar exchange in 1948 through the Frankfurt Institute. In 1957, the Law Center of Georgetown University established a sister Institute to assume full administrative responsibility for the joint program in the United States: the Institute for International and Foreign Trade Law. The Georgetown Institute's teaching space is provided by the Georgetown Law Center, and it maintains a substantial collection of books and periodicals in the field.

The execution of the joint program of the two Institutes has been conducted under the supervision of Heinrich Kronstein. Dr. Kronstein holds degrees of Dr. of Law (Berlin), LL. B. (Columbia), S.J.D. (Georgetown), with theses in the field of history of civil and common law as well as in the interpretation of modern civil law. He has been a member of the teaching faculty of the Georgetown Law Center since 1946 and is professor of law on the faculty of Frankfurt University and is currently Dean of the Law Faculty. He is a co-director of the Frankfurt Institute, with Professor Coing and Professor Schlochauer, authors of many books and articles and leading European jurists.

III. The Institutes' Joint Program of International Trade Law Research

A. Basic Purposes:

The joint program of the Institutes has two inseparable aims: (1) to provide American and European lawyers -- both scholars and practitioners -- with fruitful comparisons of policies, rules and standards in the field of trade regulation; and (2) to find common guides and coordinated methods of procedure in the field of trade regulation.

For these purposes the joint program provides for student and teacher exchange to enrich the educational processes of the two schools; it expands the resources of source material through its research and publication programs; and it opens the door to a significant interchange of ideas and experience which participating lawyers, businessmen and governmental officials can bring to bear on trade policy formulation both in the United States and in Europe.

In their program the Institutes have had to go beyond the usual categorizations of international trade law and to focus on specific, concrete problems of current consequence in the development of international trade and trade relations. This has been fruitful. For example, German industry, and Germany's place in the world trade, have vastly altered in the last twenty years. Elementary standards of the free market and competition have been imported from the United States into German and European law. In consequence, the German legal and business communities have been forced to a new acquaintance with American traditions of trade law. At the same time, the revival of German industry and the increasing changes in Europe effected by such developments as the Coal and Steel Community and the Common Market, of which Germany is a part, are of interest to United States policy in the field. Thus the joint program, in focusing on such current problems, is able to meet concrete needs in both the United States and Germany.

B. Activities Under the Program

1. Exchange Activities: Since 1948, the two Universities have exchanged 26 law students and 16 professors of law. This exchange program, which has not been limited to the students or faculties of the two Institutes, has been financed partly by funds established for this purpose by Dr. Wilhelm Schulte zur Hausen, a German industrialist, and in part by funds made available by the two Universities.

The first exchange professor was Professor Walter Hallstein, at that time Director of the Frankfurt Institute, later Secretary of State for the Federal Republic of Germany and now President of the European Common Market. Dr. Hallstein's researches during his exchange visit under the auspices of the program formed the groundwork for his later negotiations in Paris on the treaty establishing the European Coal and Steel Community.

Professor Hermann Mosler, at present Chief Director of the Max Planck Institute at Heidelberg, studied American views on International Law while at Georgetown, also under the auspices of the joint program. Professor Mosler has maintained his contact with both Institutes and has encouraged cooperation between their joint program and the Max Planck Institute.

Professor Conrad Zweigert, formerly a member of the Federal Constitutional Supreme Court of Germany and now director of the Max Planck Institute at Hamburg, is another exchange professor who received a grant for American studies at Georgetown from the Institute, as did Professor Helmut Coing, one of the present co-directors of the Frankfurt Institute, whose research concentrated on the synthesizing of the history of law and the law of trade regulation. Working along similar lines, Professor Adalbert Erler used his term at Georgetown in discovering parallel developments between English and German commercial law during the Middle Ages.

On the other side of the ledger are American professors who have travelled to Germany under the program. Among them have been Reverend Francis E. Lucey, S.J., Regent of the Georgetown University Law Center, and Reverend Joseph M. Snee, S.J., Professor of Constitutional Law and Contracts at the Georgetown University Law Center, and Professor A. Kenneth Pye and Edward Bennett Williams of Georgetown.

Among the German students who have studied in this country under the program are Dr. Ernst Joachim Mestmaecker, professor of law at the University of Saarbruecken; Ivo E. Schwartz, Esq., Secretary to the International Conference on Cartels; Dr. Kurt H. Biedenkopf, Assistant to the Frankfurt Institute; Dr. Horst Bruecher of the legal staff of the Deutsche Gold & Silber-Scheide-Anstalt; Dr. Wolfgang Schmalz, a member of the legal staff of the Thyssen Handelsgesellschaft; Dr. Ekkehard Kaufmann, Privatdozent at the Frankfurt University; Dr. Horst Kaufmann, Assistant to the Seminars of the Faculty of Law at Frankfurt; and Dr. Helmut Steinberger, Assistant to the Max Planck Institute, Heidelberg.

Among the American students who have participated in the exchange program are John R. Lilly, Esq., a member of the legal staff of Ford International Division; Alfred F. Crotti, Esq., associate of Langner, Parry, Card & Langner, New York, New York; J. Henry Glazer, Esq., member of the legal staff of the National Aeronautics and Space Administration; Frederick M. Hart, Esq., professor at Albany Law School, Albany, New York; Ralph J. Gilbert, Esq., patent lawyer, New York City; Jan M. Z. Kaczmarek, Esq., Cleary, Gottlieb, Steen and Ball, Washington, D. C., and James F. Allen, Esq., a member of the legal staff of the International Law Division, United States Department of Defense.

2. Research Activities: The researches of the Institutes conducted during the last years have revealed common problem areas in the legal structure of trade regulation within the individual countries of the Atlantic Community, as well as in inter-country trade regulation. It has been shown that the work of the administrative bodies entrusted with the execution of policies and the enforcement of rules in the field -- both those of national and of international character -- has been less than effective, primarily as a result of indefinite standards of legislation and treaties, and of lack of coordination between certain

basic rules of trade law and the pertinent economic order. In focusing on the issues of effectiveness, the program apparently is making an original contribution, at least in the case of the European Communities. It is hoped that its work will be meaningful to the present debate over the American federal administrative agencies in the economic field, as well as to the corresponding European administrative programs.

Studies are going forward with respect to the American experience in the Federal Trade Commission -- compared with the pertinent European experience -- and of the European experience in the administration of the European Coal and Steel Community and European national trade regulations -- compared with American experiences:

(a) U. S. Federal Trade Commission (to be published in English and German): This study, based on an examination of cases pending and decided and on legislative and business materials, will show how the original legislative aims have been seriously hampered by a lack of clear guides and standards. It will also deal with the fact that other systems of trade regulation based on principles of "law" are confronted with similar logical and practical difficulties, and will consider means of meeting these problems.

(b) Administration of trade regulation by organizations of the type of the European Coal and Steel Community: After only a decade, the Coal and Steel Community, especially in regard to its relations with private cartel organizations (Article 60 ff of the Treaty), appears to be endangered by a serious lack of clarity in the legislative standards. The research of the Institutes in the field is subdivided into studies on the concept of discrimination and subsidies; the concept of "competition" in several European Treaties and statutes, etc. The purposes of this research are again practical ones. They are not only to provide a full analysis of the pertinent rules, but to examine whether, and to what extent, the formulation of enforceable rules under proper standards is possible -- both on the national and international levels.

(c) Analysis of the practice under national European laws on trade regulation in the light of the problems indicated above: The Institutes' examination of the administration of the laws of trade regulation will involve critical analyses of the legal systems existing within the European orbit, with special emphasis on the substantive guides and standards, and the effectiveness of procedures adopted under them. The first of several such studies to be published will examine Swedish law. Similar analyses of other nations are under way.

The research programs on the Federal Trade Commission and on the Swedish law are expected to be completed during the year 1960. During the same year the Institutes expect to publish an introduction into the analysis of the actual economic and legal effect of the Coal and Steel Community.

3. Conferences: An exchange program and a program for joint research such as that described above operate most effectively when they bring scholarly institutions and universities into close contact with governments, labor unions and important figures in the field of international trade law. The applicant Institutes have become convenient meeting places for those who do the thinking and prepare the position papers on important issues in international and domestic trade regulation, including such questions common to both Europe and the United States as comparative techniques of trade regulation, protection of competition, coordination of tariff and cartel regulation, and other devices of public control of business. These contacts have for several years occurred on an informal basis.

In 1959, however, the Department of State, the Organization of European Economic Cooperation, the High Authorities in Luxembourg and Brussels of the European Common Market, and the German Cartel Office discussed with the two Institutes the organization of a formal Conference on Cartels and the European Common Market in 1960.

It was suggested that the Conference be directed at a full, comparative analysis of the experiences of the various nations of the free world which subscribe to the principles of a competitive society in the field of trade regulation.

The Conference will be held in Frankfurt/Main, Germany, in June 1960. The participants are being organized into four working groups to deal with the following fields of inquiry:

1. The Problem of Competitive Restraints and the European Communities.
2. Business Consolidation and Cartel Law.
3. Problems of International Cartel Law.
4. Means and Effective Limits of Administrative Action in Cartel Matters.

The agenda and program of the Conference are also attached hereto. The Conference reports and discussions will be published. The OEEC, The European Common Market, the Federal Republic of Germany, and, indirectly, the Government of the United States, will underwrite the direct expenses of the program itself. Among the principal speakers at the Conference will be: Corwin D. Edwards, of the School of Business, University of Chicago; Irston Barnes, Economist, Federal Trade Commission; Honorable Earl W. Kintner, Chairman, Federal Trade Commission; M. P. VerLoren van Themaat, General Director of the Bureau of Trade Competition, European Common Market; Kingman Brewster, Jr., Professor of Law at Harvard University Law School; and members of the law faculties of Columbia, Chicago, Georgetown and other universities.

Reaction to the proposed Frankfurt Conference has proved so favorable that the Institutes have concluded that they could expect a favorable response to proposals for other conferences. Recent experience with the European-American coal problems suggested "energy" as a topic appropriate for conference discussion, and

accordingly it is planned to hold a Conference on International Problems of Energy Resources sometime during 1961. The focus of the Conference will be the recent economic, political and legal problems posed by the vast recent expansion of various free-world energy resources. The Conference will concern itself with two questions in particular:

1. The experience and practical results of such recent regulatory devices as tariffs, quotas, and international cartels; and

2. The possibility for solution of the problems raised by an apparent oversupply of free-world oil, coal and gas resources through private, or through governmental, cooperation.

4. Examination of Methods of Legal Teaching Used in the United States and Germany, exemplified by the teaching of Trade Regulation: At present, American as well as German methods of legal education are under heavy criticism. Joint re-examination of teaching and research methods in one particular system of law by lawyers educated and teaching in a different system can produce a fruitful comparison. Such a comparison is a stimulating by-product of the joint program of the two Institutes. For example, in 1960, Dean Frank J. Dugan of Georgetown Graduate School of Law is coming to Frankfurt for the particular purpose of studying comparative teaching and research methods. It is intended, on the other side, to have Dr. Luecke of Frankfurt draw certain conclusions for German law teaching and the selection of law students from American experience (e.g. Law School Admission Test).

Both Institutes are most anxious not only to include people from different organizations in their work, but also to have their visitors see as many other institutions as possible and to integrate the joint program with other related programs. Georgetown invited most of their professor-guests to make a trip through the United States and to

visit famous American places of learning. The Frankfurt University has strong links with many other European universities, as well as with American institutions such as Harvard University and the University of Chicago. In fact, the joint program of the two Institutes is increasingly a device for bringing law schools of different approaches and philosophy in the United States and in Europe to mutual understanding.

IV. The Financing of the Joint Program

A. Existing Program Financing

At the present time the expenses of two fellowships for Georgetown applicants in Frankfurt and two fellowships for Frankfurt applicants in Georgetown have been assured to the Institutes by Dr. Schulte zur Hausen for the period 1959-1962. In addition, the Institutes have been assured new funds for an expanded program of scholar exchange with sister institutions in Switzerland, involving two scholarships for Swiss applicants each year for the next three years.

Other expenses of the joint research program are to be paid for as follows: Georgetown University Law Center contributes \$12,000 a year to the joint program which is expended for secretarial assistance, study materials and a research assistant in Washington.

To meet the operational expenses of the program in Frankfurt, the Frankfurt University has available to it some \$20,000. Certain additional funds have been and will be made available to the Frankfurt University for pursuing certain projects.

These contributions have enabled the joint research program to develop to its present status. If the proposed expanded program is to be made possible, additional funds are required.

B. Financing the Expanded Program

The grant of \$140,000 annually for three years is requested, to finance the expanded activities of the joint program as follows:

(1) It is essential to expand the professional research staff and stenographic help attached to the program, to be directed in large part toward the work of the forthcoming conferences and research projects.

(2) Faculty support to the Director and Assistant Director of the joint program is requested.

(3) It is proposed to support the scholar exchange and research programs by expanding the flow of international trade law information and materials between the two Institutes. While the Frankfurt Institute maintains a relatively good collection of materials on American law, it should supplement this collection substantially with more American Congressional and administrative agency material. The Frankfurt Institute should also have at its disposal pertinent, non-official American economic and legal literature, and it should enlarge its collection of English, Canadian, Australian and New Zealand materials.

(4) Additional funds are required to publish and make available to the American reader the results of the final research work of the German exchange scholars insofar as they may be of interest to the American reader.

(5) The Conference program of the Institutes requires a permanent assistant for preparation and organization of the forthcoming conference.

(6) Support is requested for the indirect costs of the expanded joint program.

(7) Finally, funds are also required for rentals for conference facilities.

Thus, the requested grant of \$140,000 annually for a three year period would be budgeted in summary as follows:

Paragraph above

(1)	Three research assistants	\$27,000
(1)	Three secretarial assistants	18,000
(2)	Faculty support to Director and Assistant Director	10,000
(3)	Books and Periodicals Exchanged	15,000
(4)	Research Translation and Publication	35,000
(5)	Conference Assistant	10,000
(6)	Indirect Costs	20,000
(7)	Rentals for Conference Facilities	5,000
	Total annual grant requested	<u>\$140,000</u>

ATTACHMENT I

Partial List of Studies

- | | |
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| Heinrich Kronstein | <u>Probleme des modernen amerikanischen "Corporation"-Rechts</u>
21 RABELS Z. 456-511 (No. 3/4 Berlin u. Tuebingen 1956) |
| " " | RECHTSAUSLEGUNG IM WERTGEBUNDENEN RECHT, Karlsruhe 1957 (Interpretation of law in a system based on values) |
| " " | <u>"Cartels" under the New German "Cartel" Statute</u>
11 VAND.L.REV. 271 (1958) |
| Heinrich Kronstein
John T. Miller, Jr.
Ivo E. Schwartz | MODERN AMERICAN ANTITRUST LAW,
New York 1958 |
| Helmut Coing
Heinrich Kronstein | UEBER DEN ZEITPUNKT DER ANWENDBARKEIT DER WETTBEWERBSREGELN (ART.85-88) DES VERTRAGES UEBER DIE EUROPAEISCHE WIRTSCHAFTSGEMEINSCHAFT (Advisory opinion to the German Federal Government on the time of application of the provisions on competition contained in the Treaty on the European Economic Community), Frankfurt, 1958 |
| Heinrich Kronstein | <u>Extraterritorial Application of American Anti-Trust Legislation</u>
THE JOURNAL OF BUSINESS LAW (London, April 1959) 205-209 |
| Helmut Coing
Heinrich Kronstein | DIE NENNWERTLOSE AKTIE (no par value share) Frankfurt, 1959 |
| Kurt H. Biedenkopf | VERTRAGLICHE WETTBEWERBSBESCHRAENKUNGEN UND WIRTSCHAFTSVERFASSUNG - DIE AUSSCHLIESSLICHKEITSKLAUSEL ALS BEISPIEL (Contractual restraints of competition and the economic structure - the exclusive dealing clause as an example) Heidelberg 1958 |

- Alfred F. Crotti The "Allgemeine Erfindungsgedanke" in the German Patent (General idea of invention in the German patent) 39 J.PAT.OFF.SOC'Y 477 (1957)
- " " The German "Gebrauchsmuster", 39 J.PAT.OFF.SOC'Y 566 (1957)
- Ernst-J. Mestmaecker Diskriminierung, Dirigismus und Wettbewerb (Discriminations, dirigism and competition) 7 WIRTSCHAFT UND WETTBEWERB 21-40 and 92-101 Duesseldorf 1957
- " " Dekartellierung und Wettbewerb in der Rechtsprechung der deutschen Gerichte (Decartelization and competition before German courts) 9 ORDO 99-130 Freiburg 1957
- " " VERWALTUNG, KONZERNGEWALT UND RECHTE DER AKTIONAERE (Comparative study on the law of the German Aktienrecht and the American law of corporations) Karlsruhe 1958
- J. Henry Glazer A Functional Approach to the International Finance Corporation, 57 COLUM. L. REV. 1089-1112 (1957)
- Jan M.Z. Kaczmarek Tax Incentives to Foreign Trade 44 GEO.L.J. 88 (1958)
- Ivo E. Schwartz Antitrust Legislation and Policy in Germany A Comparative Study, 105 U.PA.L.REV. 617 (1957)
- C. Peter Claussen Die Publizitaet im Rahmen der Reform des Aktienrechts (Publicity and the amendment of the German law of corporations) Frankfurt 1959
- Ekkehard Kaufmann Die Erfolgshaftung, Untersuchungen ueber die strafrechtliche Zurechnung im Rechtsdenken des fruehen Mittelalters, Frankfurt 1958
- Horst Kaufmann On the Sources of Glanvill, Frankfurt 1959 in "TRADITIO"
- Horst Bruecher Bereichsausnahmen im US Antitrustrecht (Exemptions in US Antitrust law) 7 WIRTSCHAFT UND WETTBEWERB 532-544, Duesseldorf 1959.
- Helmut Coing

The following studies are being prepared for publication

Heinrich Kronstein	A study of the US Federal Trade Commission as an instance of administrative adjudication, to be published in German and English.
Hans Erhorn	On the practical aspects of the Swedish "cartel" law under the aspect of a "cartel" legislation in a socialist country.
Manfred Schiedermaier	On the English cartel law, an attempt to find a legal procedure between the American and the old European system.
Helmut Steinberger	ON GATT and the European common market.
James J. Allen	On European common market legal aspects, as a result of his studies at the Max Planck Institute for International Law in Heidelberg.

ATTACHMENT II

Summary of the Fields of Inquiry and
the Specific Topics for the International
Cartel Conference, to take place at
Frankfurt on Main in 1960

Four working groups are to be formed, each to deal with one of the following fields of inquiry:

- 1) The Problem of Restrictions on Competition and the European Communities
- 2) Business Concentration and Cartel Law
- 3) Problems of International Cartel Law
- 4) Means and Effective Limits of Administrative Action in Cartel Matters

Within these main fields, the plan is that at least one report, to be followed by discussion, will be given on each of the following topics at closed sessions of the corresponding working group.

- 1) The Problem of Restrictions on Competition and the European Communities
 - a) Determining When the Provisions Respecting Restraints on Competition in the European Coal and Steel Community Treaty and the European Common Market Treaty Apply and When a National Cartel Law Applies (Concept of "Trade between Member Nations" and Domestic Trade)
 - b) The Prohibition Against Restrictions on Competition Contained in Article 85, Paragraph 1 of the European Common Market Treaty, and Its Private-Law Consequences (Article 85, Paragraph 2)

- c) The Restrictions on Competition That can be Exempt from the Prohibition of Article 85, Paragraph 1 of the European Common Market Treaty (Article 85, Paragraph 3), and the Procedure for Obtaining Exemption
 - d) The Prohibition Against Discrimination Contained in the European Coal and Steel Community Treaty and the European Common Market Treaty
 - e) Problems of Allocating Authority between the Commission of the European Common Market and the Respective National Cartel Authorities
- 2) Business Concentration and Cartel Law
- a) Legal Methods of Preventing Business Consolidations that Reduce Competition, with Special Emphasis on the American Experience.
 - b) The Economic and Legal Problems Presented by Parallel Action on the Part of Firms in Concentrated Industries Producing Cartel-like Effects (The Problem of Oligopoly Behavior)
 - c) Distribution Methods in Restraint of Competition used by Enterprises Dominating the Market
 - d) The Problem of Coordinating Tax Law and Import Duties with Cartel Law
 - e) The Obligation to Contract Incumbent on Monopolies
- 3) Problems of International Cartel Law
- a) The Problem of Applying National Cartel Law to International Restraints on Competition

- b) The Juridical and Economic Problem Posed by Import and Export Associations
 - c) The Use of Patents and Trade Marks, Especially Licensing Contracts, for International Cartel Purposes
 - d) Arbitration Proceedings Involving International Cartels and the Execution of Arbitration Awards
 - e) An Evaluation of the Efforts so far made to Regulate International Cartel Problems on the Basis of International Law
- 4) Means and Effective Limits of Administrative Action in Cartel Matters
- a) The Politico-Economic Problem Posed by Granting Exemptions to Certain Fields of Economic Activity
 - b) The Legal Problems Posed by Administrative Supervision by Cartel and by Other Authorities
 - c) The Taking of Evidence and Burden of Proof in Cartel Law
 - d) Judicial Review of Decisions of Cartel Authorities
 - e) Means for Ensuring, and the Effects of Publicity in Cartel Law

