

103D CONGRESS
1ST SESSION

S. 99

To amend the antitrust laws to provide a cause of action for persons injured in United States commerce by unfair foreign competition.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. METZENBAUM (for himself, Mr. GRASSLEY, Mr. SIMON, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the antitrust laws to provide a cause of action for persons injured in United States commerce by unfair foreign competition.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “International Fair
5 Competition Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) all nations should enact and vigorously en-
9 force strong competition laws to benefit consumers,

1 encourage international competition, and foster
2 growth in jobs, productivity, and investment;

3 (2) industries should not be allowed to take ad-
4 vantage of weak or nonexistent competition law en-
5 forcement in their home markets to compete unfairly
6 in markets that do have strong competition laws and
7 effective enforcement;

8 (3) existing United States antitrust law is inad-
9 equate to prevent international competitors from
10 unfairly exploiting United States markets; it should
11 be amended to recognize that lack of competition
12 abroad should not result in unfair competition
13 domestically; and

14 (4) United States antitrust laws applicable to
15 foreign competitors that export articles to the Unit-
16 ed States market should be consistent with United
17 States antitrust laws that are applicable to domestic
18 business conduct.

19 **SEC. 3. EXPORTATION TO THE UNITED STATES AND SALE**
20 **OF ARTICLES BELOW COST.**

21 (a) REPEAL OF CRIMINAL PROVISION.—The second
22 paragraph of section 801 of the Act of September 8, 1916
23 (15 U.S.C. 72), is repealed.

24 (b) EXPORTATION OR SALE AT LESS THAN AVER-
25 AGE TOTAL COST.—Section 801 of the Act of September

1 8, 1916 (15 U.S.C. 72), as amended by subsection (a),
2 is amended—

3 (1) by designating the first, second, and third
4 paragraphs as subsections (a), (b), and (c), respec-
5 tively; and

6 (2) by amending subsection (a), as designated
7 by paragraph (1), to read as follows:

8 “(a)(1) It shall be unlawful for any person that ex-
9 ports a product from a foreign country into the United
10 States, commonly and systematically to export the article
11 into, cause the article to be exported into, or cause the
12 article to be sold within the United States, at a price that
13 is less than the average total cost of the article, if—

14 “(A) the exportation or sale has the effect of—

15 “(i) destroying or injuring commerce in the
16 United States;

17 “(ii) preventing the establishment of a line
18 of commerce in the United States; or

19 “(iii) substantially lessening competition or
20 tending to create a monopoly in any part of
21 trade and commerce in the article in the United
22 States; and

23 “(B) the foreign country’s market in the arti-
24 cle—

1 “(i) lacks effective price competition
2 among competitors; or

3 “(ii) is substantially closed to effective
4 international competition.

5 “(2) Nothing shall prevent a defendant from rebut-
6 ting a prima facie case made with respect to the cir-
7 cumstances described in paragraph (1) by showing that
8 the circumstances described in paragraph (1)(B) were not
9 a factor in the price charged.”.

10 (c) EFFECTIVE DATE.—The amendment made by
11 subsection (b) shall become effective on the date that is
12 180 days after the date of enactment of this Act.

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