

ANTITRUST TECHNICAL CORRECTIONS ACT OF 2001

MARCH 12, 2001.—Committed to the Committee of the Whole House and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 809]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 809) to make technical corrections to various antitrust laws and to references to such laws, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 809, the “Antitrust Technical Corrections Act of 2001,” makes six miscellaneous changes to the antitrust laws. Three of these changes repeal outdated provisions; one clarifies a long-standing ambiguity regarding the application of the antitrust laws in the District of Columbia and the territories; and two correct typographical errors in recently passed laws.

BACKGROUND AND NEED FOR THE LEGISLATION

A. REPEAL OF THE ACT OF MARCH 3, 1913 (15 U.S.C. § 30)

The Act of March 3, 1913 (15 U.S.C. § 30) requires that all depositions taken in Sherman Act equity cases brought by the government be conducted in public. In the early days of the Sherman Act, the courts conducted such cases by deposition without any formal trial proceeding. See generally *United States v. Microsoft Corporation*, 165 F.3d 952, 957–58 (D.C. Cir. 1999). In 1912, a district court held that such depositions must be closed under the Equity Rules in effect at the time. *United States v. United States Shoe Machinery Co.*, 198 F. 870 (D. Mass. 1912). In response, Congress passed this statute requiring that the depositions be open. The rationale was that because these depositions essentially constituted the trial, they should be open as a trial would be. For a fuller description of these events, see *Microsoft*, 165 F.3d at 957–58, and the authorities cited therein.

Under the modern practice of broad discovery, depositions are generally taken in private and then made public if they are used at trial. Under the modern system, § 30 causes three problems: (1) it sets up a special rule for a narrow class of cases when the justification for that rule has disappeared; (2) it makes it hard for a court to protect proprietary information that may be at issue in an antitrust case; and (3) it can create a circus atmosphere in the deposition of a high profile figure. In the *Microsoft* case cited above, the United States Circuit Court of Appeals for the District of the District of Columbia invited Congress to repeal this law. *Microsoft*, 165 F.3d at 958.

B. REPEAL OF THE ANTITRUST PROVISION IN THE PANAMA CANAL ACT
(15 U.S.C. § 31)

Section 11 of the Panama Canal Act provides that no vessel owned by someone who is violating the antitrust laws may pass through the Panama Canal. The Committee has not been able to determine why this provision was added to the act or whether it has ever been used. However, with the return of the Canal to Panamanian sovereignty at the end of 1999, it is appropriate to repeal this outdated provision. The House Committee on Armed Services, which has jurisdiction over the Panama Canal Act, waived jurisdiction over this provision in the last Congress. The Committee has consulted informally with the Armed Service Committee, and, to date, it has not indicated that it has any objection to this repeal.

C. CLARIFICATION THAT § 2 OF THE SHERMAN ACT APPLIES TO THE
DISTRICT AND THE TERRITORIES (15 U.S.C. § 3)

Two of the primary provisions of antitrust law are § 1 and § 2 of the Sherman Act. 15 U.S.C. §§ 1, 2. Section 1 prohibits conspiracies in restraint of trade, and § 2 prohibits monopolization, attempts to monopolize, and conspiracies to monopolize. Section 3 of the Sherman Act was intended to apply these provisions to conduct occurring in the District of Columbia and the various territories of the United States. Unfortunately, however, ambiguous drafting in § 3 leaves it unclear whether § 2 applies to conduct occurring in those areas.

The Committee believes that Congress intended § 3 to apply both sections to the territories, and that by passing this amendment, it is only clarifying the matter by making explicit that which is already implicit in § 3.

The Committee is aware of at least one instance in which the Department of Justice declined to bring an otherwise meritorious § 2 claim in a Virgin Islands case because of this ambiguity. *United States v. Topa Equities (V.I.), Ltd.*, Civil No. 1994-179 (D.V.I. 1994). In that case, the Department was able to bring other claims under § 1 of the Sherman Act which led to a settlement. All five of the congressional representatives of the District and the Territories are cosponsors of the bill.

D. REPEAL OF REDUNDANT ANTITRUST JURISDICTIONAL PROVISION IN § 77 OF THE WILSON TARIFF ACT

In 1955, Congress modernized the jurisdictional and venue provisions relating to antitrust suits by amending § 4 of the Clayton Act (15 U.S.C. § 15). 69 Stat. 282. At that time, it repealed what was then § 7 of the Sherman Act, a jurisdiction and venue provision that was redundant of the one in § 4 of the Clayton Act. However, it did not repeal the similarly redundant jurisdiction and venue provision contained in § 77 of the Wilson Tariff Act. *Id.* It appears that this was an oversight because § 77 was never codified and has rarely been used.

Repealing § 77 will not diminish any jurisdictional or venue rights because § 4 of the Clayton Act provides any potential plaintiff with broader rights of jurisdiction and venue than does § 77. Rather, the repeal simply rids the law of a confusing, redundant, and little used provision.

E. CORRECTION OF TYPOGRAPHICAL ERRORS

The bill corrects an erroneous section number designation in the Curt Flood Act passed in 1998, and it inserts an inadvertently omitted period in the Year 2000 Information and Readiness Disclosure Act. Neither of these corrections makes any substantive change.

F. APPLICATION OF AMENDMENTS TO PENDING CASES

The changes made by the bill become effective on the date of enactment. In addition, the bill includes language that clarifies the application of the various amendments to pending cases.

With respect to § 2(a) (public depositions), the change does not affect any substantive rights of the litigants, and for that reason, the bill applies the change to pending cases.

With respect to § 2(b) (Panama Canal), the Committee believes that this provision has never been used and that there are no pending cases that will be affected. In the unlikely event that there is such a case, the bill does not apply the amendment because it would affect substantive rights.

With respect to § 2(c) (application of Sherman Act § 2 to the District of Columbia and the territories), the Committee believes that there could be pending cases that would be affected. In our judgment, the amendment only makes explicit that which is already implicit in § 3. However, a court might interpret the existing § 3 dif-

ferently. To avoid changing the rules in the middle of litigation, the Committee intends that any litigant in a pending case filed before enactment of this amendment ought to be treated as if this amendment had not passed. In such a case, a court should interpret § 3 as it would have in the absence of this amendment.

With respect to § 2(d) (§ 77 of the Wilson Tariff Act), the Committee believes that there could be pending cases that would be affected. The Committee understands that § 77 has rarely, if ever, been used. However, if there is a pending case in which a litigant has relied on it, he or she should not have the rules changed in the middle of the case. For that reason, the bill does not apply § 2(d) to pending cases.

Finally, with respect to the typographical errors corrected in §§ 2(e) and 2(f), they make no substantive change, and it was not necessary to direct how they apply to pending cases.

HEARINGS

Because H.R. 809 contains only noncontroversial technical corrections to the antitrust laws, the Committee held no hearings on it.

COMMITTEE CONSIDERATION

After its referral to the Committee on the Judiciary, H.R. 809 was held at the full Committee. Thus, it received no subcommittee consideration. On March 8, 2001, the full Committee on the Judiciary met in open session and ordered favorably reported the bill H.R. 809 unamended, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

During its consideration of H.R. 809, the Committee took no roll-call votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report. See Agency Views Section, below.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 809 authorizes no funding for any program. However, by eliminating the need for public depositions and clarifying that § 2 of the Sherman Act applies to the District of Columbia and the territories, it should improve the efficiency of the Department of Justice in enforcing the antitrust laws.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 809, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 12, 2001.

Hon. F. JAMES SENSENBRENNER, Jr.,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 809, the Antitrust Technical Corrections Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

H.R. 809—Antitrust Technical Corrections Act of 2001

CBO estimates that implementing this bill would have no significant impact on the federal budget. Because H.R. 809 could affect direct spending and receipts, pay-as-you-go procedures would apply. CBO estimates, however, that any impact on direct spending and receipts would not be significant. H.R. 809 contains no inter-governmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 809 would make several technical changes to current antitrust law and would eliminate a redundant law that establishes jurisdiction in cases involving violations of antitrust law. It also would clarify that certain provisions of antitrust laws apply to territories of the United States and the District of Columbia. As a consequence of that clarification, additional convictions for antitrust violations might result, and the federal government might collect additional fines. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Information from the Department of Justice indicates that it would be unlikely to prosecute additional criminal cases under H.R. 809. Therefore, CBO expects that any additional receipts or direct spending would be negligible.

The CBO staff contact for this estimate is Lanette J. Walker. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title. Section 1 provides that the short title of the bill is the “Antitrust Technical Corrections Act of 2001.”

Sec. 2. Amendments. Subsection 2(a) repeals the Act of March 3, 1913, requiring that depositions in Sherman Act equity cases brought by the government be held in public, as described above.

Subsection 2(b) repeals the paragraph in Section 11 of Panama Canal Act, prohibiting ships owned by persons who are violating the antitrust laws from passing through the Canal, as described above.

Subsection 2(c) adds a new §3(b) to §3 of the Sherman Act to clarify that §2 of the Sherman Act applies to the District of Columbia and the territories. This new §3(b) in §3 closely tracks the language of §2 of the Sherman Act with language applying it to the District and the territories.

Subsection 2(d) repeals §77 of the Wilson Tariff Act and also eliminates several cross-references to §77 in five other statutes (the Clayton Act, the Federal Trade Commission Act, the Packers and Stockyards Act, the Atomic Energy Act of 1954, and the Deep Seabed Hard Mineral Resources Act). These cross-references occur in definitions of the term “antitrust laws” in the other statutes and do not change the substance of those statutes.

Subsection 2(e) corrects an erroneous section number designation in the Curt Flood Act passed in 1998. It makes no substantive change.

Subsection 2(f) inserts an inadvertently omitted period in the Year 2000 Information and Readiness Disclosure Act. It makes no substantive change.

Sec. 3. Effective Date; Application of Amendments. Subsection 3(a) provides that the changes shall take effect on the date of enactment.

Subsection 3(b) provides that the change made in subsection 2(a) (i.e. taking depositions in public) shall apply to cases pending on the date of enactment, but that the other changes shall not apply to pending cases.

AGENCY VIEWS

The Committee has not received any formal agency views on H.R. 809. However, the Committee has consulted informally with both of the antitrust agencies, the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission. Both agencies have indicated informally that they have no objection to the passage of the bill.

In addition, the impetus for the provisions of subsections 2(a), 2(b), and 2(c) came from answers to questions to the Antitrust Division after the Committee’s general oversight hearing on both of the agencies on November 5, 1997. The Antitrust Enforcement Agencies: *The Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission: Hearing Before the House Committee on the Judiciary, 105th Congress 250 (1997)*. The relevant text is set forth below:

CONGRESS OF THE UNITED STATES,
 COMMITTEE ON THE JUDICIARY,
Washington, DC, December 16, 1997.

Hon. JOEL KLEIN,
*Assistant Attorney General, Antitrust Division,
 United States Department of Justice, Washington, DC.*

DEAR ASSISTANT ATTORNEY GENERAL KLEIN: I appreciate your appearing before the Committee on the Judiciary to testify at the oversight hearing on "The Antitrust Enforcement Agencies: The Antitrust Division of the Department of Justice and The Bureau of Competition of the Federal Trade Commission" on Wednesday, November 5, 1997.

Members of the Committee have asked that you answer additional written questions for the record. I have attached a copy of the questions. I would appreciate your answering the questions in writing and returning your answers to the Committee for inclusion in the hearing record at your earliest convenience.

If the Committee can provide you with any additional information, please do not hesitate to have your staff contact Joseph Gibson by Phone at (202) 225-3951 or by fax at (202) 225-7682. I appreciate your participation in our hearing.

Sincerely,

HENRY J. HYDE, *Chairman.*

QUESTIONS FOR ASSISTANT ATTORNEY GENERAL KLEIN

Questions From Chairman Hyde

* * *

6. *Does the Antitrust Division currently seek any changes to the antitrust laws, the procedural mechanisms available to it, or to any of its organizational statutes? If so, please enumerate these changes and provide a brief explanation.*

7. *Does the Antitrust Division believe that there are any provisions of the antitrust laws, the procedural mechanisms available to it, or to any of its organizational statutes that are anachronistic or that should otherwise be eliminated from the statute books? If so, please enumerate these changes and provide a brief explanation.*

* * *

U.S. DEPARTMENT OF JUSTICE,
 OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 17, 1998.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for giving Assistant Attorney General Joel Klein the opportunity to testify at the oversight hearing on "The Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission" on November 5, 1997.

Enclosed are the responses to the written questions for the record that you sent to Mr. Klein on behalf of the Committee after the hearing.

If you have any questions, please do not hesitate to contact me.
Sincerely,

ANDREW FOIS,
Assistant Attorney General.

Enclosure.

QUESTIONS FOR ASSISTANT ATTORNEY GENERAL KLEIN

Questions from Chairman Hyde

6. *Does the Antitrust Division currently seek any changes to the antitrust laws, the procedural mechanisms available to it, or to any of its organizational statutes? If so, please enumerate these changes and provide a brief explanation.*

Yes.

* * *

A second area that this Committee may wish to take a look at is the application of Section 2 of the Sherman Act to the District of Columbia and the territories. There does not appear to be any reason other than historical anomaly for the laws against monopolization to apply in the 50 States but not the District of Columbia or the territories, but that appears to be the current state of the law. I would be happy to work with the Committee on developing such legislation

7. *Does the Antitrust Division believe that there are any provisions of the antitrust laws, the procedural mechanisms available to it, or to any of its organization statutes that are anachronistic or that should otherwise be eliminated from the statute books? If so, please enumerate these changes and provide a brief explanation.*

Yes. The Antitrust Division believes that both 15 U.S.C. section 30 and 15 U.S.C. section 31 should be eliminated from the statute books. The first statute requires that in antitrust cases, as opposed to any other types of civil cases, depositions of witnesses be open to the public. We do not believe that different procedures should apply regarding the openness of depositions in antitrust cases from any other civil cases. Indeed, such a requirement could raise unnecessary complications in certain instances. For example, in a high profile civil litigation, it is possible that a large number of people may desire to be present at a given deposition. If the deposition has been scheduled for a normal size conference room, and large numbers of people show up, the question would arise whether any of those individuals could be turned away consistent with the statute. Must the deposition be postponed until a larger room can be found or could the deposition go forward and people be excluded? In any event, the Division sees no need for this type of provision. If the matter goes to trial, the trial will be public.

The second statute that could be eliminated is entitled "Panama Canal closed to violators of the antitrust laws," 15 U.S.C. section 31. In the 84 years since this statute has been part of the law, we are aware of no enforcement of the statute. Moreover, without expressing any Department of Justice legal opinion on the issue, it may be the case that the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (Sept. 7, 1977)

impliedly repealed this statute. In any event, we believe this statute is anachronistic and should be removed from the statute books.

* * *

In addition, although they do not constitute formal agency views, the Committee would like to recognize two other contributions to this bill. The Committee appreciates the contribution of the D.C. Circuit in calling to our attention the need for the repeal contained in subsection 2(a). *Microsoft*, 165 F.3d at 958. We also appreciate the contribution of the office of the House Legislative Counsel, in calling to our attention the need for the repeal contained in subsection 2(d).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF MARCH 3, 1913

CHAP. 114.—AN ACT Providing for publicity in taking evidence under Act of July second, eighteen hundred and ninety.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That in the taking of depositions of witnesses for use in any suit in equity brought by the United States under the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, and in the hearings before any examiner or special master appointed to take testimony therein, the proceedings shall be open to the public as freely as are trials in open court; and no order excluding the public from attendance on any such proceedings shall be valid or enforceable.]

SECTION 11 OF THE PANAMA CANAL ACT

SEC. 11. * * *

* * * * *

[No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the Act of Congress approved July second, eighteen hundred and ninety, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” or the provisions of sections seventy-three to seventy-seven, both inclusive, of an Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” or the provisions

of any other Act of Congress amending or supplementing the said Act of July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act, and amendments thereto, or said sections of the Act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.】

SECTION 3 OF THE SHERMAN ACT

* * * * *

SEC. 3. (a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(b) *Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.*

WILSON TARIFF ACT

* * * * *

【SEC. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this Act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.】

SEC. 【78.】 77. Sections 73, 74, 75, 【76, and 77】 and 76 of this Act may be cited as the "Wilson Tariff Act".

CLAYTON ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) “antitrust laws,” as used herein, includes the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; sections seventy-three to [seventy-seven] *seventy-six*, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen; and also this Act.

* * * * *

SEC. [27.] 28. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 4 OF THE FEDERAL TRADE COMMISSION ACT

SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

* * * * *

“Antitrust Acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July 2, 1890; also sections 73 to [77] 76, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August 27, 1894; also the Act entitled “An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February 12, 1913; and also the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914.

* * * * *

SECTION 405 OF THE PACKERS AND STOCKYARDS ACT, 1921

SEC. 405. Nothing contained in this Act, except as otherwise provided herein, shall be construed—

(a) To prevent or interfere with the enforcement of, or the procedure under, the provisions of the Act entitled “An Act to protect

trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, the Interstate Commerce Act as amended, the Act entitled "An Act to promote export trade, and for other purposes," approved April 10, 1918, or sections 73 to [77] 76, inclusive, of the Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," as amended by the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'" approved February 12, 1913, or

* * * * *

SECTION 105 OF THE ATOMIC ENERGY ACT

SEC. 105. ANTITRUST PROVISIONS.—

a. Nothing contained in this Act shall relieve any person from the operation of the following Acts, as amended, "An Act to protect trade and commerce against unlawful restraints and monopolies" approved July second, eighteen hundred and ninety; sections seventy-three to [seventy-seven] *seventy-six*, inclusive, of an Act entitled "An Act to reduce taxation, mission, to define its powers and duties, and for other purposes" approved August twenty-seven, eighteen hundred and ninety-four; "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October fifteen, nineteen hundred and fourteen; and "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" approved September twenty-six, nineteen hundred and fourteen. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act.

* * * * *

SECTION 103 OF THE DEEP SEABED HARD MINERAL RESOURCES ACT

SEC. 103. LICENSE AND PERMIT APPLICATIONS, REVIEW, AND CERTIFICATION.

(a) * * *

* * * * *

(d) ANTITRUST REVIEW.—(1) * * *

* * * * *

(7) As used in the subsection, the term “antitrust laws” means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1–7); sections 73 through [77] 76 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8–11); the Clayton Act (15 U.S.C. 12 et seq.); the Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13–13b and 21a); and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

* * * * *

SECTION 5 OF THE YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT

SEC. 5. TEMPORARY ANTITRUST EXEMPTION.

(a) EXEMPTION.—Except as provided in subsection (b), the anti-trust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of and limited to—

- (1) * * *
- (2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure.

* * * * *

**BUSINESS MEETING
THURSDAY, MARCH 8, 2001**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner (chairman of the committee) presiding.

Chairman SENSENBRENNER. The committee will be in order. Pursuant to notice, I now call up the Bill H.R. 809, a bill to make technical corrections to various antitrust laws and to references to such laws, for purposes of markup and move its favorable recommendation to the House.

[H.R. 809 follows:]

107TH CONGRESS
1ST SESSION

H. R. 809

To make technical corrections to various antitrust laws and to references to such laws.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2001

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. HYDE, Ms. NORTON, Mr. UNDERWOOD, Mr. FALEOMAVAEGA, Mrs. CHRISTENSEN, and Mr. ACEVEDO-VILÁ), introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To make technical corrections to various antitrust laws and to references to such laws.

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 “Antitrust Technical
5 Corrections Act of 2001”.

1 **SEC. 2. AMENDMENTS.**

2 (a) ACT OF MARCH 3, 1913.—The Act of March 3,
3 1913 (chapter 114, 37 Stat. 731; 15 U.S.C. 30) is re-
4 pealed.

5 (b) PANAMA CANAL ACT.—Section 11 of the Panama
6 Canal Act (37 Stat. 566; 15 U.S.C. 31) is amended by
7 striking the undesignated paragraph that begins “No ves-
8 sel permitted”.

9 (c) SHERMAN ACT.—Section 3 of the Sherman Act
10 (15 U.S.C. 3) is amended—

11 (1) by inserting “(a)” after “SEC. 3.”, and

12 (2) by adding at the end the following:

13 “(b) Every person who shall monopolize, or attempt
14 to monopolize, or combine or conspire with any other per-
15 son or persons, to monopolize any part of the trade or
16 commerce in any Territory of the United States or of the
17 District of Columbia, or between any such Territory and
18 another, or between any such Territory or Territories and
19 any State or States or the District of Columbia, or with
20 foreign nations, or between the District of Columbia, and
21 any State or States or foreign nations, shall be deemed
22 guilty of a felony, and, on conviction thereof, shall be pun-
23 ished by fine not exceeding \$10,000,000 if a corporation,
24 or, if any other person, \$350,000, or by imprisonment not
25 exceeding three years, or by both said punishments, in the
26 discretion of the court.”.

1 (d) WILSON TARIFF ACT.—

2 (1) TECHNICAL AMENDMENT.—The Wilson
3 Tariff Act (28 Stat. 509; 15 U.S.C. 8 et seq.) is
4 amended—

5 (A) by striking section 77, and

6 (B) in section 78—

7 (i) by striking “76, and 77” and in-
8 sserting “and 76”; and

9 (ii) by redesignating such section as
10 section 77.

11 (2) CONFORMING AMENDMENTS TO OTHER
12 LAWS.—

13 (A) CLAYTON ACT.—Subsection (a) of the
14 1st section of the Clayton Act (15 U.S.C.
15 12(a)) is amended by striking “seventy-seven”
16 and inserting “seventy-six”.

17 (B) FEDERAL TRADE COMMISSION ACT.—
18 Section 4 of the Federal Trade Commission Act
19 (15 U.S.C. 44) is amended by striking “77”
20 and inserting “76”.

21 (C) PACKERS AND STOCKYARDS ACT,
22 1921.—Section 405(a) of the Packers and
23 Stockyards Act, 1921 (7 U.S.C. 225(a)) is
24 amended by striking “77” and inserting “76”.

1 (D) ATOMIC ENERGY ACT OF 1954.—Sec-
2 tion 105 of the Atomic Energy Act of 1954 (42
3 U.S.C. 2135) is amended by striking “seventy-
4 seven” and inserting “seventy-six”.

5 (E) DEEP SEABED HARD MINERAL RE-
6 SOURCES ACT.—Section 103(d)(7) of the Deep
7 Seabed Hard Mineral Resources Act (30 U.S.C.
8 1413(d)(7)) is amended by striking “77” and
9 inserting “76”.

10 (e) CLAYTON ACT.—The first section 27 of the Clay-
11 ton Act (15 U.S.C. 27) is redesignated as section 28 and
12 is transferred so as to appear at the end of such Act.

13 (f) YEAR 2000 INFORMATION AND READINESS DIS-
14 CLOSURE ACT.—Section 5(a)(2) of the Year 2000 Infor-
15 mation and Readiness Disclosure Act (Public Law 105-
16 271) is amended by inserting a period after “failure”.

17 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

18 (a) EFFECTIVE DATE.—Except as provided in sub-
19 section (b), this Act and the amendments made by this
20 Act shall take effect on the date of the enactment of this
21 Act.

22 (b) APPLICATION TO CASES.—(1) Section 2(a) shall
23 apply to cases pending on or after the date of the enact-
24 ment of this Act.

1 (2) The amendments made by subsections (b), (c),
2 and (d) of section 2 shall apply only with respect to cases
3 commenced on or after the date of the enactment of this
4 Act.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. Hearing none, so ordered. I yield myself 5 minutes.

Today, the committee considers H.R. 809, the Antitrust Technical Corrections Act of 2001, which I have introduced with Ranking Member Conyers and Representative Hyde. This bill makes six separate technical corrections to our antitrust laws. Three of these corrections repeal outdated provisions of the law, one clarifies the long-existing ambiguity regarding application of the law to the District of Columbia and the territories and to correct two typographical errors in recently passed laws.

This bill is identical to a bill we passed by voice vote in the committee and the full House last year, except we have added the two typographical corrections and some effective date language. The committee has informally consulted with the antitrust enforcement agencies, the Antitrust Division of DOJ and the Bureau of Competition of the FTC, and the agencies have indicated they do not object to any of these changes.

In response to written questions following the committee's November 5, 1997, oversight hearing on the antitrust enforcement agencies, the Department of Justice recommended two of the repeals and a clarification contained in the bill.

First, this bill repeals the act of March 3, 1913, which requires that all depositions taken in antitrust cases brought by the Government be conducted in public. In early days, the courts conducted such cases by deposition without any formal trial proceeding. Thus, Congress required the depositions to be open, as a trial would be. Under the modern practice of broad discovery, the depositions are taken in private and then made public if they are used at trial.

Second, the bill repeals the antitrust provision in the Panama Canal Act, which provides that no vessel owned by someone who is violating the antitrust laws may pass through the Panama Canal.

Third, the bill clarifies that section 2 of the Sherman Act applies to the District of Columbia and its territories.

Finally, the bill repeals a number of redundant antitrust jurisdictional provisions in section 77 of the Wilson Tariff Act. The bill also corrects an erroneous section number designation in the Curt Flood Act passed in 1998.

I believe that all of these provisions are noncontroversial and would help clean up some underbrush in the antitrust laws. I ask unanimous consent that my full statement be made a part of the record and yield to Mr. Conyers.

[The prepared statement of Chairman Sensenbrenner follows:]

PREPARED STATEMENT OF HON. F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Today the Committee considers H.R. 809, the "Antitrust Technical Corrections Act of 2001," which I have introduced with Ranking Member Conyers and Representative Hyde. H.R. 809 makes six separate technical corrections to our antitrust laws. Three of these corrections repeal outdated provisions of the law; one clarifies a long existing ambiguity regarding the application of the law to the District of Columbia and the territories; and two correct typographical errors in recently passed laws.

The bill is identical to a bill that we passed by voice vote in the Committee and the full House last year, except that we have added the two typographical corrections and some effective date language. The Committee has informally consulted

with the antitrust enforcement agencies, the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission, and the agencies have indicated that they do not object to any of these changes. In response to written questions following the Committee's November 5, 1997 oversight hearing on the antitrust enforcement agencies, the Department of Justice recommended two of the repeals and the clarification contained in this bill.

First, H.R. 809 repeals the Act of March 3, 1913 (15 U.S.C. § 30). That act requires that all depositions taken in antitrust cases brought by the government be conducted in public. In the early days, the courts conducted such cases by deposition without any formal trial proceeding. Thus, Congress required that the depositions be open as a trial would be. Under the modern practice of broad discovery, depositions are generally taken in private and then made public if they are used at trial. Under our system, § 30 causes three problems: (1) it sets up a special rule for a narrow class of cases when the justification for that rule has disappeared; (2) it makes it hard for a court to protect proprietary information that may be at issue in an antitrust case; and (3) it can create a circus atmosphere in the deposition of a high profile figure like Bill Gates. In an appeal in the Microsoft case, the D.C. Circuit invited Congress to repeal this law.

Second, H.R. 809 repeals the antitrust provision in the Panama Canal Act (15 U.S.C. § 31). Section 11 of the Panama Canal Act provides that no vessel owned by someone who is violating the antitrust laws may pass through the Panama Canal. The Committee has not been able to determine why this provision was added to the Act or whether it has ever been used. However, with the return of the Canal to Panamanian sovereignty at the end of 1999, it is appropriate to repeal this outdated provision. The House Committee on Armed Services, which has jurisdiction over the Panama Canal Act, waived jurisdiction over this bill last year. The Committee staff has consulted informally with the Armed Services staff, and to date, they have not indicated any objection to this repeal.

Third, H.R. 809 clarifies that Section 2 of the Sherman Act applies to the District and the territories (15 U.S.C. § 3). Two of the primary provisions of antitrust law are Section 1 and Section 2 of the Sherman Act. Section 1 prohibits conspiracies in restraint of trade, and Section 2 prohibits monopolization, attempts to monopolize, and conspiracies to monopolize. Section 3 of the Sherman Act was intended to apply these provisions to the District of Columbia and the various territories of the United States. Unfortunately, however, ambiguous drafting in Section 3 leaves it unclear whether Section 2 applies to those areas. The Committee is aware of at least one instance in which the Department of Justice declined to bring an otherwise meritorious Section 2 claim in a Virgin Islands case because of this ambiguity. This bill clarifies that both Section 1 and Section 2 apply to the District and the Territories. All of the congressional representatives of the District and the Territories are co-sponsors of the bill.

Finally, H.R. 809 repeals a redundant antitrust jurisdictional provision in Section 77 of the Wilson Tariff Act. In 1955, Congress modernized the jurisdictional and venue provisions relating to antitrust suits by amending Section 4 of the Clayton Act (15 U.S.C. § 15). At that time, it repealed the redundant jurisdictional provision in Section 7 of the Sherman Act, but not the one contained in Section 77 of the Wilson Tariff Act. It appears that this was an oversight because Section 77 was never codified and has rarely been used. Repealing Section 77 will not diminish any jurisdictional or venue rights because Section 4 of the Clayton Act provides any potential plaintiff with the same jurisdiction and venue rights that Section 77 does and it also provides broader rights. Rather, the repeal simply rids the law of a confusing, redundant, and little used provision.

Finally, the bill corrects an erroneous section number designation in the Curt Flood Act passed in 1998, and it inserts an inadvertently omitted period in the Year 2000 Information and Readiness Disclosure Act. Neither of these corrections makes any substantive change.

I believe that all of these provisions are non-controversial, and they will help to clean up some underbrush in the antitrust laws. I recommend that the Committee pass the bill without amendment.

Mr. CONYERS. I ask unanimous consent to submit my statement for the record.

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. As a co-sponsor of the bill and a supporter of the corrections, I concur with your analysis and remind our colleagues that this has been arrived at in consultation with the Department of Justice Antitrust Division, the Federal Trade Commission, and I urge all of the members to support the measure.

I thank you.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN

H.R. 809, the "Antitrust Technical Corrections Act" makes six non-controversial changes in our antitrust laws to repeal some out-dated provisions of the law, to clarify that our antitrust laws apply to the District of Columbia and to the Territories, and to make some necessary organizational and grammatical changes.

Chairman Sensenbrenner and I have worked together on this bill, and we have consulted with the Department of Justice Antitrust Division and the Federal Trade Commission Bureau of Competition to ensure that these technical changes improve the efficiency of our antitrust laws. I urge you to support this bi-partisan bill.

Chairman SENSENBRENNER. Are there any amendments?

If not, the question occurs on the motion to report the Bill H.R. 809 favorably. All of those in favor will signify by saying aye.

Opposed, no.

The ayes have it, and the motion is adopted.

Without objection, the chairman is authorized to move to go to conference, pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all members will be given 2 days, as provided by House rules and wish to submit additional dissenting supplemental or minority views.

