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#### FOREIGN TRUST-BUSTING ACT

**HON. BENJAMIN A. GILMAN**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, June 23, 2000

Mr. GILMAN. Mr. Speaker, today I am introducing the Foreign Oil Trust-Busting Act, H.R. 4731.

Crude oil prices are going through the roof, and gasoline prices are following them.

Do illegal activities by foreign oil producers lie at the heart of the problem? I believe they do. Can we do something about those illegal activities? I believe we can.

Every day the activities of American firms are subjected to antitrust examination in foreign countries. Every day the activities of foreign entities are subject to examination by the competition authorities of our Nation. This is so because if a price fixing cartel, or other restraint on trade adversely affects our Nation, we are entitled to act to protect our own interests.

Yet, even though everyone knows that the Organization of Petroleum Exporting Countries openly and blatantly manipulates the price of oil, no action is taken against it. OPEC likes to keep energy prices high enough to fund their own economies, yet not too high, so as to keep us "hooked" on oil and to keep us from making renewable or other alternatives economical. By the same token, they are not adverse to periodic and temporary diminutions in energy prices. Those gyrations cause havoc in our own oil patch, as wells are taken out of production and production is in fact lost permanently.

Given these open manipulations of the market, which clearly seem to violate the antitrust laws, and which certainly have an impact on the American economy, why is not legal pressure brought to bear on the members of OPEC?

During the energy crisis of the 1980's the International Association of Machinists did in fact bring suit against OPEC. It was dismissed because the so-called "Act of State" doctrine was invoked by the United States Court of Appeals in *IAM v. OPEC*, 649 F.2d 1354 (9th Cir. 1981).

The "Act of State" doctrine is a discretionary legal doctrine that encourages courts to withhold legal judgement regarding the official actions of foreign states. The theory is that the official acts of foreign states are more sensitively addressed by the political branches of government.

The Act of State doctrine was invoked in the 1960's to prevent actions against the government of Cuba in an expropriation case.

The Congress passed the "Second Hickenlooper Amendment" to forbid the application of the doctrine unless a suggestion that it was appropriate to apply it was filed on behalf the President of the United States; in such cases the Court would have the discretion to apply the doctrine. Thus, the Congress per-

mitted a case that had already been filed to go forward. The constitutionality of the provision was upheld in *Banco Nacional de Cuba v. Farr*, 383 F.2d 166 (2d Cir. 1966).

It is my judgement that the Courts should be allowed to proceed to try antitrust cases against states and other foreign entities manipulating the price or supply of energy without reference to the Act of State doctrine. It would not upset our foreign relations if such a case proceeded, and if it did, it would be worth it, given the potential that the enforcement of antitrust laws would have in busting up OPEC.

This judgement about foreign policy is one that the Congress and not the Courts should make.

It is one thing for high gas prices to result, as they do in Europe, in revenues flowing to the government. That is their decision to make. It is quite another thing for the profits from artificially high prices to unjustly enrich foreign potentates. That is what is happening now. Diplomatic niceties will have to take a back seat. Too much damage is being inflicted on our economy.

I recognize that there may be other barriers to a successful lawsuit against OPEC members, but those barriers need to be dealt with in other Committees, and I welcome the prospect of working on those barriers with the Committees of jurisdiction.

In the interim, we know that the barrier of the "Act of State Doctrine" must be dealt with, and I urge my colleagues who care about high oil prices to join me in cosponsoring this bill.

A copy of the bill follows:

H.R. 4731

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Foreign Trust Busting Act".

#### SEC. 2. FINDINGS.

Congress finds that—

(1) it is in the foreign policy interest of the United States for there to be a free market in energy on an international basis;

(2) a principal reason for high energy prices in the United States is international price fixing that has evaded review under the antitrust laws of the United States because of foreign policy considerations and technical impediments in these laws that prevent the effective enforcement of United States law with respect to international price fixing in the energy market; and

(3) among these foreign policy and technical impediments is the discretionary federal act of state doctrine which has been used to bar a lawsuit directed at stopping the manipulation of energy supplies and prices because of concern that such litigation might interfere in the foreign policy of the United States.

#### SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to establish that the foreign policy interest of the United States would be advanced, rather than impeded or complicated, if foreign entities, including foreign cartels and foreign countries participating in such cartels, were held responsible for energy supply and price manipulation that affects the United States economy; and

(2) to eliminate barriers to the effective application of United States antitrust laws to foreign entities that have manipulated energy supplies or prices.

#### SEC. 4. AMENDMENT TO FOREIGN ASSISTANCE ACT OF 1961 RELATING TO JURISDICTION OF UNITED STATES COURTS IN CERTAIN ANTITRUST CASES.

Section 620(e)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(e)(2)) is amended—

(1) by striking "(2) Notwithstanding" and inserting "(2)(A) Notwithstanding";

(2) by striking ": Provided, That this subparagraph shall not be applicable (1)" and inserting ", except, that this subparagraph shall not be applicable";

(3) by striking "or other taking, or (2)" and inserting the following: "or other taking.

"(B)(i) Notwithstanding any other provision of law, no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits relating to an action under any antitrust laws in a case asserting the manipulation of energy supplies or prices, except that this subparagraph shall not be applicable"; and

(4) by adding at the end the following:

"(ii) In this subparagraph, the term 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition."

#### DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2001

SPEECH OF

**HON. TOM UDALL**

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 20, 2000

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4635) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2001, and for other purposes

Mr. UDALL of New Mexico. Mr. Chairman, I am disappointed with yet another poison apple that we have been given by the majority to vote on—H.R. 4635, the FY 2001 VA-HUD-Independent Agencies Appropriations Act.

Although this bill is \$2 billion more than the FY 2000 appropriation it is still more than \$6 billion below the President's request. In addition, this funding bill follows the FY 2001 congressional budget resolution, which provides for inadequate resources for discretionary investments. I agree with my colleagues and with the administration that we need realistic levels of funding for critical programs that Americans, and New Mexicans, expect their government to perform and provide. Specifically in the areas of education, law enforcement, research and technology, adequate health care, the administration of Social Security and Medicare, and veteran programs.

Mr. Chairman, this bill hurts many constituencies throughout my district, as well as those in the districts of my colleagues. The Appropriations Committee has eliminated the Corporation for National and Community Service. In doing so, 62,000 Americans, including participants in my district, would be denied the opportunity to meet pressing education, public safety, and environmental needs in exchange for help with college costs through participation in AmeriCorps. This funding bill would also prevent students from participating in