

by blockading terrorist-controlled Gaza. I believe that this blockade is a necessary measure to stop the shipment of weapons and prevent the loss of innocent lives in the region. After careful examination of the facts, I am confident Israel's right to defend herself will be sustained in the eyes of the international community.

Israel plays an intricate role in United States foreign policy and provides the United States with a staunch ally in the region. As the only free market economy and viable democracy in the Middle East, it is essential that Israel and the United States continue this mutually beneficial partnership. We should continue to support this valuable ally in their fight against terrorism and extremism.

I encourage the international community to recognize this basic right of Israel and encourage my colleagues to join me in making clear that the United States cares deeply about our friend and ally and we will not allow their right to their own defense compromised because of the actions of Hamas extremists who seek to do them harm.

BALANCING PUBLIC AND PRIVATE
REMEDIES IN ENHANCED
CARTEL PROSECUTION

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 10, 2010

Mr. CONYERS. Madam Speaker, just before Congress left for the Memorial Day recess, we passed and sent to the President H.R. 5330, the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 Extension Act, and the President has just signed it into law. As Chairman of the House Judiciary Committee, and sponsor of this legislation, I would like to emphasize a few points about its importance.

The antitrust laws have been described as the Magna Carta of free enterprise. They are a safeguard that protects the vitality of the free market by preventing its becoming concentrated in too few hands. Just as importantly, they protect consumers from unscrupulous businesses that would conspire among themselves or illegally leverage market power to charge artificially high prices and deny meaningful choice.

The worst kinds of antitrust offenses, conspiracies by competitors to organize into cartels to cheat the marketplace of fair competition, are rightly condemned and subject to high criminal fines and prison sentences.

Treble damages in private rights of action are also an essential element of vigorous antitrust enforcement. They not only compensate consumers for harm they suffer from illegal anticompetitive activity, they also create a powerful incentive for other market participants to refrain from engaging in anticompetitive activity in the future.

The Department of Justice Antitrust Division's corporate leniency program has worked well in exposing illegal price-fixing cartels and bringing them to justice. Starting in 1993, the corporate leniency program created incentives for participants in illegal price-fixing cartels—provided that they weren't the ringleader—to come forward and expose the cartel, in exchange for amnesty from criminal prosecution.

Although the program was achieving success, the Antitrust Division recognized that the treble damages, as well as the joint and several liability overall, to which amnesty applicants would be exposed in related private actions was limiting the effectiveness of the program. The party that was coming forward to expose the cartel could potentially even be left paying damages for the entire cartel.

The Antitrust Criminal Penalty Enhancement and Reform Act was passed in 2004 to address these concerns, by limiting the civil liability of amnesty applicants to their share of the legal responsibility, while leaving the other cartel participants subject to joint and several liability. In this way, Congress sought to balance the need for strong incentives to uncover harmful, sometimes multi-billion-dollar price-fixing cartels, without lessening the total amount of damages that would be available to the victims in private civil actions.

By some measures, the 2004 changes have been effective. Since those changes were made, the Antitrust Division has prosecuted some of the biggest cartels ever detected, collecting more than \$5 billion in criminal fines.

However, concerns have arisen that some cartel members who have taken advantage of the leniency program may be abusing the civil liability relief by failing to cooperate fully and in a timely manner with the cartel's victims in their civil actions. In reauthorizing the Act for another 10 years, we are making some clarifying amendments to ensure that the benefits to the Department of Justice's criminal cartel enforcement program do not come at the expense of the victims.

One of the amendments revises the timely cooperation requirement. In the original Act, Section 213(c) signaled the importance of timely cooperation with civil claimants, but specifically required it only in a very narrow set of prosecutions. This legislation revises section 213(c) to make it clear that this timely cooperation requirement applies in all cases where amnesty is being sought under the leniency program.

The legislation also creates a new Section 213(d) that clarifies the necessary balance between public and private pursuit of price-fixing cartels. The Department of Justice will frequently ask the court to stay related civil claims in order to build its criminal case against the rest of the cartel. These stays can sometimes last a year, or even longer. As the Act makes clear, the judicious granting of these stays is, and remains, fully in keeping with the purposes of the Act. We have added a new section 213(d) to clarify that the obligation for timely cooperation with civil claimants does not take effect until after the stay is lifted, but that, once it is lifted, then the amnesty applicant must cooperate in a prompt and timely fashion.

Section 213(d) does not include a reference to the 213(b)(3) requirement to make available witnesses for deposition or testimony, in recognition of the fact that, even after the stay is lifted generally, there may be remaining sensitivities that, for a time, may make it problematic for certain witnesses to provide interviews, depositions, or trial testimony in connection with the private litigation without disrupting or harming the ongoing criminal investigation. The omission of this reference from section 213(d) is not intended to discount the importance of cooperation with civil claimants in this regard; rather, it reflects that these aspects of

cooperation with civil claimants may be more disruptive to the ongoing criminal investigation. Subject to the additional temporary delays that the Antitrust Division may request on a case-by-case basis, the timely cooperation requirement also applies to witness availability. We expect that the Antitrust Division and the courts will be appropriately sensitive to the needs and rights of private claimants in this regard as well.

We are also commissioning a study by the Government Accountability Office to consider other possible ways to improve the efficacy of the Act, including, but not limited to, adding qui tam and whistleblower protection provisions.

We believe these improvements further promote vigorous antitrust enforcement for the protection of American consumers and free-market competition.

CONGRATULATING THE LADY SEA
WARRIORS OF HAWAII PACIFIC
UNIVERSITY ON WINNING THE
NCAA DIVISION II SOFTBALL
WORLD SERIES

HON. MAZIE K. HIRONO

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 10, 2010

Ms. HIRONO. Madam Speaker, I rise today to congratulate the Lady Sea Warriors of Hawaii Pacific University for winning their first NCAA Division II Softball World Series title. On May 31, 2010, the Lady Sea Warriors scored four runs in the fifth inning and held off Valdosta State to win the title game by a score of 4–3.

I take great pride in extending my congratulations to players Chante Tesoro, Kozy Toriano, Erin Fujita, Melissa Awa, Malia Killam, Chelsea Luckey, Ashley Valine, Ciera Senas, Breanne Patton, Pomaikai Kalakau, Casey Sugihara, Maile Kim, Ashley Fernandez, Nicole Morrow, Sherise Musquiz, Laine Shikuma, Celina Garces, and Caira Pires, many of whom hail from Hawaii's second congressional district. The hard work, perseverance, and outstanding performance of these young women led to a 50–8 season, the most successful season in their program's history.

I would like to extend special congratulations to Ms. Musquiz, who pitched every inning of the NCAA Division II tournament and amassed a 4–0 record, earning her Most Outstanding Player honors.

I would also like to commend head coach Bryan Nakasone and assistant coaches Howard Okita, Roger Javillo, Jon Corrales, and Richard Nomura for their superb leadership throughout the Lady Sea Warriors' historic season.

This has been a great year for Hawaii softball, and the Lady Sea Warriors' victory on a national stage has generated much pride back home. I congratulate the Lady Sea Warriors on their outstanding season and wish the program continued success.