

UNITED STATES EXTRATERRITORIAL  
JURISDICTION - ANTI TRUST LAW

99TH CONGRESS  
1ST SESSION

**S. 397**

To amend the Sherman Act and the Clayton Act to modify the application of such Acts to international commerce.

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IN THE SENATE OF THE UNITED STATES \*

FEBRUARY 6 (legislative day, JANUARY 21), 1985

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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**A BILL**

To amend the Sherman Act and the Clayton Act to modify the application of such Acts to international commerce.

- 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Foreign Trade Antitrust  
4 Improvements Act of 1985".  
5 SEC. 2. Section 7 of the Sherman Act (15 U.S.C. 6a) is  
6 amended by—  
7 (1) inserting "(a)" before "This Act"; and  
8 (2) adding at the end thereof the following new  
9 paragraph:

\* (Copy provided through the services of BNA International Inc., London, publishers of US Business Briefing).

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1       “(b) Whenever a motion to dismiss for lack of subject  
2 matter jurisdiction under this section shall be made in any  
3 action under the antitrust laws, it shall be the duty of the  
4 judge designated to hear and determine the case to hear and  
5 determine such motion, after such discovery or other pro-  
6 ceedings directly related to the motion as the court deems  
7 appropriate, before conducting or permitting the parties to  
8 conduct any further proceedings in the action.”.

9       SEC. 3. The Clayton Act (15 U.S.C. 12 et seq.) is  
10 amended by adding after section 20 the following new sec-  
11 tion:

12                   “INTERNATIONAL COMMERCE

13       “SEC. 21. (a) Notwithstanding any other provision of  
14 the antitrust laws or any provision of any State laws similar  
15 to the antitrust laws, in any action brought by any person or  
16 State under the antitrust laws or similar State laws and in-  
17 volving trade or commerce with a foreign nation, the court  
18 shall enter a judgment dismissing such action whenever it  
19 determines that the interests of the United States served by  
20 the action are outweighed by the interests of one or more  
21 foreign nations adversely affected by the action. Upon a re-  
22 quest by the court, the Attorney General shall appear to set  
23 forth the views of the United States as to the effects of the  
24 action on the interests of the United States and on any affect-  
25 ed foreign nation.

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1       “(b) Whenever a motion to dismiss for interference with  
2 foreign national interests is made under this section in any  
3 action under the antitrust laws, it shall be the duty of the  
4 court, after such discovery or other proceedings directly re-  
5 lated to the motion as the court deems appropriate, to hear  
6 and determine such motion before conducting or permitting  
7 the parties to conduct any further proceedings in the  
8 action.”.

9       SEC. 4. Section 12 of the Clayton Act is amended by—

10                   (1) inserting “(a)” before “That suit”; and

11                   (2) adding at the end thereof the following:

12       “(b) The doctrine of *forum non conveniens* shall be ap-  
13 plicable in any suit, action, or proceeding under the antitrust  
14 laws that involves trade or commerce with a foreign nation,  
15 and nothing contained in this section or any other venue pro-  
16 vision applicable to such suits, actions, or proceedings shall  
17 be construed to prevent dismissal of such suits, actions, or  
18 proceedings on the ground of *forum non conveniens*.”.

19       SEC. 5. The Clayton Act is amended by adding after  
20 section 4H the following:

21                   “FOREIGN TRADE

22       “SEC. 4I. (a) Notwithstanding sections 4 and 4C, and in  
23 lieu of the relief specified in such sections, and notwithstand-  
24 ing any provision of any State law providing damages for  
25 conduct similar to that forbidden by the antitrust laws, any  
26 person or State entitled to recovery on a claim under such

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1 section or provision shall recover (1) the actual damages sus-  
2 tained by such person or, in the case of a claim under section  
3 4C, the total damage as described in subsection (a)(1) of such  
4 section, (2) interest calculated at the rate specified in section  
5 1961 of title 28, United States Code, on such actual damages  
6 or total damage as specified in subsection (d) of section 4 of  
7 the National Cooperative Research Act of 1984 (15 U.S.C.  
8 4303(d)), and (3) the cost of suit attributable to such claim,  
9 including a reasonable attorney's fee, if—

10       “(A) such claim results from conduct occurring in  
11 the course of trade or commerce with a foreign nation,

12       “(B) such claim is determined by the court to  
13 affect adversely and substantially the interests of a for-  
14 eign nation, and

15       “(C) the court determines that the adverse effect  
16 of the claim on the interests of a foreign nation would  
17 be substantially reduced if the claim were limited to  
18 actual damages or total damage as provided herein.

19 Upon a request by the court, the Attorney General shall  
20 appear to set forth the views of the United States as to the  
21 effects of the claim and of the possible limitation of damages  
22 authorized herein on the interests of foreign nations.

23       “(b) Whenever a motion to limit damages as provided in  
24 this section is made in any action under the antitrust laws, it  
25 shall be the duty of the court to hear and determine such

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1 motion, after such discovery or other proceedings directly re-  
2 lated to the motion as the court deems appropriate, before  
3 conducting or permitting the parties to conduct any further  
4 proceedings in the action.”.

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