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FOLDER TITLE:

Antitrust/Maximum Price Fixing: Antitrust Joint Production

2018-0662-S

rs3141

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

file joint production

93 MAR 25 P3:57

FAX COVER SHEET

TO:

John Podesta

OF:

Fax:

456-2215

Phone:

FROM:

OF:

Subcommittee on Technology and the Law

DATE:

3-25-93

Number of pages including cover sheet:

5

COMMENTS:

These changes to be incorporated
in Substitute Amendment for 2:30
~~marking~~ markup

If you have any questions, please call: (202)224-3406

Jm

1 favorable to United States persons than to that
2 country's domestic persons with respect to participa-
3 tion in joint ventures for production."

4 **SEC. 4. REPORTS ON JOINT VENTURES AND UNITED**
5 **STATES COMPETITIVENESS.**

6 (a) **PURPOSE.**—The purpose of the reports required
7 by this section is to inform Congress and the American
8 people of the effect of the National Cooperative Research
9 and Production Act of 1993 on the competitiveness of the
10 United States in key technological areas of research, devel-
11 opment, and production.

12 (b) **ANNUAL REPORT BY THE ATTORNEY GEN-**
13 **ERAL.**—In the 30-day period beginning at each 1-year in-
14 terval after the date of enactment of this Act, the Attorney
15 General shall submit to the Committee on the Judiciary
16 of the House of Representatives and the Committee on
17 the Judiciary of the Senate—

for 9
years

INSERT A

18 (1) a list of joint ventures for which notice was
19 filed under section 6(a) of the National Cooperative
20 Research and Production Act of 1993 during the 12-
21 month period for which the report is made, including
22 the purpose of each joint venture and the identity
23 and nationality of each party to the joint venture as
24 described in that section, and

1 (2) a list of cases and proceedings brought dur-
2 ing that period under the antitrust laws by the De-
3 partment of Justice and the Federal Trade Commis-
4 sion with respect to joint ventures ~~for which notice~~
5 was filed under that section at any time. *for 9 years*

6 (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-
7 ERAL.—In the 30-day period beginning at each 3-year in-
8 terval after the date of enactment of this Act, the Attorney
9 General, after consultation with such other agencies as the
10 Attorney General considers to be appropriate, shall submit
11 to the Committee on the Judiciary of the House of Rep-
12 resentatives and the Committee on the Judiciary of the
13 Senate—

14 (1)(A) a description of the technological areas
15 of research, development, and production most com-
16 monly pursued by joint ventures ~~for which notice~~
17 was filed under section 6(a) of the National Cooper-
18 ative Research and Production Act of 1993 during
19 the 3-year period for which the report is made; and

20 (B) an analysis of the trends in the competitive-
21 ness of United States industry in those areas; and

22 (2) a supplement to the report submitted by the
23 Attorney General under subsection (d) reflecting
24 changes in antitrust treatment of joint ventures *for production*
25 under the laws of other nations.

1 (d) REVIEW OF ANTITRUST TREATMENT UNDER
2 FOREIGN LAWS.—Not later than 1 year after the date of
3 enactment of this Act, the Attorney General, after con-
4 sultation with such other agencies as the Attorney General
5 considers to be appropriate, shall submit to the Committee
6 on the Judiciary of the House of Representatives and the
7 Committee on the Judiciary of the Senate a report on the
8 antitrust treatment of United States businesses that are
9 parties to joint ventures under the law of each foreign na-
10 tion in which there is operating a business that filed notice
11 under section 6(a) of the National Cooperative Research
12 and Production Act of 1993.

INSERT A

Amendment to H.R. 1313

Offered by

Page 10, strike lines 1 through 7 and insert the following:

for production

1 (1) a list of joint ventures for which notice was
2 filed under section 6(a) of the National Cooperative
3 Research and Production Act of 1993 during the 12-
4 month period for which such report is made,
5 including—
6 (A) the purpose of each joint venture;
7 (B) the identity of each party described in
8 section 6(a)(1) of such Act, and
9 (C) the identity and nationality of each
10 person described in section 6(a)(3) of such Act;
11 and

Suggested Clarifications to Section 3(g) of H.R. 1313

(g) LIMITATION. — The National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.) is amended by adding at the end the following:

“APPLICATION OF SECTION 4 PROTECTIONS TO PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

“SEC. 7. Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to a joint venture’s production of a product, process, or service, as referred to in section 2(a) (6) (D), unless —

“(1) the principal facilities for such production are located in the United States or its territories, and

“(2) each person who controls any party to such venture (including such party itself) is a United states person, or a foreign person from a country **that is a party to an international agreement with the United States that accords or** whose law accords antitrust treatment no less favorable to United States persons than to such country’s domestic persons with respect to participation in joint ventures for production.”

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Third Congress

93 MAR 5 P3:49

93 MAR 5 P3:49

File
Whittrust:

Joint
production

DATE:

3/5

TO:

John Podesta

(456-2215)

FROM:

Don Yarowsky

TELEPHONE: 202 225-3951 (FAX 202 225-4550)

NUMBER OF PAGES (INCLUDING THIS PAGE):

13

3/5/93

A BILL

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

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 "National Cooperative
5 Production Amendments of 1993".

6 SEC. 2. FINDINGS AND PURPOSE.

7 (a) FINDINGS.—The Congress finds that—

8 (1) technological innovation and its profitable
9 commercialization are critical components of the

1 ability of the United States to raise the living stand-
2 ards of Americans and to compete in world markets;

3 (2) cooperative arrangements among
4 nonaffiliated businesses in the private sector are
5 often essential for successful technological innova-
6 tion; and

7 (3) the antitrust laws may have been mis-
8 takenly perceived to inhibit procompetitive coopera-
9 tive innovation arrangements, and so clarification
10 serves a useful purpose in helping to promote such
11 arrangements.

12 (b) PURPOSE.—It is the purpose of this Act to pro-
13 mote innovation, facilitate trade, and strengthen the com-
14 petitiveness of the United States in world markets by
15 clarifying the applicability of the rule of reason standard
16 and establishing a procedure under which businesses may
17 notify the Department of Justice and Federal Trade Com-
18 mission of their cooperative ventures and thereby qualify
19 for a single-damage limitation on civil antitrust liability.

20 SEC. 3. AMENDMENTS.

21 (a) SHORT TITLE.—Section 1 of the National Coop-
22 erative Research Act of 1984 (15 U.S.C. 4301 note) is
23 amended by striking “National Cooperative Research Act
24 of 1984” and inserting “National Cooperative Research
25 and Production Act of 1993”.

1 (b) DEFINITION.—Section 2(a)(6) of the National
2 Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6))
3 is amended—

4 (1) in the matter preceding subparagraph (A)
5 by striking “research and development”;

6 (2) in subparagraph (D) by inserting “or pro-
7 duction” after “research”;

8 (3) in subparagraph (E) by striking “and (D)”
9 and inserting “(D), and (E),”;

10 (4) by redesignating subparagraphs (D) and
11 (E) as subparagraphs (E) and (F), respectively;

12 (5) by inserting after subparagraph (C) the fol-
13 lowing:

14 “(D) the production and testing of a prod-
15 uct, process, or service”; and

16 (6) by striking “research” the last place it ap-
17 pears and inserting “such venture”.

18 (c) EXCLUSIONS.—Section 2(b) of the National Co-
19 operative Research Act of 1984 (15 U.S.C. 4301(b)) is
20 amended—

21 (1) in the matter preceding paragraph (1) by
22 striking “research and development”;

23 (2) in paragraph (1) by striking “conduct the
24 research and development that is” and inserting
25 “carry out”;

1 (3) by amending paragraph (2) to read as fol-
2 lows:

3 "(2) entering into any agreement or engaging
4 in any other conduct restricting, requiring, or other-
5 wise involving the market testing, marketing, dis-
6 tribution, or provision by any person who is a party
7 to such venture of any product, process, or service,
8 other than—

9 "(A) the distribution among the parties to
10 such venture, in accordance with such venture,
11 of a product, process, or service produced by
12 such venture,

13 "(B) the marketing of proprietary informa-
14 tion, such as patents and trade secrets, devel-
15 oped through such venture formed under a
16 written agreement entered into before the date
17 of the enactment of the National Cooperative
18 Production Amendments of 1993, or

19 "(C) the licensing, conveying, or transfer-
20 ring of intellectual property, such as patents
21 and trade secrets, developed through such ven-
22 ture formed under a written agreement entered
23 into on or after the date of the enactment of
24 the National Cooperative Production Amend-
25 ments of 1993,";

1 (4) in paragraph (3)—

2 (A) in subparagraph (B) by striking “such
3 party” and inserting “any person who is a
4 party to such venture”; and

5 (B) by striking the period at the end and
6 inserting a comma, and

7 (5) by adding at the end the following:

8 “(4) entering into any agreement or engaging
9 in any other conduct allocating a market with a
10 competitor,

11 “(5) exchanging production information among
12 competitors that is not reasonably required to carry
13 out the purpose of such venture,

14 “(6) entering into any agreement or engaging
15 in any other conduct restricting, requiring, or other-
16 wise involving the production of a product, process,
17 or service, other than the production by such venture
18 of a product, process, or service,

19 “(7) the use of existing facilities in connection
20 with the production of a product, process, or service
21 by such venture unless such use is for the produc-
22 tion of a new product or technology, and

23 “(8) except as provided in paragraphs (2), (3),
24 and (6), entering into any agreement or engaging in
25 any other conduct to restrict or require participation

1 by any person who is a party to such venture, in any
2 unilateral or joint activity that is not reasonably re-
3 quired to carry out the purpose of such venture.”.

4 (d) RULE OF REASON STANDARD.—Section 3 of the
5 National Cooperative Research Act of 1984 (15 U.S.C.
6 4302) is amended—

7 (1) by striking “research and development” the
8 first place it appears;

9 (2) by striking “and development” the last
10 place it appears and inserting “, development, prod-
11 uct, process, and service”; and

12 (3) by adding at the end the following:
13 “For the purpose of determining a properly defined, rel-
14 evant market, worldwide capacity shall be considered to
15 the extent that it may be appropriate in the cir-
16 cumstances.”.

17 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
18 The National Cooperative Research Act of 1984 (15
19 U.S.C. 4301 et seq.) is amended—

20 (1) in section 4—

21 (A) in subsections (a)(1), (b)(1), (c)(1),
22 and (e) by striking “research and development”
23 each place it appears; and

24 (B) in subsection (b) by inserting “of this
25 section” after “subsection (d)”; and

1 (2) in section 5(a) in the matter preceding
2 paragraph (1) by striking "research and develop-
3 ment".

4 (f) DISCLOSURE.—Section 6 of the National Cooper-
5 ative Research Act of 1984 (15 U.S.C. 4305) is
6 amended—

7 (1) in the heading by striking "RESEARCH AND
8 DEVELOPMENT";

9 (2) in subsection (a)(1) by striking "identities
10 of the parties to such venture, and" and inserting
11 the following:

12 "identity and nationality of each party to such ven-
13 ture including, in the case of a party that is not an
14 individual, the country (or State) under whose laws
15 such party is organized, the location of such party's
16 principal place of business, and the identity and na-
17 tionality of any person or entity that directly or indi-
18 rectly controls such party, whether separately or
19 with one or more other persons or entities acting as
20 a group for the purpose of controlling such party,
21 and"; and

22 (3) in subsections (a), (d)(2), and (e) by strik-
23 ing "research and development" each place it ap-
24 pears.

1 (g) LIMITATION.—The National Cooperative Re-
2 search Act of 1984 (15 U.S.C. 4301 et seq.) is amended
3 by adding at the end the following:

4 "APPLICATION OF SECTION 4 PROTECTIONS TO
5 PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

6 "SEC. 7. (a) Notwithstanding sections 4 and 6, the
7 protections of section 4 shall not apply with respect to the
8 production of a product, process, or service by a joint ven-
9 ture unless—

10 "(1) the principal facilities for such production
11 are located in the United States or its territories,
12 and

13 "(2) each party to such venture is a United
14 States entity, or a foreign entity from a country
15 whose competition law accords national treatment to
16 United States entities with respect to participation
17 in joint ventures.

18 "(b) For purposes of subsection (a), a person or for-
19 eign entity that directly or indirectly controls a party to
20 a joint venture, whether separately or with one or more
21 other persons or entities acting as a group for the purpose
22 of controlling such party, shall be considered to be a party
23 to such venture.

24 "(c) For purposes of this section—

25 "(1) the term 'foreign entity' means—

1 “(A) a foreign state, as defined in section
2 1603(a) of title 28, United States Code,

3 “(B) a person that is organized under the
4 laws of such foreign state or that has its prin-
5 cipal place of business outside the United
6 States, or

7 “(C) an individual who is not a citizen of
8 the United States,

9 “(2) the term ‘national treatment’ means, with
10 respect to the competition law of a country, treat-
11 ment no less favorable than is accorded to domestic
12 entities in such country, and

13 “(3) the term ‘United States entity’ means—

14 “(A) a person that is organized under the
15 laws of a State or of the United States and that
16 has its principal place of business in the United
17 States, or

18 “(B) an individual who is a citizen of the
19 United States.”.

20 **SEC. 4. REPORTS ON JOINT VENTURES AND UNITED**
21 **STATES COMPETITIVENESS.**

22 (a) **PURPOSE.**—The purpose of the reports required
23 by this section is to inform Congress and the American
24 people of the effect of the National Cooperative Research
25 and Production Act of 1993 on the competitiveness of the

1 United States in key technological areas of research, devel-
2 opment, and production.

3 (b) ANNUAL REPORT BY THE ATTORNEY GEN-
4 ERAL.—In the 30-day period beginning at each 1-year in-
5 terval after the date of the enactment of this Act, the At-
6 torney General shall submit to the Committee on the Judi-
7 ciary of the House of Representatives and the Committee
8 on the Judiciary of the Senate—

9 (1) a list of joint ventures for which notice was
10 filed under section 6(a) of the National Cooperative
11 Research and Production Act of 1993 during the 12-
12 month period for which such report is made, includ-
13 ing the purpose of each joint venture and the iden-
14 tity and nationality of each party to such joint ven-
15 ture as described in such section; and

16 (2) a list of cases and proceedings, if any,
17 brought during such period under the antitrust laws
18 by the Department of Justice, and by the Federal
19 Trade Commission, with respect to joint ventures for
20 which notice was filed under such section at any
21 time.

22 (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-
23 ERAL.—In the 30-day period beginning at each 3-year in-
24 terval after the date of the enactment of this Act, the At-
25 torney General, after consultation with such other agen-

1 cies as may be appropriate, shall submit to the Committee
2 on the Judiciary of the House of Representatives and the
3 Committee on the Judiciary of the Senate—

4 (1) a description of the technological areas of
5 research, development, and production most com-
6 monly pursued by joint ventures for which notice
7 was filed under section 6(a) of the National Cooper-
8 ative Research and Production Act of 1993 during
9 the 3-year period for which such report is made, and
10 an analysis of the trends in the competitiveness of
11 United States industry in such areas; and

12 (2) an update of the report submitted by the
13 Attorney General under subsection (d) to reflect
14 changes in foreign competition laws or practices.

15 (d) REVIEW OF FOREIGN COMPETITION LAWS.—Not
16 later than 1 year after the date of enactment of this Act,
17 the Attorney General, after consultation with such other
18 agencies as may be appropriate, shall submit to the Com-
19 mittee on the Judiciary of the House of Representatives
20 and the Committee on the Judiciary of the Senate a report
21 on the treatment of United States businesses that are par-
22 ties to joint ventures under the competition law of each
23 foreign nation, or community of nations, any of whose do-
24 mestic businesses have filed notice under section 6(a) of

- 1 the National Cooperative Research and Production Act of
- 2 1993 at any time.

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

FAX COVER SHEET

TO: John Podesta

OF: _____

Fax: 456-2215

Phone: _____

FROM: Ann HarkinsOF: Subcommittee on Technology and the LawDATE: 3-5-93Number of pages including cover sheet: 15

COMMENTS:

If you have any questions, please call: (202)224-3406

House Draft
3/5/93
w/ Senate annotations

A BILL

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

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 "National Cooperative Production Amendments of 1993"

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS —The Congress finds that—

(1) technological innovation and its profitable commercialization are critical components of the

ability of the United States to raise the living standards of Americans and to compete in world markets;

(2) cooperative arrangements among nonaffiliated businesses in the private sector are often essential for successful technological innovation; and

(3) the antitrust laws may have been mistakenly perceived to inhibit procompetitive cooperative innovation arrangements, and so clarification serves a useful purpose in helping to promote such arrangements.

(b) **PURPOSE.**—It is the purpose of this Act to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which businesses may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damage limitation on civil antitrust liability.

SEC. 3. AMENDMENTS.

(a) **SHORT TITLE.**—Section 1 of the National Cooperative Research Act of 1984 (15 U.S.C. 4301 note) is amended by striking "National Cooperative Research Act of 1984" and inserting "National Cooperative Research and Production Act of 1993"

(b) DEFINITION.—Section 2(a)(6) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6)) is amended—

(1) in the matter preceding subparagraph (A) by striking “research and development”;

(2) in subparagraph (D) by inserting “or production” after “research”;

(3) in subparagraph (E) by striking “and (D)” and inserting “(D), and (E).”;

(4) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively;

(5) by inserting after subparagraph (C) the following:

“(D) the production ^{OR} [and] testing of a product, process, or service”; and

(6) by striking “research” the last place it appears and inserting “such venture”.

(c) EXCLUSIONS.—Section 2(b) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301(b)) is amended—

(1) in the matter preceding paragraph (1) by striking “research and development”;

(2) in paragraph (1) by striking “conduct the research and development that is” and inserting “carry out”;

(3) by amending paragraph (2) to read as follows:

"(2) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the [market testing]* marketing, distribution, or provision by any person who is a party to such venture of any product, process, or service, other than—

"(A) the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture,

"(B) the marketing of proprietary information, such as patents and trade secrets, developed through such venture formed under a written agreement entered into before the date of the enactment of the National Cooperative Production Amendments of 1993, or

"(C) the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture formed under a written agreement entered into on or after the date of the enactment of the National Cooperative Production Amendments of 1993,";

* Possibly market testing other than:

"Testing, evaluation or consultation ~~with~~ with potential users in connection with research, development or production of a product, process or service."

(4) in paragraph (3)—

(A) in subparagraph (B) by striking "such party" and inserting "any person who is a party to such venture"; and

(B) by striking the period at the end and inserting a comma, and

(5) by adding at the end the following:

"(4) entering into any agreement or engaging in any other conduct allocating a market with a competitor,

"(5) exchanging production information among competitors that is not reasonably required to carry out the purpose of such venture,

"(6) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production of a product, process, or service, other than the production by such venture of a product, process, or service,

"(7) the use of existing facilities in connection with the production of a product, process, or service by such venture unless such use is for the production of a new product or technology, and

"(8) except as provided in paragraphs (2), (3), and (6), entering into any agreement or engaging in any other conduct to restrict or require participation

1 by any person who is a party to such venture, in any
2 unilateral or joint activity that is not reasonably re-
3 quired to carry out the purpose of such venture."

4 (d) **RULE OF REASON STANDARD.**—Section 3 of the
5 National Cooperative Research Act of 1984 (15 U.S.C.
6 4302) is amended

7 (1) by striking "research and development" the
8 first place it appears;

9 (2) by striking "and development" the last
10 place it appears and inserting ", development, prod-
11 uct, process, and service"; and

12 (3) by adding at the end the following:
13 "For the purpose of determining a properly defined, rel-
14 evant market, worldwide capacity shall be considered to
15 the extent that it may be appropriate in the cir-
16 cumstances."

17 (e) **TECHNICAL AND CONFORMING AMENDMENTS.**—
18 The National Cooperative Research Act of 1984 (15
19 U.S.C. 4301 et seq.) is amended—

20 (1) in section 4—

21 (A) in subsections (a)(1), (b)(1), (c)(1),
22 and (e) by striking "research and development"
23 each place it appears; and

24 (B) in subsection (b) by inserting "of this
25 section" after "subsection (d)"; and

(2) in section 5(a) in the matter preceding paragraph (1) by striking "research and development"

(f) DISCLOSURE.—Section 6 of the National Cooperative Research Act of 1984 (15 U.S.C. 4305) is amended—

(1) in the heading by striking "RESEARCH AND DEVELOPMENT";

(2) in subsection (a)(1) by striking "identities of the parties to such venture, and" and inserting the following.

"identity and nationality of each party to such venture including, in the case of a party that is not an individual, the country (or State) under whose laws such party is organized, the location of such party's principal place of business, and the identity and nationality of any person or entity that directly or indirectly controls such party, whether separately or with one or more other persons or entities acting as a group for the purpose of controlling such party, and"; and

(3) in subsections (a), (d)(2), and (e) by striking "research and development" each place it appears.

(g) LIMITATION.—The National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.) is amended by adding at the end the following:

“APPLICATION OF SECTION 4 PROTECTIONS TO PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

“SEC. 7. (a) Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to the production of a product, process, or service by a joint venture unless—

“(1) the principal facilities for such production are located in the United States or its territories, and

“(2) each party to such venture is a United States entity, or a foreign entity from a country whose ^{anti-trust} ~~competition~~ law accords national treatment to United States entities with respect to participation in joint ventures.

“(b) For purposes of subsection (a), a person or foreign entity that directly or indirectly controls a party to a joint venture, whether separately or with one or more other persons or entities acting as a group for the purpose of controlling such party, shall be considered to be a party to such venture.

“(c) For purposes of this section—

“(1) the term ‘foreign entity’ means —

March 5, 1993 (12:19 p.m.)

We are looking for ways to underscore that § 7 would apply only to production joint ventures.

These ~~etc~~ annotations are one alternative.

Another is to follow the model on marketing or licensing of intellectual property on p. 4, lines 13-25.

1 "(A) a foreign state, as defined in section
2 1603(a) of title 28, United States Code,

3 "(B) a person that is organized under the
4 laws of such foreign state or that has its prin-
5 cipal place of business outside the United
6 States, or

7 "(C) an individual who is not a citizen of
8 the United States,

9 "(2) the term 'national treatment' means, with
10 respect to the ^{entity} ~~competition~~ law of a country, treat-
11 ment no less favorable than is accorded to domestic
12 entities in such country, and

13 "(3) the term 'United States entity' means—

14 "(A) a person that is organized under the
15 laws of a State or of the United States and that
16 has its principal place of business in the United
17 States, or

18 "(B) an individual who is a citizen of the
19 United States."

20 SEC. 4. REPORTS ON JOINT VENTURES AND UNITED
21 STATES COMPETITIVENESS.

22 (a) PURPOSE.—The purpose of the reports required
23 by this section is to inform Congress and the American
24 people of the effect of the National Cooperative Research
25 and Production Act of 1993 on the competitiveness of the

↓ Possible post-amble :

"The conditions of Section 7 shall
not apply to a research + development
venture."

1 United States in key technological areas of research, devel-
2 opment, and production.

3 (b) ANNUAL REPORT BY THE ATTORNEY GEN-
4 ERAL.—In the 30-day period beginning at each 1-year in-
5 terval after the date of the enactment of this Act, the At-
6 torney General shall submit to the Committee on the Judi-
7 ciary of the House of Representatives and the Committee
8 on the Judiciary of the Senate—

9 (1) a list of joint ventures for which notice was
10 filed under section 6(a) of the National Cooperative
11 Research and Production Act of 1993 during the 12-
12 month period for which such report is made, includ-
13 ing the purpose of each joint venture and the iden-
14 tity and nationality of each party to such joint ven-
15 ture as described in such section; and

16 (2) a list of cases and proceedings, if any,
17 brought during such period under the antitrust laws
18 by the Department of Justice, and by the Federal
19 Trade Commission, with respect to joint ventures for
20 which notice was filed under such section at any
21 time.

22 (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-
23 ERAL.—In the 30-day period beginning at each 3-year in-
24 terval after the date of the enactment of this Act, the At-
25 torney General, after consultation with such other agen-

1 cies as may be appropriate, shall submit to the Committee
2 on the Judiciary of the House of Representatives and the
3 Committee on the Judiciary of the Senate—

4 (1) a description of the technological areas of
5 research, development, and production most com-
6 monly pursued by joint ventures for which notice
7 was filed under section 6(a) of the National Cooper-
8 ative Research and Production Act of 1993 during
9 the 3-year period for which such report is made, and
10 an analysis of the trends in the competitiveness of
11 United States industry in such areas; and

12 (2) an update of the report submitted by the
13 Attorney General under subsection (d) to reflect
14 changes in foreign competition laws or practices.

15 (d) REVIEW OF FOREIGN COMPETITION LAWS.—Not
16 later than 1 year after the date of enactment of this Act,
17 the Attorney General, after consultation with such other
18 agencies as may be appropriate, shall submit to the Com-
19 mittee on the Judiciary of the House of Representatives
20 and the Committee on the Judiciary of the Senate a report
21 on the treatment of United States businesses that are par-
22 ties to joint ventures under the competition law of each
23 foreign nation, or community of nations, any of whose do-
24 mestic businesses have filed notice under section 6(a) of

12

- 1 the National Cooperative Research and Production Act of
- 2 1993 at any time.

March 5, 1993 (12:19 p.m.)

+ Post House Judiciary Comm.
hearing

>+

Suggested Clarifications to Section 3(g) of H.R. 1313

(g) LIMITATION. — The National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.) is amended by adding at the end the following:

“APPLICATION OF SECTION 4 PROTECTIONS TO PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

“SEC. 7. Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to a joint venture’s production of a product, process, or service, as referred to in section 2(a) (6) (D), unless —

“(1) the principal facilities for such production are located in the United States or its territories, and

“(2) each person who controls any party to such venture (including such party itself) is a United states person, or a foreign person from a country that is a party to an international agreement with the United States that accords or whose law accords antitrust treatment no less favorable to United States persons than to such country’s domestic persons with respect to participation in joint ventures for production.”

+ plaintiffs ban amendment } what you can't do

+ price fixing, amendment

+ George / Cynthia seen

+ discrimination is the antitrust + laws

+

The White House

Office of the Press Secretary

For Immediate Release

March 11, 1993

Text of Statement for President Clinton
on Introduction of Production Joint Venture Bill

I want to commend Chairman Jack Brooks, Senator Patrick Leahy, Chairman Joe Biden and the bi-partisan leadership of the House and Senate Judiciary Committees on the introduction today of an important new bill to help create jobs and build a more competitive, hi-tech American economy. This bill -- the National Cooperative Production Amendments of 1993 -- will pave the way for companies large and small to pool their resources and talents in new joint production ventures. It is just the kind of forward thinking initiative we need to drive our economy toward a decade of creative change.

We live in a world in which our competitive advantage flows more and more from our command of high technology, but in which the development and production of hi-tech products has become enormously expensive. It is altogether appropriate to lift the legal barriers that prevent good companies from playing to win in the global market -- provided, of course, that our antitrust laws continue to prevent improper collusion. Now is the time -- as we work together to turn this nation in a new direction -- to strip away outdated impediments to our growth and potential.

I look forward to working with Chairman Brooks, Chairman Biden, Senator Leahy and their colleagues on this important legislation.

THE WHITE HOUSE
WASHINGTON

NEC MEETING ON JOINT PRODUCTION VENTURE BILL
March 23, 1993

- | | | |
|----|-------------------------------|---|
| 1. | Industry views | Ted Heydinger: CBEMA, Coalition for Joint Manufacturing |
| 2. | Background on Admin. policy | NEC |
| 3. | Congressional timetable | |
| 4. | Antitrust implications | Justice |
| 5. | Foreign participation | USTR |
| 6. | General discussion/next steps | |

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The White House

Office of the Press Secretary

For Immediate Release

March 11, 1993

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on Introduction of Production Joint Venture Bill

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I look forward to working with Chairman Brooks, Chairman Biden, Senator Leahy and their colleagues on this important legislation.

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One Hundred Third Congress Congress of the United States U.S. House of Representatives Committee on the Judiciary Washington, D.C. 20515

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 Anti Trust
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NEWS RELEASE

Statement of Chairman Jack Brooks
 Introduction of H.R. 1313, National Cooperative
 Production Amendments of 1993
 Thursday, March 11, 1993

In the past several weeks, President Clinton has laid out a bold program to set our domestic economy back on the right track. Today, we are introducing legislation that will help achieve the parallel and equally important goal of restoring America's rightful place in the world economy. The "National Cooperative Production Amendments of 1993" will encourage American firms to undertake joint ventures to produce the high tech goods and services we will need to compete in the global marketplace of the 21st Century.

Just as with the deficit, it's high time we stare at the reality of the international marketplace with no illusions. Part of that process involves acknowledging our sorry record in international economic competition over the past few decades. In the 1960s, we lost market dominance to our trading partners in the steel and shipbuilding industries. In the 1970s, we slipped behind in a host of consumer electronic lines. In the 1980s, machine tools took the hit from abroad. Now we are well into the 1990s, and we can't afford to sit idly by as more and more American industries disappear or become inconsequential players in a new technological marketplace where the industrial winners will be those who excel at semiconductors, high definition television, robotics and computer-aided design.

What are the hard truths about competing globally? First, the cost of developing technologies and bringing them to the marketplace may be more than a single firm can bear. Second, the economics of high tech manufacturing have shifted to short product life cycles and the need for rapid response to consumer demands for variety and "customization." Third, because competing products pop up so rapidly, a technology innovator may have less than a year to reap the rewards of his innovation. That means he needs to get his idea through production and onto the market faster than ever before. Finally, we need to understand that old-fashioned competition can and must coexist with cooperative efforts to enhance innovation.

This legislation extends to production joint ventures the coverage and requirements of the National Cooperative Research Act of 1984 ("NCRA") -- legislation that provided similar antitrust clarification for research and development joint ventures. Consistent with the NCRA, my legislation creates no exemption to the antitrust laws; it simply builds upon the disclosure system established in the 1984 Act.

For over two centuries, the genius of America's economy has been its ability to sense changes in the global marketplace, adapt quickly to those changes, and finally achieve dominance by putting out a better product than anybody else. The legislation I am offering today is an essential component of reaching that goal by encouraging American industries to work together. It's high time.

103D CONGRESS
1ST SESSION

H. R. 1313

IN THE HOUSE OF REPRESENTATIVES

Mr. BROOKS (for himself, Mr. FISH, Mr. EDWARDS of California, and Mr. BOUCHIER) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

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 "National Cooperative
5 Production Amendments of 1993".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) **FINDINGS.**—The Congress finds that—

1 (1) technological innovation and its profitable
2 commercialization are critical components of the
3 ability of the United States to raise the living stand-
4 ards of Americans and to compete in world markets;

5 (2) cooperative arrangements among
6 nonaffiliated businesses in the private sector are
7 often essential for successful technological innova-
8 tion; and

9 (3) the antitrust laws may have been mis-
10 takenly perceived to inhibit procompetitive coopera-
11 tive innovation arrangements, and so clarification
12 serves a useful purpose in helping to promote such
13 arrangements.

14 (b) PURPOSE.—It is the purpose of this Act to pro-
15 mote innovation, facilitate trade, and strengthen the com-
16 petitiveness of the United States in world markets by
17 clarifying the applicability of the rule of reason standard
18 and establishing a procedure under which businesses may
19 notify the Department of Justice and Federal Trade Com-
20 mission of their cooperative ventures and thereby qualify
21 for a single-damage limitation on civil antitrust liability.

22 SEC. 3. AMENDMENTS.

23 (a) SHORT TITLE.—Section 1 of the National Coop-
24 erative Research Act of 1984 (15 U.S.C. 4301 note) is
25 amended by striking "National Cooperative Research Act

1 of 1984" and inserting "National Cooperative Research
2 and Production Act of 1993".

3 (b) DEFINITION.—Section 2(a)(6) of the National
4 Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6))
5 is amended—

6 (1) in the matter preceding subparagraph (A)
7 by striking "research and development";

8 (2) in subparagraph (D) by inserting "or pro-
9 duction" after "research";

10 (3) in subparagraph (E) by striking "and (D)"
11 and inserting "(D), (E), and (F)";

12 (4) by redesignating subparagraphs (D) and
13 (E) as subparagraphs (F) and (G), respectively;

14 (5) by inserting after subparagraph (C) the fol-
15 lowing:

16 "(D) the production of a product, process,
17 or service,

18 "(E) the testing in connection with the
19 production of a product, process, or service by
20 such venture,"; and

21 (6) by striking "research" the last place it ap-
22 pears and inserting "such venture".

23 (c) EXCLUSIONS.—Section 2(b) of the National Co-
24 operative Research Act of 1984 (15 U.S.C. 4301(b)) is
25 amended—

1 (1) in the matter preceding paragraph (1) by
2 striking "research and development";

3 (2) in paragraph (1) by striking "that is not
4 reasonably required to conduct the research and de-
5 velopment that is" and inserting "if such informa-
6 tion is not reasonably required to carry out";

7 (3) by amending paragraph (2) to read as fol-
8 lows:

9 "(2) entering into any agreement or engaging
10 in any other conduct restricting, requiring, or other-
11 wise involving the marketing, distribution, or provi-
12 sion by any person who is a party to such venture
13 of any product, process, or service, other than—

14 "(A) the distribution among the parties to
15 such venture, in accordance with such venture,
16 of a product, process, or service produced by
17 such venture,

18 "(B) the marketing of proprietary informa-
19 tion, such as patents and trade secrets, devel-
20 oped through such venture formed under a
21 written agreement entered into before the date
22 of the enactment of the National Cooperative
23 Production Amendments of 1993, or

24 "(C) the licensing, conveying, or transfer-
25 ring of intellectual property, such as patents

1 and trade secrets, developed through such ven-
2 ture formed under a written agreement entered
3 into on or after the date of the enactment of
4 the National Cooperative Production Amend-
5 ments of 1993,";

6 (4) in paragraph (3)—

7 (A) in subparagraph (A) by striking "or
8 developments not developed through" and in-
9 serting ", developments, products, processes, or
10 services not developed through, or produced
11 by,";

12 (B) in subparagraph (B) by striking "such
13 party" and inserting "any person who is a
14 party to such venture"; and

15 (C) by striking the period at the end and
16 inserting a comma, and

17 (5) by adding at the end the following:

18 "(4) entering into any agreement or engaging
19 in any other conduct allocating a market with a
20 competitor,

21 "(5) exchanging information among competitors
22 relating to production (other than production by
23 such venture) of a product, process, or service if
24 such information is not reasonably required to carry
25 out the purpose of such venture,

1 “(6) entering into any agreement or engaging
2 in any other conduct restricting, requiring, or other-
3 wise involving the production (other than the pro-
4 duction by such venture) of a product, process, or
5 service,

6 “(7) using existing facilities in connection with
7 the production of a product, process, or service by
8 such venture unless such use is for the production
9 of a new product or technology, and

10 “(8) except as provided in paragraphs (2), (3),
11 and (6), entering into any agreement or engaging in
12 any other conduct to restrict or require participation
13 by any person who is a party to such venture, in any
14 unilateral or joint activity that is not reasonably re-
15 quired to carry out the purpose of such venture.”.

16 (d) **RULE OF REASON STANDARD.**—Section 3 of the
17 National Cooperative Research Act of 1984 (15 U.S.C.
18 4302) is amended—

19 (1) by striking “research and development” the
20 first place it appears;

21 (2) by striking “and development” the last
22 place it appears and inserting “, development, prod-
23 uct, process, and service”; and

24 (3) by adding at the end the following:

1 "For the purpose of determining a properly defined, rel-
2 evant market, worldwide capacity shall be considered to
3 the extent that it may be appropriate in the cir-
4 cumstances."

5 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
6 The National Cooperative Research Act of 1984 (15
7 U.S.C. 4301 et seq.) is amended—

8 (1) in section 4—

9 (A) in subsections (a)(1), (b)(1), (c)(1),
10 and (e) by striking "research and development"
11 each place it appears; and

12 (B) in subsection (b) by inserting "of this
13 section" after "subsection (d)"; and

14 (2) in section 5(a) in the matter preceding
15 paragraph (1) by striking "research and develop-
16 ment".

17 (f) DISCLOSURE.—Section 6 of the National Cooper-
18 ative Research Act of 1984 (15 U.S.C. 4305) is
19 amended—

20 (1) in the heading by striking "RESEARCH AND
21 DEVELOPMENT";

22 (2) in subsection (a)—

23 (A) in paragraph (1) by striking "and" at
24 the end,

1 (B) in paragraph (2) by striking the period
2 at the end and inserting “, and”, and

3 (C) by inserting the following after para-
4 graph (2):

5 “(3) if a purpose of such venture is the produc-
6 tion of a product, process, or service, as referred to
7 in section 2(a)(6)(D), the identity and nationality of
8 any person who is a party to such venture, or who
9 controls any party to such venture whether sepa-
10 rately or with one or more other persons acting as
11 a group for the purpose of controlling such party.”;
12 and

13 (3) in subsections (a), (d)(2), and (e) by strik-
14 ing “research and development” each place it ap-
15 pears.

16 (g) LIMITATION.—The National Cooperative Re-
17 search Act of 1984 (15 U.S.C. 4301 et seq.) is amended
18 by adding at the end the following:

19 “APPLICATION OF SECTION 4 PROTECTIONS TO
20 PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES
21 “SEC. 7. Notwithstanding sections 4 and 6, the pro-
22 tections of section 4 shall not apply with respect to a joint
23 venture’s production of a product, process, or service, as
24 referred to in section 2(a)(6)(D), unless—

1 “(1) the principal facilities for such production
2 are located in the United States or its territories,
3 and

4 “(2) each person who controls any party to
5 such venture (including such party itself) is a United
6 States person, or a foreign person from a country
7 whose law accords antitrust treatment no less favor-
8 able to United States persons than to such country's
9 domestic persons with respect to participation in
10 joint ventures for production.”.

11 **SEC. 4. REPORTS ON JOINT VENTURES AND UNITED**
12 **STATES COMPETITIVENESS.**

13 (a) **PURPOSE.**—The purpose of the reports required
14 by this section is to inform Congress and the American
15 people of the effect of the National Cooperative Research
16 and Production Act of 1993 on the competitiveness of the
17 United States in key technological areas of research, devel-
18 opment, and production.

19 (b) **ANNUAL REPORT BY THE ATTORNEY GEN-**
20 **ERAL.**—In the 30-day period beginning at each 1-year in-
21 terval after the date of the enactment of this Act, the At-
22 torney General shall submit to the Committee on the Judi-
23 ciary of the House of Representatives and the Committee
24 on the Judiciary of the Senate---

1 (1) a list of joint ventures for which notice was
2 filed under section 6(a) of the National Cooperative
3 Research and Production Act of 1993 during the 12-
4 month period for which such report is made, includ-
5 ing the purpose of each joint venture and the iden-
6 tity and nationality of each party to such joint ven-
7 ture as described in such section; and

8 (2) a list of cases and proceedings, if any,
9 brought during such period under the antitrust laws
10 by the Department of Justice, and by the Federal
11 Trade Commission, with respect to joint ventures for
12 which notice was filed under such section at any
13 time.

14 (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-
15 ERAL.—In the 30-day period beginning at each 3-year in-
16 terval after the date of the enactment of this Act, the At-
17 torney General, after consultation with such other agen-
18 cies as may be appropriate, shall submit to the Committee
19 on the Judiciary of the House of Representatives and the
20 Committee on the Judiciary of the Senate—

21 (1) a description of the technological areas of
22 research, development, and production most com-
23 monly pursued by joint ventures for which notice
24 was filed under section 6(a) of the National Cooper-
25 ative Research and Production Act of 1993 during

1 the 3-year period for which such report is made, and
2 an analysis of the trends in the competitiveness of
3 United States industry in such areas; and

4 (2) an update of the report submitted by the
5 Attorney General under subsection (d) to reflect
6 changes in foreign law's antitrust treatment of joint
7 ventures.

8 (d) REVIEW OF ANTITRUST TREATMENT UNDER
9 FOREIGN LAWS.—Not later than 1 year after the date of
10 enactment of this Act, the Attorney General, after con-
11 sultation with such other agencies as may be appropriate,
12 shall submit to the Committee on the Judiciary of the
13 House of Representatives and the Committee on the Judi-
14 ciary of the Senate a report on the antitrust treatment
15 of United States businesses that are parties to joint ven-
16 tures under the law of each foreign nation whose domestic
17 businesses filed notice under section 6(a) of the National
18 Cooperative Research and Production Act of 1993 at any
19 time.

CHRON

THE WHITE HOUSE
WASHINGTON

DATE: 3/13

NOTE FOR: *Bruce Lindsey*

The President has reviewed the attached, and it is forwarded to you
for your:

Information ☐

Action ☒

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc: *R. A. ...*



MARCY KAPTUR
9TH DISTRICT, OHIO

Dear Mr. President - March 11, 1993

Attorney General Lee Fisher of Ohio asked me
to pass on this resume on to you --
Mr. Peter Ljivaji of Toledo, Ohio as
Ambassador to Hungary. Thank you!

Sincerely -
Marcy Kaptur

Bl

Raleen or someone that
can be about this guy
Marcy says that he really
thinks he's a very good
candidate

B.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. resume	[Personally Identifiable Information] [partial] (1 page)	03/00/1993	b(6)

COLLECTION:

Clinton Presidential Records
Staff Secretary
John Podesta (Subject Files)
OA/Box Number: 17335

FOLDER TITLE:

Antitrust/Maximum Price Fixing: Antitrust Joint Production

2018-0662-S

rs3141

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

BIOGRAPHY OF PETER S. UJVAGI

PETER S. UJVAGI
124 PAINE AVENUE
TOLEDO, OH 43606
(419) 693-7103

VICE-PRESIDENT
E & C MANUFACTURING CORP., INC.
225 MIAMI STREET
TOLEDO, OH 43605
(419) 693-7103

DATE OF BIRTH:

(b)(6)

ENTERED THE UNITED STATES IN 1957
RECEIVED UNITED STATES CITIZENSHIP IN 1967

MARRIED TO ELIZABETH M. ZARECKY
CHILDREN: ANDREW, KRISZTINA, ELIZABETH, SUZANNE

GRADUATE OF ST. FRANCES DE SALES HIGH SCHOOL
UNIVERSITY OF TOLEDO, BACHELOR OF ARTS

1976 - PRESENT

VICE-PRESIDENT OF E & C MANUFACTURING CO., INC.
A FAMILY OWNED SPECIALTY PRECISION MACHINERY BUILDING COMPANY

1989 - PRESENT

MANAGING PARTNER, EUROSATCO, KFT,
A HUNGARIAN AMERICAN JOINT VENTURE COMPANY SPECIALIZING IN THE SALE
OF EQUIPMENT AND TECHNOLOGY FOR INFRASTRUCTURE DEVELOPMENT AND
ENVIRONMENTAL CONTROL AND REMEDIATION.

COMMUNITY AND NATIONAL INVOLVEMENT

APPOINTED BY PRESIDENT JIMMY CARTER AS MEMBER OF NATIONAL
NEIGHBORHOOD COMMISSION (1977)

APPOINTED BY GOV. RICHARD CELESTE TO THE STEERING COMMITTEE OF THE
GOVERNORS CONFERENCE ON SMALL BUSINESS (1985)

FOUNDING MEMBER OF THE HUNGARIAN-AMERICAN COALITION
MEMBER OF THE EXECUTIVE COMMITTEE

MEMBER, OHIO EDUCATIONAL BROADCASTING COMMISSION (1985-1989)

MEMBER, TOLEDO/SZEGED, HUNGARY STEERING COMMITTEE

MEMBER, SAINT STEPHEN'S CATHOLIC CHURCH

MEMBER, OHIO DEMOCRATIC PARTY EXECUTIVE COMMITTEE; CHAIRMAN LUCAS
COUNTY DEMOCRATIC PARTY (1989-1992)

MEMBER OF TOLEDO CITY COUNCIL (1981-1983, 1985-1989)

MEMBER, NATIONAL BOARD OF ROMAN CATHOLIC CHURCH'S MAJOR FOUNDATION,
THE CAMPAIGN FOR HUMAN DEVELOPMENT (1972-1975)

SUSAN R. BARON
2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20037

March 9, 1993

VIA MESSENGER

Secretary Henry G. Cisneros
United States Department of Housing
and Urban Development
Room 10,000
451 Seventh Street, S.W.
Washington, D.C. 21404

Dear Henry:

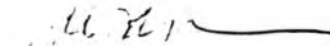
After much deliberation, I have decided to withdraw my name from consideration for the position of General Counsel of HUD.

I feel honored and privileged to have been considered by you and President Clinton for a position of such great importance. However, it is time for me to get beyond this period of uncertainty and pursue other options and avenues. Despite its frustrations, the past four months has afforded me a rare opportunity to rethink and act on who I am, what I have to give and how and where I may be able to make the biggest impact on persons who are less fortunate than I am. In that regard, this period has been a most important gift.

HUD needs a new vision, a renewed spirit and the leadership to inspire others from within and without to see to it that the job gets done. I am convinced that you are the person to steer the ship and set it on its proper course.

I wish you all the best and hope and believe our paths will cross again. Take care of HUD. It is good and important work -- as millions of lives are affected by it each day.

Very truly yours,



Susan R. Baron

CHRON

Bruce L.
That was
probably a
mistake.
She's
terrific

To the
President

THE WHITE HOUSE
WASHINGTON

3/13

Bruce -

Ed Smith helped
in the campaign and
debate prep & response.

I think he also worked
generally on wine & drug
policy.

I think he's good.
Rov Klain knows him
well.

We might want to
try to find him something
at ONDCP

Tom Podesta

CHARLES B. RANGEL, NEW YORK
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GEORGE J. WOCHNER, NEW YORK
CRAIG A. WASHINGTON, TEXAS
ROBERT L. ANDREWS, NEW JERSEY

U.S. House of Representatives

SELECT COMMITTEE ON
NARCOTICS ABUSE AND CONTROL
ROOM H2-234, HOUSE OFFICE BUILDING ANNEX 2
WASHINGTON, DC 20515-6425

COMMITTEE PHONE 202-225-3040

March 11, 1993

LAWRENCE COUGHLIN, PENNSYLVANIA
RANKING MINORITY MEMBER

BENJAMIN A. GILMAN, NEW YORK
MICHAEL G. OXLEY, OHIO
F. JAMES SENSENBRENNER, JR., WISCONSIN
ROBERT K. DORNAN, CALIFORNIA
TOM LEWIS, FLORIDA
JAMES M. INHOFE, OKLAHOMA
WALLY HERGER, CALIFORNIA
CHRISTOPHER SHAYS, CONNECTICUT
BILL PAXON, NEW YORK
WILLIAM R. CLINGER, JR., PENNSYLVANIA
HOWARD COBLE, NORTH CAROLINA
PAUL E. GILLMOR, OHIO
JIM RAMSTAD, MINNESOTA

EDWARD H. JURITH
STAFF DIRECTOR
MELANIE T. YOUNG
MINORITY STAFF DIRECTOR

Mr. Bruce Lindsey
Assistant to the President and
Director, Office of Personnel
The White House
Washington, D.C. 20050

Dear Bruce:

I know that the President is in the process of selecting a Director for the Office of National Drug Control Policy (ONDCP) and deciding how that office will be staffed. It is with my strong support that I recommend that Edward H. Jurith, Staff Director of the House Select Committee on Narcotics Abuse and Control, be considered for a senior position in this office. Attached is a copy of his resume.

I recommend Ed's name to you with some regret. As you are aware, the House had decided not to renew the authorization of the Select Narcotics Committee in the 103rd Congress. For the last ten years, as Chairman of the House Narcotics Committee, I worked daily with Ed on the formulation of national drug abuse policy. As a committee counsel from 1981 to 1986, and as staff director from 1987 to the present, Ed has played a pivotal role in the development of the Anti-Drug Abuse Acts of 1986 and 1988, the 1992 Urban Aid initiative, and in the national debate about drug policy. I cannot think of any other individual who has Ed's breath of experience, knowledge, and insight into this very complex policy area.

As you know, drug policy is very intricate. It cuts across many subject areas, disciplines, cabinet departments, and congressional committees. Ed Jurith is the only person I know that has a first-hand working knowledge of all aspects of drug policy. He has led committee study missions to the coca producing countries in the Andes and to the heroin producing nations of Asia. He is familiar with the drug control officials in many of these nations. He has worked with the Defense Department, the Coast Guard and Customs Service on their drug interdiction programs and is aware of the many successes - and shortcomings - of these initiatives. Ed is extremely

knowledgeable about the programs of the Drug Enforcement Administration, as well as of the anti-drug initiatives of State and local law enforcement. In these matters he worked closely with the National Governor's Association, the U.S. Conference of Mayors, the National League of Cities, and other representatives of law enforcement. Further, our committee, under Ed's leadership has fought to insure that we have the most effective drug abuse treatment and prevention programs in place to help all our citizens resist the lure of illicit drugs.

In short, I cannot think of any other candidate whose name would come before you for consideration for the Drug Policy Office that has Ed's thorough understanding of the broad and complex nature of the drug problem. Moreover, Ed is a real professional and dedicated civil servant in every sense. As the Staff Director he and I have worked side-by-side for the past six years in the direction of the House Select Committee on Narcotics. Ed has overall responsibility for all of the activities and operations of the Select Committee, which has established a national and international reputation in the field of drug abuse. Not only does he supervise all committee personnel and administers the committee's budget, Ed has worked closely with Federal officials, medical, legal, scientific, and other professional and public interests in the development of drug policy. I cannot think of any time that Ed did not carryout his responsibilities to the fullest and with the highest degree of professionalism.

As an attorney he brings to his work the highest ethical standards, and I know that as a husband and father his personal life is beyond any question.

I highly recommend Ed Jurith to the President, not only as a highly qualified professional, but as a close friend of mine who I know will do an outstanding job for the Administration.

Sincerely,



CHARLES B. RANGEL
Chairman

cc: Howard Paster
John Podesta
Andre Oliver
Ron Klain

EDWARD H. JURITH

3720 Jocelyn Street, NW
Washington, DC 20015

Office: 202/226-3040
Home: 202/363-6631

EXPERIENCE	1987-Present Staff Director, United States House of Representatives, Select Committee on Narcotics Abuse and Control, Washington, DC. Overall responsibility for all activities and operations of the committee including hiring and supervising committee staff, administering a budget of \$600,000 a year, and coordinating the legislative and oversight programs of the committee. Responsible for issues relating to federal drug abuse policy including: budget, drug policy recommendations from the Administration, drug abuse legislation pending in the standing committees of the House and public liaison for the committee. Other responsibilities include: working with the House leadership, Administration drug policy officials, medical, legal, scientific, and other professional and public interests in developing drug abuse policy; managing the legislative activities of the committee such as hearings, reports, foreign study missions, domestic field investigations, and the introduction and passage of legislation. Many of the committee's initiatives in the 100th Congress were incorporated in the Anti-Drug Abuse Act of 1988. 1981-1986 Counsel, United States House of Representatives, Select Committee on Narcotics Abuse and Control, Washington, DC. Responsibilities included initiating studies of criminal justice issues related to narcotics enforcement including bail reform, mandatory minimum sentencing, criminal asset forfeiture, international narcotics trafficking, federal narcotics enforcement policies, the effects of federal policies and budgeting on local law enforcement and drug abuse in the military. These investigations resulted in policy recommendations and legislation submitted by the Select Committee to the 97th, 98th, and 99th Congresses, and specifically the Anti-Drug Abuse Act of 1986. 1975-1981 Associate, Lyon & Erlbaum, Esq. (and successor firm of Herbert A. Lyon, Esq.), Kew Gardens, New York. Criminal and civil litigation and appeals. Appellate duties included drafting and arguing appeals in state and federal appellate courts. Litigation duties included trial preparation, research and investigations. 1975-1976 Research Assistant, Brooklyn Law School, New York. Assistant to Professor Oscar G. Chase. Responsibilities included revising the Weinstein-Korn-Miller treatise, <i>New York Civil Practice</i>. 1971-1974 Legislative Aide, U.S. Representative Frank J. Brasco (11th District—New York). Responsibilities included analysis and drafting of legislation related to housing, education and crime.
-------------------	---

BAR ADMISSIONS

Bar of the State of New York (Admitted 1977)
Bar of the District of Columbia (Admitted 1983)
U.S. Court of Appeals for the District of Columbia Circuit (Admitted 1983)
U.S. District Court for the District of Columbia (Admitted 1983)

EDUCATION

Brooklyn Law School, New York.
Juris Doctor (1976)
Member: Phi Delta Phi

The American University, Washington, DC.
Bachelor of Arts in Political Science, *cum laude* (1973)
Honoraries: Phi Kappa Phi, Omicron Delta Kappa, Pi Sigma Alpha

ASSOCIATIONS

The District of Columbia Bar
The Bar Association of the District of Columbia
Board of Directors, Criminal Courts Bar Association of Queens County, New York (1980)

References available on request.

CHRON

THE WHITE HOUSE

Tom -

I think you know Sue, Carl
Wagner's wife. She's a great
writer. Do you think you might
have a home for her? Give me
a call & let me know.

John Podesta

TIN-SWE THANT
3745 Brandywine Street, NW
Washington DC 20016
(H) 202/244-1992 (B) 202/783-7200

PROFESSIONAL EXPERIENCE

Association of Science-Technology Centers, Washington DC
Director of Development (January 1991-Present)

American Association of University Women Educational Foundation, Washington DC
Acting-Director of Development (January-December 1990)

Manager, Corporate Development (1987-1990)

Development Assistant for Branch & Division Fundraising (1985-1987)

Administrative Assistant, Membership Programs (1983-1985)

Education Policy Research Institute, Educational Testing Service, Washington DC
Research Associate (1976-1979)

State of Wisconsin Department of Administration
C.E.T.A. Coordinator (1974-1976)

The International Brotherhood of Teamsters, and the United Auto Workers, Washington DC
Legislative Assistant (1971-1973)

The White House Conference on Youth, Washington DC
Assistant Coordinator, Task Force on Education (1970-1971)

The Museum of Natural History, The Smithsonian Institution, Washington DC
Consultant (1971)

EDUCATION

Swarthmore College, B.A., Political Science, 1970

LANGUAGES

Burmese and French

JOSEPH R. BIDEN, JR., DELAWARE CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
HOWARD M. METZENBAUM, OHIO
DENNIS D. CONNORS, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HIEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
HERBERT KOHL, WISCONSIN

STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
HANK BROWN, COLORADO

DONALD A. BLAIR, CHIEF CLERK
JEFFREY J. PECK, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

93 MAR 10 11:40

file
antitrust
Joint
production

FAX COVER SHEET

TO: John Podesta

OF: _____

Fax: 456-2215

Phone: _____

FROM: Ann Harkins

OF: Subcommittee on Technology and the Law

DATE: 3-10-93

Number of pages including cover sheet: 12

COMMENTS:

COULD SOMEONE GET A COPY
OF THIS TO Tom KHALIL

3/11/93
TW

If you have any questions, please call: (202)224-3406

3/10/93
10:00 A.M.

A BILL

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

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 "National Cooperative
5 Production Amendments of 1993".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) **FINDINGS.**—The Congress finds that—

8 (1) technological innovation and its profitable
9 commercialization are critical components of the

1 ability of the United States to raise the living stand-
2 ards of Americans and to compete in world markets;

3 (2) cooperative arrangements among
4 nonaffiliated businesses in the private sector are
5 often essential for successful technological innova-
6 tion; and

7 (3) the antitrust laws may have been mis-
8 takenly perceived to inhibit procompetitive coopera-
9 tive innovation arrangements, and so clarification
10 serves a useful purpose in helping to promote such
11 arrangements.

12 (b) PURPOSE.—It is the purpose of this Act to pro-
13 mote innovation, facilitate trade, and strengthen the com-
14 petitiveness of the United States in world markets by
15 clarifying the applicability of the rule of reason standard
16 and establishing a procedure under which businesses may
17 notify the Department of Justice and Federal Trade Com-
18 mission of their cooperative ventures and thereby qualify
19 for a single-damage limitation on civil antitrust liability.

20 **SEC. 3. AMENDMENTS.**

21 (a) SHORT TITLE.—Section 1 of the National Coop-
22 erative Research Act of 1984 (15 U.S.C. 4301 note) is
23 amended by striking “National Cooperative Research Act
24 of 1984” and inserting “National Cooperative Research
25 and Production Act of 1993”.

1 (b) DEFINITION.—Section 2(a)(6) of the National
2 Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6))
3 is amended—

4 (1) in the matter preceding subparagraph (A)
5 by striking “research and development”;

6 (2) in subparagraph (D) by inserting “or pro-
7 duction” after “research”;

8 (3) in subparagraph (E) by striking “and (D)”
9 and inserting “(D), (E), and (F)”;

10 (4) by redesignating subparagraphs (D) and
11 (E) as subparagraphs (F) and (G), respectively;

12 (5) by inserting after subparagraph (C) the fol-
13 lowing:

14 “(D) the production of a product, process,
15 or service,

16 “(E) the testing in connection with the
17 production of a product, process, or service by
18 such venture,”; and

19 (6) by striking “research” the last place it
20 appears and inserting “such venture”.

21 (c) EXCLUSIONS.—Section 2(b) of the National Co-
22 operative Research Act of 1984 (15 U.S.C. 4301(b)) is
23 amended—

24 (1) in the matter preceding paragraph (1) by
25 striking “research and development”;

1 (2) in paragraph (1) by striking "conduct the
2 research and development that is" and inserting
3 "carry out";

4 (3) by amending paragraph (2) to read as fol-
5 lows:

6 "(2) entering into any agreement or engaging
7 in any other conduct restricting, requiring, or other-
8 wise involving the marketing, distribution, or provi-
9 sion by any person who is a party to such venture
10 of any product, process, or service, other than—

11 "(A) the distribution among the parties to
12 such venture, in accordance with such venture,
13 of a product, process, or service produced by
14 such venture,

15 "(B) the marketing of proprietary informa-
16 tion, such as patents and trade secrets, devel-
17 oped through such venture formed under a
18 written agreement entered into before the date
19 of the enactment of the National Cooperative
20 Production Amendments of 1993, or

21 "(C) the licensing, conveying, or transfer-
22 ring of intellectual property, such as patents
23 and trade secrets, developed through such ven-
24 ture formed under a written agreement entered
25 into on or after the date of the enactment of

1 the National Cooperative Production
2 Amendments of 1993,";

3 (4) in paragraph (3)—

4 (A) in subparagraph (A) by striking "or
5 developments not developed through" and in-
6 *etc*serting ", developments, products, processes, or
7 services not developed through, or produced
8 by,";

9 (B) in subparagraph (B) by striking "such
10 party" and inserting "any person who is a
11 party to such venture"; and

12 (C) by striking the period at the end and
13 inserting a comma, and

14 (5) by adding at the end the following:

15 "(4) entering into any agreement or engaging
16 in any other conduct allocating a market with a
17 competitor,

18 "(5) exchanging production information among
19 competitors that is not reasonably required to carry
20 out the purpose of such venture,

21 "(6) entering into any agreement or engaging
22 in any other conduct restricting, requiring, or other-
23 wise involving the production of a product, process,
24 or service, other than the production by such venture
25 of a product, process, or service,

1 “(7) using existing facilities in connection with
2 the production of a product, process, or service by
3 such venture unless such use is for the production
4 of a new product or technology, and

5 “(8) except as provided in paragraphs (2), (3),
6 and (6), entering into any agreement or engaging in
7 any other conduct to restrict or require participation
8 by any person who is a party to such venture, in any
9 unilateral or joint activity that is not reasonably re-
10 quired to carry out the purpose of such venture.”.

11 (d) RULE OF REASON STANDARD.—Section 3 of the
12 National Cooperative Research Act of 1984 (15 U.S.C.
13 4302) is amended—

14 (1) by striking “research and development” the
15 first place it appears;

16 (2) by striking “and development” the last
17 place it appears and inserting “, development, prod-
18 uct, process, and service”; and

19 (3) by adding at the end the following:

20 “For the purpose of determining a properly defined, rel-
21 evant market, worldwide capacity shall be considered to
22 the extent that it may be appropriate in the cir-
23 cumstances.”.

1 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

2 The National Cooperative Research Act of 1984 (15

3 U.S.C. 4301 et seq.) is amended—

4 (1) in section 4—

5 (A) in subsections (a)(1), (b)(1), (c)(1),
6 and (e) by striking “research and development”
7 each place it appears; and

8 (B) in subsection (b) by inserting “of this
9 section” after “subsection (d)”; and

10 (2) in section 5(a) in the matter preceding
11 paragraph (1) by striking “research and develop-
12 ment”.

13 (f) DISCLOSURE.—Section 6 of the National Cooper-
14 ative Research Act of 1984 (15 U.S.C. 4305) is
15 amended—

16 (1) in the heading by striking “RESEARCH AND
17 DEVELOPMENT”;

18 (2) in subsection (a)(1) by striking “identities
19 of the parties to such venture, and” and inserting
20 the following:

21 “identity and nationality of each party to such ven-
22 ture including, in the case of a party that is not an
23 individual, the country (or State) under whose laws
24 such party is organized, the location of such party’s
25 principal place of business, and the identity and na-

*Need
to clarify
new
identity
requirements
N/A to
R+D
Ventures*

1 tionality of any person or entity that directly or indi-
 2 rectly controls such party, whether separately or
 3 with one or more other persons or entities acting as
 4 a group for the purpose of controlling such party,
 5 and"; and

6 (3) in subsections (a), (d)(2), and (e) by strik-
 7 ing "research and development" each place it
 8 appears.

9 (g) LIMITATION.—The National Cooperative Re-
 10 search Act of 1984 (15 U.S.C. 4301 et seq.) is amended
 11 by adding at the end the following:

12 "APPLICATION OF SECTION 4 PROTECTIONS TO
 13 PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

14 "SEC. 7. Notwithstanding sections 4 and 6, the pro-
 15 tections of section 4 shall not apply with respect to the
 16 production of a product, process, or service by a joint ven-
 17 ture unless—

18 "(1) the principal facilities for such production
 19 are located in the United States or its territories,
 20 and

21 "(2) each party to such venture is controlled by
 22 a United States person, or by a foreign person from
 23 a country whose law accords antitrust treatment no
 24 less favorable to United States persons than to such
 25 country's domestic persons with respect to participa-
 26 ^[production]tion in joint ventures.

Still
discussing
this §

→ [organized
in?]

1 SEC. 4. REPORTS ON JOINT VENTURES AND UNITED
2 STATES COMPETITIVENESS.

3 (a) PURPOSE.--The purpose of the reports required
4 by this section is to inform Congress and the American
5 people of the effect of the National Cooperative Research
6 and Production Act of 1993 on the competitiveness of the
7 United States in key technological areas of research, devel-
8 opment, and production.

9 (h) ANNUAL REPORT BY THE ATTORNEY GEN-
10 ERAL.--In the 30-day period beginning at each 1-year in-
11 terval after the date of the enactment of this Act, the
12 Attorney General shall submit to the Committee on the
13 Judiciary of the House of Representatives and the Com-
14 mittee on the Judiciary of the Senate--

15 (1) a list of joint ventures for which notice was
16 filed under section 6(a) of the National Cooperative
17 Research and Production Act of 1993 during the 12-
18 month period for which such report is made, includ-
19 ing the purpose of each joint venture and the iden-
20 tity and nationality of each party to such joint ven-
21 ture as described in such section; and

22 (2) a list of cases and proceedings, if any,
23 brought during such period under the antitrust laws
24 by the Department of Justice, and by the Federal
25 Trade Commission, with respect to joint ventures for

1 which notice was filed under such section at any
2 time.

3 (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-
4 ERAL.—In the 30-day period beginning at each 3-year in-
5 terval after the date of the enactment of this Act, the
6 Attorney General, after consultation with such other
7 agencies as may be appropriate, shall submit to the Com-
8 mittee on the Judiciary of the House of Representatives
9 and the Committee on the Judiciary of the Senate—

10 (1) a description of the technological areas of
11 research, development, and production most com-
12 monly pursued by joint ventures for which notice
13 was filed under section 6(a) of the National Cooper-
14 ative Research and Production Act of 1993 during
15 the 3-year period for which such report is made, and
16 an analysis of the trends in the competitiveness of
17 United States industry in such areas; and

18 (2) an update of the report submitted by the
19 Attorney General under subsection (d) to reflect
20 changes in foreign competition laws or practices.

21 (d) REVIEW OF FOREIGN COMPETITION LAWS.—Not
22 later than 1 year after the date of enactment of this Act,
23 the Attorney General, after consultation with such other
24 agencies as may be appropriate, shall submit to the Com-
25 mittee on the Judiciary of the House of Representatives

1 and the Committee on the Judiciary of the Senate a report
2 on the treatment of United States businesses that are par-
3 ties to joint ventures under the competition law of each
4 foreign nation, or community of nations, any of whose do-
5 mestic businesses has filed notice under section 6(a) of
6 the National Cooperative Research and Production Act of
7 1993 at any time.

PROPOSED AMENDMENT TO S. 574 - FOREIGN PARTICIPATION

Amend proposed new section 7 of the National Cooperative Research and Production Act of 1993 to read as follows:

SEC. 7. Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to a joint venture's production of a product, process, or service, as referred to in section 2(a)(6)(D), unless --

(1) the principal facilities for such production are located in the United States or its territories, or in a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production, and

(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

Purpose of Proposed Amendment

Under S. 574 as introduced, the Act's damage-limitation protection would be available only if the principal production facilities of a joint venture were in the United States or its territories, and only if all of the joint venture's participants and the persons that control them were United States persons or persons from a country whose antitrust treatment of United States participants in production joint ventures is no less favorable than the treatment it affords to its domestic firms.

This limitation raises significant concerns. It introduces a discriminatory element into the antitrust laws, which have never discriminated against foreign firms or conduct outside the United States, but which look solely to whether the conduct in question lessens competition. The limitation also could undercut the bill's purpose by deterring beneficial joint ventures where, for example, important technology is available to U.S. firms only in conjunction with a foreign partner or facilities located outside the United States. It also raises serious questions about the ability of the United States to carry out its obligations under a number of international agreements that provide for national treatment of foreign investors, and may encourage U.S. trading partners to adopt discriminatory provisions in their own laws to the disadvantage of U.S. firms that do business abroad.

The proposed amendment would ameliorate these concerns. As amended, the damage-limitation benefits of section 4 would be available if the joint venture's principal production facilities were either in the United States or in a country whose antitrust law does not discriminate against U.S. firms in similar circumstances.

PROPOSED AMENDMENT TO S. 574 - FOREIGN PARTICIPATION

Amend proposed new section 7 of the National Cooperative Research and Production Act of 1993 to read as follows:

SEC. 7. Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to a joint venture's production of a product, process, or service, as referred to in section 2(a)(6)(D), unless --

(1) the principal facilities for such production are located in the United States or its territories, or in a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production, and

(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

PROPOSED AMENDMENT TO S. 574 - REPORTS

Amend section 4 of S. 574 to read as follows:

"SEC. 4. REPORTS ON JOINT VENTURES AND UNITED STATES
COMPETITIVENESS

"(a) PURPOSE.--The purpose of the reports required by this section is to inform Congress and the American people of the effect of the National Cooperative Research and Production Act of 1993 on the competitiveness of the United States in key technological areas of production.

"(b) REPORT BY THE ATTORNEY GENERAL.--Two years after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate--

(1) a list of joint ventures for the production of a product, process, or service for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the two year period after the date of enactment of this Act, including the purpose of each such joint venture and the identity and nationality of each party to such joint venture as described in such section; and

(2) a list of cases and proceedings, if any, brought during such two year period under the antitrust laws by the Department of Justice and by the Federal Trade Commission with respect to joint ventures for the production of a product, process, or service for which notice was filed under such section.

"(c) REPORT BY THE SECRETARY OF COMMERCE.--Three years after the date of enactment of this Act, the Secretary of Commerce shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a description of the technological areas of production most commonly pursued by joint ventures for the production of a product, process, or service for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the three year period after the date of enactment of this Act, and an analysis of the trends in the competitiveness of United States industry in such areas.

"(d) REVIEW OF ANTITRUST TREATMENT UNDER FOREIGN LAWS.--Not later than one year after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the antitrust treatment of United States businesses that are parties to joint ventures for the production of a product, process, or service under the law of each foreign nation whose domestic businesses filed notice of a joint venture for the production of a product, process, or service under section 6(a) of the National Cooperative Research and Production Act of 1993 at any time."

PROPOSED AMENDMENT TO S. 574 - USE OF EXISTING FACILITIES

Amend proposed new section 2(b)(7) of the National Cooperative Research and Production Act of 1993 to read as follows:

"(7) principally using existing facilities in connection with the production of a product, process, or service by such venture unless such use involves or is for the production of a new product or technology;"

PROPOSED AMENDMENT TO H.R. 1313 - FOREIGN PARTICIPATION

Amend proposed new section 7 of the National Cooperative Research and Production Act of 1993 to read as follows:

SEC. 7. Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to a joint venture's production of a product, process, or service, as referred to in section 2(a)(6)(D), unless --

(1) the principal facilities for such production are located in the United States or its territories, or in a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production, and

(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

Purpose of Proposed Amendment

Under H.R. 1313 as introduced, the Act's damage-limitation protection would be available only if the principal production facilities of a joint venture were in the United States or its territories, and only if all of the joint venture's participants and the persons that control them were United States persons or persons from a country whose antitrust treatment of United States participants in production joint ventures is no less favorable than the treatment it affords to its domestic firms.

This limitation raises significant concerns. It introduces a discriminatory element into the antitrust laws, which have never discriminated against foreign firms or conduct outside the United States, but which look solely to whether the conduct in question lessens competition. The limitation also could undercut the bill's purpose by deterring beneficial joint ventures where, for example, important technology is available to U.S. firms only in conjunction with a foreign partner or facilities located outside the United States. It also raises serious questions about the ability of the United States to carry out its obligations under a number of international agreements that provide for national treatment of foreign investors, and may encourage U.S. trading partners to adopt discriminatory provisions in their own laws to the disadvantage of U.S. firms that do business abroad.

The proposed amendment would ameliorate these concerns. As amended, the damage-limitation benefits of section 4 would be available if the joint venture's principal production facilities were either in the United States or in a country whose antitrust law does not discriminate against U.S. firms in similar circumstances.

PROPOSED AMENDMENT TO H.R. 1313 - REPORTS

Amend section 4 of H.R. 1313 to read as follows:

"SEC. 4. REPORTS ON JOINT VENTURES AND UNITED STATES
COMPETITIVENESS

"(a) PURPOSE.--The purpose of the reports required by this section is to inform Congress and the American people of the effect of the National Cooperative Research and Production Act of 1993 on the competitiveness of the United States in key technological areas of production.

"(b) REPORT BY THE ATTORNEY GENERAL.--Two years after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate--

(1) a list of joint ventures for the production of a product, process, or service for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the two year period after the date of enactment of this Act, including the purpose of each such joint venture and the identity and nationality of each party to such joint venture as described in such section; and

(2) a list of cases and proceedings, if any, brought during such two year period under the antitrust laws by the Department of Justice and by the Federal Trade Commission with respect to joint ventures for the production of a product, process, or service for which notice was filed under such section.

"(c) REPORT BY THE SECRETARY OF COMMERCE.--Three years after the date of enactment of this Act, the Secretary of Commerce shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a description of the technological areas of production most commonly pursued by joint ventures for the production of a product, process, or service for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the three year period after the date of enactment of this Act, and an analysis of the trends in the competitiveness of United States industry in such areas.

"(d) REVIEW OF ANTITRUST TREATMENT UNDER FOREIGN LAWS.--Not later than one year after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the antitrust treatment of United States businesses that are parties to joint ventures for the production of a product, process, or service under the law of each foreign nation whose domestic businesses filed notice of a joint venture for the production of a product, process, or service under section 6(a) of the National Cooperative Research and Production Act of 1993 at any time."

Purpose of Proposed Amendment

The proposed amendment would limit the scope of the reports required by section 4 to production joint ventures, which are the focus of H.R. 1313 and the only joint ventures that are required by the proposed amendments to section 6(a) of the Act to submit information on nationality of parties. It would also substitute initial reports, which could be supplemented by such follow-up reports as are deemed necessary, for permanent reporting requirements. Permanent reporting requirements consume scarce agency resources and can outlive their usefulness. Finally, the proposed amendment would substitute the Secretary of Commerce for the Attorney General as the reporting agency on trends in competitiveness of United States industry. The Secretary of Commerce is better situated to develop and submit such reports.

PROPOSED AMENDMENT TO H.R. 1313 - PREEXISTING JOINT VENTURES

Amend section 6(a) of the National Cooperative Research and Production Act of 1993 in pertinent part to read as follows:

"SEC. 6(a) Any party to a joint venture, acting on such venture's behalf, may, not later than (i) 90 days after entering into a written agreement to form such venture, or (ii) 90 days after the date of enactment of this Act (or, in the case of a joint venture the purpose of which is the production of a product, process, or service, as referred to in section 2(a)(6)(D), 90 days after the date of enactment of the National Cooperative Production Amendments of 1993, in which case notification under this section shall convey the protections of section 4 only prospectively), whichever is later...."

Purpose of Proposed Amendment

The proposed amendment would permit production joint ventures formed before the National Cooperative Production Amendments of 1993 to file notifications under section 6 of the National Cooperative Research and Production Act of 1993 (the "Act") and thereby obtain the damage-reduction protection of section 4 of the Act. Under the amendment, however, section 4 protection for such preexisting production joint ventures would be prospective only.

The proposed amendment is a middle ground between the retroactive section 4 protection offered to preexisting joint R&D ventures by the National Cooperative Research Act of 1984 and the approach in H.R. 1313 as introduced, which would generally deny the protection of section 4 to preexisting production joint ventures. The purpose of the amendment is to

accord equal treatment, on a prospective basis, to all production joint ventures under the Act.

While it might be argued that preexisting production joint ventures could bring about this same result by disbanding, reforming, and then filing a notification under the Act, it is uncertain whether the courts would recognize such action as adequate to obtain the protection of section 4. Thus, the amendment is appropriate to clearly level the playing field for all production joint ventures on a prospective basis.

PROPOSED AMENDMENT TO H.R. 1313 - USE OF EXISTING FACILITIES

Amend proposed new section 2(b)(7) of the National Cooperative Research and Production Act of 1993 to read as follows:

"(7) principally using existing facilities in connection with the production of a product, process, or service by such venture unless such use involves or is for the production of a new product or technology;"

Purpose of Proposed Amendment

The proposed amendment would add the word "principally" to proposed new section 2(b)(7) of the National Cooperative Research and Production Act of 1993. The amendment would preserve the basic exclusion in H.R. 1313 from the Act's coverage of the use of existing facilities in production joint ventures unless such use is in connection with the production of a new product or technology. It would add an appropriate degree of flexibility to the Act in this regard, however, inasmuch as some production joint ventures developed principally around new facilities might find it clearly more efficient and therefore generally beneficial to integrate some existing facilities into the ventures.

The proposed amendment would also clarify the exception in exclusion (7) so that the Act would cover using existing facilities where such use "involves or is for" the production of a new product or technology. This clarification would be important to production joint ventures whose primary new-technology component lies in the manufacturing facility itself.

PROPOSED AMENDMENT TO H.R. 1313 - FOREIGN PARTICIPATION

Amend proposed new section 7 of the National Cooperative Research and Production Act of 1993 to read as follows:

SEC. 7. Notwithstanding sections 4 and 6, the protections of section 4 shall not apply with respect to a joint venture's production of a product, process, or service, as referred to in section 2(a)(6)(D), unless --

(1) the principal facilities for such production are located in the United States or its territories, or in a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production, and

(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country that is a party to an international agreement with the United States that accords, or whose law accords, antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

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"(a) PURPOSE.--The purpose of the reports required by this section is to inform Congress and the American people of the effect of the National Cooperative Research and Production Act of 1993 on the competitiveness of the United States in key technological areas of production.

"(b) REPORT BY THE ATTORNEY GENERAL.--Two years after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate--

(1) a list of joint ventures for the production of a product, process, or service for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the two year period after the date of enactment of this Act, including the purpose of each such joint venture and the identity and nationality of each party to such joint venture as described in such section; and

(2) a list of cases and proceedings, if any, brought during such two year period under the antitrust laws by the Department of Justice and by the Federal Trade Commission with respect to joint ventures for the production of a product, process, or service for which notice was filed under such section.

"(c) REPORT BY THE SECRETARY OF COMMERCE.--Three years after the date of enactment of this Act, the Secretary of Commerce shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a description of the technological areas of production most commonly pursued by joint ventures for the production of a product, process, or service for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 during the three year period after the date of enactment of this Act, and an analysis of the trends in the competitiveness of United States industry in such areas.

"(d) REVIEW OF ANTITRUST TREATMENT UNDER FOREIGN LAWS.--Not later than one year after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the antitrust treatment of United States businesses that are parties to joint ventures for the production of a product, process, or service under the law of each foreign nation whose domestic businesses filed notice of a joint venture for the production of a product, process, or service under section 6(a) of the National Cooperative Research and Production Act of 1993 at any time."

PROPOSED AMENDMENT TO H.R. 1313 - PREEXISTING JOINT VENTURES

Amend section 6(a) of the National Cooperative Research and Production Act of 1993 in pertinent part to read as follows:

"SEC. 6(a) Any party to a joint venture, acting on such venture's behalf, may, not later than (i) 90 days after entering into a written agreement to form such venture, or (ii) 90 days after the date of enactment of this Act (or, in the case of a joint venture the purpose of which is the production of a product, process, or service, as referred to in section 2(a)(6)(D), 90 days after the date of enactment of the National Cooperative Production Amendments of 1993, in which case notification under this section shall convey the protections of section 4 only prospectively), whichever is later...."

PROPOSED AMENDMENT TO H.R. 1313 - USE OF EXISTING FACILITIES

Amend proposed new section 2(b)(7) of the National Cooperative Research and Production Act of 1993 to read as follows:

"(7) principally using existing facilities in connection with the production of a product, process, or service by such venture unless such use involves or is for the production of a new product or technology;"