Public Law 97-393
97th Congress

An Act

Dec. 29, 1982
[S. 816]

To amend the Clayton Act to modify the amount of damages payable to foreign states and instrumentalities of foreign states which sue for violations of the antitrust laws.

Clayton Act, amendment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Clayton Act (15 U.S.C. 15) is amended—

(1) by striking out "That" and inserting in lieu thereof "(a) Except as provided in subsection (b)," and

(2) by adding at the end thereof the following new subsections:

"(b)(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

"(2) Paragraph (1) shall not apply to a foreign state if—

"(A) such foreign state would be denied, under section 1605(a)(2) of title 28 of the United States Code, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

"(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

"(C) such foreign state engages primarily in commercial activities; and

"(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

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"(c) For purposes of this section— Definitions.

"(1) the term 'commercial activity' shall have the meaning given it in section 1603(d) of title 28, United States Code, and

"(2) the term 'foreign state' shall have the meaning given it in section 1603(a) of title 28, United States Code.".

Approved December 29, 1982.

LEGISLATIVE HISTORY—S. 816 (H.R. 5106):

SENATE REPORT No. 97-78 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 128 (1982):
Apr. 27, H.R. 5106 considered and passed House.
Sept. 30, H.R. 5106 considered and passed Senate, amended.
July 9, considered and passed Senate.
Dec. 13, considered and passed House, amended.
Dec. 15, Senate concurred in House amendments.