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FOREIGN TRUST-BUSTING ACT

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, June 23, 2000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A copy of the bill follows:

H.R. 4731

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

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds that—

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

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

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

SEC. 3. PURPOSES.

The purposes of this Act are—

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

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

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

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

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

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

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

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

(4) by adding at the end the following:

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

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

SPEECH OF

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 20, 2000

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

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

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

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

service-learning programs that provide academic benefits, along with the opportunity to learn responsible citizenship.

Besides eliminating funding for the Corporation for National and Community Service, it also cuts key housing programs which currently provide crucial services to my constituents in northern New Mexico and throughout my district.

Other than the reduction of funding, this bill also denies the request for 120,000 new rental assistance vouchers, a \$78 million cut in elderly and disabled housing, and a \$28 million cut in HOPWA, the program which provides housing assistance for people with HIV/AIDS, a group in need of housing assistance.

Mr. Chairman, other housing programs being cut or reduced include the Home Program and the HOPE VI funds that replace distressed housing projects and operating subsidies for housing authorities.

What really disappoints me, Mr. Speaker, is that this bill also makes substantial cuts below the FY 2000 level in the Community Development Block Grant Program. This \$295 million cut will result in 12,000 fewer jobs being created and 36,000 fewer people receiving housing rehabilitation, construction, and home buyer assistance. It also fails to provide funds for regional empowerment zones or the new markets initiative.

I want to now shift this conversation toward our veterans, to the men and women who put their lives on the line to protect the liberties and security of our nation. This country should not turn its back on these courageous men and women and should provide them with the benefits and resources they so rightly deserve.

I am opposed to any reduction in minor construction funding, which would adversely affect all VA operations, ranging from patient safety and maintenance in VA medical centers to gravesite development in some national cemeteries. In addition, I am also opposed to the provision included in the legislation to prohibit the VA from transferring funds to the Department of Justice to support litigation against tobacco companies. The VA spends more than \$1 billion annually treating veterans suffering from tobacco-related conditions and is committed to helping the Federal Government recover these funds. Therefore, the VA should receive their share of any recoveries as a result of the litigation and apply that share toward medical services for our veterans.

On the environmental side, the VA-HUD-appropriations bill contains funding cuts for environmental protection, contains anti-environmental riders and blocks the EPA from investigating environmental justice claims. For years, the most vulnerable in our Nation have borne the brunt of environmental pollution from hazardous practices. I believe that all citizens have a fundamental right to a clean environment and this legislation does not provide that right.

The President has already indicated that if this bill, in its present form, arrives at his desk for signature it will receive a veto.

I'm tired and I know the constituents in my district are tired of the majority crafting appropriation bills which fail to properly address the needs of our country and its programs.

I will continue working with my colleagues on the other side of the aisle to construct funding bills that are based on a balanced approach and maintain fiscal discipline while providing appropriate tax cuts, protecting the sol-

vency of Medicare and Social Security, and funding for critical programs important to all of us. However, we are not going to get there if we keep sending the President inadequate funding bills that do not take the balanced approach.

Mr. Chairman, if the leadership continues to ask Members of Congress to support these "poison apple" appropriation bills, I will have to continue to vote against them. For the reasons I have outlined today and for the other deficiencies contained in this legislation, I have to oppose passage of this appropriations bill.

PERSONAL EXPLANATION

HON. THOMAS M. BARRETT

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, June 23, 2000

Mr. BARRETT of Wisconsin. Mr. Speaker, on Thursday, June 15th, I was unable to vote on rollcall # 278, concerning a resolution (H. Res. 525) providing for the consideration of H.R. 4635, the Departments of Veterans Affairs and Housing and Urban Development Appropriations for FY2001. Had I been present, I would have voted "nay."

SPRINT-WORLDCOM MERGER

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, June 23, 2000

Mr. OXLEY. Mr. Speaker, as a strong supporter of free markets and the Sprint-WorldCom merger, I wish to bring the lead editorial from today's Wall Street Journal to the attention of my colleagues.

On both sides of the Atlantic, there persists a certain regulatory bias against large corporate combinations. I believe regulators commit an error when they scrutinize such alliances on a regional basis instead of taking a global perspective. Such mergers offer efficiencies and synergies very much in demand in the age of instant global communications.

Again, Mr. Speaker, I submit the following editorial.

[From the Wall Street Journal, June 23, 2000]
SUPER MARIO SMOTHERS

Look out, Mario Monti is in town. While it seems unlikely that U.S. unemployment will shoot up right away to German levels or Silicon Valley will suddenly take on the lugubriousness of a French panel in charge of setting lawn mower standards, you can't be too careful when the European Commission's "competition" czar is visiting.

Mr. Monti arrived in Washington yesterday to bring us his unique perspective on the pending Spring-WorldCom merger. His meeting agenda included Janet Reno and Joel Klein and the FCC's Bill Kennard. No wonder the markets went all languid yesterday.

Though Internet services aren't a big part of this landmark deal, Mr. Monti has decided to grab the opportunity to make WorldCom cough up UU-Net, its wholly owned Internet backbone carrier, which hauls a large share of Europe's web traffic. Never mind that others are rapidly adding backbone capacity. Never mind that this new investment is more likely to dry up if Europe is seen pun-

ishing those who successfully invested in the past. Mr. Monti has decided WorldCom's share is "too big" according to some static gauge of industry concentration. It's not his job to notice other dynamic factors in a rapidly advancing industry that make his gauge irrelevant.

It's hard to say what's worse, Mr. Monti's academic rigidity or the Clinton Justice Department's notion that it can fine-tune "innovation" to a fare-thee-well.

We'll wait to be apprised of Justice's full reasoning for aligning with Mr. Monti in trying to scuttle the merger. The latest leaks say Justice is taking its advice from the company's long-distance competitors Qwest and Level Three Communications. Let's see: These other companies fear that WorldCom would be a formidable competitor, so the Justice Department is opposing the deal as . . . anticompetitive?

Whatever he comes up with for this one, antitrust chief Joel Klein has lately been on a bender claiming that his ministrations are necessary to free up technological advance, which apparently is something lacking in our economy. Perhaps we need more lessons on this from dynamic Europe.

What seems to be missing on both sides of the Atlantic is a little humility. These days the best minds in industry are regularly caught flat-footed by change. Why should somebody who hung around with Bill Clinton at Renaissance Weekend or graduated first in his class from some finishing school have any better handle on the direction of markets and technology?

At some point the danger is going to manifest itself in lost jobs and opportunities for middle-class voters. If businesses are not allowed to move forward, they stagnate and die. If enough businesses are blocked from moving ahead, the whole economy slows down. That's a voting issue.

WorldCom is a good example. Bernie Ebbers assembled a nice collection of telecommunications assets, but he didn't see how important wireless would be. Who did? Cell coverage and bandwidth are improving so rapidly that wireless is becoming many people's primary phone. Unless he can cajole regulators to sign off on the acquisition of Sprint's wireless business, he doesn't have a viable strategy.

One reason Europe is Europe and we're not is that our companies have been free to adapt. The Founding Fathers granted us rights so we wouldn't be in the position of arguing with our rulers for our freedom on a case-by-case basis. These rights extend even to companies and their shareholders, and just any old reason for blocking their private strategies shouldn't be good enough.

Indeed, it would be quite a feat if our trustbusters manage single-handedly to bring European-style corporate stasis to the U.S. economy, but they're working on it. We're not talking just about the Microsofts, WorldComs, AOL-Time Warners and other businesses that make the evening news. Late last year the FTC scuttled a Pathmark merger just as the company was trying to break out of the pack by bringing modern supermarkets to the inner city. Last month Pathmark filed for Chapter 11. Too bad for Harlem, which was just about to get a new store.

Hmm, maybe we know why the Europeans sent Mr. Monti to Washington after all. It's part of their comeback plan to offload their antitrust hang-ups on U.S. companies so their own economies can catch up. Only in a Clinton presidency could they think such a strategy might take wing.