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## Appendix 2: Recent United States Legislative Antitrust Proposals

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## Appendix 2: Recent United States Legislative Antitrust Proposals

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### PETROLEUM INDUSTRY COMPETITION ACT, S. 82.

Introduced on January 18, 1979, by Senator Bayh.

Referred to the Judiciary Committee.

Facilitates the creation and maintenance of competition in the petroleum industry, and requires divestment of certain assets of vertically-integrated oil companies.

Within five years of its enactment, makes it unlawful for any major producer, transporter, refiner, marketer, or other person owning refining, production, or marketing assets to control any interest in refinery, transport, or marketing assets.

Anyone covered by these provisions must submit to the Federal Trade Commission within eighteen months of enactment a plan for divestment of the prohibited assets. The required divestment must occur within five years.

Violations of the Petroleum Industry Competition Act incur civil penalties of up to \$100,000 for individuals and up to \$1 million for corporations.

Creates Temporary Petroleum Industry Divestiture Court having exclusive jurisdiction of matters arising under this Act.

### ANTITRUST ENFORCEMENT ACT, S. 300.

Introduced on January 31, 1979, by Senator Kennedy.

Referred to the Judiciary Committee; Hearing March 9, 1979.

Reported as amended S. REPT. No. 96-239, July 10, 1979.

Amends Clayton Act Section 4 to allow those injured by antitrust violations to recover damages whether or not they have dealt directly with the defendant.

Allows as partial or complete defense that plaintiff has passed on to others who are entitled to recover under Clayton Act some measure of what would otherwise constitute plaintiff's damages.

Limits recovery of foreign governments to actual damages, and permits such suits in U.S. courts only if the foreign state's laws forbid the same conduct which is the subject of suit under the Clayton Act.

Amends Multidistrict Litigation Act to permit the Judicial Panel on Multidistrict Litigation to consolidate related civil antitrust actions.

Authorizes court to award attorney fees to prevailing defendants upon showing of plaintiff's bad faith in bringing suit.

SMALL AND INDEPENDENT BUSINESS PROTECTION ACT, S. 600.

Introduced on March 8, 1979, by Senator Kennedy.

Referred to the Judiciary Committee; Hearing March 8, 1979.

Prohibits mergers which would result in control of a majority of assets if each party has sales exceeding a certain amount.

Establishes affirmative defense that the transaction will enhance competition, result in substantial efficiencies, or within one year before consummation, the parties have divested one or more viable business units, the assets and revenues of which are equal to or greater than those of the smaller party to the transaction.

Endows attorney general and Federal Trade Commission with enforcement authority. Grants injunctive relief to private parties under same terms as Section 16 of the Clayton Act.

PETROLEUM MARKETING MORATORIUM ACT, S. 723.

Introduced on March 21, 1979, by Senator Durkin.

Referred to the Judiciary Committee.

Prohibits any major market shareholder directly or indirectly engaged in production, refinery, or transportation of petroleum products from acquiring, operating, or controlling any retail outlet for marketing petroleum products not already acquired, operated, or controlled by it by enactment date.

Establishes a fine of \$100,000 and/or imprisonment up to ten years for violations, and adds a further civil penalty up to \$10,000 a day during continuation of violation.

Provides that anyone injured as a result of the above provisions may bring an action to enforce compliance, enjoin, or for damages.

UNFAIR COMPETITION ACT, S. 938.

Introduced on April 10, 1979, by Senator Mathias.

Referred to the Judiciary Committee; Senate Hearing December 6, 1979.

Amends Clayton Act Section 4 to include Section 801 of Revenue Act of 1916. Section 801 prohibits importation of foreign goods to be sold in United States at prices less than market value if act done with intent of destroying or injuring U.S. industry, preventing establishment of an industry in the United States or restraining or monopolizing any part of trade and commerce in such

goods in this country. The proposed Unfair Competition Act would amend Section 801 by adding that injury or restraint or monopoly must result from such conduct to be illegal. It would also add provisions authorizing the court to cause any other parties it deems necessary to resolution of the dispute to appear. If defendant fails to comply with any discovery order or other order of the court, the amendment provides, the court has authority to enjoin further importation into the United States or distribution in interstate commerce of same articles alleged in the proceeding to have been sold illegally.

Amends penalty provisions of Section 801 to increase the fine from \$5,000 to \$50,000.

ANTITRUST CONSENT DECREE ENFORCEMENT ACT, S. 958.

Introduced on April 10, 1979, by Senator Kennedy.

Referred to the Judiciary Committee.

Amends Clayton Act Section 5 to provide remedies for enforcement of antitrust judgments. Any individual damaged by violation of antitrust judgment may notify the attorney general that the judgment is not being complied with. Prevailing private parties may recover costs of action and reasonable attorney's fees.

Provides penalty for violation of judgment up to \$10,000. Each day a violation continues may be considered a separate violation.

THE ANTITRUST RECIPROCITY ACT, S. 317.

Introduced on February 1, 1979, by Senator DeConcini.

Referred to the Judiciary Committee.

Limits the standing of foreign sovereigns to sue under antitrust laws.

Amends Clayton Act Section 4 by limiting the damages foreign sovereigns may recover to actual damages, and by providing that no foreign state may maintain an action in the United States unless the attorney general, within 120 days after commencement of an action, has certified to the relevant court that the United States is entitled to sue in that foreign state's courts and that the foreign sovereign has laws prohibiting restrictive business practices which are enforced against those within its territory.

INTERNATIONAL TRADE AND INVESTMENT REORGANIZATION ACT, S. 377.

Introduced on February 2, 1979, by Senator Roth.

Referred to the Governmental Affairs Committee; Hearing July 23, 1979.

Establishes a Department of International Trade and Investment as an executive department. This Department would assume many of the functions and duties of other bodies, *i.e.* Special Representative for Trade Negotiations, secretary of state, and Department of State, that relate to commercial activities.

COMPETITION IMPROVEMENTS ACT, S. 382.

Introduced on February 7, 1979, by Senator Kennedy.  
Referred to the Judiciary Committee; Hearing March 6, 1979.  
Prohibits federal agencies from taking any action that has the effect of lessening competition. Requires each independent regulatory agency to establish procedures within one hundred and twenty days after enactment which provide for notification of the attorney general of important pending agency actions.

EXPORT TRADE ASSOCIATION ACT, S. 864.

Introduced on April 4, 1979, by Senator Danforth.  
Referred to the Banking, Housing & Urban Affairs Committee.  
Encourages U.S. exports by establishing office within Department of Commerce to promote formation of export trade associations through the Webb-Pomerene Act. Makes provisions of Webb-Pomerene Act applicable to exportation of services and transfers responsibility for administering Act from the Chairman of the Federal Trade Commission to the secretary of commerce.

Amends Section 2 of the Webb-Pomerene Act to exempt export trade associations from the antitrust laws in certain circumstances.

Only federal agencies have standing to sue the export association. Individuals may file a petition requesting the appropriate enforcement action.

(No Title) S. 980.

Introduced on April 23, 1979, by Senator Mathias.  
Referred to the Judiciary Committee.  
Amends Clayton Act by providing that no foreign sovereign may maintain an action under Section 4 unless its laws would have forbidden the same conduct upon which its action is based. The foreign state's laws must authorize the government and U.S. citizens to recover damages in its courts. Limits foreign sovereign potential recovery to actual damages.

(No Title) S. 1010.

Introduced on April 10, 1979, by Senator Mathias.

Referred to the Governmental Affairs Committee; Senate Hearing October 31, 1979.

Establishes Commission on the International Application of Antitrust Laws. Commission shall make comprehensive recommendations regarding international aspects of U.S. antitrust law, and make periodic reports to president and Congress. Commission has power to hold hearings and subpoena witnesses.

OIL WINDFALL ACQUISITION ACT, S. 1246.

Introduced on May 24, 1979, by Senator Kennedy.

Referred to the Judiciary Committee; Hearing June 19, 1979.

Reported as amended, S. REP. No. 9-444, December 4, 1979.

Amends Clayton Act by adding limitation on acquisitions and mergers where the acquiree has assets in excess of \$100 million in the energy business, or assets of \$50 million and not in the energy business, and the major producer would control a majority of those assets.

The bill does not prohibit acquisitions which enhance competition in United States domestic or foreign commerce, or materially increase energy exploration, extraction, production, or conversion; the bill does not apply to joint ventures.

The bill presumes that assets acquired in the energy business within three years are the subject of a single acquisition.

(No Title) S. 1413.

Introduced on June 26, 1979, by Senator Jackson.

Referred to the Energy & Natural Resources and Judiciary Committees; Senate Hearing October 3, 1979.

Extends the antitrust exemption for oil companies that participate in the Agreement on an International Energy Program. Section 252(j) of Energy Policy & Conservation Act of 1975 is amended by striking out "June 30, 1979" and inserting "January 19, 1986."

EXPORT TRADE ACTIVITIES ACT, S. 1499.

Introduced on July 12, 1979, by Senator Roth.

Referred to the Banking and Housing & Urban Affairs Committees; Hearing September 17, 1979.

Encourages the formation and utilization of export trade associations. Gives the Federal Trade Commission exclusive jurisdiction to certify and supervise such associations, which are exempt from the antitrust laws as long as they refrain from certain conduct.

Individuals have standing to bring actions against an association only if the Federal Trade Commission determines its activities constitute certain prohibited conduct.

Repeals Webb-Pomerene Act as of the ninetieth day of Export Trade Activities Act's enactment.

(No Title) S. 1744.

Introduced on September 13, 1979, by Senator Inouye.

Referred to the Banking and Housing and Urban Affairs Committees; Senate Hearing September 17, 1979.

Amends Export Trade Act to encourage increased utilization of the Act, to expand exemptions provided under the Act, to clarify U.S. government policy with respect to administration of the Act, and to assist U.S. exporters in international trade competition.

(No Title) S. 1871.

Introduced on October 10, 1979, by Senators Metzenbaum, Thurmond, and Jackson.

Referred to the Energy & Natural Resources Committee.

Reported, amended, without written Senate report October 16, 1979; passed Senate as reported (Voice) October 17, 1979; amended to contain text of H. 4445 as passed (Voice) October 22, 1979; passed House as amended (Voice) October 22, 1979; Senate agreed to unanimous consent agreement regarding consideration (Voice) October 29, 1979; House amendments agreed to by Senate with amendments (Roll-call) October 30, 1979; Pursuant to HOUSE RES. 478, bill returned to Senate November 8, 1979; amended on Senate floor (Voice) November 16, 1979; Conferees appointed by House November 26, 1979; Conferees appointed by Senate November 27, 1979; agreed to by Senate (Voice) November 28, 1979; Conferees Report filed, H. REP. No. 96-669 November 28, 1979; agreed to by House (Voice) November 29, 1979; to president November 29, 1979; approved (P.L. 96-133) November 30, 1979.

Extends existing antitrust exemption for oil companies that participate in Agreement on International Energy Program, by Amending Section 252(j) of the Energy Policy & Consideration Act of 1975 by striking out "June 30, 1979" and inserting "June 30, 1980."

ANTITRUST ENFORCEMENT IMPROVEMENTS ACT, S. 1980.

Introduced on November 6, 1979, by Senators Hatch, Thurmond, Cochran, Helms, Laxalt.

Referred to the Judiciary Committee.

Provides for more efficient and equitable enforcement of the antitrust laws by eliminating adjudicative function of the Federal Trade Commission. Vests that function in federal district courts and retains in the Federal Trade Commission its authority to investigate alleged violations of antitrust provisions. Confers authority on the Federal Trade Commission to bring civil actions in federal district courts.

Amends Clayton Act by investing federal district courts with jurisdiction to prevent violations of Clayton Act. Requires U.S. attorneys under direction of the attorney general to institute proceedings in equity.

FOREIGN INVESTMENT DISCLOSURE ACT, H. R. 158.

Introduced on January 15, 1979, by Representative Brodhead.

Referred to Interstate and Foreign Commerce Committee.

Amends Securities Exchange Act of 1934 to require disclosure by foreign investors acquiring more than 5 percent of equity securities in U.S. corporations having assets greater than \$1 million. The president may prohibit such acquisitions to protect national security and the domestic economy or to further foreign policy. The president shall prohibit such acquisitions if he determines the foreign investor has caused, attempted, or conspired to cause any person to discriminate against a U.S. company, because that company has been dealing with a country with which the United States has diplomatic relations.

ENERGY COMPETITION ACT, H. R. 508.

Introduced on January 15, 1979, by Representative Kastenmeier.

Referred to the Judiciary Committee.

Makes it unlawful for any person involved in production of petroleum or petroleum products to acquire any coal, uranium, or geothermal power asset; to buy, own, or control any of the above energy sources after three years from enactment date; or to have any management personnel holding a controlling interest in any energy company in the United States.

Attorney general requires those covered to submit within one year of the date of this bill's enactment a plan for divestment of prohibited assets within three years.

For knowing violations there is a penalty of up to \$500,000 for individu-



als, or imprisonment, or both. For corporations, the penalty is \$5 million and up to a ten-year suspension of the right to do business.

COMPETITIVE ENERGY DEVELOPMENT ACT, H. R. 2345.

Introduced on February 22, 1979, by Representative McKinney.

Referred to the Interstate and Foreign Commerce Committee.

Requires the Federal Trade Commission (Commission) to monitor energy-related industries under criteria established in consultation with the Department of Energy to measure the level of competition in alternative energy source markets. If the Commission determines such criteria have been violated, it may issue an order to show cause at a hearing. The person must come forward with reasons why he should not be held responsible for non-competitive or anticompetitive situations.

The Commission may make recommendations to any governmental entity to take action which that entity has authority to carry out.

SMALL AND INDEPENDENT BUSINESS PROTECTION ACT, H. R. 3169.

Introduced on March 21, 1979, by Representative Seiberling.

Referred to the Judiciary Committee.

Prohibits mergers between two or more parties, one having assets greater than \$2 billion and the other having assets of \$350 million; or if one party has assets exceeding \$350 million and the other has 20 percent or more of the sales in a significant market.

Establishes affirmative defense that transaction will substantially enhance competition, efficiencies, or that within one year the parties will divest one or more business units whose assets and revenues are equal to or greater than those of the smallest party.

Attorney general and the Federal Trade Commission have the authority to enforce compliance. Injunctive relief for private parties is available under same terms as Section 16 of the Clayton Act.

FOREIGN INVESTORS LIMITATION ACT, H. R. 3182.

Introduced on March 22, 1979, by Representative Gaydos.

Referred to the Interstate & Foreign Trade Committee.

Amends Securities Exchange Act of 1934 to restrict non-U.S. citizens from acquiring more than 35 percent of nonvoting securities or more than 5 percent of voting securities of any issuer registered under the Act.

PETROLEUM INDUSTRY COMPETITION ACT, H. R. 3346.

Introduced on March 29, 1979, by Representative Mottl.

Referred to the Judiciary Committee.

Requires divestment of vertically-integrated petroleum companies. Makes it unlawful for any major petroleum producer, refiner, transporter, or marketer to own or control any interest in stages of production it is not presently involved in.

The Federal Trade Commission shall require each person covered by Section 4 to submit plans for divestment within three years.

Penalties for willful violation are \$500,000 for an individual and/or imprisonment not more than ten years; for corporations, the same amount and/or suspension of the right to do business in interstate commerce for up to ten years.

ENERGY ANTIMONOPOLY ACT, H. R. 4295.

Introduced on June 4, 1979, by Representative Luken.

Referred to the Judiciary Committee.

Amends Clayton Act by prohibiting major oil producers, or subsidiaries thereof, from merging or consolidating with any person engaged in commerce. Prohibits acquisition of an amount of stock or other share of capital of any person engaged in commerce so as to enable such producer to control such other person or acquire a majority of his assets, if he has assets over \$100,000,000.

CARTEL RESTRICTION ACT, H. R. 4661.

Introduced on June 28, 1979, by Representatives Gore and Scheuer.

Referred to the Interstate & Foreign Commerce and Judiciary Committees.

Amends Federal Trade Commission Act to require persons subject to the Act to submit reports regarding certain business activities conducted by them in foreign states to enable the Federal Trade Commission to determine whether such activities involve anticompetitive practices.

In actions brought to enforce this Act or the antitrust laws the court may not decline to exercise jurisdiction solely because it would require an examination of official action of a foreign state, except where the foreign state acted in its sovereign capacity.

COMPETITION IN GASOLINE MARKETING ACT, H. R. 4682.

Introduced on June 28, 1979, by Representative Kostmayer.

Referred to the Judiciary Committee.

To restore and provide competition in marketing of motor fuel by prohibiting the control, operation, or acquisition of marketing outlets by petroleum refiners, producers, distributors. Such interests must be disposed of within two years after enactment.

A knowing violation invokes a penalty of up to \$100,000 and/or imprisonment up to ten years. A violation by a corporation shall be deemed to be a violation by the individual directors, officers, receivers, trustees, or agents. It is the duty of the attorney general to commence a civil action for appropriate relief upon violation.

If a producer, refiner, or distributor fails to comply with Act's requirements, any retailer may maintain a civil action against it.

#### PETROLEUM COMPANY HOLDINGS ACT, H. R. 4733.

Introduced on July 10, 1979, by Representative Mottl.  
Referred to the Interstate and Foreign Commerce & Judiciary Committees. Prohibits major petroleum producers, refiners, and marketers from acquiring, owning, or controlling any business (or interest therein) outside of the petroleum industry, effective beginning three years after this bill's enactment.

The Federal Trade Commission shall require those subject to this Act to submit within one year a plan for divestment of the interests prohibited by the Act. The plan must accomplish the divestment within three years of the date of enactment.

The Commission shall institute suits in federal district courts requesting the issuance of such appropriate relief to assure compliance.

A knowing or willful violation of this Act carries a penalty of \$500,000 and/or imprisonment. A corporation may stand to lose the right to engage in commerce for up to ten years and/or the above fine. Provides for civil penalty up to \$100,000 for violation of lawful Commission orders.

#### SPECIAL ENERGY PROSECUTION ACT, H. R. 5776.

Introduced on November 1, 1979, by Representative Glickman.  
Referred to the Interstate & Foreign Commerce and Judiciary Committees. Creates special prosecutor for audit, review, investigation, and prosecution of violations by major oil companies of the Federal Trade Commission Act, the Sherman and Clayton Acts, and other antitrust laws.

#### (No Title) H. R. 6292.

Introduced on January 24, 1980, by Representative Long.  
Referred to the Judiciary Committee.  
Restores and promotes competition in the marketing of gasoline by prohibit-

ing the control, operation, or acquisition of marketing outlets by petroleum refiners, producers, and distributors.

(No Title) H. RES. 125.

Introduced on February 15, 1979, by Representative St. Germain.

Referred to the Rules Committee.

Creates a select committee to investigate nationalization of the oil industry.