

Union Calendar No. 420

103D CONGRESS
2D SESSION

H. R. 4781

[Report No. 103-722]

A BILL

To facilitate obtaining foreign-located antitrust evidence by authorizing the Attorney General of the United States and the Federal Trade Commission to provide, in accordance with antitrust mutual assistance agreements, antitrust evidence to foreign antitrust authorities on a reciprocal basis; and for other purposes.

OCTOBER 3, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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[Report No. 103-772]

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IN THE HOUSE OF REPRESENTATIVES

JULY 19, 1994

Mr. BROOKS (for himself and Mr. FISH) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 3, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 19, 1994]

A BILL

To facilitate obtaining foreign-located antitrust evidence by authorizing the Attorney General of the United States and the Federal Trade Commission to provide, in accordance with antitrust mutual assistance agreements, antitrust evidence to foreign antitrust authorities on a reciprocal basis; and for other purposes.

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 “International Antitrust*
5 *Enforcement Assistance Act of 1994”.*

6 **SEC. 2. DISCLOSURE TO A FOREIGN ANTITRUST AUTHOR-**
7 **ITY OF ANTITRUST EVIDENCE.**

8 *In accordance with an antitrust mutual assistance*
9 *agreement in effect under this Act, subject to section 8, and*
10 *except as provided in section 5, the Attorney General of the*
11 *United States and the Federal Trade Commission may pro-*
12 *vide to a foreign antitrust authority with respect to which*
13 *such agreement is in effect under this Act, antitrust evi-*
14 *dence to assist the foreign antitrust authority—*

15 *(1) in determining whether a person has violated*
16 *or is about to violate any of the foreign antitrust laws*
17 *administered or enforced by the foreign antitrust au-*
18 *thority, or*

19 *(2) in enforcing any of such foreign antitrust*
20 *laws.*

21 **SEC. 3. INVESTIGATIONS TO ASSIST A FOREIGN ANTITRUST**
22 **AUTHORITY IN OBTAINING ANTITRUST EVI-**
23 **DENCE.**

24 *(a) REQUEST FOR INVESTIGATIVE ASSISTANCE.—A re-*
25 *quest by a foreign antitrust authority for investigative as-*

1 *sistance under this section shall be made to the Attorney*
2 *General, who may deny the request in whole or in part.*
3 *No further action shall be taken under this section with re-*
4 *spect to any part of a request that has been denied by the*
5 *Attorney General.*

6 *(b) AUTHORITY TO INVESTIGATE.—In accordance with*
7 *an antitrust mutual assistance agreement in effect under*
8 *this Act, subject to section 8, and except as provided in sec-*
9 *tion 5, the Attorney General and the Commission may,*
10 *using their respective authority to investigate possible viola-*
11 *tions of the Federal antitrust laws, conduct investigations*
12 *to obtain antitrust evidence relating to a possible violation*
13 *of the foreign antitrust laws administered or enforced by*
14 *the foreign antitrust authority with respect to which such*
15 *agreement is in effect under this Act, and may provide such*
16 *antitrust evidence to the foreign antitrust authority, to as-*
17 *sist the foreign antitrust authority—*

18 *(1) in determining whether a person has violated*
19 *or is about to violate any of such foreign antitrust*
20 *laws, or*

21 *(2) in enforcing any of such foreign antitrust*
22 *laws.*

23 *(c) SPECIAL SCOPE OF AUTHORITY.—An investigation*
24 *may be conducted under subsection (b), and antitrust evi-*
25 *dence obtained through such investigation may be provided,*

1 *without regard to whether the conduct investigated violates*
2 *any of the Federal antitrust laws.*

3 *(d) RIGHTS AND PRIVILEGES PRESERVED.—A person*
4 *may not be compelled in connection with an investigation*
5 *under this section to give testimony or a statement, or to*
6 *produce a document or other thing, in violation of any le-*
7 *gally applicable right or privilege.*

8 *(e) CONFORMING AMENDMENTS.—*

9 *(1) ANTITRUST CIVIL PROCESS ACT.—The Anti-*
10 *trust Civil Process Act (15 U.S.C. 1311 et seq.) is*
11 *amended—*

12 *(A) in section 2—*

13 *(i) in subsection (d)—*

14 *(I) by striking “or any” and in-*
15 *serting “, any”, and*

16 *(II) by inserting before the semi-*
17 *colon “or, with respect to the Inter-*
18 *national Antitrust Enforcement Assist-*
19 *ance Act of 1994, any of the foreign*
20 *antitrust laws”, and*

21 *(ii) by adding at the end the following:*

22 *“(k) The term ‘foreign antitrust laws’ has the*
23 *meaning given such term in section 12 of the Inter-*
24 *national Antitrust Enforcement Assistance Act of*
25 *1994.”, and*

1 (B) in the first sentence of section 3(a)—

2 (i) by inserting “or, with respect to the
3 International Antitrust Enforcement Assist-
4 ance Act of 1994, an investigation author-
5 ized by section 3 of such Act” after “inves-
6 tigation”, and

7 (ii) by inserting “by the United
8 States” after “proceeding”.

9 (2) FEDERAL TRADE COMMISSION ACT.—The
10 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
11 is amended—

12 (A) in section 6 by inserting after sub-
13 section (h) the following:

14 “(i) With respect to the International Antitrust En-
15 forcement Assistance Act of 1994, to conduct investigations
16 of possible violations of foreign antitrust laws (as defined
17 in section 12 of such Act).”;

18 (B) in section 20(a) by amending para-
19 graph (8) to read as follows:

20 “(8) The term ‘antitrust violation’ means—

21 “(A) any unfair method of competition
22 (within the meaning of section 5(a)(1));

23 “(B) any violation of the Clayton Act or of
24 any other Federal statute that prohibits, or
25 makes available to the Commission a civil rem-

1 *edy with respect to, any restraint upon or mo-*
2 *nopolization of interstate or foreign trade or*
3 *commerce;*

4 *“(C) with respect to the International Anti-*
5 *trust Enforcement Assistance Act of 1994, any*
6 *violation of any of the foreign antitrust laws (as*
7 *defined in section 12 of such Act) with respect to*
8 *which a request is made under section 3 of such*
9 *Act; or*

10 *“(D) any activity in preparation for a*
11 *merger, acquisition, joint venture, or similar*
12 *transaction, which if consummated, may result*
13 *in any such unfair method of competition or in*
14 *any such violation.”.*

15 **SEC. 4. JURISDICTION OF THE DISTRICT COURTS OF THE**
16 **UNITED STATES.**

17 *(a) AUTHORITY OF THE DISTRICT COURTS.—On the*
18 *application of the Attorney General made in accordance*
19 *with an antitrust mutual assistance agreement in effect*
20 *under this Act, the United States district court for the dis-*
21 *trict in which a person resides, is found, or transacts busi-*
22 *ness may order such person to give testimony or a state-*
23 *ment, or to produce a document or other thing, to the Attor-*
24 *ney General to assist a foreign antitrust authority with re-*
25 *spect to which such agreement is in effect under this Act—*

1 (1) *in determining whether a person has violated*
2 *or is about to violate any of the foreign antitrust laws*
3 *administered or enforced by the foreign antitrust au-*
4 *thority, or*

5 (2) *in enforcing any of such foreign antitrust*
6 *laws.*

7 (b) *CONTENTS OF ORDER.—*

8 (1) *USE OF APPOINTEE TO RECEIVE EVI-*
9 *DENCE.—(A) An order issued under subsection (a)*
10 *may direct that testimony or a statement be given, or*
11 *a document or other thing be produced, to a person*
12 *who shall be recommended by the Attorney General*
13 *and appointed by the court.*

14 (B) *A person appointed under subparagraph (A)*
15 *shall have power to administer any necessary oath*
16 *and to take such testimony or such statement.*

17 (2) *PRACTICE AND PROCEDURE.—(A) An order*
18 *issued under subsection (a) may prescribe the practice*
19 *and procedure for taking testimony and statements*
20 *and for producing documents and other things.*

21 (B) *Such practice and procedure may be in*
22 *whole or in part the practice and procedure of the for-*
23 *foreign state, or the regional economic integration orga-*
24 *nization, represented by the foreign antitrust author-*

1 *ity with respect to which the Attorney General re-*
2 *quests such order.*

3 *(C) To the extent such order does not prescribe*
4 *otherwise, any testimony and statements required to*
5 *be taken shall be taken, and any documents and other*
6 *things required to be produced shall be produced, in*
7 *accordance with the Federal Rules of Civil Procedure.*

8 *(c) RIGHTS AND PRIVILEGES PRESERVED.—A person*
9 *may not be compelled under an order issued under sub-*
10 *section (a) to give testimony or a statement, or to produce*
11 *a document or other thing, in violation of any legally appli-*
12 *cable right or privilege.*

13 *(d) VOLUNTARY CONDUCT.—This section does not pre-*
14 *clude a person in the United States from voluntarily giving*
15 *testimony or a statement, or producing a document or other*
16 *thing, in any manner acceptable to such person for use in*
17 *an investigation by a foreign antitrust authority.*

18 **SEC. 5. LIMITATIONS ON AUTHORITY.**

19 *Sections 2, 3, and 4 shall not apply with respect to*
20 *the following antitrust evidence:*

21 *(1) Antitrust evidence that is received by the At-*
22 *torney General or the Commission under section 7A*
23 *of the Clayton Act (15 U.S.C. 18a), as added by title*
24 *II of the Hart-Scott-Rodino Antitrust Improvements*
25 *Act of 1976. Nothing in this paragraph shall affect*

1 *the ability of the Attorney General or the Commission*
2 *to disclose to a foreign antitrust authority antitrust*
3 *evidence that is obtained otherwise than under such*
4 *section 7A.*

5 (2) *Antitrust evidence that is matter occurring*
6 *before a grand jury and with respect to which disclo-*
7 *sure is prevented by Federal law, except that for the*
8 *purpose of applying Rule 6(e)(3)(C)(iv) of the Federal*
9 *Rules of Criminal Procedure with respect to this sec-*
10 *tion—*

11 (A) *a foreign antitrust authority with re-*
12 *spect to which a particularized need for such*
13 *antitrust evidence is shown shall be considered to*
14 *be an appropriate official of any of the several*
15 *States, and*

16 (B) *a foreign antitrust law administered or*
17 *enforced by the foreign antitrust authority shall*
18 *be considered to be a State criminal law.*

19 (3) *Antitrust evidence that is specifically author-*
20 *ized under criteria established by Executive Order*
21 *12356, or any successor to such order, to be kept se-*
22 *cret in the interest of national defense or foreign pol-*
23 *icy, and—*

24 (A) *that is classified pursuant to such order*
25 *or such successor, or*

1 (B) with respect to which a determination
2 of classification is pending under such order or
3 such successor.

4 (4) Antitrust evidence that is classified under
5 section 142 of the Atomic Energy Act of 1954 (42
6 U.S.C. 2162).

7 **SEC. 6. EXCEPTION TO CERTAIN DISCLOSURE RESTRIC-**
8 **TIONS.**

9 Section 4 of the Antitrust Civil Process Act (15 U.S.C.
10 1313), and sections 6(f) and 21 of the Federal Trade Com-
11 mission Act (15 U.S.C. 46, 57b-2), shall not apply to pre-
12 vent the Attorney General or the Commission from provid-
13 ing to a foreign antitrust authority antitrust evidence in
14 accordance with an antitrust mutual assistance agreement
15 in effect under this Act and in accordance with the other
16 requirements of this Act.

17 **SEC. 7. PUBLICATION REQUIREMENTS APPLICABLE TO**
18 **ANTITRUST MUTUAL ASSISTANCE AGREE-**
19 **MENTS.**

20 (a) PUBLICATION OF PROPOSED ANTITRUST MUTUAL
21 ASSISTANCE AGREEMENTS.—Not less than 45 days before
22 an antitrust mutual assistance agreement is entered into,
23 the Attorney General, with the concurrence of the Commis-
24 sion, shall publish in the Federal Register—

1 (1) *the proposed text of such agreement and any*
2 *modification to such proposed text, and*

3 (2) *a request for public comment with respect to*
4 *such text or such modification, as the case may be.*

5 (b) *PUBLICATION OF PROPOSED AMENDMENTS TO*
6 *ANTITRUST MUTUAL ASSISTANCE AGREEMENTS IN EF-*
7 *FECT.—Not less than 45 days before an agreement is entered*
8 *into that makes an amendment to an antitrust mutual as-*
9 *sistance agreement, the Attorney General, with the concur-*
10 *rence of the Commission, shall publish in the Federal Reg-*
11 *ister—*

12 (1) *the proposed text of such amendment, and*

13 (2) *a request for public comment with respect to*
14 *such amendment.*

15 (c) *PUBLICATION OF ANTITRUST MUTUAL ASSISTANCE*
16 *AGREEMENTS, AMENDMENTS, AND TERMINATIONS.—Not*
17 *later than 45 days after an antitrust mutual assistance*
18 *agreement is entered into or terminated, or an agreement*
19 *that makes an amendment to an antitrust mutual assist-*
20 *ance agreement is entered into, the Attorney General, with*
21 *the concurrence of the Commission, shall publish in the Fed-*
22 *eral Register—*

23 (1) *the text of the antitrust mutual assistance*
24 *agreement or amendment, or the terms of the termi-*
25 *nation, as the case may be, and*

1 (2) *in the case of an agreement that makes an*
2 *amendment to an antitrust mutual assistance agree-*
3 *ment, a notice containing—*

4 (A) *citations to the locations in the Federal*
5 *Register at which the text of the antitrust mu-*
6 *tual assistance agreement that is so amended,*
7 *and of any previous amendments to such agree-*
8 *ment, are published, and*

9 (B) *a description of the manner in which a*
10 *copy of the antitrust mutual assistance agree-*
11 *ment, as so amended, may be obtained from the*
12 *Attorney General and the Commission.*

13 (d) *CONDITION FOR VALIDITY.—An antitrust mutual*
14 *assistance agreement, or an agreement that makes an*
15 *amendment to an antitrust mutual assistance agreement,*
16 *with respect to which publication does not occur in accord-*
17 *ance with subsections (a), (b), and (c) shall not be consid-*
18 *ered to be in effect under this Act.*

19 **SEC. 8. CONDITIONS ON USE OF ANTITRUST MUTUAL AS-**
20 **SISTANCE AGREEMENTS.**

21 (a) *DETERMINATIONS.—Neither the Attorney General*
22 *nor the Commission may conduct an investigation under*
23 *section 3, apply for an order under section 4, or provide*
24 *antitrust evidence to a foreign antitrust authority under*
25 *an antitrust mutual assistance agreement, unless the Attor-*

1 *ney General or the Commission, as the case may be, deter-*
2 *mines in the particular instance in which the investigation,*
3 *application, or antitrust evidence is requested that—*

4 *(1) the foreign antitrust authority—*

5 *(A) will satisfy the assurances, terms, and*
6 *conditions described in subparagraphs (A), (B),*
7 *and (E) of section 12(2), and*

8 *(B) is capable of complying with and will*
9 *comply with the confidentiality requirements ap-*
10 *plicable under such agreement to the requested*
11 *antitrust evidence,*

12 *(2) providing the requested antitrust evidence*
13 *will not violate section 5, and*

14 *(3) conducting such investigation, applying for*
15 *such order, or providing the requested antitrust evi-*
16 *dence, as the case may be, is consistent with the pub-*
17 *lic interest of the United States, taking into consider-*
18 *ation, among other factors, whether the foreign state*
19 *or regional economic integration organization rep-*
20 *resented by the foreign antitrust authority holds any*
21 *proprietary interest that could benefit or otherwise be*
22 *affected by such investigation, by the granting of such*
23 *order, or by the provision of such antitrust evidence.*

24 *(b) LIMITATION ON DISCLOSURE OF CERTAIN ANTI-*
25 *TRUST EVIDENCE.—Neither the Attorney General nor the*

1 *Commission may disclose in violation of an antitrust mu-*
2 *tual assistance agreement any antitrust evidence received*
3 *under such agreement, except that such agreement may not*
4 *prevent the disclosure of such antitrust evidence to a defend-*
5 *ant in an action or proceeding brought by the Attorney*
6 *General or the Commission for a violation of any of the*
7 *Federal laws if such disclosure would otherwise be required*
8 *by Federal law.*

9 (c) *REQUIRED DISCLOSURE OF NOTICE RECEIVED.—*
10 *If the Attorney General or the Commission receives a notice*
11 *described in section 12(2)(H), the Attorney General or the*
12 *Commission, as the case may be, shall transmit such notice*
13 *to the person that provided the evidence with respect to*
14 *which such notice is received.*

15 **SEC. 9. LIMITATIONS ON JUDICIAL REVIEW.**

16 (a) *DETERMINATIONS.—Determinations made under*
17 *paragraphs (1) and (3) of section 8(a) shall not be subject*
18 *to judicial review.*

19 (b) *CITATIONS TO AND DESCRIPTIONS OF CONFIDEN-*
20 *TIALITY LAWS.—Whether an antitrust mutual assistance*
21 *agreement satisfies section 12(2)(C) shall not be subject to*
22 *judicial review.*

23 (c) *RULES OF CONSTRUCTION.—*

24 (1) *ADMINISTRATIVE PROCEDURE ACT.—The re-*
25 *quirements in section 7 with respect to publication*

1 *and request for public comment shall not be construed*
2 *to create any availability of judicial review under*
3 *chapter 7 of title 5 of the United States Code.*

4 (2) *LAWS REFERENCED IN SECTION 5.—Nothing*
5 *in this section shall be construed to affect the avail-*
6 *ability of judicial review under laws referred to in*
7 *section 5.*

8 **SEC. 10. PRESERVATION OF EXISTING AUTHORITY.**

9 (a) *IN GENERAL.—The authority provided by this Act*
10 *is in addition to, and not in lieu of, any other authority*
11 *vested in the Attorney General, the Commission, or any*
12 *other officer of the United States.*

13 (b) *ATTORNEY GENERAL AND COMMISSION.—This Act*
14 *shall not be construed to modify or affect the allocation of*
15 *responsibility between the Attorney General and the Com-*
16 *mission for the enforcement of the Federal antitrust laws.*

17 **SEC. 11. REPORT TO THE CONGRESS.**

18 *In the 30-day period beginning 3 years after the date*
19 *of the enactment of this Act and with the concurrence of*
20 *the Commission, the Attorney General shall submit, to the*
21 *Speaker of the House of Representatives and the President*
22 *pro tempore of the Senate, a report—*

23 (1) *describing how the operation of this Act has*
24 *affected the enforcement of the Federal antitrust laws,*

1 (2) describing the extent to which foreign anti-
2 trust authorities have complied with the confidential-
3 ity requirements applicable under antitrust mutual
4 assistance agreements in effect under this Act,

5 (3) specifying separately the identities of the for-
6 eign states, regional economic integration organiza-
7 tions, and foreign antitrust authorities that have en-
8 tered into such agreements and the identities of the
9 foreign antitrust authorities with respect to which
10 such foreign states and such organizations have en-
11 tered into such agreements,

12 (4) specifying the identity of each foreign state,
13 and each regional economic integration organization,
14 that has in effect a law similar to this Act,

15 (5) giving the approximate number of requests
16 made by the Attorney General and the Commission
17 under such agreements to foreign antitrust authorities
18 for antitrust investigations and for antitrust evidence,

19 (6) giving the approximate number of requests
20 made by foreign antitrust authorities under such
21 agreements to the Attorney General and the Commis-
22 sion for investigations under section 3, for orders
23 under section 4, and for antitrust evidence, and

1 (7) *describing any significant problems or con-*
2 *cerns of which the Attorney General is aware with re-*
3 *spect to the operation of this Act.*

4 **SEC. 12. DEFINITIONS.**

5 *For purposes of this Act:*

6 (1) *The term “antitrust evidence” means infor-*
7 *mation, testimony, statements, documents, or other*
8 *things that are obtained in anticipation of, or during*
9 *the course of, an investigation or proceeding under*
10 *any of the Federal antitrust laws or any of the for-*
11 *eign antitrust laws.*

12 (2) *The term “antitrust mutual assistance agree-*
13 *ment” means a written agreement, or written memo-*
14 *randum of understanding, that is entered into by the*
15 *United States and a foreign state or regional eco-*
16 *nom ic integration organization (with respect to the*
17 *foreign antitrust authorities of such foreign state or*
18 *such organization, and such other governmental enti-*
19 *ties of such foreign state or such organization as the*
20 *Attorney General and the Commission jointly deter-*
21 *mine may be necessary in order to provide the assist-*
22 *ance described in subparagraph (A)), or jointly by the*
23 *Attorney General and the Commission and a foreign*
24 *antitrust authority, for the purpose of conducting in-*
25 *vestigations under section 3, applying for orders*

1 *under section 4, or providing antitrust evidence, on*
2 *a reciprocal basis and that includes the following:*

3 *(A) An assurance that the foreign antitrust*
4 *authority will provide to the Attorney General*
5 *and the Commission assistance that is com-*
6 *parable in scope to the assistance the Attorney*
7 *General and the Commission provide under such*
8 *agreement or such memorandum.*

9 *(B) An assurance that the foreign antitrust*
10 *authority is subject to laws and procedures that*
11 *are adequate to maintain securely the confiden-*
12 *tiality of antitrust evidence that may be received*
13 *under section 2, 3, or 4 and will give protection*
14 *to antitrust evidence received under such section*
15 *that is not less than the protection provided*
16 *under the laws of the United States to such anti-*
17 *trust evidence.*

18 *(C) Citations to and brief descriptions of*
19 *the laws of the United States, and the laws of the*
20 *foreign state or regional economic integration or-*
21 *ganization represented by the foreign antitrust*
22 *authority, that protect the confidentiality of*
23 *antitrust evidence that may be provided under*
24 *such agreement or such memorandum. Such cita-*
25 *tions and such descriptions shall include the en-*

1 *enforcement mechanisms and penalties applicable*
2 *under such laws and, with respect to a regional*
3 *economic integration organization, the applica-*
4 *bility of such laws, enforcement mechanisms, and*
5 *penalties to the foreign states composing such or-*
6 *ganization.*

7 *(D) Citations to the Federal antitrust laws,*
8 *and the foreign antitrust laws, with respect to*
9 *which such agreement or such memorandum ap-*
10 *plies.*

11 *(E) Terms and conditions that specifically*
12 *require using, disclosing, or permitting the use*
13 *or disclosure of, antitrust evidence received under*
14 *such agreement or such memorandum only—*

15 *(i) for the purpose of administering or*
16 *enforcing the foreign antitrust laws in-*
17 *volved, or*

18 *(ii) with respect to a specified disclo-*
19 *sure or use requested by a foreign antitrust*
20 *authority and essential to a significant law*
21 *enforcement objective, in accordance with*
22 *the prior written consent that the Attorney*
23 *General or the Commission, as the case may*
24 *be, gives after—*

1 (I) *determining that such anti-*
2 *trust evidence is not otherwise readily*
3 *available with respect to such objective,*

4 (II) *making the determinations*
5 *described in paragraphs (2) and (3) of*
6 *section 8(a), with respect to such dis-*
7 *closure or use, and*

8 (III) *making the determinations*
9 *applicable to a foreign antitrust au-*
10 *thority under section 8(a)(1) (other*
11 *than the determination regarding the*
12 *assurance described in subparagraph*
13 *(A) of this paragraph), with respect to*
14 *each additional governmental entity, if*
15 *any, to be provided such antitrust evi-*
16 *dence in the course of such disclosure*
17 *or use, after having received adequate*
18 *written assurances applicable to each*
19 *such governmental entity.*

20 (F) *An assurance that antitrust evidence re-*
21 *ceived under section 2, 3, or 4 from the Attorney*
22 *General or the Commission, and all copies of*
23 *such evidence, in the possession or control of the*
24 *foreign antitrust authority will be returned to*
25 *the Attorney General or the Commission, respec-*

1 *tively, at the conclusion of the foreign investiga-*
2 *tion or proceeding with respect to which such*
3 *evidence was so received.*

4 *(G) Terms and conditions that specifically*
5 *provide that such agreement or such memoran-*
6 *dum will be terminated if—*

7 *(i) the confidentiality required under*
8 *such agreement or such memorandum is*
9 *violated with respect to antitrust evidence,*
10 *and*

11 *(ii) adequate action is not taken both*
12 *to minimize any harm resulting from the*
13 *violation and to ensure that the confiden-*
14 *tiality required under such agreement or*
15 *such memorandum is not violated again.*

16 *(H) Terms and conditions that specifically*
17 *provide that if the confidentiality required under*
18 *such agreement or such memorandum is violated*
19 *with respect to antitrust evidence, notice of the*
20 *violation will be given—*

21 *(i) by the foreign antitrust authority*
22 *promptly to the Attorney General or the*
23 *Commission with respect to antitrust evi-*
24 *dence provided by the Attorney General or*
25 *the Commission, respectively, and*

1 (ii) by the Attorney General or the
2 Commission to the person (if any) that pro-
3 vided such evidence to the Attorney General
4 or the Commission.

5 (3) The term “Attorney General” means the At-
6 torney General of the United States.

7 (4) The term “Commission” means the Federal
8 Trade Commission.

9 (5) The term “Federal antitrust laws” has the
10 meaning given the term “antitrust laws” in sub-
11 section (a) of the first section of the Clayton Act (15
12 U.S.C. 12(a)) but also includes section 5 of the Fed-
13 eral Trade Commission Act (15 U.S.C. 45) to the ex-
14 tent that such section 5 applies to unfair methods of
15 competition.

16 (6) The term “foreign antitrust authority”
17 means a governmental entity of a foreign state or of
18 a regional economic integration organization that is
19 vested by such state or such organization with author-
20 ity to enforce the foreign antitrust laws of such state
21 or such organization.

22 (7) The term “foreign antitrust laws” means the
23 laws of a foreign state, or of a regional economic inte-
24 gration organization, that are substantially similar to
25 any of the Federal antitrust laws and that prohibit

1 *conduct similar to conduct prohibited under the Fed-*
2 *eral antitrust laws.*

3 (8) *The term “person” has the meaning given*
4 *such term in subsection (a) of the first section of the*
5 *Clayton Act (15 U.S.C. 12(a)).*

6 (9) *The term “regional economic integration or-*
7 *ganization” means an organization that is con-*
8 *stituted by, and composed of, foreign states, and on*
9 *which such foreign states have conferred sovereign au-*
10 *thority to make decisions that are binding on such*
11 *foreign states, and that are directly applicable to and*
12 *binding on persons within such foreign states, includ-*
13 *ing the decisions with respect to—*

14 (A) *administering or enforcing the foreign*
15 *antitrust laws of such organization, and*

16 (B) *prohibiting and regulating disclosure of*
17 *information that is obtained by such organiza-*
18 *tion in the course of administering or enforcing*
19 *such laws.*

20 **SEC. 13. AUTHORITY TO RECEIVE REIMBURSEMENT.**

21 *The Attorney General and the Commission are author-*
22 *ized to receive from a foreign antitrust authority, or from*
23 *the foreign state or regional economic integration organiza-*
24 *tion represented by such foreign antitrust authority, reim-*
25 *bursement for the costs incurred by the Attorney General*

1 *or the Commission, respectively, in conducting an inves-*
2 *tigation under section 3 requested by such foreign antitrust*
3 *authority, applying for an order under section 4 to assist*
4 *such foreign antitrust authority, or providing antitrust evi-*
5 *dence to such foreign antitrust authority under an antitrust*
6 *mutual assistance agreement in effect under this Act with*
7 *respect to such foreign antitrust authority.*

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