

103^D CONGRESS
1ST SESSION

H. R. 1313

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

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

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 mistak-
8 enly perceived to inhibit procompetitive cooperative
9 innovation arrangements, and so clarification serves
10 a useful purpose in helping to promote such ar-
11 rangements.

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 ap-
20 pears 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 “that is not
2 reasonably required to conduct the research and de-
3 velopment that is” and inserting “if such informa-
4 tion is not reasonably required to carry out”;

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

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

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

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

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

1 into on or after the date of the enactment of
2 the National Cooperative Production Amend-
3 ments of 1993,”;

4 (4) in paragraph (3)—

5 (A) in subparagraph (A) by striking “or
6 developments not developed through” and in-
7 serting “, developments, products, processes, or
8 services not developed through, or produced
9 by,”;

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

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

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

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

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

24 “(6) entering into any agreement or engaging
25 in any other conduct restricting, requiring, or other-

1 wise involving the production (other than the pro-
2 duction by such venture) of a product, process, or
3 service,

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

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

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

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

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

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

23 “For the purpose of determining a properly defined, rel-
24 evant market, worldwide capacity shall be considered to

1 the extent that it may be appropriate in the cir-
2 cumstances.”.

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

6 (1) in section 4—

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

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

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

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

18 (1) in the heading by striking “RESEARCH AND
19 DEVELOPMENT”;

20 (2) in subsection (a)—

21 (A) in paragraph (1) by striking “and” at
22 the end,

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) a list of joint ventures for which notice was
23 filed under section 6(a) of the National Cooperative
24 Research and Production Act of 1993 during the 12-
25 month period for which such report is made, includ-

1 ing the purpose of each joint venture and the iden-
2 tity and nationality of each party to such joint ven-
3 ture as described in such section; and

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

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

17 (1) a description of the technological areas of
18 research, development, and production most com-
19 monly pursued by joint ventures for which notice
20 was filed under section 6(a) of the National Cooper-
21 ative Research and Production Act of 1993 during
22 the 3-year period for which such report is made, and
23 an analysis of the trends in the competitiveness of
24 United States industry in such areas; and

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

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

○