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INTERNATIONAL ANTI-BRIBERY AND FAIR COMPETITION ACT

AN ACT To amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, and for other purposes.

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

SECTION 1. [15 U.S.C. 78a note] SHORT TITLE.

This Act may be cited as the "International Anti-Bribery and Fair Competition Act of 1998".

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SEC. 5. [15 U.S.C. 78dd–1 note] TREATMENT OF INTERNATIONAL ORGANIZATIONS PROVIDING COMMERCIAL COMMUNICATIONS SERVICES.

(a) DEFINITION.—For purposes of this section:

(1) INTERNATIONAL ORGANIZATION PROVIDING COMMERCIAL COMMUNICATIONS SERVICES.—The term "international organization providing commercial communications services" means—

(A) the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization; and

(B) the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization.

(2) PRO-COMPETITIVE PRIVATIZATION.—The term "pro-competitive privatization" means a privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services.

(b) TREATMENT AS PUBLIC INTERNATIONAL ORGANIZATIONS.—

(1) TREATMENT.—An international organization providing commercial communications services shall be treated as a public international organization for purposes of section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2) until such time as the President certifies to the Committee on Commerce of the House of Representatives and the Committees on Banking, Housing and Urban Affairs and Commerce, Science, and Transportation that such international organization providing commercial communications services has achieved a pro-competitive privatization.

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(2) LIMITATION ON EFFECT OF TREATMENT.—The requirement for a certification under paragraph (1), and any certification made under such paragraph, shall not be construed to affect the administration by the Federal Communications Commission of the Communications Act of 1934 in authorizing the provision of services to, from, or within the United States over space segment of the international satellite organizations, or the privatized affiliates or successors thereof.

(c) EXTENSION OF LEGAL PROCESS.—

(1) IN GENERAL.—Except as required by international agreements to which the United States is a party, an international organization providing commercial communications services, its officials and employees, and its records shall not be accorded immunity from suit or legal process for any act or omission taken in connection with such organization's capacity as a provider, directly or indirectly, of commercial telecommunications services to, from, or within the United States.

(2) NO EFFECT ON PERSONAL LIABILITY.—Paragraph (1) shall not affect any immunity from personal liability of any individual who is an official or employee of an international organization providing commercial communications services.

(3) EFFECTIVE DATE.—This subsection shall take effect on May 1, 1999.

(d) ELIMINATION OR LIMITATION OF EXCEPTIONS.—

(1) ACTION REQUIRED.—The President shall, in a manner that is consistent with requirements in international agreements to which the United States is a party, expeditiously take all appropriate actions necessary to eliminate or to reduce substantially all privileges and immunities that are accorded to an international organization described in subparagraph (A) or (B) of subsection (a)(1), its officials, its employees, or its records, and that are not eliminated pursuant to subsection (c).

(2) DESIGNATION OF AGREEMENTS.—The President shall designate which agreements constitute international agreements to which the United States is a party for purposes of this section.

(e) PRESERVATION OF LAW ENFORCEMENT AND INTELLIGENCE FUNCTIONS.—Nothing in subsection (c) or (d) of this section shall affect any immunity from suit or legal process of an international organization providing commercial communications services, or the privatized affiliates or successors thereof, for acts or omissions—

(1) under chapter 119, 121, 206, or 601 of title 18, United States Code, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 514 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 884), or Rule 104, 501, or 608 of the Federal Rules of Evidence;

(2) under similar State laws providing protection to service providers cooperating with law enforcement agencies pursuant to State electronic surveillance or evidence laws, rules, regulations, or procedures; or

(3) pursuant to a court order.

(f) RULES OF CONSTRUCTION.—

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(1) NEGOTIATIONS.—Nothing in this section shall affect the President's existing constitutional authority regarding the time, scope, and objectives of international negotiations.

(2) PRIVATIZATION.—Nothing in this section shall be construed as legislative authorization for the privatization of INTELSAT or Inmarsat, nor to increase the President's authority with respect to negotiations concerning such privatization.

SEC. 6. [15 U.S.C. 78dd–1 note] ENFORCEMENT AND MONITORING.

(a) REPORTS REQUIRED.—Not later than July 1 of 1999 and each of the 5 succeeding years, the Secretary of Commerce shall submit to the House of Representatives and the Senate a report that contains the following information with respect to implementation of the Convention:

(1) RATIFICATION.—A list of the countries that have ratified the Convention, the dates of ratification by such countries, and the entry into force for each such country.

(2) DOMESTIC LEGISLATION.—A description of domestic laws enacted by each party to the Convention that implement commitments under the Convention, and assessment of the compatibility of such laws with the Convention.

(3) ENFORCEMENT.—As assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention and achieve its object and purpose including—

(A) an assessment of the enforcement of the domestic laws described in paragraph (2);

(B) an assessment of the efforts by each such party to promote public awareness of such domestic laws and the achievement of such object and purpose; and

(C) an assessment of the effectiveness, transparency, and viability of the monitoring process for the Convention, including its inclusion of input from the private sector and nongovernmental organizations.

(4) LAWS PROHIBITING TAX DEDUCTION OF BRIBES.—An explanation of the domestic laws enacted by each party to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes.

(5) NEW SIGNATORIES.—A description of efforts to expand international participation in the Convention by adding new signatories to the Convention and by assuring that all countries which are or become members of the Organization for Economic Cooperation and Development are also parties to the Convention.

(6) SUBSEQUENT EFFORTS.—An assessment of the status of efforts to strengthen the Convention by extending the prohibitions contained in the Convention to cover bribes to political parties, party officials, and candidates for political office.

(7) ADVANTAGES.—Advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by the organizations described in section 5(a), the reason for such advantages, and an assessment of progress toward fulfilling the policy described in that section.

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(8) BRIBERY AND TRANSPARENCY.—An assessment of anti-bribery programs and transparency with respect to each of the international organizations covered by this Act.

(9) PRIVATE SECTOR REVIEW.—A description of the steps taken to ensure full involvement of United States private sector participants and representatives of nongovernmental organizations in the monitoring and implementation of the Convention.

(10) ADDITIONAL INFORMATION.—In consultation with the private sector participants and representatives of nongovernmental organizations described in paragraph (9), a list of additional means for enlarging the scope of the Convention and otherwise increasing its effectiveness. Such additional means shall include, but not be limited to, improved recordkeeping provisions and the desirability of expanding the applicability of the Convention to additional individuals and organizations and the impact on United States business of section 30A of the Securities Exchange Act of 1934 and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977.

(b) DEFINITION.—For purposes of this section, the term "Convention" means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on November 21, 1997, and signed on December 17, 1997, by the United States and 32 other nations.

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SECTION 3001 OF THE OMNIBUS CONSOLIDATED APPROPRIATIONS FOR FISCAL YEAR 1997

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