

110TH CONGRESS
2D SESSION

H. R. 6828

To make improvements in the electronic filing of export data, to strengthen enforcement authorities under the Export Administration Act of 1979, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2008

Mr. SHERMAN (for himself, Mr. MANZULLO, and Mr. SMITH of Washington) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To make improvements in the electronic filing of export data, to strengthen enforcement authorities under the Export Administration Act of 1979, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Export Control Improvements Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—IMPROVEMENTS IN ELECTRONIC FILING OF EXPORT
 DATA

Sec. 101. Short title.

Sec. 102. Mandatory electronic filing of export data.

Sec. 103. Information sharing of Automated Export System data; conferences;
 automated export system licenses and filings.

Sec. 104. Definitions.

Sec. 105. Conforming amendments.

Sec. 106. Authorization of appropriations.

TITLE II—EXPORT ENFORCEMENT ENHANCEMENT

Sec. 201. Short title.

Sec. 202. Declaration of policy.

Sec. 203. Enforcement.

Sec. 204. Authorization of appropriations.

Sec. 205. Termination date.

Sec. 206. Designation of destinations of diversion concern.

Sec. 207. Validated end-user program review.

Sec. 208. Annual report on transfers of militarily sensitive technology to coun-
 tries and entities of concern.

Sec. 209. Definition.

3 **TITLE I—IMPROVEMENTS IN**
 4 **ELECTRONIC FILING OF EX-**
 5 **PORT DATA**

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “Securing Exports
 8 Through Coordination and Technology Act”.

9 **SEC. 102. MANDATORY ELECTRONIC FILING OF EXPORT**
 10 **DATA.**

11 Section 1404(b) of the Foreign Relations Authoriza-
 12 tion Act, Fiscal Year 2003 (13 U.S.C. 301 note) is amend-
 13 ed to read as follows:.

14 “(b) IN GENERAL.—

1 “(1) FILING THROUGH AES.—The Secretary of
2 Commerce shall maintain regulations that require
3 that persons who are required to file Shipper’s Ex-
4 port Declarations under chapter 9 of title 13, United
5 States Code, file (either themselves or through their
6 intermediaries) such Declarations through the Auto-
7 mated Export System before the items are exported
8 from any United States port, unless the Secretary of
9 Commerce, with the concurrence of the Secretary of
10 State, the Secretary of Defense, the Secretary of the
11 Treasury, and the Secretary of Homeland Security,
12 determines that it is appropriate to grant an excep-
13 tion to this requirement. Such filing of data shall, at
14 a minimum, include—

15 “(A) the name and address of the principal
16 party-in-interest in the United States;

17 “(B) the name and address of the foreign
18 principal party-in-interest;

19 “(C) the name and address of all inter-
20 mediate consignees;

21 “(D) the name and address of the ultimate
22 consignee;

23 “(E) the commodity classification of each
24 item being exported;

1 “(F) when appropriate, the license number
2 or regulatory authorization for the export; and

3 “(G) a declaration, under penalty of per-
4 jury under the laws of the United States, that
5 the information filed under this paragraph is
6 true and correct.

7 “(2) MODIFICATIONS TO REGULATIONS.—Any
8 modifications to the regulations referred to in para-
9 graph (1) may be made only with the concurrence of
10 the heads of the relevant departments and agencies.

11 “(3) INTERMEDIARY DEFINED.—In this sub-
12 section, the term ‘intermediary’ means a freight for-
13 warder, a non-vessel operating common carrier
14 (NVOCC), an ATA (Admission Temporaire/Tem-
15 porary Admission) Carnet national guaranteeing as-
16 sociation and its service providers, or any other simi-
17 lar entity as determined by the Secretary of Com-
18 merce, in consultation with the Secretary of Home-
19 land Security.”.

20 **SEC. 103. INFORMATION SHARING OF AUTOMATED EXPORT**
21 **SYSTEM DATA; CONFERENCES; AUTOMATED**
22 **EXPORT SYSTEM LICENSES AND FILINGS.**

23 Chapter 9 of title 13, United States Code, is amend-
24 ed—

1 (1) by redesignating sections 302 through 307
2 as sections 306 through 311, respectively; and

3 (2) by inserting after section 301 the following
4 new sections:

5 **“§ 302. Conferences and seminars**

6 “(a) MANDATORY CONFERENCE PARTICIPATION.—

7 The Secretary shall work with the Secretary of State, the
8 Secretary of Defense, the Secretary of Homeland Security,
9 and the Secretary of the Treasury to ensure that appro-
10 priate personnel of each of their respective departments
11 and agencies that are involved in the regulation of exports
12 or the enforcement of such regulation are made available,
13 subject to the availability of such personnel, to participate
14 in fora the purpose of which is to educate exporters about
15 laws and regulations of the United States governing ex-
16 ports and about the Automated Export System in par-
17 ticular, including through seminars, educational or train-
18 ing meetings, exhibitions, symposiums, and other similar
19 meetings.

20 “(b) AUTHORITY TO COLLECT FEES.—The Sec-
21 retary may collect fees from any individual or other person
22 attending or participating in any forum described in sub-
23 section (a) that is conducted by, or jointly with, the De-
24 partment of Commerce. The Secretary may use contrac-

1 tors to collect such fees. Fees under this subsection may
2 be collected in advance of the forum.

3 “(c) DISPOSITION OF COLLECTED FEES.—Amounts
4 collected under subsection (b) shall be used to pay all or
5 part of the cost of fora described in subsection (a), and
6 shall be credited to the account from which the costs of
7 such fora have been paid or will be paid.

8 “(d) BUDGET FOR PARTICIPATING AGENCIES.—In
9 the case of any agency that does not have the available
10 funds to participate in a forum under subsection (a), the
11 Secretary shall make such sums available, from fees col-
12 lected under subsection (b), as are necessary to allow such
13 participation by the agency.

14 “(e) AVAILABILITY OF MATERIALS TO THE PUB-
15 LIC.—The Secretary shall make available to the public, in-
16 cluding through its public website, relevant materials pro-
17 vided for the fora held under subsection (a).

18 **“§ 303. Automated Export System registrations for fil-**
19 **ers**

20 “(a) REGISTRATIONS.—

21 “(1) IN GENERAL.—The Secretary may estab-
22 lish a registration program for persons to file infor-
23 mation in the Automated Export System, either on
24 behalf of themselves or acting as an intermediary.
25 Such registration program may include authorization

1 for individuals to file as well as any corporation, as-
2 sociation, or partnership that is organized under the
3 laws of the United States or of any State, the Dis-
4 trict of Columbia, or any commonwealth, territory,
5 or possession of the United States.

6 “(2) QUALIFICATIONS FOR INDIVIDUALS.—The
7 Secretary may establish qualification requirements
8 for an individual seeking to register under the pro-
9 gram, except that an individual may be so registered
10 only if the individual is a United States citizen, an
11 alien lawfully admitted for permanent residence to
12 the United States, or a national of the United States
13 (in the case of a resident of a territory or possession
14 of the United States). In assessing the qualification
15 of an applicant for registration, the Secretary may
16 conduct an examination to determine the applicant’s
17 knowledge of the Automated Export System and
18 laws, regulations, and procedures related to the ex-
19 port of goods from the United States, and may re-
20 quire participation in a continuing education pro-
21 gram on a periodic basis. The Secretary may also
22 obtain information to determine an applicant’s fit-
23 ness and character to act as an Automated Export
24 System filer. An individual who meets the require-

1 ments for registration under this paragraph shall be
2 issued an Automated Export System registration.

3 “(3) QUALIFICATIONS FOR CORPORATIONS AND
4 OTHER BUSINESS ENTITIES.—A corporation, asso-
5 ciation, or partnership may be registered under this
6 subsection only if at least one official of the corpora-
7 tion or association who is designated by the corpora-
8 tion or association, or one member of the partner-
9 ship, who is authorized to act on behalf of the cor-
10 poration, association, or partnership, as the case
11 may be—

12 “(A) holds a valid Automated Export Sys-
13 tem registration under paragraph (2);

14 “(B) is responsible for the supervision and
15 control of filing Shipper’s Export Declaration
16 information in the Automated Export System;
17 and

18 “(C) is a United States citizen, an alien
19 lawfully admitted for permanent residence to
20 the United States, or a national of the United
21 States (in the case of a resident of a territory
22 or possession of the United States).

23 The Secretary may establish such other registration
24 requirements for corporations, associations, and
25 partnerships as the Secretary considers appropriate.

1 A corporation, association, or partnership that meets
2 the requirements for registration under this para-
3 graph shall be issued an Automated Export System
4 registration.

5 “(4) FEDERAL MARITIME COMMISSION LI-
6 CENSES.—An ocean transportation intermediary
7 (OTI) license issued by the Federal Maritime Com-
8 mission may be used to satisfy the initial qualifica-
9 tion requirements of the registration program under
10 this subsection, if the Federal Maritime Commission
11 maintains sufficient requirements with respect to
12 such license, as determined by the Secretary.

13 “(5) LAPSE OF REGISTRATION.—Registrations
14 under this subsection shall be granted for a period
15 of not less than 3 years, and may be renewed in
16 such manner and under such conditions as are es-
17 tablished by the Secretary.

18 “(b) DENIAL, SUSPENSION, OR REVOCATION OF
19 REGISTRATION.—

20 “(1) GENERAL RULE.—The Secretary may re-
21 voke or suspend a registration or deny an applica-
22 tion for registration under subsection (a), which may
23 take effect immediately, if the Secretary has reason
24 to believe that the registrant or applicant has vio-
25 lated or will violate any regulations issued under this

1 section or any law or regulation of the United States
2 controlling exports. The Secretary may provide rules
3 for notifying registrants and registration applicants
4 of the process for revoking or suspending a registra-
5 tion or denying an application, consistent with the
6 need to protect national security.

7 “(2) PROCEDURES FOR DENIAL, REVOCATION,
8 OR SUSPENSION.—

9 “(A) IN GENERAL.—If a registration is re-
10 voked or suspended or an application is denied
11 under paragraph (1), the Secretary shall send
12 the registrant or applicant notice in writing spe-
13 cifically setting forth the grounds for suspen-
14 sion, revocation, or denial, shall allow the reg-
15 istrant or applicant a period of 30 calendar
16 days beginning on the date on which the notice
17 is received to respond in writing, and shall ad-
18 vise the registrant or applicant of the right to
19 a hearing. A registrant or applicant may re-
20 quest an extension of time for such response,
21 and the Secretary shall grant such extension for
22 good cause shown. If no response is filed within
23 that 30-day period, or any extension thereof,
24 and the Secretary determines that the revoca-
25 tion, suspension, or denial is still warranted,

1 the revocation, suspension, or denial shall be-
2 come final.

3 “(B) HEARING.—If a timely response is
4 received under subparagraph (A) and the reg-
5 istrant or applicant requests a hearing, a hear-
6 ing shall be held within 30 calendar days after
7 the date on which the request is received, or at
8 a later date if the registrant or applicant re-
9 quests an extension and shows good cause
10 therefor. An administrative law judge appointed
11 under section 3105 of title 5 shall preside at
12 the hearing, which shall be conducted in accord-
13 ance with regulations issued by the Secretary.
14 The administrative law judge shall issue a writ-
15 ten decision either upholding, reversing, or
16 modifying the decision of the Secretary, based
17 solely on the record, setting forth the findings
18 of fact, and the reasons for the decision.

19 “(C) SUSPENSION OF REGISTRATION
20 PENDING APPEAL.—In a case in which a person
21 appeals a decision revoking or suspending a
22 registration under this subsection, including an
23 appeal under subsection (c), the Secretary may
24 order that the registration continue to be sus-
25 pended while the appeal is pending.

1 “(3) SETTLEMENT AND COMPROMISE.—The
2 Secretary may settle and compromise any proceeding
3 that has been instituted under this subsection ac-
4 cording to the terms and conditions agreed to by the
5 parties, including the reduction of any proposed sus-
6 pension or revocation.

7 “(4) LIMITATION OF ACTIONS.—The Secretary
8 may revoke or suspend a registration or deny an ap-
9 plication for registration under this subsection only
10 if the appropriate service of written notice is made
11 under paragraph (2)(A) within 5 years after the
12 date on which the alleged act described in paragraph
13 (1) was committed, except that if the alleged act
14 consists of fraud, the 5-year period shall begin on
15 the date on which the alleged act was discovered.

16 “(c) JUDICIAL APPEAL.—

17 “(1) IN GENERAL.—A registrant under this sec-
18 tion, or an applicant for a registration under this
19 section, may appeal any decision of the administra-
20 tive law judge under subsection (b) suspending or
21 revoking the registration or denying the application
22 by filing in the appropriate United States district
23 court, within 60 days after the date on which the de-
24 cision is issued, a written petition requesting that
25 the decision be modified or set aside in whole or in

1 part. A copy of the petition shall be served upon the
2 Secretary. In cases involving revocation or suspen-
3 sion of a registration, the Secretary, after receiving
4 the petition, shall file in the court the record upon
5 which the decision complained of was entered.

6 “(2) FAILURE TO APPEAL.—If an appeal is not
7 filed within the time limits specified in paragraph
8 (1), the decision of the administrative law judge
9 under subsection (b) shall be final and conclusive.

10 “(d) REGULATIONS.—The Secretary shall provide a
11 period of at least 90 days for the submission of public
12 comments on any regulations issued to carry out this sec-
13 tion, before such regulations may become effective.

14 **“§ 304. Blocking prohibited or restricted exports**

15 “(a) IN GENERAL.—The Secretary, with the concur-
16 rence of the heads of the appropriate departments and
17 agencies, shall issue regulations to ensure that the Auto-
18 mated Export System will identify the filing of data in
19 connection with an export from the United States if the
20 country of destination of intended export or the export
21 control information, or lack thereof, would result in a vio-
22 lation of any prohibition or restriction on exports under
23 the laws and regulations of the United States.

24 “(b) SUFFICIENCY AND TIMELINESS OF EXPORT
25 CONTROL INFORMATION IN THE AUTOMATED EXPORT

1 SYSTEM.—Not later than 1 year after the date of the en-
2 actment of the Securing Exports Through Coordination
3 and Technology Act, the Secretary, with the concurrence
4 of the heads of the relevant departments and agencies and
5 in consultation with representatives of affected industries
6 and nongovernmental organizations with relevant exper-
7 tise, shall—

8 “(1) ensure on an ongoing basis that changes
9 in laws and regulations controlling exports from the
10 United States are reflected in the Automated Export
11 System upon implementation of those changes;

12 “(2) enable on an ongoing basis the classifica-
13 tion of products to be exported in a manner suffi-
14 cient to carry out the purposes of this section; and

15 “(3) ensure on an ongoing basis that all lists
16 maintained by the United States and comprised of
17 persons or entities to whom exports are restricted
18 are available in a standardized format and contain
19 sufficient descriptive information to enable their ef-
20 fective use by exporters (through the Automated Ex-
21 port System or otherwise) to screen transactions and
22 prevent diversions of exported items for unauthor-
23 ized destinations, parties, or uses.

24 “(c) MINIMUM REQUIREMENTS.—The Secretary,
25 with the concurrence of the heads of the relevant depart-

1 ments and agencies and in consultation with representa-
2 tives of affected industries and nongovernmental organiza-
3 tions with relevant expertise, shall ensure that the Auto-
4 mated Export System contains at least the following oper-
5 ational features:

6 “(1) The Automated Export System will proc-
7 ess data filed in connection with an export and will
8 alert the filer to export license requirements under
9 the laws and regulations of the United States.

10 “(2) If the data filed that is associated with the
11 export does not satisfy requirements under the ex-
12 port control laws and regulations of the United
13 States, the Automated Export System will issue no-
14 tices that the transaction cannot be completed, com-
15 pliance alerts, and other warnings, as appropriate,
16 accompanied by references to the applicable authori-
17 ties.

18 “(3) The Automated Export System will retain
19 records of actions of users while filing export data.

20 “(d) CONSTRUCTION.—Nothing in this section shall
21 be construed to authorize an export solely because the
22 Automated Export System accepts the filing of data.

23 **“§ 305. Fees and charges**

24 “The Secretary may issue regulations prescribing
25 reasonable fees and charges, with particular sensitivity to

1 small businesses, to defray the costs of the Secretary in
2 carrying out this chapter.”.

3 **SEC. 104. DEFINITIONS.**

4 Chapter 9 of title 13, United States Code, is amended
5 by adding at the end the following new section:

6 **“§ 312. Definitions**

7 “In this chapter:

8 “(1) **AUTOMATED EXPORT SYSTEM.**—The term
9 ‘Automated Export System’ means the automated
10 and electronic system for filing export information
11 established under this chapter.

12 “(2) **INTERMEDIARY.**—The term ‘intermediary’
13 means a freight forwarder, a non-vessel operating
14 common carrier (NVOCC), an ATA (Admission
15 Temporaire/Temporary Admission) Carnet national
16 guaranteeing association and its service providers, or
17 any other similar entity as determined by the Sec-
18 retary, in consultation with the Secretary of Home-
19 land Security.

20 “(3) **RELEVANT DEPARTMENTS AND AGEN-**
21 **CIES.**—The term ‘relevant departments and agen-
22 cies’ means the Department of State, the Depart-
23 ment of Defense, the Department of Homeland Se-
24 curity, and the Department of the Treasury.

1 “(4) SHIPPER’S EXPORT DECLARATION.—The
2 term ‘Shipper’s Export Declaration’ means the ex-
3 port information filed under this chapter.”.

4 **SEC. 105. CONFORMING AMENDMENTS.**

5 (a) COLLECTION AND PUBLICATION.—Section 301 of
6 title 13, United States Code, is amended by striking sub-
7 section (g) and redesignating subsection (h) as subsection
8 (g).

9 (b) REGULATIONS, ORDERS, ETC.—Section 306 of
10 title 13, United States Code, as redesignated by section
11 103(1) of this Act, is amended by striking the last sen-
12 tence and inserting “The Secretary shall make rules, regu-
13 lations, and orders, and amendments thereto, in consulta-
14 tion with the Secretary of Homeland Security.”.

15 (c) CROSS REFERENCES.—Section 309 of title 13,
16 United States Code, as redesignated by section 103(1) of
17 this Act, is amended—

18 (1) in subsection (b), by striking “304” and in-
19 serting “308”; and

20 (2) in subsection (c)—

21 (A) in paragraph (1), by striking “304”
22 and inserting “308”;

23 (B) in paragraph (4), by striking “306”
24 and inserting “310”; and

1 (C) in paragraph (5), by striking “304”
2 and inserting “308”.

3 (d) TABLE OF CONTENTS.—The table of contents for
4 chapter 9 of title 13, United States Code, is amended to
5 read as follows:

“301. Collection and publication.

“302. Conferences and seminars.

“303. Automated Export System registrations for filers.

“304. Blocking prohibited or restricted exports.

“305. Fees and charges.

“306. Rules, regulations, and orders.

“307. Secretary of Treasury functions.

“308. Filing export information, delayed filings, penalties for failure to file.

“309. Penalties for unlawful export information activities.

“310. Delegation of functions.

“311. Relationship to general census law.

“312. Definitions.”.

6 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
8 as may be necessary to carry out the amendments made
9 by this Act.

10 **TITLE II—EXPORT**
11 **ENFORCEMENT ENHANCEMENT**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Export Enforcement
14 Act of 2008”.

15 **SEC. 202. DECLARATION OF POLICY.**

16 The Congress declares that, at a time of evolving
17 threats and changing relationships with other countries,
18 as well as rapid technological change and an increasingly
19 globalized economy, United States strategic export con-
20 trols are in urgent need of a comprehensive review in order

1 to assure those controls are achieving their intended pur-
2 poses of protecting the national security of the United
3 States in the Global War on Terrorism and of promoting
4 the economic and foreign policy interests of the United
5 States, in particular by assuring that—

6 (1) export authorization procedures are prop-
7 erly designed to prioritize which exports may be ap-
8 proved quickly for trusted partners of the United
9 States and which require greater scrutiny in order to
10 safeguard national interests;

11 (2) strategic export controls appropriately and
12 effectively identify and protect technologies critical
13 to United States national security interests; and

14 (3) coordination among the responsible depart-
15 ments and agencies of the Government of the United
16 States is improved in order to enhance efficiency, in-
17 formation sharing, and the consistent execution of
18 United States policy.

19 **SEC. 203. ENFORCEMENT.**

20 Section 12 of the Export Administration Act of 1979
21 (50 U.S.C. App. 2411) is amended as follows:

22 (1) Subsection (a) is amended by striking para-
23 graphs (1), (2), (3), and (4) and inserting after “(a)
24 GENERAL AUTHORITY.—” the following:

1 “(1) IN GENERAL.—To the extent necessary or
2 appropriate to the enforcement of this Act or to the
3 imposition of any penalty, forfeiture, or liability arising
4 under this Act—

5 “(A) the head of any department or agency
6 exercising any function under this Act (and officers or
7 employees of such department or agency specifically
8 designated by the head thereof)
9 may conduct investigations within the United
10 States;

11 “(B) the Secretary of Homeland Security
12 (and officers or employees of U.S. Immigration
13 and Customs Enforcement specifically designated
14 by the Secretary of the Department of
15 Homeland Security) and the Secretary of Commerce
16 (and officers and employees of the Office
17 of Export Enforcement of the Department of
18 Commerce specifically designated by the Secretary
19 of Commerce) may conduct investigations
20 outside of the United States;

21 “(C) the head of any department or agency
22 exercising any function under this Act (and
23 such officers or employees) may obtain information
24 from, require reports or the keeping of
25 records by, inspect the books, records, and

1 other writings, premises, or property of, and
2 take the sworn testimony of, any person;

3 “(D)(i) such officers or employees may ad-
4 minister oaths or affirmations, and may by sub-
5 poena require any person to appear and testify
6 or to appear and produce books, records, and
7 other writings, or both; and

8 “(ii) in the case of contumacy by, or re-
9 fusal to obey a subpoena issued to, any such
10 person, a district court of the United States,
11 after notice to any such person and hearing,
12 shall have jurisdiction to issue an order requir-
13 ing such person to appear and give testimony or
14 to appear and produce books, records, and
15 other writings, or both, and any failure to obey
16 such order of the court may be punished by
17 such court as a contempt thereof; and

18 “(E) the Secretary (and officers or employ-
19 ees of the Department of Commerce designated
20 by the Secretary) may conduct, outside the
21 United States, pre-license checks and post-ship-
22 ment verifications of items licensed for export.

23 “(2) AUTHORITY OF IMMIGRATION AND CUS-
24 TOMS ENFORCEMENT AND CUSTOMS AND BORDER
25 PROTECTION.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), U.S. Immigration and Customs En-
3 forcement and U.S. Customs and Border Pro-
4 tection are authorized, in the enforcement of
5 this Act—

6 “(i) to search, detain (after search),
7 and seize goods or technology at those
8 places outside the United States where
9 such entities are authorized, pursuant to
10 agreements or other arrangements with
11 other countries, to perform enforcement
12 activities; and

13 “(ii) to conduct such activities at
14 those ports of entry or exit from the
15 United States where officers of U.S. Immi-
16 gration and Customs Enforcement and
17 U.S. Customs and Border Protection are
18 authorized by law to conduct such activi-
19 ties.

20 “(B) SEARCHES AND SEIZURES.—An offi-
21 cer of U.S. Immigration and Customs Enforce-
22 ment or U.S. Customs and Border Protection
23 may do the following in carrying out enforce-
24 ment authority under this Act:

1 “(i) Stop, search, and examine a vehi-
2 cle, vessel, aircraft, person, package, or
3 container on which or whom such officer
4 has reasonable cause to suspect there are
5 any goods or technology that has been, is
6 being, or is about to be exported from the
7 United States in violation of this Act.

8 “(ii) Detain (after search) or seize
9 and secure for trial any goods or tech-
10 nology on or about such vehicle, vessel, air-
11 craft, or person, or in such package or con-
12 tainer, if such officer has probable cause to
13 believe the goods or technology has been, is
14 being, or is about to be exported from the
15 United States in violation of this Act.

16 “(iii) Make arrests without warrant
17 for any violation of this Act committed in
18 the presence or view of the officer or if the
19 officer has probable cause to believe that
20 the person to be arrested has committed or
21 is committing such a violation.

22 “(C) ARREST AUTHORITY.—The arrest au-
23 thority conferred by subparagraph (B)(iii) is in
24 addition to any arrest authority under other
25 laws.

1 “(D) DETENTION OF GOODS.—U.S. Immi-
2 gration and Customs Enforcement and U.S.
3 Customs and Border Protection may not detain
4 for more than 45 days any shipment of goods
5 or technology that is eligible for export without
6 prior authorization under this Act. In a case in
7 which such detention is on account of a dis-
8 agreement between the Secretary and the head
9 of any other department or agency with export
10 license authority under other provisions of law
11 concerning the export license requirements for
12 such goods or technology, such disagreement
13 shall be resolved within that 45-day period. At
14 the end of that 45-day period, U.S. Immigra-
15 tion and Customs Enforcement or U.S. Cus-
16 toms and Border Protection (as the case may
17 be) shall either release the goods or technology,
18 or seize the goods or technology as authorized
19 by other provisions of law.

20 “(3) ENFORCEMENT.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B)—

23 “(i) the Secretary shall have the re-
24 sponsibility for the enforcement of section
25 8;

1 “(ii) in the enforcement of the other
2 provisions of this Act, the Secretary is au-
3 thorized to search, detain (after search),
4 and seize goods or technology—

5 “(I) at those places within the
6 United States other than those ports
7 specified in paragraph (2)(A); and

8 “(II) at those places outside the
9 United States where the Office of Ex-
10 port Enforcement of the Department
11 of Commerce, pursuant to agreements
12 or other arrangements with other
13 countries, is authorized to perform en-
14 forcement activities;

15 “(iii) the search, detention (after
16 search), or seizure of goods or technology
17 at those ports and places specified in para-
18 graph (2)(A) may be conducted by officers
19 or employees of the Department of Com-
20 merce designated by the Secretary, with
21 the concurrence of the Secretary of Home-
22 land Security; and

23 “(iv) enforcement activities conducted
24 outside the United States, except for pre-
25 license checks and post-shipment

1 verifications, shall be undertaken with the
2 concurrence of the Secretary of Homeland
3 Security.

4 “(B) AUTHORITY OF OFFICE OF EXPORT
5 ENFORCEMENT.—The Secretary may designate
6 any employee of the Office of Export Enforce-
7 ment of the Department of Commerce to do the
8 following in carrying out the enforcement au-
9 thority conferred by this Act:

10 “(i) Execute any warrant or other
11 process issued by a court or officer of com-
12 petent jurisdiction.

13 “(ii) Make arrests without warrant for
14 any offense against the United States com-
15 mitted in such officer’s presence or view or
16 any felony offense against the United
17 States, if such officer has probable cause
18 to believe that the person to be arrested
19 has committed or is committing that felony
20 offense.

21 “(iii) Carry firearms.

22 “(4) ATTORNEY GENERAL GUIDELINES.—The
23 authorities conferred by the Export Enforcement
24 Act of 2008 under paragraph (3) shall be exercised

1 consistent with guidelines approved by the Attorney
2 General.”.

3 (2) Subsection (a) is further amended—

4 (A) by striking paragraphs (6), (7), and
5 (8);

6 (B) in paragraph (5)—

7 (i) by striking “(5) All” and inserting
8 “(5) REFERRAL OF VIOLATIONS.—All”;
9 and

10 (ii) by moving the remaining text 2
11 ems to the right; and

12 (C) by inserting after paragraph (5) the
13 following:

14 “(6) BEST PRACTICES GUIDELINES.—

15 “(A) IN GENERAL.—The Secretary, in con-
16 sultation with the technical advisory committees
17 established under section 5(h) and exporters,
18 shippers, trade facilitators, freight forwarders,
19 and reexporters representative of their respec-
20 tive industries, shall continue to publish and
21 update ‘best practices’ guidelines to help those
22 industries develop and implement, on a vol-
23 untary basis, effective export control programs
24 in compliance with this Act.

1 “(B) EXPORT COMPLIANCE PROGRAM.—

2 The existence of an effective export compliance
3 program and high quality overall export compli-
4 ance efforts are factors that ordinarily should
5 be given weight as mitigating factors in civil
6 penalty enforcement actions under this Act.

7 “(7) REFERENCE TO ENFORCEMENT.—For
8 purposes of this section, a reference to the enforce-
9 ment of this Act or to a violation of this Act in-
10 cludes a reference to the enforcement or a violation
11 of any regulation, order, or license issued under this
12 Act, and the enforcement or violation of the Export
13 Administration Regulations as maintained and
14 amended under the authority of the International
15 Emergency Economic Powers Act (50 U.S.C. 1701
16 et seq.), or any order or license issued pursuant to
17 those regulations.”.

18 (3) Subsection (c)(3) is amended by striking
19 “Commissioner of Customs” each place it appears
20 and inserting “Secretary of Homeland Security”.

21 (4) Section 12 is further amended by adding at
22 the end the following new subsections:

23 “(f) FORFEITURE.—

24 “(1) IN GENERAL.—Any tangible items lawfully
25 seized under subsection (a) by designated officers or

1 employees shall be subject to forfeiture to the United
2 States.

3 “(2) PROCEDURES.—Any seizure or forfeiture
4 under this subsection shall be carried out in accord-
5 ance with the procedures set forth in chapter 46 of
6 title 18, United States Code.

7 “(g) UNDERCOVER INVESTIGATION OPERATIONS.—

8 “(1) USE OF FUNDS.—With respect to any un-
9 dercover investigative operation conducted by the Of-
10 fice of Export Enforcement of the Department of
11 Commerce that is necessary for the detection and
12 prosecution of violations of this Act—

13 “(A) funds made available for export en-
14 forcement under this Act may be used to pur-
15 chase property, buildings, and other facilities,
16 and to lease equipment, conveyances, and space
17 within the United States, without regard to sec-
18 tions 1341 and 3324 of title 31, United States
19 Code, section 8141 of title 40, United States
20 Code, sections 3732(a) and 3741 of the Revised
21 Statutes of the United States (41 U.S.C. 11(a)
22 and 22), and sections 304(a), 304A, 304B,
23 304C, and 305 of the Federal Property and Ad-
24 ministrative Services Act of 1949 (41 U.S.C.
25 254(a), 254b, 254c, 254d, and 255);

1 “(B) funds made available for export en-
2 forcement under this Act may be used to estab-
3 lish or to acquire proprietary corporations or
4 business entities as part of an undercover oper-
5 ation, and to operate such corporations or busi-
6 ness entities on a commercial basis, without re-
7 gard to sections 1341, 3324, and 9102 of title
8 31, United States Code;

9 “(C) funds made available for export en-
10 forcement under this Act and the proceeds from
11 undercover operations may be deposited in
12 banks or other financial institutions without re-
13 gard to section 648 of title 18, United States
14 Code, and section 3302 of title 31, United
15 States Code; and

16 “(D) the proceeds from undercover oper-
17 ations may be used to offset necessary and rea-
18 sonable expenses incurred in such operations
19 without regard to section 3302 of title 31,
20 United States Code, if the Secretary certifies,
21 in writing, that the action authorized by sub-
22 paragraph (A), (B), or (C) for which the funds
23 would be used is necessary for the conduct of
24 the undercover operation.

1 “(2) DISPOSITION OF BUSINESS ENTITIES.—If
2 a corporation or business entity established or ac-
3 quired as part of an undercover operation has a net
4 value of more than \$250,000 and is to be liquidated,
5 sold, or otherwise disposed of, the Secretary shall re-
6 port the circumstances to the Comptroller General of
7 the United States as much in advance of such dis-
8 position as the Secretary determines is practicable.
9 The proceeds of the liquidation, sale, or other dis-
10 position, after obligations incurred by the corpora-
11 tion or business enterprise are met, shall be depos-
12 ited in the Treasury of the United States as mis-
13 cellaneous receipts. Any property or equipment pur-
14 chased pursuant to paragraph (1) may be retained
15 for subsequent use in undercover operations under
16 this section. When such property or equipment is no
17 longer needed, it shall be considered surplus and dis-
18 posed of as surplus government property.

19 “(3) DEPOSIT OF PROCEEDS.—As soon as the
20 proceeds from an undercover investigative operation
21 of the Office of Export Enforcement of the Depart-
22 ment of Commerce with respect to which an action
23 is authorized and carried out under this subsection
24 are no longer needed for the conduct of such oper-
25 ation, the proceeds or the balance of the proceeds re-

1 maining at the time shall be deposited into the
2 Treasury of the United States as miscellaneous re-
3 ceipts.

4 “(4) AUDIT AND REPORT.—

5 “(A) AUDIT.—The Secretary shall conduct
6 a detailed financial audit of each closed under-
7 cover investigative operation of the Office of
8 Export Enforcement of the Department of
9 Commerce. Not later than 180 days after an
10 undercover operation is closed, the Secretary
11 shall submit to the Congress a report on the re-
12 sults of the audit.

13 “(B) REPORT.—The Secretary shall sub-
14 mit annually to the Congress a report, which
15 may be included in the annual report under sec-
16 tion 14, including the following information:

17 “(i) The number of undercover inves-
18 tigative operations pending as of the end of
19 the period for which the report is sub-
20 mitted.

21 “(ii) The number of undercover inves-
22 tigative operations commenced in the 1-
23 year period preceding the period for which
24 the report is submitted.

1 “(iii) The number of undercover in-
2 vestigative operations closed in the 1-year
3 period preceding the period for which such
4 report is submitted and, with respect to
5 each such closed undercover operation, the
6 results obtained and any civil claims made
7 with respect to the operation.

8 “(C) DEFINITIONS.—In this paragraph:

9 “(i) CLOSED.—The term ‘closed’, with
10 respect to an undercover investigative oper-
11 ation, refers to the earliest point in time at
12 which all criminal proceedings (other than
13 appeals) pursuant to the investigative oper-
14 ation are concluded, or covert activities
15 pursuant to such operation are concluded,
16 whichever occurs later.

17 “(ii) UNDERCOVER INVESTIGATIVE
18 OPERATION AND UNDERCOVER OPER-
19 ATION.—

20 “(I) IN GENERAL.—The terms
21 ‘undercover investigative operation’
22 and ‘undercover operation’ mean any
23 undercover investigative operation
24 conducted by the Office of Export En-

1 enforcement of the Department of Com-
2 merce—

3 “(aa) in which the gross re-
4 cepts (excluding interest earned)
5 exceed \$25,000, or expenditures
6 (other than expenditures for sala-
7 ries of employees) exceed
8 \$75,000; and

9 “(bb) which is exempt from
10 section 3302 or 9102 of title 31,
11 United States Code.

12 “(II) EXCEPTION.—Items (aa)
13 and (bb) of subclause (I) shall not
14 apply with respect to the report to the
15 Congress required by subparagraph
16 (2)(B).

17 “(h) AUTHORIZATION FOR BUREAU OF INDUSTRY
18 AND SECURITY.—The Secretary may authorize, without
19 fiscal year limitation, the expenditure of funds transferred
20 to, paid to, received by, or made available to the Bureau
21 of Industry and Security of the Department of Commerce
22 as a reimbursement in accordance with section 9703 of
23 title 31, United States Code (as added by Public Law
24 102–393).”.

1 **SEC. 204. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 18 of the Export Administration Act of 1979
3 (50 U.S.C. App. 2417) is amended to read as follows:

4 “AUTHORIZATION OF APPROPRIATIONS

5 “SEC. 18. There are authorized to be appropriated
6 to the Department of Commerce to carry out section 12
7 of this Act such sums as may be necessary for each fiscal
8 year.”.

9 **SEC. 205. TERMINATION DATE.**

10 Section 20 of the Export Administration Act of 1979
11 (50 U.S.C. App. 2419) is amended by inserting before the
12 period at the end the following: “, except that section 12
13 shall not terminate”.

14 **SEC. 206. DESIGNATION OF DESTINATIONS OF DIVERSION**
15 **CONCERN.**

16 (a) **EFFORTS WITH UAE.**—The Congress recognizes
17 efforts taken by the United Arab Emirates, in coordina-
18 tion with the Secretary of Commerce, in response to inter-
19 national concerns over the diversion of dual-use items to
20 prohibited destinations, parties, or uses, and urges the
21 Secretary of Commerce to continue to work with the Gov-
22 ernment of the United Arab Emirates to ensure that such
23 efforts are successful in stopping such diversion of dual-
24 use items.

25 (b) **COUNTRY OF DIVERSION CONCERN.**—Not later
26 than 60 days after the date of the enactment of this Act,

1 the Secretary of Commerce shall amend the Export Ad-
2 ministration Regulations by—

3 (1) creating a designation of a country as a
4 “country of diversion concern” based on criteria that
5 include, but are not limited to—

6 (A) volume of dual-use items transshipped
7 through the country;

8 (B) volume and proportion of trade by the
9 country with countries of concern for prolifera-
10 tion or terrorism;

11 (C) inadequate export or reexport controls
12 in the country;

13 (D) demonstrated inability to control diver-
14 sion activities in the country; and

15 (E) unwillingness or inability of the gov-
16 ernment of the country to cooperate with the
17 United States in efforts to stop illegal transfers
18 of dual-use items; and

19 (2) requiring the imposition of additional re-
20 strictions on exports of dual-use items to a country
21 of diversion concern, including, but not limited to,
22 some or all of the following:

23 (A) Implementing more stringent review
24 policies.

1 (B) Imposing additional license restric-
2 tions.

3 (C) Requiring more frequent and more
4 thorough end-user and end-use checks.

5 (c) REPORT.—Not later than 90 days after the date
6 of the enactment of this Act, the Secretary of Commerce
7 shall submit to the appropriate congressional committees
8 a report describing in detail past, current, and future ef-
9 forts undertaken or planned by the Governments of the
10 United Arab Emirates, Malaysia, and the United States
11 to ensure that dual-use items are not diverted to countries,
12 entities, or uses of concern for proliferation or terrorism
13 from the territory or jurisdiction of Malaysia or the United
14 Arab Emirates.

15 (d) RESTRICTIONS.—Unless the Secretary of Com-
16 merce makes the certification described in subsection (e)
17 with respect to a country listed in that subsection, the Sec-
18 retary shall by regulation impose the following measures
19 with respect to that country:

20 (1) The Secretary shall designate the country
21 as a country of diversion concern under subsection
22 (b).

23 (2) The Secretary shall impose additional re-
24 strictions on exports of dual-use items to the coun-
25 try, including restrictions on nuclear dual-use items.

1 (e) CERTIFICATION.—The certification under this
2 subsection is a certification by the Secretary of Commerce
3 to the appropriate congressional committees, not later
4 than 180 days after the date of the enactment of this Act,
5 and not later than the end of each of the next 5 1-year
6 periods, with respect to each of the countries of the United
7 Arab Emirates and Malaysia that the Government of such
8 country—

9 (1) has adopted and is vigorously implementing
10 effective national laws and regulations controlling
11 the export and transshipment of dual-use items; and

12 (2) is taking all reasonable steps to ensure that
13 dual-use items within its territory and jurisdiction
14 are not diverted to countries, entities, or uses of con-
15 cern for proliferation or terrorism.

16 (f) SUBSEQUENT CERTIFICATIONS.—If the Secretary
17 is unable to make a certification with respect to a country
18 under subsection (e), the Secretary may at any time there-
19 after make such a certification with respect to that coun-
20 try.

21 (g) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) IN GENERAL.—There are authorized to ap-
23 propriated for each fiscal year such sums as may be
24 necessary to carry out this section.

1 (2) FUNDS FOR ADDITIONAL PERSONNEL.—

2 There are authorized to be appropriated for each fis-
3 cal year \$10,000,000 for additional personnel in the
4 Department of Commerce to conduct end-use checks
5 and export control compliance in the United Arab
6 Emirates and Malaysia.

7 **SEC. 207. VALIDATED END-USER PROGRAM REVIEW.**

8 (a) AUDIT.—The Comptroller General shall conduct,
9 and report to the appropriate congressional committees
10 the results of, an audit of the Validated End-User pro-
11 gram operated by the Department of Commerce. In doing
12 so, the Comptroller General shall examine whether the na-
13 tional security of the United States is sufficiently pro-
14 tected by Validated End-User program procedures as they
15 are designed and carried out, including those related to
16 selecting, reviewing, and approving candidates for Vali-
17 dated End-User status, monitoring compliance by Vali-
18 dated End-Users with export control laws and regulations
19 of the United States, and monitoring individual exports
20 under the Validated End-User program.

21 (b) RESTRICTION ON DESIGNATION OF ADDITIONAL
22 VALIDATED END-USERS.—The Secretary of Commerce
23 may not designate additional Validated End-Users until
24 the end of the 6-month period beginning on the date on
25 which the report on the audit required under subsection

1 (a) is submitted to the appropriate congressional commit-
2 tees.

3 (c) CONSULTATION PRIOR TO DESIGNATION.—The
4 Secretary of Commerce shall consult with the appropriate
5 congressional committees at least 30 days before desig-
6 nating any Validated End-User.

7 **SEC. 208. ANNUAL REPORT ON TRANSFERS OF MILITARILY**
8 **SENSITIVE TECHNOLOGY TO COUNTRIES AND**
9 **ENTITIES OF CONCERN.**

10 (a) ANNUAL REPORT.—Not later than March 30 of
11 each year beginning in 2009, the President shall transmit
12 to the Congress a report on transfers to countries and en-
13 tities of concern during the preceding calendar year of the
14 most significant categories of United States technologies
15 and technical information with potential military applica-
16 tions.

17 (b) CONTENTS OF REPORT.—The report required by
18 subsection (a) shall include, at a minimum, the following:

19 (1) An assessment by the Director of National
20 Intelligence of efforts by countries and entities of
21 concern to acquire technologies and technical infor-
22 mation referred to in subsection (a) during the pre-
23 ceding calendar year.

24 (2) An assessment by the Secretary of Defense,
25 in consultation with the Joint Chiefs of Staff and

1 the Director of National Intelligence, of the cumu-
2 lative impact of licenses granted by the United
3 States for exports of technologies and technical in-
4 formation referred to in subsection (a) to countries
5 and entities of concern during the preceding 5-cal-
6 endar year period on—

7 (A) the military capabilities of such coun-
8 tries and entities; and

9 (B) countermeasures that may be nec-
10 essary to overcome the use of such technologies
11 and technical information.

12 (3) An audit by the Inspectors General of the
13 Departments of Defense, State, Commerce, Home-
14 land Security, Energy, and the Treasury, in con-
15 sultation with the Director of National Intelligence
16 and the Director of the Federal Bureau of Investiga-
17 tion, of the policies and procedures of the United
18 States Government with respect to the export of
19 technologies and technical information referred to in
20 subsection (a) to countries and entities of concern.

21 (c) **ADDITIONAL REQUIREMENT FOR FIRST RE-**
22 **PORT.**—The first annual report required by subsection (a)
23 shall include an assessment by the Inspectors General of
24 the Departments of Defense, State, Commerce, Homeland
25 Security, Energy, and the Treasury and the Inspector

1 General of the Central Intelligence Agency of the adequacy
2 of current export controls and counterintelligence meas-
3 ures to protect against the acquisition by countries and
4 entities of concern of United States technology and tech-
5 nical information referred to in subsection (a).

6 (d) SUPPORT OF OTHER AGENCIES.—Upon the re-
7 quest of any of the officials responsible for preparing an
8 assessment or audit required by subsection (b) or (c), the
9 heads of other departments and agencies shall make avail-
10 able to those officials all information necessary to carry
11 to prepare such assessment or audit.

12 (e) CLASSIFIED AND UNCLASSIFIED REPORTS.—
13 Each report required by this section shall be submitted
14 in classified form and unclassified form.

15 (f) DEFINITION.—As used in this section, the term
16 “countries and entities of concern” means—

17 (1) any country the government of which the
18 Secretary of State has determined, for purposes of
19 section 6(j) of the Export Administration Act of
20 1979 or other applicable law, to have repeatedly pro-
21 vided support for acts of international terrorism;

22 (2) any country that—

23 (A) has detonated a nuclear explosive de-
24 vice (as defined in section 830(4) of the Nu-

1 clear Proliferation Prevention Act of 1994 (22
2 U.S.C. 6305(4)); and

3 (B) is not a member of the North Atlantic
4 Treaty Organization; and

5 (3) any entity that—

6 (A) is engaged in international terrorism
7 or activities in preparation thereof; or

8 (B) is directed or controlled by the govern-
9 ment of a country described in paragraph (1) or
10 (2).

11 **SEC. 209. DEFINITION.**

12 In this title, the term “appropriate congressional
13 committees” means the Committee on Foreign Affairs of
14 the House of Representatives and the Committee on For-
15 eign Relations of the Senate.

○