

109TH CONGRESS
1ST SESSION

H. R. 4572

To revise and extend the Export Administration Act of 1979.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2005

Mr. HYDE introduced the following bill; which was referred to the Committee
on International Relations

A BILL

To revise and extend the Export Administration Act of 1979.

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 “Export Administration
5 Renewal Act of 2005”.

6 **SEC. 2. CONGRESSIONAL DECLARATION OF POLICY.**

7 Section 3(a) of the Export Administration Act of
8 1979 (50 U.S.C. App. 2402(a)) is amended by adding at
9 the end the following new paragraph:

10 “(15) It is the policy of the United States to
11 utilize the analytic product of the United States in-

1 intelligence community with respect to the consider-
2 ation of any proposed license under this Act.”.

3 **SEC. 3. GENERAL PROVISIONS.**

4 Section 4 of the Export Administration Act of 1979
5 (50 U.S.C. App. 2403) is amended by adding at the end
6 the following new subsection:

7 “(h) COMMODITY CLASSIFICATION REVIEW.—The
8 President, in consultation with the Secretary and the
9 heads of other appropriate departments and agencies,
10 shall conduct a comprehensive review of the commodity
11 classification process and the Export Control Classifica-
12 tion Number (in this Act referred to as the ‘ECCN’) sys-
13 tem, taking into account—

14 “(1) the potential relevance of industrial tech-
15 nical literature to ECCN classifications;

16 “(2) the extent of review for ECCN classifica-
17 tions;

18 “(3) consistency between United States ECCN
19 definitions and multilateral export control regime
20 control lists;

21 “(4) any other applicable laws such as the
22 Arms Export Control Act; and

23 “(5) other appropriate considerations, including
24 the global war on terror.”.

1 **SEC. 4. NATIONAL SECURITY CONTROLS.**

2 Section 5(f)(6) of the Export Administration Act of
3 1979 (50 U.S.C. App. 2404(f)(6)) is amended by striking
4 “Under Secretary of Commerce for Export Administra-
5 tion” and inserting “Under Secretary of Commerce for In-
6 dustry and Security”.

7 **SEC. 5. VIOLATIONS.**

8 Section 11 of the Export Administration Act of 1979
9 (50 U.S.C. App. 2410) is amended—

10 (1) by striking subsections (a) and (b) and in-
11 serting the following:

12 “(a) CRIMINAL PENALTIES.—

13 “(1) VIOLATIONS BY AN INDIVIDUAL.—Any in-
14 dividual who willfully violates, conspires to violate, or
15 attempts to violate any provision of this Act or any
16 regulation, license, or order issued under this Act
17 shall be fined up to 10 times the value of the exports
18 involved or \$1,000,000, whichever is greater, impris-
19 oned for not more than 10 years, or both, for each
20 violation.

21 “(2) VIOLATIONS BY A PERSON OTHER THAN
22 AN INDIVIDUAL.—Any person, other than an indi-
23 vidual, who willfully violates, conspires to violate, or
24 attempts to violate any provision of this Act or any
25 regulation, license, or order issued under this Act
26 shall be fined up to 10 times the value of the exports

1 involved or \$5,000,000, whichever is greater, for
2 each violation.

3 “(b) FORFEITURE OF PROPERTY INTEREST AND
4 PROCEEDS.—

5 “(1) FORFEITURE.—Any person who is con-
6 victed under paragraph (1) or (2) of subsection (a)
7 shall, in addition to any other penalty, forfeit to the
8 United States—

9 “(A) any of that person’s security or other
10 interest in, claim against, or property or con-
11 tractual rights of any kind in the tangible items
12 that were the subject of the violation;

13 “(B) any of that person’s security or other
14 interest in, claim against, or property or con-
15 tractual rights of any kind in the tangible prop-
16 erty that was used in the export or attempt to
17 export that was the subject of the violation; and

18 “(C) any of that person’s property consti-
19 tuting, or derived from, any proceeds obtained
20 directly or indirectly as a result of the violation.

21 “(2) PROCEDURES.—The procedures in any for-
22 feiture under this subsection, and the duties and au-
23 thority of the courts of the United States and the
24 Attorney General with respect to any forfeiture ac-
25 tion under this subsection, or with respect to any

1 property that may be subject to forfeiture under this
2 subsection, shall be governed by the provisions of
3 chapter 46 of title 18, United States Code (relating
4 to criminal forfeiture), to the same extent as prop-
5 erty subject to forfeiture under that chapter.”;

6 (2) in subsection (c), by striking paragraph (1)
7 and inserting the following: “(1) The Secretary may
8 impose a civil penalty of up to \$500,000 for each
9 violation of a provision of this Act or any regulation,
10 license, or order issued under this Act. A civil pen-
11 alty under this paragraph may be in addition to, or
12 in lieu of, any other liability or penalty which may
13 be imposed for such a violation.”;

14 (3) by striking subsections (g) and (h) and in-
15 serting the following:

16 “(g) VIOLATIONS DEFINED BY REGULATION.—Noth-
17 ing in this section shall limit the authority of the Secretary
18 to define by regulation violations under this Act.

19 “(h) EFFECT OF OTHER CONVICTIONS.—

20 “(1) DENIAL OF EXPORT PRIVILEGES.—Any
21 person convicted of a violation described in para-
22 graph (2) may, at the discretion of the Secretary, be
23 denied export privileges under this Act for a period
24 not to exceed 10 years from the date of the convic-
25 tion. The Secretary may also revoke any export li-

1 cense under this Act in which such person had an
2 interest at the time of the conviction.

3 “(2) VIOLATIONS.—The violations referred to in
4 paragraph (1) are a violation of—

5 “(A) a provision of this Act;

6 “(B) a provision of the International
7 Emergency Economic Powers Act (50 U.S.C.
8 1701 et seq.);

9 “(C) section 793, 794, or 798 of title 18,
10 United States Code;

11 “(D) section 4(b) of the Internal Security
12 Act of 1950 (50 U.S.C. 783(b));

13 “(E) section 38 of the Arms Export Con-
14 trol Act (22 U.S.C. 2778);

15 “(F) section 16 of the Trading with the
16 Enemy Act (50 U.S.C. App. 16);

17 “(G) any regulation, license, or order
18 issued under any provision of law listed in sub-
19 paragraph (A), (B), (C), (D), (E), or (F);

20 “(H) section 371 or 1001 of title 18,
21 United States Code, if in connection with the
22 export of items subject to this Act or any regu-
23 lation, license, or order issued under the Inter-
24 national Emergency Economic Powers Act, or

1 the export of items controlled under the Arms
2 Export Control Act;

3 “(I) section 175 of title 18, United States
4 Code;

5 “(J) a provision of the Atomic Energy Act
6 (42 U.S.C. 201 et seq.);

7 “(K) section 831 of title 18, United States
8 Code; or

9 “(L) section 2332a of title 18, United
10 States Code.

11 “(3) RELATED PERSONS.—The Secretary may
12 exercise the authority under paragraph (1) with re-
13 spect to any person related through affiliation, own-
14 ership, control, or position of responsibility to a per-
15 son convicted of any violation of a law set forth in
16 paragraph (2), upon a showing of such relationship
17 with the convicted person. The Secretary shall make
18 such showing only after providing notice and oppor-
19 tunity for a hearing.”; and

20 (4) by adding at the end the following new sub-
21 section:

22 “(j) STATUTE OF LIMITATIONS.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), a proceeding in which a civil penalty or
25 other administrative sanction is sought under sub-

1 section (c) may not be commenced more than 5
2 years after the date on which the claim first ac-
3 crued.

4 “(2) EXCEPTION.—

5 “(A) TOLLING.—In any case in which a
6 criminal indictment in connection with actions
7 constituting a violation under subsection (a) is
8 returned within the time limits prescribed by
9 law for the institution of such action, the limi-
10 tation under paragraph (1) for commencing a
11 proceeding to impose a civil penalty or other ad-
12 ministrative sanction under this section shall,
13 upon the return of the criminal indictment, be
14 tolled against any person named as a defend-
15 ant.

16 “(B) DURATION.—The tolling of the limi-
17 tation with respect to a defendant under sub-
18 paragraph (A) as a result of a criminal indict-
19 ment shall continue for a period of 6 months
20 beginning on the date on which the defendant
21 is convicted pursuant to the criminal indict-
22 ment, the indictment against the defendant is
23 dismissed, or the criminal action has otherwise
24 concluded.”.

1 **SEC. 6. UNITED STATES POLICY ON MULTILATERAL EX-**
2 **PORT CONTROL REGIMES.**

3 The Export Administration Act of 1979 is amended
4 by inserting after section 11C the following new section:

5 **“SEC. 11D. U.S. POLICY ON MULTILATERAL EXPORT CON-**
6 **TROL REGIMES.**

7 “(a) MULTILATERAL EXPORT CONTROL REGIMES.—

8 “(1) GENERAL POLICY.—It is the policy of the
9 United States to seek multilateral arrangements that
10 support the national security objectives of the
11 United States.

12 “(2) MULTILATERAL EXPORT CONTROL RE-
13 GIMES.—In this section, the term ‘multilateral ex-
14 port control regime’ means an international agree-
15 ment or arrangement among two or more countries,
16 including the United States, a purpose of which is
17 to coordinate national export control policies of its
18 members regarding certain items. The term includes
19 regimes such as the Australia Group (AG), the
20 Wassenaar Arrangement, the Missile Technology
21 Control Regime (MTCR), and the Nuclear Suppliers
22 Group Dual Use Arrangement (NSG).

23 “(3) OBJECTIVES.—It is the intent of the Con-
24 gress that the United States seek to achieve the fol-
25 lowing objectives with regard to multilateral export
26 control regimes:

1 “(A) EXISTING REGIMES.—

2 “(i) PARTICIPATION.—Continue its
3 active participation in existing multilateral
4 export control regimes, in accordance with
5 subsection (b).

6 “(ii) STRENGTHEN.—Seek to attain
7 the cooperation of members of each exist-
8 ing and future regime in implementing the
9 standards outlined in subsection (c) for ef-
10 fective national export control systems.

11 “(B) NEW REGIMES.—Consider participa-
12 tion in additional multilateral export control re-
13 gimes if such participation would serve the na-
14 tional security interests of the United States.

15 “(C) REVIEW AND UPDATE.—Review and
16 update multilateral regime export control lists
17 with other members, taking into account—

18 “(i) national security concerns, includ-
19 ing the global war on terror;

20 “(ii) the foreign availability of items;
21 and

22 “(iii) the costs and benefits of con-
23 trols.

1 “(D) IMPLEMENTATION BY NONMEM-
2 BERS.—Encourage countries that are not mem-
3 bers of the multilateral export control regime—

4 “(i) to strengthen their national ex-
5 port control regimes and improve enforce-
6 ment;

7 “(ii) to adhere to the guidelines of the
8 appropriate multilateral export control re-
9 gime;

10 “(iii) not to undermine an existing
11 multilateral export control regime by ex-
12 porting controlled items in a manner in-
13 consistent with the guidelines of the re-
14 gime; and

15 “(iv) to work with member countries
16 in training government officials on the
17 principles and procedures for implementing
18 effective export controls.

19 “(4) TRANSPARENCY OF MULTILATERAL EX-
20 PORT CONTROL REGIMES.—

21 “(A) PUBLICATION OF INFORMATION ON
22 EACH EXISTING REGIME.—Not later than 120
23 days after the date of the enactment of this sec-
24 tion, the Secretary shall, for each multilateral
25 export control regime, to the extent that it is

1 not inconsistent with the arrangements of that
2 regime (in the judgment of the Secretary of
3 State) or with the national interest, publish in
4 the Federal Register and post on the Depart-
5 ment of Commerce website the following infor-
6 mation with respect to that regime:

7 “(i) The purposes of the regime.

8 “(ii) The members of the regime.

9 “(iii) The export licensing policy of
10 the regime.

11 “(iv) The items that are subject to ex-
12 port controls under the regime, together
13 with all related public notes, and all
14 changes thereto.

15 “(v) Any countries, end uses, or end
16 users that are subject to the export con-
17 trols of the regime.

18 “(vi) Rules of interpretation.

19 “(vii) Major policy actions.

20 “(viii) The rules and procedures of
21 the regime for establishing and modifying
22 any matter described in clauses (i) through
23 (vii).

24 “(B) NEW REGIMES.—Not later than 60
25 days after the United States joins or organizes

1 a new multilateral export control regime, the
2 Secretary shall, to the extent that it is not in-
3 consistent with arrangements under that regime
4 (in the judgment of the Secretary of State) or
5 with the national interest, publish in the Fed-
6 eral Register and post on the Department of
7 Commerce website the information described in
8 subparagraphs (i) through (viii) of subpara-
9 graph (A) with respect to the regime.

10 “(C) PUBLICATION OF CHANGES.—Not
11 later than 60 days after a multilateral export
12 control regime adopts any change in the infor-
13 mation published under this paragraph, the
14 Secretary shall, to the extent not inconsistent
15 with the arrangements under that regime (in
16 the judgment of the Secretary of State) or the
17 national interest, publish such changes in the
18 Federal Register and post such changes on the
19 Department of Commerce website.

20 “(b) STANDARDS FOR MULTILATERAL EXPORT CON-
21 TROL REGIMES.—It is the intent of the Congress that the
22 President take steps to establish the following features in
23 any multilateral export control regime in which the United
24 States is participating or may participate:

1 “(1) FULL MEMBERSHIP.—Supplier countries
2 should be considered for membership of the regime
3 based on their acting in accordance with the objec-
4 tives and meeting the membership criteria of the re-
5 gime.

6 “(2) EFFECTIVE IMPLEMENTATION.—The re-
7 gime promotes implementation of the regime’s rules
8 and guidelines.

9 “(3) PUBLIC UNDERSTANDING.—The regime
10 seeks to enhance public understanding of the pur-
11 pose and procedures of the regime.

12 “(4) EFFECTIVE INTERPRETATION PROCE-
13 DURES.—The regime has procedures to promote the
14 uniform and consistent interpretation of its rules
15 and guidelines.

16 “(5) ENHANCED COOPERATION WITH REGIME
17 NONMEMBERS.—There is agreement among the
18 members of the regime—

19 “(A) to cooperate with governments of
20 countries that are not members of the regime to
21 restrict the export of items controlled by the re-
22 gime; and

23 “(B) to establish an ongoing mechanism in
24 the regime to coordinate planning and imple-

1 mentation of export control measures related to
2 such cooperation.

3 “(6) PERIODIC HIGH LEVEL MEETINGS.—There
4 are regular periodic meetings of high level represent-
5 atives of the governments of countries that are mem-
6 bers of the regime for the purpose of coordinating
7 export control policies and issuing policy guidance to
8 members of the regime.

9 “(7) COMMON LIST OF CONTROLLED ITEMS.—
10 There is agreement on a common list of items con-
11 trolled by the regime.

12 “(8) REGULAR UPDATES OF COMMON LIST.—
13 There is a procedure for removing items from the
14 list of controlled items when the control of such
15 items no longer serves the objectives of the members
16 of the regime, and for adding items to the list of
17 controlled items when appropriate in light of the ob-
18 jectives of the regime.

19 “(9) GLOBAL WAR ON TERROR.—There is
20 agreement—

21 “(A) to prevent the export or diversion of
22 sensitive items to terrorist individuals and
23 groups; and

1 “(B) to support the United States and its
2 international partners in the global war on ter-
3 ror.

4 “(10) COORDINATION OF LICENSE APPROVAL
5 PROCEDURES.—There is coordination among the
6 members of the regime regarding their national ex-
7 port license approval procedures, practices, and
8 standards.

9 “(11) UNDERCUTTING.—The regime establishes
10 rules with respect to the approval of licenses for the
11 export of any item that is controlled pursuant to the
12 regime, in cases in which a member has denied an
13 export license for such item to the particular end
14 user for reasons that are relevant to the purposes of
15 the regime.

16 “(12) INFORMATION SHARING.—There are pro-
17 cedures for the coordination and exchange of infor-
18 mation about export licensing among members of
19 the regime, including—

20 “(A) notification of the denial of licenses
21 to export sensitive items controlled under the
22 regime to countries that are not members of the
23 regime, in cases in which the reasons for denial
24 are relevant to the purposes of the regime; and

1 “(B) notification of applications for li-
2 censes to export goods and technology that are
3 destined for terrorist organizations or individ-
4 uals.

5 “(c) STANDARDS FOR NATIONAL EXPORT CONTROL
6 SYSTEMS.—It is the intent of the Congress that the Presi-
7 dent take steps to attain the cooperation of members of
8 each multilateral export control regime in implementing
9 effective national export control systems in accordance
10 with the following:

11 “(1) EXPORT CONTROL LAWS.—Enforcement
12 authority, civil and criminal penalties, and statutes
13 of limitations are sufficient to deter potential viola-
14 tions and punish violators under the member’s ex-
15 port control laws.

16 “(2) LICENSE APPROVAL PROCESS.—The sys-
17 tem for evaluating export license applications in-
18 cludes sufficient technical expertise to assess the li-
19 censing status of exports and ensure the reliability
20 of end users.

21 “(3) ENFORCEMENT.—The enforcement mecha-
22 nism provides authority for trained enforcement offi-
23 cers to investigate and prevent illegal exports.

1 “(4) DOCUMENTATION.—There is a system of
2 export control documentation and verification with
3 respect to controlled items.

4 “(5) INFORMATION.—There are procedures for
5 the coordination and exchange of information con-
6 cerning licensing, end users, and enforcement with
7 other members of the multilateral export control re-
8 gime.

9 “(6) RESOURCES.—The member has devoted
10 adequate resources to administer and enforce effec-
11 tively the authorities, systems, mechanisms, and pro-
12 cedures described in paragraphs (1) through (5).

13 “(d) SUPPORT OF OTHER COUNTRIES’ EXPORT CON-
14 TROL SYSTEMS.—The Secretary is encouraged to continue
15 to—

16 “(1) participate in training of, and provide
17 training to, officials of other countries on the prin-
18 ciples and procedures for implementing effective ex-
19 port controls; and

20 “(2) participate in any such training provided
21 by other departments and agencies of the United
22 States.

23 “(e) ANNUAL REPORTS TO CONGRESS.—

24 “(1) ON EACH MULTILATERAL EXPORT CON-
25 TROL REGIME.—Not later than February 1 of each

1 year, the President shall submit to the Committee
2 on Banking, Housing, and Urban Affairs of the Sen-
3 ate and the Committee on International Relations of
4 the House of Representatives a report evaluating—

5 “(A) the purpose and objectives of each
6 multilateral export control regime;

7 “(B) the effectiveness of each multilateral
8 export control regime, including an assessment
9 of the steps undertaken pursuant to subsections
10 (c) and (d), in meeting those objectives;

11 “(C) any proposals or actions made by the
12 United States to change the regime’s control
13 list;

14 “(D) the response or position of the other
15 regime members to any such proposal or action
16 made by the United States; and

17 “(E) the overall responsiveness of the re-
18 gime to any such action or proposal made by
19 the United States.

20 “(2) CLASSIFICATION.—The reports, or any
21 part of the reports, under this subsection may be
22 submitted in classified form to the extent the Presi-
23 dent considers necessary.”.

1 **SEC. 7. ENFORCEMENT.**

2 Section 12 of the Export Administration Act of 1979
3 (50 U.S.C. App. 2411) is amended—

4 (1) in subsection (a)—

5 (A) by striking paragraphs (1), (2), (3),
6 and (4) and inserting the following:

7 “(a) GENERAL AUTHORITY.—(1) To the extent nec-
8 essary or appropriate to the enforcement of this Act or
9 to the imposition of any penalty, forfeiture, or liability
10 arising under this Act—

11 “(A) the head of any department or agency ex-
12 ercising any function under this Act (and officers or
13 employees of such department or agency specifically
14 designated by the head thereof) may conduct inves-
15 tigations within the United States;

16 “(B) the Secretary of Homeland Security (and
17 officers or employees of U.S. Immigration and Cus-
18 toms Enforcement specifically designated by the Sec-
19 retary of the Department of Homeland Security)
20 and the Secretary (and officers and employees of the
21 Office of Export Enforcement of the Department of
22 Commerce specifically designated by the Secretary)
23 may conduct investigations outside of the United
24 States;

25 “(C) the head of any such department or agen-
26 cy (and such officers or employees) may obtain in-

1 formation from, require reports or the keeping of
2 records by, inspect the books, records, and other
3 writings, premises, or property of, and take the
4 sworn testimony of, any person;

5 “(D)(i) such officers or employees may admin-
6 ister oaths or affirmations, and may by subpoena re-
7 quire any person to appear and testify or to appear
8 and produce books, records, and other writings, or
9 both; and

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

19 “(E) the Secretary (and officers or employees
20 of the Department of Commerce designated by the
21 Secretary) may conduct, outside the United States,
22 pre-license investigations and post-shipment
23 verifications of items licensed for export.

24 “(2)(A) Subject to subparagraph (B), U.S. Im-
25 migration and Customs Enforcement and U.S. Cus-

1 toms and Border Protection are authorized, in the
2 enforcement of this Act—

3 “(i) to search, detain (after search), and
4 seize goods or technology at those places out-
5 side the United States where such entities are
6 authorized, pursuant to agreements or other ar-
7 rangements with other countries, to perform en-
8 forcement activities; and

9 “(ii) to conduct such activities at those
10 ports of entry or exit from the United States
11 where officers of U.S. Immigration and Cus-
12 toms Enforcement and U.S. Customs and Bor-
13 der Protection are authorized by law to conduct
14 such activities.

15 “(B) An officer of U.S. Immigration and Cus-
16 toms Enforcement or U.S. Customs and Border Pro-
17 tection may do the following in carrying out enforce-
18 ment authority under this Act:

19 “(i) Stop, search, and examine a vehicle,
20 vessel, aircraft, or person on which or whom
21 such officer has reasonable cause to suspect
22 there are any goods or technology that has
23 been, is being, or is about to be exported from
24 the United States in violation of this Act.

1 “(ii) Search any package or container in
2 which such officer has reasonable cause to sus-
3 pect there are any goods or technology that has
4 been, is being, or is about to be exported from
5 the United States in violation of this Act.

6 “(iii) Detain (after search) or seize and se-
7 cure for trial any goods or technology on or
8 about such vehicle, vessel, aircraft, or person, or
9 in such package or container, if such officer has
10 probable cause to believe the goods or tech-
11 nology has been, is being, or is about to be ex-
12 ported from the United States in violation of
13 this Act.

14 “(iv) Make arrests without warrant for any
15 violation of this Act committed in his or her
16 presence or view or if the officer has probable
17 cause to believe that the person to be arrested
18 has committed or is committing such a viola-
19 tion.

20 “(C) The arrest authority conferred by sub-
21 paragraph (B)(iv) is in addition to any arrest au-
22 thority under other laws. U.S. Immigration and Cus-
23 toms Enforcement and U.S. Customs and Border
24 Protection may not detain for more than 20 days
25 any shipment of goods or technology eligible for ex-

1 port without license application. In a case in which
2 such detention is on account of a disagreement be-
3 tween the Secretary and the head of any other de-
4 partment or agency with export license authority
5 under other provisions of law concerning the export
6 license requirements for such goods or technology,
7 such disagreement shall be resolved within that 20-
8 day period. At the end of that 20-day period, U.S.
9 Immigration and Customs Enforcement or U.S.
10 Customs and Border Protection (as the case may
11 be) shall either release the goods or technology, or
12 seize the goods or technology as authorized by other
13 provisions of law.

14 “(3)(A) Subject to subparagraph (B)—

15 “(i) the Secretary shall have the responsi-
16 bility for the enforcement of section 8;

17 “(ii) in the enforcement of the other provi-
18 sions of this Act, the Secretary is authorized to
19 search, detain (after search), and seize goods or
20 technology—

21 “(I) at those places within the United
22 States other than those ports specified in
23 paragraph (2)(A); and

24 “(II) at those places outside the
25 United States where the Office of Export

1 Enforcement of the Department of Com-
2 merce, pursuant to agreements or other ar-
3 rangements with other countries, is author-
4 ized to perform enforcement activities;

5 “(iii) the search, detention (after search),
6 or seizure of goods or technology at those ports
7 and places specified in paragraph (2)(A) may
8 be conducted by officers or employees of the
9 Department of Commerce designated by the
10 Secretary, with the concurrence of U.S. Cus-
11 toms and Border Protection; and

12 “(iv) enforcement activities conducted out-
13 side the United States, except for pre-license in-
14 vestigations and post-shipment verifications,
15 shall be undertaken in coordination with U.S.
16 Immigration and Customs Enforcement.

17 “(B) The Secretary may designate any em-
18 ployee of the Office of Export Enforcement of the
19 Department of Commerce to do the following in car-
20 rying out the enforcement authority conferred by
21 this Act:

22 “(i) Execute any warrant or other process
23 issued by a court or officer of competent juris-
24 diction.

1 “(ii) Make arrests without warrant for any
2 offense against the United States committed in
3 such officer’s presence or view or any felony of-
4 fense against the United States if such officer
5 has probable cause to believe that the person to
6 be arrested has committed or is committing
7 that felony offense.

8 “(iii) Carry firearms.

9 “(4) The authorities conferred by the Export
10 Administration Renewal Act of 2005 under para-
11 graph (3) shall be exercised consistent with guide-
12 lines approved by the Attorney General.”;

13 (B) by striking paragraphs (6) and (7);

14 (C) by striking paragraph (8) and insert-
15 ing the following:

16 “(6)(A) The Secretary, in consultation with the
17 technical advisory committees established under sec-
18 tion 5(h) and exporters, shippers, trade facilitators,
19 freight forwarders, and reexporters representative of
20 their respective industries, shall continue to publish
21 and update ‘best practices’ guidelines to help those
22 industries develop and implement, on a voluntary
23 basis, effective export control programs in compli-
24 ance with this Act.

1 “(B) The existence of an effective export com-
 2 pliance program and high quality overall export com-
 3 pliance efforts is one factor which ordinarily should
 4 be accorded great weight as a mitigating factor in
 5 civil penalty enforcement actions under this Act.

6 “(7) For purposes of this section, a reference to
 7 the enforcement of this Act or to a violation of this
 8 Act includes a reference to the enforcement or a vio-
 9 lation of any regulation, order, or license issued
 10 under this Act, and the enforcement or violation of
 11 the Export Administration Regulations as main-
 12 tained and amended under the authority of the
 13 International Emergency Economic Powers Act (50
 14 U.S.C. 1701 et seq.), or any order or license issued
 15 pursuant to those regulations.”;

16 (2) in subsection (c)—

17 (A) by striking “(c) CONFIDENTIALITY”
 18 and all that follows through paragraph (2) and
 19 inserting the following:

20 “(c) CONFIDENTIALITY OF INFORMATION.—

21 “(1) EXEMPTIONS FROM DISCLOSURE.—

22 “(A) INFORMATION OBTAINED ON OR BE-
 23 FORE JUNE 30, 1980.—Except as otherwise pro-
 24 vided by the third sentence of section 8(b)(2)
 25 and by section 11(c)(2)(C), information ob-

1 tained under this Act, or any predecessor stat-
2 ute, on or before June 30, 1980, which is
3 deemed confidential, including Shipper's Export
4 Declarations, or with respect to which a request
5 for confidential treatment is made by the per-
6 son furnishing such information, shall not be
7 subject to disclosure under section 552 of title
8 5, United States Code, and such information
9 shall not be published or disclosed, unless the
10 Secretary determines that the withholding
11 thereof is contrary to the national interest.

12 “(B) INFORMATION OBTAINED AFTER
13 JUNE 30, 1980.—Except as otherwise provided
14 by the third sentence of section 8(b)(2) and by
15 section 11(c)(2)(C), information obtained under
16 this Act after June 30, 1980, or under the Ex-
17 port Administration Regulations as maintained
18 and amended under the authority of the Inter-
19 national Emergency Economic Powers Act (50
20 U.S.C. 1701 et seq.), may be withheld from dis-
21 closure only to the extent permitted by statute,
22 except that information submitted or obtained
23 in connection with an application for an export
24 license, other export authorization (or record-
25 keeping or reporting requirement), enforcement

1 activity, or other operations under this Act, or
2 under the Export Administration Regulations
3 as maintained and amended under the authority
4 of the International Emergency Economic Pow-
5 ers Act, including—

6 “(i) the export license or other export
7 authorization itself,

8 “(ii) classification requests described
9 in section 10(l),

10 “(iii) information or evidence obtained
11 in the course of any investigation by an
12 employee or officer of the Department of
13 Commerce or any other department or
14 agency of the United States,

15 “(iv) information obtained or fur-
16 nished under section 5 or 6 in connection
17 with any international agreement, treaty,
18 or other obligation, and

19 “(v) information obtained in any in-
20 vestigation of an alleged violation of sec-
21 tion 8, except for information required to
22 be disclosed by section 8(b)(2),

23 shall be withheld from public disclosure and
24 shall not be subject to disclosure under section
25 552 of title 5, United States Code, unless the

1 release of such information is determined by the
2 Secretary to be in the national interest.

3 “(2) INFORMATION TO THE CONGRESS AND
4 THE GAO.—

5 “(A) IN GENERAL.—Nothing in this Act
6 shall be construed as authorizing the with-
7 holding of information from the Congress or
8 from the Government Accountability Office.

9 “(B) AVAILABILITY TO THE CONGRESS.—

10 “(i) IN GENERAL.—Any information
11 obtained at any time under this Act or
12 under any predecessor Act, or under the
13 Export Administration Regulations as
14 maintained and amended under the au-
15 thority of the International Emergency
16 Economic Powers Act, regarding the con-
17 trol of exports, including any report or li-
18 cense application required under this Act,
19 shall be made available to any committee
20 or subcommittee of Congress of appro-
21 priate jurisdiction upon the request of the
22 chairman or ranking minority member of
23 such committee or subcommittee.

24 “(ii) PROHIBITION ON FURTHER DIS-
25 CLOSURE.—No committee, subcommittee,

1 or Member of Congress shall disclose any
2 information obtained under this Act, under
3 any predecessor Act, or under the Export
4 Administration Regulations as maintained
5 and amended under the authority of the
6 International Emergency Economic Powers
7 Act, regarding the control of exports that
8 is submitted on a confidential basis to the
9 Congress under clause (i) unless the full
10 committee to which the information is
11 made available determines that the with-
12 holding of that information is contrary to
13 the national interest.

14 “(C) AVAILABILITY TO GAO.—

15 “(i) IN GENERAL.—Notwithstanding
16 subparagraph (B), information described
17 in paragraph (1) shall, consistent with the
18 protection of intelligence, counterintel-
19 ligence, and law enforcement sources,
20 methods, and activities, as determined by
21 the agency that originally obtained the in-
22 formation, and consistent with the provi-
23 sions of section 716 of title 31, United
24 States Code, be made available only by
25 that agency, upon request, to the Comp-

troller General of the United States or to any officer or employee of the Government Accountability Office authorized by the Comptroller General to have access to such information.

“(ii) PROHIBITION ON FURTHER DISCLOSURE.—No officer or employee of the Government Accountability Office shall disclose, except to the Congress in accordance with this subsection, any such information which is submitted on a confidential basis and from which any individual can be identified.”; and

(B) in paragraph (3)—

(i) by striking “(3) Any” and inserting “(3) INFORMATION SHARING.—Any”;

(ii) by moving the text of paragraph (3) 2 ems to the right; and

(iii) by striking “Commissioner of Customs” each place it appears and inserting “Secretary of Homeland Security”; and

(3) by adding at the end the following new subsections:

“(f) FORFEITURE.—

1 “(1) IN GENERAL.—Any tangible items lawfully
2 seized under subsection (a) by designated officers or
3 employees shall be subject to forfeiture to the United
4 States.

5 “(2) APPLICABLE LAWS.—Those provisions of
6 law relating to—

7 “(A) the seizure, summary and judicial
8 forfeiture, and condemnation of property for
9 violations of the customs laws,

10 “(B) the disposition of such property or
11 the proceeds from the sale thereof,

12 “(C) the remission or mitigation of such
13 forfeitures, and

14 “(D) the compromise of claims,
15 shall apply to seizures and forfeitures incurred, or
16 alleged to have been incurred, under the provisions
17 of this subsection, insofar as applicable and not in-
18 consistent with this Act.

19 “(3) FORFEITURES UNDER CUSTOMS LAWS.—
20 Duties that are imposed upon a customs officer or
21 any other person with respect to the seizure and for-
22 feiture of property under the customs laws may be
23 performed with respect to seizures and forfeitures of
24 property under this subsection by the Secretary or
25 any officer or employee of the Department of Com-

1 merce that may be authorized or designated for that
2 purpose by the Secretary (or by the Under Secretary
3 for Border and Transportation Security of the De-
4 partment of Homeland Security (formerly the Com-
5 missioner of Customs) or any officer or employee of
6 the Directorate for Border and Transportation Secu-
7 rity (formerly the United States Customs Service)
8 designated by the Under Secretary), or, upon the re-
9 quest of the Secretary, by any other agency that has
10 authority to manage and dispose of seized property.

11 “(g) UNDERCOVER INVESTIGATION OPERATIONS.—

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

17 “(A) funds made available for export en-
18 forcement under this Act may be used to pur-
19 chase property, buildings, and other facilities,
20 and to lease equipment, conveyances, and space
21 within the United States, without regard to sec-
22 tions 1341 and 3324 of title 31, United States
23 Code, section 8141 of title 40, United States
24 Code, sections 3732(a) and 3741 of the Revised
25 Statutes of the United States (41 U.S.C. 11(a))

1 and 22), and sections 304(a), 304A, 304B,
2 304C, and 305 of the Federal Property and Ad-
3 ministrative Services Act of 1949 (41 U.S.C.
4 254 (a), 254b, 254c, 254d, and 255);

5 “(B) funds made available for export en-
6 forcement under this Act may be used to estab-
7 lish or to acquire proprietary corporations or
8 business entities as part of an undercover oper-
9 ation, and to operate such corporations or busi-
10 ness entities on a commercial basis, without re-
11 gard to sections 1341, 3324, and 9102 of title
12 31, United States Code;

13 “(C) funds made available for export en-
14 forcement under this Act and the proceeds from
15 undercover operations may be deposited in
16 banks or other financial institutions without re-
17 gard to the provisions of section 648 of title 18,
18 United States Code, and section 3302 of title
19 31, United States Code; and

20 “(D) the proceeds from undercover oper-
21 ations may be used to offset necessary and rea-
22 sonable expenses incurred in such operations
23 without regard to the provisions of section 3302
24 of title 31, United States Code, if the Secretary
25 certifies, in writing, that the action authorized

1 by subparagraph (A), (B), (C), or (D) for which
2 the funds would be used is necessary for the
3 conduct of the undercover operation.

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

22 “(3) DEPOSIT OF PROCEEDS.—As soon as the
23 proceeds from an undercover investigative operation
24 of the Office of Export Enforcement of the Depart-
25 ment of Commerce with respect to which an action

1 is authorized and carried out under this subsection
2 are no longer needed for the conduct of such oper-
3 ation, the proceeds or the balance of the proceeds re-
4 maining at the time shall be deposited into the
5 Treasury of the United States as miscellaneous re-
6 ceipts.

7 “(4) AUDIT AND REPORT.—

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

16 “(B) REPORT.—The Secretary shall sub-
17 mit annually to Congress a report, which may
18 be included in the annual report under section
19 14, including the following information:

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

24 “(ii) The number of undercover inves-
25 tigative operations commenced in the 1-

1 year period preceding the period for which
2 the report is submitted.

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

10 “(5) DEFINITIONS.—For purposes of paragraph
11 (4)—

12 “(A) the term ‘closed’, with respect to an
13 undercover investigative operation, refers to the
14 earliest point in time at which all criminal pro-
15 ceedings (other than appeals) pursuant to the
16 investigative operation are concluded, or covert
17 activities pursuant to such operation are con-
18 cluded, whichever occurs later; and

19 “(B) the terms ‘undercover investigative
20 operation’ and ‘undercover operation’ mean any
21 undercover investigative operation conducted by
22 the Office of Export Enforcement of the De-
23 partment of Commerce—

24 “(i) in which the gross receipts (ex-
25 cluding interest earned) exceed \$25,000, or

1 expenditures (other than expenditures for
2 salaries of employees) exceed \$75,000, and
3 “(ii) which is exempt from section
4 3302 or 9102 of title 31, United States
5 Code,

6 except that clauses (i) and (ii) shall not apply
7 with respect to the report to the Congress re-
8 quired by paragraph (4)(B).

9 “(h) WIRETAPS.—Interceptions of communications in
10 accordance with section 2516 of title 18, United States
11 Code, are authorized to further the enforcement of this
12 Act.

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

21 “(j) EXPORT ENFORCEMENT ACCOUNT.—

22 “(1) ESTABLISHMENT.—There is established in
23 the general fund of the Treasury a separate fund
24 which shall be known as the ‘The BIS Export En-
25 forcement Fund’. Notwithstanding any other provi-

1 sion of this Act, there shall be deposited as offset-
2 ting receipts into the BIS Export Enforcement Fund
3 amounts described in paragraph (2). Amounts in the
4 BIS Export Enforcement Fund shall remain avail-
5 able until expended.

6 “(2) AMOUNTS DESCRIBED.—The amounts de-
7 scribed in this paragraph are civil penalties collected
8 pursuant to regulations issued, maintained, or
9 amended under the Act, the International Emer-
10 gency Economic Powers Act, and any other statute
11 pursuant to which the Bureau of Industry and Secu-
12 rity of the Department of Commerce has the author-
13 ity to impose civil penalties.

14 “(3) TRANSFERS TO OTHER ACCOUNTS.—The
15 Secretary of the Treasury shall transfer from the
16 BIS Export Enforcement Fund to the BIS Export
17 Enforcement Account amounts equal to the expenses
18 incurred by the Secretary of Commerce for activities
19 that further the enforcement of the provisions of this
20 Act. Such activities include—

21 “(A) the investigative travel expenses of
22 agents of the Office of Export Enforcement of
23 the Department of Commerce, including travel
24 expenses for training courses for such agents;

1 “(B) storage costs for detained and seized
 2 items related to investigations of violations of
 3 this Act; and

4 “(C) the purchase, repair, and mainte-
 5 nance of equipment necessary for the operations
 6 of the Office of Export Enforcement of the De-
 7 partment of Commerce.

8 “(4) AUTHORIZATION OF APPROPRIATIONS.—
 9 There are authorized to be appropriated from the
 10 BIS Export Enforcement Fund amounts not to ex-
 11 ceed \$1,000,000 for each fiscal year to carry out the
 12 purposes set forth in this subsection.

13 “(5) DEPOSITS INTO GENERAL FUND.—At the
 14 end of each fiscal year, any unobligated amount in
 15 excess of \$1,000,000 remaining in the BIS Export
 16 Enforcement Fund shall be deposited in the general
 17 fund of the Treasury.”.

18 **SEC. 8. ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-**
 19 **VIEW.**

20 Section 13(a) of the Export Administration Act of
 21 1979 (50 U.S.C. App. 2412(a)) is amended in the first
 22 sentence by inserting “or under the Export Administration
 23 Regulations as maintained and amended under the au-
 24 thority of the International Emergency Economic Powers
 25 Act (50 U.S.C. 1701 et seq.)” after “under this Act”.

1 **SEC. 9. ADMINISTRATIVE AND REGULATORY AUTHORITY.**

2 Section 15(a) of the Export Administration Act of
3 1979 (50 U.S.C. App. 2414(a)) is amended in the first
4 sentence—

5 (1) by striking “Under Secretary of Commerce
6 for Export Administration” and inserting “Under
7 Secretary of Commerce for Industry and Security”;
8 and

9 (2) by striking “such other statutes” and all
10 that follows through the end of the sentence and in-
11 serting “other statutes that the Secretary has dele-
12 gated to the Under Secretary of Commerce for In-
13 dustry and Security or any predecessor (including
14 the Under Secretary of Commerce for Export Ad-
15 ministration and the Assistant Secretary of Com-
16 merce for Trade Administration) as of the date of
17 the enactment of the Export Administration Re-
18 newal Act of 2005, or may delegate to the Under
19 Secretary of Commerce for Industry and Security
20 from time to time.”.

21 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

22 Section 18 of the Export Administration Act of 1979
23 (50 U.S.C. App. 2417) is amended to read as follows:

24 “AUTHORIZATION OF APPROPRIATIONS

25 “SEC. 18. There are authorized to be appropriated
26 to the Department of Commerce to carry out the purposes

1 of this Act such sums as may be necessary for each fiscal
2 year.”.

3 **SEC. 11. TERMINATION DATE.**

4 Section 20 of the Export Administration Act of 1979
5 (50 U.S.C. App. 2419) is amended to read as follows:

6 “TERMINATION DATE

7 “SEC. 20. The authority granted by this Act termi-
8 nates at the end of the 2-year period beginning on the
9 date of the enactment of the Export Administration Re-
10 newal Act of 2005, except that the authority granted by
11 section 12 of the Act shall not terminate.”.

12 **SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.**

13 (a) WIRETAPPING.—Section 2516(1) of title 18,
14 United States Code, is amended by adding at the end the
15 following:

16 “(q) any violation of, or conspiracy to violate,
17 the Export Administration Act of 1979.”.

18 (b) PAY OF UNDER SECRETARY.—Section 5314 of
19 title 5, United States Code, is amended by striking
20 “Under Secretary of Commerce for Export Administra-
21 tion” and inserting “Under Secretary of Commerce for In-
22 dustry and Security”.

23 (c) AMENDMENTS TO TITLE 31, UNITED STATES
24 CODE.—

25 (1) Section 9703(a) of title 31, United States
26 Code (as added by Public Law 102–393), is amend-

1 ed by striking “or the United States Coast Guard”
2 and inserting “, the United States Coast Guard, or
3 the Bureau of Industry and Security of the Depart-
4 ment of Commerce”.

5 (2) Section 9703(a)(2)(B)(i) of title 31, United
6 States Code (as added by Public Law 102–393), is
7 amended—

8 (A) by striking “or” at the end of sub-
9 clause (I);

10 (B) by inserting “or” at the end of sub-
11 clause (II); and

12 (C) by adding at the end the following new
13 subclause:

14 “(III) a violation of the Export
15 Administration Act of 1979, or any
16 regulation, license, or order issued
17 under that Act;”.

18 (3) Section 9703(p)(1) of title 31, United
19 States Code (as added by Public Law 102–393) is
20 amended by adding at the end the following: “In ad-
21 dition, for purposes of this section, the Bureau of
22 Industry and Security of the Department of Com-
23 merce shall be considered to be a Department of the
24 Treasury law enforcement organization.”.

1 (d) CIVIL FORFEITURE PROCEEDINGS.—Section
2 983(i)(2) of title 18, United States Code, is amended—

3 (1) by striking “or” at the end of subparagraph
4 (D);

5 (2) by striking the period at the end of sub-
6 paragraph (E) and inserting “; or”; and

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(F) the Export Administration Act of
10 1979.”.

11 (e) CLERICAL AMENDMENT.—Paragraph (3) of sec-
12 tion 11A(k) of the Export Administration Act of 1979 (50
13 U.S.C. App. 2410A(k)(3)) is amended—

14 (1) by redesignating that paragraph as para-
15 graph (2); and

16 (2) by striking “paragraph (2)” and inserting
17 “paragraph (1)”.

○