

FACT SHEET

THE EXPORT ENFORCEMENT ACT OF 2007

Background

The Export Enforcement Act of 2007 is a bill before Congress that would strengthen the enforcement authority of dual-use export controls through renewal of the Export Administration Act of 1979 (EAA) and enhancement of its law enforcement provisions. The EAA has been in lapse since 2001.

The Administration has been working with Congress since 2001 to reauthorize the Export Administration Act (EAA) in order to strengthen a vital national security apparatus. With the EAA in lapse, the dual use export control system has been continued by annual Executive Orders invoking the International Emergency Economic Powers Act (IEEPA). However, enforcement authorities and penalties proscribed under IEEPA are not as strong as those afforded in the EAA. Thus, export enforcement investigations done by the Commerce Department's Bureau of Industry and Security (BIS) are severely hampered and prosecutors are sometimes reluctant to bring criminal indictments for export control violations, given the complex web of authorities for current export control regulations. In addition, the ability of the United States to lead other countries to adopt comprehensive export control legislation, as called for by United Nations Security Council Resolution 1540, is undercut by the absence of a current EAA.

Independent authorities have also highlighted the need for an EAA. The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (the Robb-Silberman Commission) stated in its 2005 Commission Report that "BIS (Bureau of Industry and Security) needs stronger law enforcement powers, something it has lacked in recent years, mainly because some of BIS's law enforcement authorities lapsed when the Export Administration Act expired."

Key Provisions of the Enforcement Act

- Reauthorization of the EAA: The Export Enforcement Act would reauthorize the EAA for five years.
- Increased penalties: The Export Enforcement Act would substantially increase EAA penalties. Those penalties would also represent a substantial increase over penalties presently authorized by IEEPA. IEEPA penalties apply to violations of the Export Administration Regulations when the EAA is in lapse.

Existing EAA	IEEPA	Export Enforcement Act of 2007
Criminal Maximum <u>Corporate</u> : Greater of \$1 million or five times the value of exports involved <u>Individual</u> : \$250,000 and 10 years imprisonment	Criminal Maximum <u>Corporate</u> : \$50,000 (greater of twice the gross gain or loss, or \$500,000 under alternative criminal code fine provision) <u>Individual</u> : \$50,000 and 10 years imprisonment (greater of twice the gross gain or loss, or \$250,000 under alternative criminal code fine provision)	Criminal Maximum <u>Corporate</u> : Greater of \$5 million or ten times the value of the exports involved <u>Individual</u> : Greater of \$1 million and 10 years imprisonment
Civil Maximum \$11,000 per violation (\$120,000 for national security violations)	Civil Maximum ¹ \$50,000 per violation	Civil Maximum ² \$500,000 per violation

¹ IEEPA civil penalties were increased by a statutory amendment set forth in the USA PATRIOT Act Improvement and Reauthorization Act of 2005, enacted on March 9, 2006. However, for violations committed prior to this amendment, IEEPA civil penalties continue to be set at \$11,000 per violation.

- Permanent and expanded law enforcement authority: The Export Enforcement Act would provide BIS Special Agents expanded undercover authority as well as statutory overseas investigative authority. It would also make permanent BIS Special Agent law enforcement authority, thereby avoiding lapse of that authority when the EAA is not in effect.
- Permanent EAA Section 12(c) confidentiality protections: The Export Enforcement Act would make permanent provisions protecting confidential business and other information protected by the EAA, as well as clarify the scope of the information covered by Section 12(c).
- The Export Enforcement Act would authorize BIS to participate in the Department of the Treasury's Asset Forfeiture Fund.

Additional Provisions of the Export Enforcement Act

The Export Enforcement Act would make several additional targeted amendments by:

- Tolling the statute of limitations in administrative cases where a related criminal case is ongoing
- Expanding the list of criminal violations upon which a denial of export privileges may be based pursuant to Section 11(h) of the EAA
- Providing for the continued exemption from certain provisions of the Administrative Procedure Act, including provisions dealing with judicial review, during lapses of the EAA

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² Other existing administrative penalties (e.g., denial orders and exclusion from practice) would be retained.