



**THE SECRETARY OF COMMERCE**  
Washington, D.C. 20230

November 14, 2005

The Honorable Henry J. Hyde  
Chairman  
Committee on International Relations  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for taking my recent call to discuss renewal of the Export Administration Act (EAA). I very much appreciate your strong support and determination to move renewal legislation forward.

As I mentioned to you, the absence of permanent authorizing legislation poses significant risks to U.S. national security and foreign policy. For example, prosecutors sometimes find it difficult to bring criminal indictments for export control violations, given the complex web of authorities for current export control regulations. As a result, confidentiality protections for sensitive information are weakened and subject to legal challenge; and the United States has less ability to lead other countries to adopt comprehensive export control legislation, as called for by United Nations Security Council Resolution 1540.

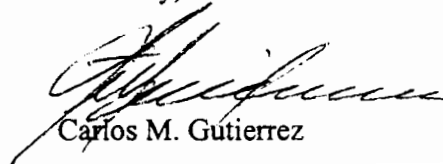
Some recent events underscore new and continuing problems that the Department must address in administering its dual-use export control system. On October 21, 2005, the U.S. District Court for the District of Columbia issued an opinion in United States v. Quinn, which calls into question the validity of certain provisions of the Export Administration Regulations (EAR). Specifically, the opinion dismissed a criminal count of conspiracy based on the EAR, stating that with the EAA in lapse, only those provisions of the EAR explicitly authorized by the International Emergency Economic Powers Act (IEEPA) or the EAA as it existed in 1977, the time when IEEPA was passed, are valid (neither IEEPA nor the EAA as it existed in 1977 include conspiracy as a violation). While the judge's opinion is new and the full scope and magnitude of the judge's opinion is open to interpretation, at a minimum, the practical effect of this decision is that it may be even more difficult for federal prosecutors to pursue and effectively prosecute export control cases.

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In addition, another judge from the U.S. District Court -- in his keynote address to a conference of prominent lawyers and industry officials on October 18, 2005 -- clearly expressed his concern about the legal basis of indictments based on the EAR while the EAA is in lapse. These comments were based on his work on a significant export control case. It is particularly noteworthy that both of these federal judges are from the District of Columbia federal court that has jurisdiction over any criminal prosecution of a dual-use export control violation. These examples reinforce and highlight a point on which you and I agree: the current situation must be rectified.

I hope we can move forward expeditiously with a bill that would renew the lapsed EAA, strengthen Commerce's law enforcement tools and increase penalties for violations, protect business confidential information, and avoid the need to rely on emergency authorities to administer our export control system. I hope to be your active partner in this effort and look forward to speaking with you again in the near future.

Sincerely,



Carlos M. Gutierrez