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INTERNATIONAL CONSUMER PROTECTION ACT OF 2004

NOVEMBER 16, 2004.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 3143]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3143) to enhance Federal Trade Commission enforcement against cross-border fraud and deception, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be referred to as the "International Consumer Protection Act of 2004".

SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.

Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following:

" 'Foreign law enforcement agency' means—

"(A) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

"(B) any multinational or multiagency organization to the extent that it is acting on behalf of an entity described in subparagraph (A).".

SEC. 3. AVAILABILITY OF REMEDIES.

Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end the following:

"(4) (A) For purposes of this subsection, the term 'unfair or deceptive acts or practices' shall include such acts or practices involving foreign commerce that—

"(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

"(ii) involve material conduct occurring within the United States.

"(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.".

SEC. 4. POWERS OF THE COMMISSION.

(a) PUBLICATION OF INFORMATION; REPORTS.—Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by inserting "(1)" after "such information" the first place it appears; and

(2) by striking "purposes." and inserting "purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b).".

(b) OTHER POWERS OF THE COMMISSION.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is further amended by inserting after subsection (i) and before the proviso the following:

"(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

"(1) IN GENERAL.—Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), the Commission may provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

"(2) TYPE OF ASSISTANCE.—In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

"(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this Act; and

"(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28, United States Code.

"(3) CRITERIA FOR DETERMINATION.—In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

"(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

"(B) whether compliance with the request would prejudice the public interest of the United States; and

"(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

"(4) INTERNATIONAL AGREEMENTS.—If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—

"(A) provide assistance using the powers set forth in this subsection;

"(B) disclose materials and information in accordance with subsection (f) and section 21(b); and

"(C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this Act.

"(5) ADDITIONAL AUTHORITY.—The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

"(6) LIMITATION.—The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal credit union described in section 18(f)(4) (15 U.S.C. 57a(f)(4)), or a common carrier subject to the Act to regulate commerce, except in accordance with the proviso following the last designated subsection of section 6 (15 U.S.C. 46).

"(7) ASSISTANCE TO CERTAIN COUNTRIES.—The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

"(k) REFERRAL OF EVIDENCE FOR CRIMINAL PROCEEDINGS.—

"(1) IN GENERAL.—Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Commission may transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

"(2) INTERNATIONAL INFORMATION.—The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

"(l) EXPENDITURES FOR COOPERATIVE ARRANGEMENTS.—The Commission may expend appropriated funds for—

"(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

"(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

"(A) such incidental expenses as meals taken in the course of such attendance;

"(B) any travel and transportation to or from such meetings; and

"(C) any other related lodging or subsistence.".

(c) AUTHORIZATION OF APPROPRIATIONS.—The Federal Trade Commission is authorized to expend appropriated funds not to exceed $100,000 per fiscal year for purposes of section 6(l) of the Federal Trade Commission Act (15 U.S.C. 46(l)) (as added by subsection (b) of this Act), including operating expenses and other costs of the

following bilateral and multilateral cooperative law enforcement agencies and organizations:

(1) The International Consumer Protection and Enforcement Network.

(2) The International Competition Network.

(3) The Mexico-U.S.-Canada Health Fraud Task Force.

(4) Project Emptor.

(5) The Toronto Strategic Partnership and other regional partnerships with a nexus in a Canadian province.

(d) CONFORMING AMENDMENT.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking "clauses (a) and (b)" in the proviso following subsection (l) (as added by subsection (b) of this section) and inserting "subsections (a), (b), and (j)".

SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.

Section 16 of the Federal Trade Commission Act (15 U.S.C. 56) is amended by adding at the end the following:

"(c) FOREIGN LITIGATION.—

"(1) COMMISSION ATTORNEYS.—With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

"(2) REIMBURSEMENT FOR FOREIGN COUNSEL.—The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts, and for expenses related to litigation in foreign courts in which the Commission has an interest.

"(3) LIMITATION ON USE OF FUNDS.—Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

"(4) OTHER AUTHORITY.—The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.".

SEC. 6. SHARING INFORMATION WITH FOREIGN LAW ENFORCEMENT AGENCIES.

(a) MATERIAL OBTAINED PURSUANT TO COMPULSORY PROCESS.—Section 21(b)(6) of the Federal Trade Commission Act (15 U.S.C. 57b–2(b)(6)) is amended by adding at the end the following: "The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—

"(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

"(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

"(i) foreign laws prohibiting fraudulent or deceptive commercial practices or other practices substantially similar to practices prohibited by any law administered by the Commission;

"(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

"(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

"(C) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), or a Federal credit union described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(4)); and

"(D) the foreign law enforcement agency is not from a country that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided sup-

port for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)) to any officer or employee of a foreign law enforcement agency.".

(b) INFORMATION SUPPLIED BY AND ABOUT FOREIGN SOURCES.—Section 21(f) of the Federal Trade Commission Act (15 U.S.C. 57b–2(f)) is amended to read as follows—

"(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

"(1) IN GENERAL.—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5, United States Code, or any other provision of law, except as provided in paragraph (2)(B) of this section.

"(2) MATERIAL OBTAINED FROM A FOREIGN SOURCE.—

"(A) Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—

"(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

"(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

"(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

"(B) Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.".

SEC. 7. CONFIDENTIALITY, DELAYED NOTICE OF PROCESS.

(a) IN GENERAL.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by inserting after section 21 the following:

"SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF COMPULSORY PROCESS FOR CERTAIN THIRD PARTIES.

"(a) APPLICATION WITH OTHER LAWS.—The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, shall apply with respect to the Commission, except as otherwise provided in this section.

"(b) PROCEDURES FOR DELAY OF NOTIFICATION OR PROHIBITION OF DISCLOSURE.—The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

"(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18, United States Code, (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result, as defined in subsection (g); and

"(2) if notification would otherwise be required under chapter 121 of title 18, United States Code, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result, as defined in subsection (g).

"(c) EX PARTE APPLICATION BY COMMISSION.—

"(1) IN GENERAL.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result, as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

"(2) APPLICATION.—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

"(3) LIMITATION.—No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

"(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

"(1) the underlying conduct reported;

"(2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404), where applicable; or

"(3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

"(e) VENUE AND PROCEDURE.—

"(1) IN GENERAL.—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, United States Code, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

"(2) IN CAMERA PROCEEDINGS.—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

"(f) SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.—This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211).

"(g) ADVERSE RESULT DEFINED.—For purposes of this section the term 'adverse result' means—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3) the destruction of, or tampering with, evidence;

"(4) the intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

"(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

"(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

"(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.".

(b) CONFORMING AMENDMENT.—Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (C) by striking "or" after the semicolon;

(2) in subparagraph (D) by inserting "or" after the semicolon; and

(3) by inserting after subparagraph (D) the following:

"(E) under section 21A of this Act;".

SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is further amended by adding after section 21A (as added by section 7 of this Act) the following:

"SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

"(a) IN GENERAL.—

"(1) NO LIABILITY FOR PROVIDING CERTAIN MATERIAL.—An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

"(A) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

"(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to provide material.

"(2) LIMITATIONS.—Nothing in this subsection shall be construed to exempt any such entity from liability—

"(A) for the underlying conduct reported; or

"(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

"(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, United States Code, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

"(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

"(A) related to possibly fraudulent or deceptive commercial practices;

"(B) related to persons involved in such practices; or

"(C) otherwise subject to recovery by the Commission; or

"(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

"(c) CONSUMER COMPLAINTS.—Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.

"(d) APPLICATION.—This section applies to the following entities, whether foreign or domestic:

"(1) A financial institution as defined in section 5312 of title 31, United States Code.

"(2) To the extent not included in paragraph (1) a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

"(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

"(4) An Internet service provider or provider of telephone services.".

SEC. 9. STAFF EXCHANGES.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by adding after section 25 the following new section:

"SEC. 25A. STAFF EXCHANGES.

"(a) IN GENERAL.—The Commission may—

"(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 2 of this Act, or section 3101 or section 3109 of title 5, United States Code; and

"(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

"(b) RECIPROCITY AND REIMBURSEMENT.—The staff arrangements described in subsections (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

"(c) STANDARDS OF CONDUCT.—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.".

SEC. 10. INFORMATION SHARING WITH FINANCIAL REGULATORS.

Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended by inserting "the Federal Trade Commission," after "the Securities and Exchange Commission,".

SEC. 11. PRESERVATION OF EXISTING AUTHORITY.

The authority provided by this Act, and by the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as such Acts are amended by this Act, is in addition to, and not in lieu of, any other authority vested in the Federal Trade Commission or any other officer of the United States.

SEC. 12. REPORT.

Not later than 3 years after the date of enactment of this Act, the Federal Trade Commission shall transmit to Congress a report describing its use of and experience with the authority granted by this Act, along with any recommendations for additional legislation. The report shall include—

(1) the number of cross-border complaints received by the Commission;

(2) identification of the foreign agencies to which the Commission has provided nonpublic investigative information under this Act;

(3) the number of times the Commission has used compulsory process on behalf of foreign law enforcement agencies pursuant to section 6 of the Federal Trade Commission Act (15 U.S.C. 46), as amended by section 4 of this Act;

(4) a list of international agreements and memoranda of understanding executed by the Commission that relate to this Act;

(5) the number of times the Commission has sought delay of notice pursuant to section 21A of the Federal Trade Commission Act, as added by section 7 of this Act, and the number of times a court has granted a delay;

(6) a description of the types of information private entities have provided voluntarily pursuant to section 21B of the Federal Trade Commission Act, as added by section 8 of this Act;

(7) a description of the results of cooperation with foreign law enforcement agencies under section 21 of the Federal Trade Commission Act (15 U.S.C. 57–2) as amended by section 6 of this Act;

(8) an analysis of whether the lack of an exemption from the disclosure requirements of section 552 of title 5, United States Code, with regard to information or material voluntarily provided relevant to possible unfair or deceptive acts or practices, has hindered the Commission in investigating or engaging in enforcement proceedings against such practices; and

(9) a description of Commission litigation brought in foreign courts.

PURPOSE AND SUMMARY

H.R. 3143, the "International Consumer Protection Act of 2003" or ("ICPA") empowers the Federal Trade Commission ("FTC") to combat transnational fraudulent and deceptive commercial prac-

tices by granting it new enforcement and information sharing powers and allowing it to enter into agreements with its counterpart foreign law enforcement and consumer protection authorities. The ICPA will combat the growing problem of cross-border fraud and deception perpetrated from foreign jurisdictions or by foreign individuals that adversely affect U.S. consumers and businesses. The legislation also allows cooperation by the FTC with its foreign counterparts in cases involving U.S. entities or persons defrauding foreign consumers.

BACKGROUND AND NEED FOR THE LEGISLATION

The advent of the Internet, improved telecommunications, and the globalization of the economy have created incredible opportunities by shrinking distances and blurring traditional barriers. However, some of the international opportunities being created today are not for legislative entrepreneurs and consumers, but for more criminal's who seek to deceive and defraud. What might be called "cross-border fraud" is a burgeoning problem involving those who establish operations in one country, and use communications that may cross multiple national borders to deceive or defraud consumers in other countries.

An increasing number of consumer complaints collected in the *Consumer Sentinel* database maintained by the FTC, and an increasing number of cases brought by it, involve foreign consumers, foreign businesses or individuals, or assets or evidence located outside the United States. In 2002, according to the FTC, 14% of the complaints in the *Consumer Sentinel* database (excluding identity theft complaints) were cross-border complaints, up from 11% in 2000. The 2002 complaints include over 24,000 complaints by U.S. consumers against foreign businesses.

Increasingly, the FTC reports that its fraud or deceptive practices related investigations and cases have some transnational component. For instance, a typical spam related case may involve a foreign sender or an e-mail message that crosses several national boundaries en route to its final destination. To better enforce existing fraud and consumer protection laws and meet the enforcement expectations of Congress, the FTC believes better international cooperation and additional tools are critical.

The Committee has been informed by the FTC that the additional authority provided to it in this legislation mirrors existing authority given to the Securities and Exchange Commission and some other regulatory agencies. The Committee understands that the legislation is not intended to be a bold departure giving unprecedented authorities to the FTC but rather is intended to harmonize the FTC's international enforcement and investigatory powers with those of other similar independent regulatory agencies.

The Committee's favorably reported this legislation with an amendment that represents the product of discussions between the FTC and DOJ. This action represents a judgment that the amendment has improved the bill in some respects: 1) incorporating a greater consultative role for the Attorney General when the FTC interacts and makes agreements with foreign law enforcement agencies or engages in foreign litigation; 2) preventing interference with Memoranda of Understanding ("MOU") with other countries on criminal matters and the referral of information related to

criminal violations with the Department of Justice; 3) including greater safeguards for the sharing of information on U.S. citizens and entities with foreign consumer protection authorities; 4) ensuring (because of a concern raised by the Committee) that state sponsors of terrorism do not receive cooperation or information; 5) placing greater limits on use of materials obtained by FTC's compulsory process powers; 6) placing greater limits on use of delayed notice by the FTC when information is sought from third parties that are not the target of an investigation; and 7) improving the Federal Government's liability exposure when the FTC employs volunteer services by mirroring language of the Volunteer Protection Act of 1997 [1] rather than the Federal Tort Claims Act.

As the House Committee on Energy and Commerce noted in its report on H.R. 3143, this legislation: "will likely improve the ability of the Commission and its foreign counterparts to share information about cross-border fraud and deception, to conduct joint and parallel investigations [to], render assistance to each other" and it "is critical to achieve more timely and effective enforcement in cross-border cases." [2] The Committee on the Judiciary does not dispute these findings about the merits and necessity of the legislation, and it is concerned about the growing threat of trans-border fraud and deceptive practices.

However, the legislation has drawn some criticism from interest groups concerned about information sharing with foreign governments, the potential for FTC investigation of American citizens for activities that may be legal under U.S. law but which are violations of foreign law, the circumstances under which delayed notice may be used against the target of an FTC investigation, and exceptions to the Freedom of Information Act ("FOIA"). While the Committee believes that the amended version of the legislation reported by the Committee, (which embodies the text of H.R. 4996 as introduced) makes improvements in all of these areas, concerns remain about the scope of the powers sought, the FTC's need for them, and the existence of adequate due process and privacy safeguards.

If this legislation becomes law, the Committee expects to closely monitor the Commission's use of the resulting new powers. The Committee believes it will be joined in these oversight efforts by other committees of Congress and Executive branch agencies in supervising the Commission's employment of these new powers and monitoring the level of cooperation the Commission receives from foreign counterpart agencies. The foremost oversight concern should be any abuses of information shared about U.S. entities or persons with foreign consumer protection authorities. The reporting requirements contained in the legislation are serious, and the FTC should be on notice that these new authorities can easily be revoked if they are not used properly or if Congress does not receive adequate information concerning the FTC's employment of them.

HEARINGS

No hearings were held by the Committee on the Judiciary on H.R. 3143 or H.R. 4996.

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[1] Pub. L. No. 105–19; codified at 42 U.S.C. § 14503 *et. seq.* (2003).
[2] H.R. Rept. No. 108–635, Part 1, page 2 (2004)

COMMITTEE CONSIDERATION

On September 30, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 3143, with an amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee's consideration of H.R. 3143.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3143, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 14, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3143, the International Consumer Protection Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Melissa E. Zimmerman (for federal costs), who can be reached at 226–2860, Sarah Puro (for the impact on state and local governments), who can be reached at 225–3220, and Selena Caldera (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3143—International Consumer Protection Act of 2004.

H.R. 3143 would expand the authority of the Federal Trade Commission (FTC) to work with foreign law enforcement agencies to enforce laws prohibiting fraudulent and deceptive commercial practices. The bill would allow temporary staff exchanges between foreign government agencies and the FTC and would authorize the agency to accept payment in-kind or reimbursement for costs associated with such exchanges. It also would authorize the appropriation of up to $100,000 a year for the FTC to support activities of certain international law enforcement groups.

Assuming appropriation of the amounts specified in H.R. 3143, CBO estimates that implementing the bill would cost less than $500,000 over the 2004–2008 period. Enacting the bill would not affect direct spending or revenues.

H.R. 3143 would authorize the FTC to request that a judge order the recipient of a summons, subpoena, or other compulsory process to delay giving notice to anyone that they have been required to appear as a witness before, or to produce documents in, an FTC proceeding. The order could be issued, notwithstanding any State or local laws or regulations, if there is reason to believe that notification would cause certain adverse results. Further, the recipient would not be liable under any State or local laws or regulations for disclosing information or for failure to provide notice. The bill also would protect certain entities that voluntarily provide specified material to the FTC from liability under any State or local law or regulation that precludes disclosure of information or requires notification to the interested third party.

To the extent that State and local governments have laws that contradict these provisions, the legislation would preempt those laws and thereby impose mandates under the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of those mandates would be minimal and would not exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation).

H.R. 3143 would exempt from liability those entities providing certain information on third parties to the FTC. This exemption would limit the ability of a third party to sue and thus impose a private-sector mandate under UMRA. CBO estimates that the cost to the private sector would be minimal and would fall below the annual threshold for private-sector mandates established in UMRA ($120 million in 2004, adjusted annually for inflation).

Section 21B of the Federal Trade Commission Act, as amended by H.R. 3143, would protect from liability entities voluntarily providing information to the FTC about possible unfair or deceptive acts or practices of third parties. By exempting those entities from liability, H.R. 3143 would limit the ability of third parties to sue for disclosure or failure to provide notice of disclosure; such a limit constitutes a private-sector mandate under UMRA. The direct cost of the mandate would be the amount awarded in settlements and judgments (net of costs) to third parties under current law that would be precluded under H.R. 3143. Due to the exposure to liability under current law, entities do not voluntarily provide information on third parties to the FTC. CBO estimates the costs to the private sector would be minimal, since few, if any, third-party lawsuits are filed.

On July 9, 2003, CBO transmitted a cost estimate for S. 1234, the Federal Trade Commission Reauthorization Act of 2003, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 19, 2003. On October 8, 2003, CBO transmitted a cost estimate for H.R. 3143, the International Consumer Protection Act of 2003, as ordered reported by the House Committee on Energy and Commerce on October 1, 2003. H.R. 3143, as ordered reported by the House Committee on the Judiciary, is nearly identical to the version of H.R. 3143 that was ordered reported by the House Committee on Energy and Commerce. The bill contains similar provisions to those in title II of S. 1234, although S. 1234 would authorize funding for all operations of the FTC, and this bill would authorize funding only for support to certain international law-enforcement groups. All three bills would preempt State and local law in the same way and would impose the same private-sector mandate.

The CBO staff contacts for this estimate are Melissa E. Zimmerman (for federal costs), who can be reached at 226–2860, Sara Puro (for the impact on State and local governments), who can be reached at 225–3220, and Selena Caldera (for the private-sector impact), who can be reached at 226–2940. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3143 is intended to protect consumers from cross border fraud and deceptive commercial practices by improving the ability of the Federal Trade Commission to cooperate with foreign counterpart agencies and pursue perpetrators and the profits of their conduct that are located in foreign jurisdictions.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. Section 1 establishes the short title of the Act as the "International Consumer Protection Act of 2003."

Section 2. Foreign Law Enforcement Agency Defined. Section 2 amends § 4 of the Federal Trade Commission Act by adding a definition of "foreign law enforcement agency." It is defined as: (1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; or, (2) any multinational multi-agency organization to the extent that it is acting on behalf of an entity described in subparagraph (A). This definition is integral to the new powers related to court proceedings given to the FTC throughout the bill.

Section 3. Availability of Remedies. Section 3 amends § 5(a) of the Federal Trade Commission Act extending the remedies available under that section to "unfair or deceptive acts or practices" involving foreign commerce. that: (1) cause or are likely to cause reasonably foreseeable injury within the United States; or (2) involve material conduct occurring within the United States. Some of these remedies are administrative and some involve court proceedings. The language extends both types of these remedies to an entirely new area. See generally 15 U.S.C. § 45.

Section 4. Powers of the Commission. Section 4 adds new language to § 6 of the FTCA (15 U.S.C. § 46). First, § 4(a) of H.R. 3143 amends § 6 of the FTCA to allow the FTC to reveal confidential business information that it has gathered in its investigations to foreign law enforcement agencies. This information may include matters relevant to criminal investigations that are being conducted by the Department of Justice. Second, § 4(b) creates new subsections (j), (k), and (l) of § 6 of the FTCA. New subsection (j) gives the FTC broad new powers to share law enforcement information with foreign law enforcement agencies, to conduct investigations on their behalf, and to enter into international agreements with them. New subsection (k) empowers the FTC to receive information relating to criminal matters from foreign law enforcement authorities and to refer it to the Department of Justice. New subsection (l) authorizes the FTC to spend appropriated funds for such purposes. Third, § 4(c) authorizes the expenditure of $100,000 per fiscal year for the purposes of the new subsection (l).

Section 5. Representation in Foreign Litigation. Section 5 amends § 16 of the Federal Trade Commission Act by adding a new § 16(c) to the FTCA (15 U.S.C. § 56) providing that the FTC can designate FTC attorneys to assist the Attorney General in the conduct of foreign litigation relating to the FTC (pursuant to a memorandum of understanding to be negotiated between the Commission and the Attorney General) and to spend appropriated funds to hire foreign attorneys to represent it in foreign courts. The subsection also contains a disclaimer that the subsection does not authorize the payment of claims from any source other than the judgment fund. This language has implications for the power of the Attorney General to direct litigation on behalf of the United States. See 28 U.S.C. § 516.

Section 6. Sharing Information with Foreign Law Enforcement Agencies. Section 6 adds new language to § 21(b)(6) of the FTCA (15 U.S.C. § 57b–2(b)(6)) that would allow the FTC to turn over information that it has obtained by compulsory process enforced by U.S. Federal courts to foreign law enforcement agencies investigating civil and criminal law violations subject to certain conditions. This section provides that the Commission may make material obtained pursuant to compulsory process available to any foreign law enforcement agency upon appropriate certification that such material will be maintained in confidence and will be used only for official law enforcement purposes. The materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of: (1) foreign laws prohibiting fraudulent or deceptive commercial practices or other practices, substantially similar to practices prohibited by any law administered by the Commission; (2) a law administered by the Commission, if disclosure of the material would further a Commission investigation

or enforcement proceeding; or (3) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined or covered by a criminal mutual legal assistance treaty in force between the United States and the foreign law enforcement authority's state. However, the FTC shall not make available such material to a foreign law enforcement agency where the activity the person is engaged in is protected under the Constitution of the United States.

Section 6 also exempts from the Freedom of Information Act, except in limited circumstances, all information that the FTC receives in any investigation from a foreign law enforcement or consumer protection agency as well as consumer complaint information received from non-governmental foreign sources when the agency or foreign source providing the material requests confidentiality as a condition of providing the information. However, this subsection does not authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court in an action commenced by the Commission or the United States.

Section 7. Confidentiality, Delayed Notice of Process. Section 7 creates a new § 21A of the FTCA. This section gives the FTC power to use the provisions of the Electronic Communications Privacy Act, including the delayed notice provisions. See 18 U.S.C. § 2701 et seq. The new section also establishes court procedures for the use of these powers. In general, the procedures for delay or prohibition of notice under the Electronic Communications Privacy Act (18 U.S.C. § 2701 et seq.) are also made available to the Commission. In the case of ECPA, the notification is delayed pursuant to § 2705(a)(1)(B) of Title 18, upon a finding by the Commission that there is reason to believe that notification may cause an "adverse result." If the procedures for delay or prohibition of notice under the Right to Financial Privacy Act and the Electronic Communications Privacy Act do not apply, under § 21(A)(c) the Commission may apply ex parte to a presiding judge or magistrate judge for an order commanding the recipient of compulsory process issued by the Commission not to notify any other person of the existence of the process, notwithstanding any other law. The presiding judge or magistrate judge may, in turn, enter such an order granting the requested delay for a period not to exceed 60 days, if there is reason to believe that notification may cause an adverse result. The presiding judge or magistrate judge may grant extensions of this delay of notice of up to 30 days each in accordance with this subsection, provided that in no event shall the notice be delayed for more than a total of 9 months. The recipient of compulsory process issued by the Commission under this § 21(A)(d) shall not be liable under any law or under any contract or other legally enforceable agreement, for failure to provide notice that such process has been issued or that the recipient has provided information in response to such process. In doing so, the recipient is not provided with any exemption from liability for: (1) the underlying conduct reported; (2) noncompliance with the record retention requirements under § 3404 of title 12; or (3) noncompliance with any requirement of a Federal Government agency to disclose information to that agency. For purposes of this section, the term "adverse result" is defined in detail.20

Section 8. Protection for Voluntary Provision of Information. Section 8 creates a new § 21B of the FTCA. This section gives immunity from suit to various persons or entities who voluntarily disclose information to the FTC that may help it in an investigation if the entity reasonably believes that such disclosures are relevant to possible unfair or deceptive practices, or assets subject to recovery by the Commission, including assets located in overseas. The section does not provide any exemption from liability for the underlying conduct.

Section 9. Staff Exchanges. Section 9 creates a new § 25A of the FTCA. This section gives the FTC authority to exchange employees with foreign law enforcement authorities and it makes those foreign law enforcement

Section 10. Information Sharing with Financial Regulators. Section 10 amends § 1112(e) of the Right to Financial Privacy Act (12 U.S.C. § 3412(e)) by adding "the Federal Trade Commission" after "the Securities and Exchange Commission." This includes the FTC in an exemption that allows Federal financial and market regulators, including the SEC, to share financial records, examination reports, or other appropriate information.

Section 11. Report. Section 11 requires the FTC to report to Congress not later than 3 years after the date of enactment on the use of the various new authorities granted by the Act.

AGENCY VIEWS

Office of the Chairman

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 29, 2004

The Honorable Jim Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

Dear Chairman Sensenbrenner and Congressman Conyers:

The Commission appreciates your consideration of H.R. 3143, "The International Consumer Protection Act," in this week's mark-up session. This important legislation will assist the FTC in fighting the rapidly expanding problem of cross-border fraud against consumers.

The Internet and electronic commerce know no boundaries, and cross-border fraud is a growing problem for consumers and businesses in the United States and abroad. During 2003, approximately 14% of the complaints collected in the Consumer Sentinel complaint database involved a cross-border element, up from fewer than 1% in 1995. We have learned that the path from a fraudulent spammer to a consumer's inbox typically crosses at least one international boundary, if not several. As a result, the number of FTC cases involving offshore defendants, offshore evidence, or offshore assets also has increased significantly.

Those individuals and businesses who prey on consumers take advantage of the special problems faced by law enforcers in the United States in acting against foreign companies, including difficulties in sharing information with and receiving information from foreign law enforcement agencies, exerting our jurisdiction, and enforcing our judgments abroad. Thus, law enforcers worldwide, now more than ever, need to cooperate and expand their consumer protection efforts.

To better protect consumers in this environment, the FTC has proposed legislation to improve the agency's ability to cooperate and share information in cases and investigations relating to cross-border consumer protection. The FTC has worked closely with the Congress, other agencies, and private organizations to help develop an appropriate, carefully crafted legislative response that is embodied in this bill.

We are confident that, with Congress' approval of this legislation, the Commission will be in a better position to protect the American public. We thank you for your support.

By direction of the Commission.

Deborah P. Majoras
Chairman

cc: House Judiciary Committee

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL TRADE COMMISSION ACT

* * * * * * *

SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; also sections 73 to 76, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

"Banks" means the types of banks and other financial institutions referred to in section 18(f)(2).

"Foreign law enforcement agency" means—

(A) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement

or investigative authority in civil, criminal, or administrative matters; and

(B) any multinational or multiagency organization to the extent that it is acting on behalf of an entity described in subparagraph (A).

SEC. 5. (a)(1) * * *

* * * * * * *

(4)(A) For purposes of this subsection, the term "unfair or deceptive acts or practices" shall include such acts or practices involving foreign commerce that—

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

* * * * * * *

SEC. 6. That the commission shall also have power—

(a) * * *

* * * * * * *

(f) To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: *Provided,* That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information *(1)* to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement [purposes.] *purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b).*

* * * * * * *

(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

(1) IN GENERAL.—Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement

Assistance Act of 1994 (15 U.S.C. 6211(5))), the Commission may provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

(2) TYPE OF ASSISTANCE.—In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this Act; and

(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28, United States Code.

(3) CRITERIA FOR DETERMINATION.—In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

(B) whether compliance with the request would prejudice the public interest of the United States; and

(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

(4) INTERNATIONAL AGREEMENTS.—If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—

(A) provide assistance using the powers set forth in this subsection;

(B) disclose materials and information in accordance with subsection (f) and section 21(b); and

(C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this Act.

(5) ADDITIONAL AUTHORITY.—The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

(6) LIMITATION.—The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal credit union described in section 18(f)(4) (15 U.S.C. 57a(f)(4)), or a common carrier subject to the Act to regulate commerce, except in accordance with the proviso following the last designated subsection of section 6 (15 U.S.C. 46).

(7) ASSISTANCE TO CERTAIN COUNTRIES.—The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

(k) REFERRAL OF EVIDENCE FOR CRIMINAL PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Commission may transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

(2) INTERNATIONAL INFORMATION.—The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

(l) EXPENDITURES FOR COOPERATIVE ARRANGEMENTS.—The Commission may expend appropriated funds for—

(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

(A) such incidental expenses as meals taken in the course of such attendance;

(B) any travel and transportation to or from such meetings; and

(C) any other related lodging or subsistence.

Provided, That the exception of "banks, savings and loan institutions described in section 18(f)(3), Federal credit unions described in section 18(f)(4), and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in ⟦clauses (a) and (b)⟧ *subsections (a), (b), and (j)* of this section, shall not be construed to limit the Commission's authority to gather and compile information to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged, or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.

The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.

No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on the date of the enactment of the Federal Trade Commission Improvements Act of 1980, or as changed by law.

Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.

* * * * * * *

SEC. 16. (a)(1) * * *

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) * * *

* * * * * * *

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 5 of this Act; [or]

(D) under the second paragraph of section 9 of this Act (relating to enforcement of a subpena) and under the fourth paragraph of such section (relating to compliance with section 6 of this Act); *or*

(E) under section 21A of this Act;

* * * * * * *

(c) FOREIGN LITIGATION.—

(1) COMMISSION ATTORNEYS.—With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

(2) REIMBURSEMENT FOR FOREIGN COUNSEL.—The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts, and for expenses related to litigation in foreign courts in which the Commission has an interest.

(3) LIMITATION ON USE OF FUNDS.—Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

(4) OTHER AUTHORITY.—The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.

* * * * * * *

SEC. 21. (a) * * *

(b)(1) * * *

* * * * * * *

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will

be used only for official law enforcement purposes. *The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—*

(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

(C) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), or a Federal credit union described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(4)); and

(D) the foreign law enforcement agency is not from a country that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)) to any officer or employee of a foreign law enforcement agency.

* * * * * * *

[(f) Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any per-

son may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5, United States Code.]

(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

(1) IN GENERAL.—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5, United States Code, or any other provision of law, except as provided in paragraph (2)(B) of this section.

(2) MATERIAL OBTAINED FROM A FOREIGN SOURCE.—

(A) Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(B) Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF COMPULSORY PROCESS FOR CERTAIN THIRD PARTIES.

(a) APPLICATION WITH OTHER LAWS.—The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, shall apply with respect to the Commission, except as otherwise provided in this section.

(b) PROCEDURES FOR DELAY OF NOTIFICATION OR PROHIBITION OF DISCLOSURE.—The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in ac-

cordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18, United States Code, (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result, as defined in subsection (g); and

(2) if notification would otherwise be required under chapter 121 of title 18, United States Code, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result, as defined in subsection (g).

(c) EX PARTE APPLICATION BY COMMISSION.—

(1) IN GENERAL.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result, as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

(2) APPLICATION.—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

(3) LIMITATION.—No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in

response to such process. The preceding sentence does not exempt any recipient from liability for—

(1) the underlying conduct reported;

(2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404), where applicable; or

(3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

(e) VENUE AND PROCEDURE.—

(1) IN GENERAL.—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, United States Code, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

(2) IN CAMERA PROCEEDINGS.—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(f) SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.—This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211).

(g) ADVERSE RESULT DEFINED.—For purposes of this section the term "adverse result" means—

(1) endangering the life or physical safety of an individual;

(2) flight from prosecution;

(3) the destruction of, or tampering with, evidence;

(4) the intimidation of potential witnesses; or

(5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.

SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

(a) IN GENERAL.—

(1) NO LIABILITY FOR PROVIDING CERTAIN MATERIAL.—An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

(A) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to provide material.

(2) LIMITATIONS.—Nothing in this subsection shall be construed to exempt any such entity from liability—

(A) for the underlying conduct reported; or

(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, United States Code, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

(A) related to possibly fraudulent or deceptive commercial practices;

(B) related to persons involved in such practices; or

(C) otherwise subject to recovery by the Commission; or

(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

(c) CONSUMER COMPLAINTS.—Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.

(d) APPLICATION.—This section applies to the following entities, whether foreign or domestic:

(1) A financial institution as defined in section 5312 of title 31, United States Code.

(2) To the extent not included in paragraph (1) a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system pro-

vider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

(4) An Internet service provider or provider of telephone services.

* * * * * * *

SEC. 25A. STAFF EXCHANGES.

(a) IN GENERAL.—The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 2 of this Act, or section 3101 or section 3109 of title 5, United States Code; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

(b) RECIPROCITY AND REIMBURSEMENT.—The staff arrangements described in subsections (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

(c) STANDARDS OF CONDUCT.—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.

* * * * * * *

SECTION 1112 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

USE OF INFORMATION

SEC. 1112. (a) * * *

* * * * * * *

(e) Notwithstanding section 1101(6) or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or a subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securities and Exchange Commission, *the Federal Trade Commission,* and the Commodity Futures Trading Commission is permitted.

* * * * * * *

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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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October 7, 2003

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
H-232 Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

I am writing to request a sequential referral of H.R. 3143, the "International Consumer Protection Act of 2003."

H.R 3143 contains several substantial provisions that fall within the Committee on the Judiciary's Rule X subject matter jurisdiction. Among those provisions are:

– Section 2 adds a new definition of "foreign law enforcement agency" to § 4 of the Federal Trade Commission Act ("FTCA"). This definition is integral to the new powers related to court proceedings given the Federal Trade Commission ("FTC") throughout the bill -- many of which the Committee on the Judiciary has jurisdiction over. Thus, these matters must also fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1) ("The judiciary and judicial proceedings, civil and criminal").

– Section 3 adds new language to § 5 of the FTCA (15 U.S.C. § 45) extending the remedies available under that section to unfair or deceptive acts or practices involving foreign commerce. Some of these remedies are administrative and some involve court proceedings. The language extends both types of these remedies to an entirely new area. *See generally* 15 U.S.C. § 45. These matters fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1) & (2) ("The judiciary and judicial proceedings, civil and criminal" and "Administrative practice and procedure").

– Section 4 adds new language to § 6 of the FTCA (15 U.S.C. § 46). First, § 4(a) of H.R. 3143 amends § 6 of the FTCA to allow the FTC to reveal confidential business information that is has gathered in its investigations to foreign law enforcement agencies. This information may

include matters relevant to criminal investigations that are being conducted by the Department of Justice. Second, § 4(b) creates new subsections (j), (k), and (l) of § 6 of the FTCA. New subsection (j) gives the FTC broad new powers to share law enforcement information with foreign law enforcement agencies, to conduct investigations on their behalf, and to enter into international agreements with them. New subsection (k) empowers the FTC to receive information relating to criminal matters from foreign law enforcement authorities and to refer it to the Department of Justice. New subsection (l) authorizes the FTC to spend appropriated funds for such purposes. Third, § 4(c) authorizes the expenditure of $100,000 per fiscal year for the purposes of the new subsection (l). These matters fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1) & (5) ("The judiciary and judicial proceedings, civil and criminal" and "Civil liberties").

Section 5 adds a new § 16(c) to the FTCA (15 U.S.C. § 56). This new subsection would allow the FTC to designate FTC attorneys to assist the Attorney General in the conduct of foreign litigation relating to the FTC and to spend appropriated funds to hire foreign attorneys to represent it in foreign courts. The subsection also contains a disclaimer that the subsection does not authorize the payment of claims from any source other than the judgment fund. This language has serious implications for the power of the Attorney General to direct litigation on behalf of the United States. *See* 28 U.S.C. § 516. These matters fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1). ("The judiciary and judicial proceedings, civil and criminal").

Section 6 adds new language to § 21(b)(6) of the FTCA (15 U.S.C. 57b-2(b)(6)) that would allow the FTC to turn over information that it has obtained by compulsory process enforced by U.S. federal courts to foreign law enforcement agencies investigating civil and criminal law violations subject to certain conditions. Section 6 also exempts all information that the FTC receives in any investigation from disclosure under the Freedom of Information Act. Finally, it protects from disclosure except in limited circumstances any information that the FTC has obtained from a foreign law enforcement agency. These matters fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1) & (5) ("The judiciary and judicial proceedings, civil and criminal" and "Civil liberties").

Section 7 creates a new § 21A of the FTCA. This section gives the FTC power to use the provisions of the Electronic Communications Privacy Act, including the delayed notice provisions. *See* 18 U.S.C. 2701 *et seq.* The new section also establishes court procedures for the use of these powers. These matters fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1) & (5) ("The judiciary and judicial proceedings, civil and criminal" & "Civil liberties").

The Honorable J. Dennis Hastert
October 7, 2003
Page 3

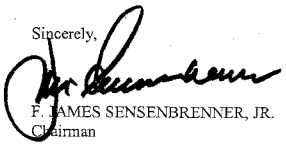
Section 8 creates a new § 21B of the FTCA. This section gives immunity from suit to various persons who disclose information to the FTC that may help it in an investigation. These matters fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1) & (5) ("The judiciary and judicial proceedings, civil and criminal" and "Civil liberties").

Section 8 creates a new § 25A of the FTCA. This section gives the FTC authority to exchange employees with foreign law enforcement authorities and it makes those foreign law enforcement authority employees subject to the provisions of 18 U.S.C. § 202 while serving with the FTC. These matters fall within the Committee on the Judiciary's jurisdiction under rule X(1)(k)(1). ("The judiciary and judicial proceedings, civil and criminal").

Section 11 requires the FTC to report to Congress not later than 3 years after the date of enactment on the use of the various new authorities granted by the Act. Because so many of these authorities fall within the Committee on the Judiciary's jurisdiction, the report falls within the Committee's jurisdiction as well.

Because of this Committee's strong jurisdictional interest in this legislation, I respectfully request that you sequentially refer this legislation to the Committee on the Judiciary. Thank you for your attention to this matter.

Sincerely,



F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable John Conyers, Jr.
The Honorable Billy Tauzin
The Honorable John Dingell
The Honorable Charles Johnson, Parliamentarian

MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, SEPTEMBER 30, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill, H.R. 3143, the "International Consumer Protection Act of 2003" for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point, and the Chair recognizes himself for 5 minutes to explain the bill. I urge my colleagues to join me in favorably reporting this bill with the amendment in the nature of a substitute that I will offer.

The legislation provides advanced powers to the Federal Trade Commission that will improve cooperation and information sharing with foreign counterparts, provide additional investigative and enforcement tools and ultimately better protect American consumers. The bill was ordered reported by the Energy and Commerce Committee last year and subsequently sequentially referred to us. There have been interagency negotiations on this legislation, and the product of these negotiations is in the amendment in the nature of a substitute that I will offer.

I ask unanimous consent that my complete statement be put in the record at this point and am happy to yield to one of the minority party Members should they wish to say anything. Gentleman from Virginia.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

I urge my colleagues to join me in favorably reporting the bill H.R. 3143 with an amendment in the nature of a substitute that I will offer. This legislation provides enhanced powers to the Federal Trade Commission that will improve cooperation and information sharing with foreign counterparts, provide additional investigative and enforcement tools, and ultimately better protect American consumers.

H.R. 3143 was the bill ordered reported by the Committee on Energy & Commerce last year and sequentially referred to the Committee on the Judiciary. However, months of interagency negotiations between the Department of Justice, the FTC, the State Department and OMB produced modifications that have been introduced as a new consensus bill, H.R. 4996.

H.R. 4996 is a notable improvement that addresses concerns raised about the original bill by the other executive branch agencies and by outside parties during Congressional hearings. I understand that H.R. 4996 is now the working text of legislation that could come to the House floor, and it matches companion legislation in the Senate. Furthermore, I understand that there are no plans to advance the older version, H.R. 3143 any further, but the Committee on Energy & Commerce will instead discharge H.R. 4996. Therefore, I will be offering an amendment in the nature of a substitute that replaces the text of H.R. 3143 with the text of H.R. 4996.

The advent of the Internet, improved telecommunications, and the globalization of the economy have created incredible opportunities by shrinking distances and blurring traditional boundaries and barriers. However, some of the international op-

portunities being created today are not for entrepreneurs and consumers, but for criminals who seek to deceive and defraud.

What might be called "Cross-border fraud" is a burgeoning problem involving those who establish operations in one country, and use communications that may cross multiple national borders to deceive or defraud consumers in other countries.

The FTC reports an increasing number of cases brought by the Commission involve foreign consumers, foreign businesses or individuals, or assets or evidence located outside the United States. In 2002, 14% of the complaints in the *Consumer Sentinel* database (excluding identity theft complaints) were cross-border complaints, up from 11% in 2000.

Increasingly, the FTC's fraud-related cases have some cross-border component. For instance a typical spam related case may involve a foreign sender or an email message that crosses several national boundaries en route to its destination. To better enforce existing fraud and consumer protection laws—like CAN-SPAM—and meet the enforcement expectations of Congress, the FTC believes better international cooperation and additional tools are critical.

The additional authority provided to the FTC in this legislation mirrors the existing authority given to the Securities and Exchange Commission.

Concerns have been raised throughout the process of crafting the International Consumer Protection Act about the scope of the powers sought, the FTC's need for them, and the existence of adequate due process and privacy safeguards.

I believe the version before us today is much improved and the FTC has addressed many of these concerns. Therefore, I support advancing the bill from Judiciary Committee at this time. However, Congress and the Executive branch should closely monitor the Commission's use of these new powers and the level of cooperation they receive from their foreign counterparts—and most importantly monitor for any abuses of information shared about U.S. entities or persons with foreign consumer protection authorities.

The reporting requirements of this legislation are serious, and the FTC is on notice that these new authorities can easily be revoked if they are not used properly or if Congress does not receive adequate information.

With that cautionary note, I urge my colleagues to favorably report the bill with the substitute amendment and help protect American consumers from cross-border fraud and deceptive practices.

Mr. SCOTT. Mr. Chairman, I am not familiar with this bill. It apparently went through the Energy and Commerce Committee, and there appear to be some—they appear to approve the bill, but I am just getting information that there is some opposition and I am not exactly clairvoyant about what the opposition is. So I just wanted to express that this apparently is not noncontroversial, and I yield back.

[Letter from the American Civil Liberties Union submitted by Mr. Scott.]

WASHINGTON LEGISLATIVE OFFICE
Laura W. Murphy
Director

915 15th Street, NW Washington, D.C. 20005 (202) 544-1681 Fax (202) 546-0738

October 1, 2004

Re: **HR 3143, The International Consumer Protection Act**

Dear Congressman:

We are writing to urge you to oppose placing HR 3143, the International Consumer Protection Act, on the suspension calendar, and to oppose the bill if a vote is taken. While, largely through the efforts of Representative Schakowsky, the bill has improved significantly from its introduction, there are still several areas that cause concern that could be addressed through amendments that would be prohibited if the bill is considered under suspension of the rules.

The purpose of the bill is to allow the Federal Trade Commission (FTC) to investigate and prosecute cross-border fraud. The bill, however, goes beyond that to allow the FTC to investigate acts that are not criminal in the United States upon the request of a foreign law enforcement agency.

1. **No "dual criminality" requirement.** "Dual criminality" relates to the fact that the acts being investigated should be crimes in both countries. The provision in the bill related to this issue has narrowed somewhat, thanks to Rep. Schakowsky, but it is still problematic. It now provides that the acts being investigated be "substantially similar" to acts the Commission would normally investigate. The determination of whether the acts are "substantially similar" is left to the discretion of the FTC.

An example of our concern comes from a real-world situation: France has a law that says one may not discuss or sell or buy Nazi memorabilia. Yahoo! France is a French subsidiary of Yahoo! that abides by all French laws, including that restriction. Yahoo! US, however, is a U.S. company, protected by the First Amendment, which ensures that such conduct is protected in the U.S. Yahoo! US has Nazi memorabilia for sale on its web site. Because it was on the web, it was "available" in France as well. A French group sued Yahoo! US, and won. Additionally, there is a criminal conviction for the President of Yahoo! US in France -- if he ever shows up there, he may be arrested and jailed. Under this bill, France could claim the law was a "consumer protection" provision, and the FTC may decide to investigate Yahoo! US for activity that is protected under the First Amendment.

Similarly, some countries prohibit "comparative advertising." If a US company engages in comparative advertising on its web site, it may run afoul of the laws in those countries prohibiting it, and be subject to investigation by the FTC. Once again, the U.S. Company has done nothing wrong under U.S. law, but would nonetheless be investigated by a U.S. agency. The FTC assures us that it would use its discretion to NOT investigate such things, but it nonetheless resists placing any protective language in the bill that says it may NOT investigate activities protected under the First Amendment.

2. **Delayed Notice provisions are too broad and too long.** The normal rule is that notice should be given upon execution of a warrant or subpoena. However, this provision allows notice to be delayed for up to 60 days, with extensions granted up to 9 months. We suggest limiting delays to seven days, with possible extensions upon application to a judge.

Delayed notice is possible if there "is reason to believe" an adverse result might happen. "Adverse result" is defined so broadly that it could swallow the rule. Courts have generally allowed delayed notice where evidence may be destroyed or witnesses harmed or intimidated. However, the bill contains a provision to allow delayed notice where

an investigation may be jeopardized or unduly delay a trial, which opens a huge loophole. An argument can always be made that the investigation may be jeopardized if notice is given. Thus, the normal rule requiring notice is essentially turned on its head.

The definition also includes two provisions designed to assist the FTC rather than prevent danger to witnesses or other serious harm. [impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices and the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission]. The provision thus goes further than courts would normally allow.

3. **The definition of "foreign law enforcement agency" is too broad**. For instance, the former KGB would probably qualify as a "foreign law enforcement" agency, although it generally did little to protect consumers. The only limitation on the exercise of the FTC's power to investigate in the U.S. is that the act be "substantially similar" to one the FTC would normally investigate, even though the acts need not necessarily be a crime in the U.S. Thus, if some foreign law enforcement agency wishes to cause trouble for a U.S. company, all they need to do is find some plausible "crime" in their country that relates to FTC jurisdiction, and have the FTC then investigate the company. That could well be for political or other purposes, despite the representations made in the request.

For example, suppose a U.S. company is encroaching on a foreign market. The foreign country could use the excuse that the U.S. company is engaging in comparative advertising on its web site to have its "law enforcement agency" instigate an investigation by the FTC against the U.S. company. This could disrupt the U.S. company, and assist the foreign country in maintaining its market share.

4. **The criteria for exercise of the FTC's discretion is too lax**. The bill attempts to set out the criteria by which the FTC should exercise its discretion in providing assistance to a foreign law enforcement agency. If one examines the "criteria for determination," there is little to restrain the exercise of the FTC's discretion. There is nothing prohibiting investigations based on First Amendment (or any other constitutionally protected) activity.

5. **"Referral of evidence for criminal prosecutions" could be abused**. This provision allows the FTC to refer for prosecution any evidence it finds while investigating. This could lead to fishing expeditions into lawful conduct through coordination with foreign governments. For example, assume the U.S. government decides to target Yahoo! US. It could then work with France to "request" an investigation based on activity that is not a crime in the U.S. Nonetheless, while "investigating" Yahoo! US, the FTC uncovers evidence of a crime, and refers it for prosecution. An investigation was thus conducted with no indication that Yahoo! US did anything wrong.

6. **"Exemption from Disclosure" provisions are too broad**. This provision protects from disclosure information obtained by the FTC from others where "a purpose" of providing the information is to determine whether any violation occurred. To the extent such a provision is necessary, it would be stronger to make it "the" purpose, rather than "a" purpose.

While the purpose of the bill is supposedly to protect consumers, its broad provisions that allow U.S. residents and businesses to be investigated by the FTC where no crime was actually committed in the United States is troubling, and provides a greater risk to consumers. For these reasons, we ask you to oppose letting the bill go forward on the suspension calendar, and have more debate about these provisions.

Sincerely,

Laura W. Murphy
Director

Marvin J. Johnson
Legislative Counsel

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this point.

Are there amendments? And I have an amendment in the nature of a substitute at the desk which the Clerk will report.

The CLERK. Amendment in the nature of a substitute to H.R. 3143 as reported, offered by Mr. Sensenbrenner of Wisconsin. Strike all after the enacting clause and insert the following.

[The amendment in the nature of a substitute follows:]

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AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 3143, AS REPORTED

OFFERED BY MR. SENSENBRENNER OF

WISCONSIN

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be referred to as the "International
3 Consumer Protection Act of 2004".

4 **SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.**

5 Section 4 of the Federal Trade Commission Act (15
6 U.S.C. 44) is amended by adding at the end the following:
7 " 'Foreign law enforcement agency' means—
8 "(A) any agency or judicial authority of a for-
9 eign government, including a foreign state, a polit-
10 ical subdivision of a foreign state, or a multinational
11 organization constituted by and comprised of foreign
12 states, that is vested with law enforcement or inves-
13 tigative authority in civil, criminal, or administrative
14 matters; and
15 "(B) any multinational or multiagency organi-
16 zation to the extent that it is acting on behalf of an
17 entity described in subparagraph (A).".

SEC. 3. AVAILABILITY OF REMEDIES.

Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end the following:

"(4) (A) For purposes of this subsection, the term 'unfair or deceptive acts or practices' shall include such acts or practices involving foreign commerce that—

"(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

"(ii) involve material conduct occurring within the United States.

"(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.".

SEC. 4. POWERS OF THE COMMISSION.

(a) PUBLICATION OF INFORMATION; REPORTS.—Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by inserting "(1)" after "such information" the first place it appears; and

(2) by striking "purposes." and inserting "purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign

1 law enforcement agencies is permitted under section
2 21(b).".
3 (b) OTHER POWERS OF THE COMMISSION.—Section
4 6 of the Federal Trade Commission Act (15 U.S.C. 46)
5 is further amended by inserting after subsection (i) and
6 before the proviso the following:
7 "(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW
8 ENFORCEMENT AGENCIES.—
9 "(1) IN GENERAL.—Upon a written request
10 from a foreign law enforcement agency to provide
11 assistance in accordance with this subsection, if the
12 requesting agency states that it is investigating, or
13 engaging in enforcement proceedings against, pos-
14 sible violations of laws prohibiting fraudulent or de-
15 ceptive commercial practices, or other practices sub-
16 stantially similar to practices prohibited by any pro-
17 vision of the laws administered by the Commission,
18 other than Federal antitrust laws (as defined in sec-
19 tion 12(5) of the International Antitrust Enforce-
20 ment Assistance Act of 1994 (15 U.S.C. 6211(5))),
21 the Commission may provide the assistance de-
22 scribed in paragraph (2) without requiring that the
23 conduct identified in the request constitute a viola-
24 tion of the laws of the United States.

1 "(2) TYPE OF ASSISTANCE.—In providing as-
2 sistance to a foreign law enforcement agency under
3 this subsection, the Commission may—
4 "(A) conduct such investigation as the
5 Commission deems necessary to collect informa-
6 tion and evidence pertinent to the request for
7 assistance, using all investigative powers au-
8 thorized by this Act; and
9 "(B) when the request is from an agency
10 acting to investigate or pursue the enforcement
11 of civil laws, or when the Attorney General re-
12 fers a request to the Commission from an agen-
13 cy acting to investigate or pursue the enforce-
14 ment of criminal laws, seek and accept appoint-
15 ment by a United States district court of Com-
16 mission attorneys to provide assistance to for-
17 eign and international tribunals and to litigants
18 before such tribunals on behalf of a foreign law
19 enforcement agency pursuant to section 1782 of
20 title 28, United States Code.
21 "(3) CRITERIA FOR DETERMINATION.—In de-
22 ciding whether to provide such assistance, the Com-
23 mission shall consider all relevant factors,
24 including—

1 "(A) whether the requesting agency has
2 agreed to provide or will provide reciprocal as-
3 sistance to the Commission;
4 "(B) whether compliance with the request
5 would prejudice the public interest of the
6 United States; and
7 "(C) whether the requesting agency's in-
8 vestigation or enforcement proceeding concerns
9 acts or practices that cause or are likely to
10 cause injury to a significant number of persons.
11 "(4) INTERNATIONAL AGREEMENTS.—If a for-
12 eign law enforcement agency has set forth a legal
13 basis for requiring execution of an international
14 agreement as a condition for reciprocal assistance,
15 or as a condition for provision of materials or infor-
16 mation to the Commission, the Commission, with
17 prior approval and ongoing oversight of the Sec-
18 retary of State, and with final approval of the agree-
19 ment by the Secretary of State, may negotiate and
20 conclude an international agreement, in the name of
21 either the United States or the Commission, for the
22 purpose of obtaining such assistance, materials, or
23 information. The Commission may undertake in
24 such an international agreement to—

1 "(A) provide assistance using the powers
2 set forth in this subsection;
3 "(B) disclose materials and information in
4 accordance with subsection (f) and section
5 21(b); and
6 "(C) engage in further cooperation, and
7 protect materials and information received from
8 disclosure, as authorized by this Act.
9 "(5) ADDITIONAL AUTHORITY.—The authority
10 provided by this subsection is in addition to, and not
11 in lieu of, any other authority vested in the Commis-
12 sion or any other officer of the United States.
13 "(6) LIMITATION.—The authority granted by
14 this subsection shall not authorize the Commission
15 to take any action or exercise any power with re-
16 spect to a bank, a savings and loan institution de-
17 scribed in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a
18 Federal credit union described in section 18(f)(4)
19 (15 U.S.C. 57a(f)(4)), or a common carrier subject
20 to the Act to regulate commerce, except in accord-
21 ance with the proviso following the last designated
22 subsection of section 6 (15 U.S.C. 46).
23 "(7) ASSISTANCE TO CERTAIN COUNTRIES.—
24 The Commission may not provide investigative as-
25 sistance under this subsection to a foreign law en-

1 forcement agency from a foreign state that the Sec-
2 retary of State has determined, in accordance with
3 section 6(j) of the Export Administration Act of
4 1979 (50 U.S.C. App. 2405(j)), has repeatedly pro-
5 vided support for acts of international terrorism, un-
6 less and until such determination is rescinded pursu-
7 ant to section 6(j)(4) of that Act (50 U.S.C. App.
8 2405(j)(4)).
9 "(k) REFERRAL OF EVIDENCE FOR CRIMINAL PRO-
10 CEEDINGS.—
11 "(1) IN GENERAL.—Whenever the Commission
12 obtains evidence that any person, partnership, or
13 corporation, either domestic or foreign, has engaged
14 in conduct that may constitute a violation of Federal
15 criminal law, the Commission may transmit such
16 evidence to the Attorney General, who may institute
17 criminal proceedings under appropriate statutes.
18 Nothing in this paragraph affects any other author-
19 ity of the Commission to disclose information.
20 "(2) INTERNATIONAL INFORMATION.—The
21 Commission shall endeavor to ensure, with respect to
22 memoranda of understanding and international
23 agreements it may conclude, that material it has ob-
24 tained from foreign law enforcement agencies acting
25 to investigate or pursue the enforcement of foreign

criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

"(l) EXPENDITURES FOR COOPERATIVE ARRANGEMENTS.—The Commission may expend appropriated funds for—

"(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

"(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

"(A) such incidental expenses as meals taken in the course of such attendance;

"(B) any travel and transportation to or from such meetings; and

"(C) any other related lodging or subsistence.".

(c) AUTHORIZATION OF APPROPRIATIONS.—The Federal Trade Commission is authorized to expend appropriated funds not to exceed $100,000 per fiscal year for purposes of section 6(l) of the Federal Trade Commission Act (15 U.S.C. 46(l)) (as added by subsection (b) of this Act), including operating expenses and other costs of the following bilateral and multilateral cooperative law enforcement agencies and organizations:

(1) The International Consumer Protection and Enforcement Network.

(2) The International Competition Network.

(3) The Mexico-U.S.-Canada Health Fraud Task Force.

(4) Project Emptor.

(5) The Toronto Strategic Partnership and other regional partnerships with a nexus in a Canadian province.

(d) CONFORMING AMENDMENT.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended

1 by striking "clauses (a) and (b)" in the proviso following
2 subsection (l) (as added by subsection (b) of this section)
3 and inserting "subsections (a), (b), and (j)".

4 **SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.**

5 Section 16 of the Federal Trade Commission Act (15
6 U.S.C. 56) is amended by adding at the end the following:
7 "(e) FOREIGN LITIGATION.—
8 "(1) COMMISSION ATTORNEYS.—With the con-
9 currence of the Attorney General, the Commission
10 may designate Commission attorneys to assist the
11 Attorney General in connection with litigation in for-
12 eign courts on particular matters in which the Com-
13 mission has an interest.
14 "(2) REIMBURSEMENT FOR FOREIGN COUN-
15 SEL.—The Commission is authorized to expend ap-
16 propriated funds, upon agreement with the Attorney
17 General, to reimburse the Attorney General for the
18 retention of foreign counsel for litigation in foreign
19 courts, and for expenses related to litigation in for-
20 eign courts in which the Commission has an interest.
21 "(3) LIMITATION ON USE OF FUNDS.—Nothing
22 in this subsection authorizes the payment of claims
23 or judgments from any source other than the perma-
24 nent and indefinite appropriation authorized by sec-
25 tion 1304 of title 31, United States Code.

1 "(4) OTHER AUTHORITY.—The authority pro-
2 vided by this subsection is in addition to any other
3 authority of the Commission or the Attorney Gen-
4 eral.".

5 **SEC. 6. SHARING INFORMATION WITH FOREIGN LAW EN-**
6 **FORCEMENT AGENCIES.**

7 (a) MATERIAL OBTAINED PURSUANT TO COMPUL-
8 SORY PROCESS.—Section 21(b)(6) of the Federal Trade
9 Commission Act (15 U.S.C. 57b–2(b)(6)) is amended by
10 adding at the end the following: "The custodian may make
11 such material available to any foreign law enforcement
12 agency upon the prior certification of an appropriate offi-
13 cial of any such foreign law enforcement agency, either
14 by a prior agreement or memorandum of understanding
15 with the Commission or by other written certification, that
16 such material will be maintained in confidence and will
17 be used only for official law enforcement purposes, if—
18 "(A) the foreign law enforcement agency has
19 set forth a bona fide legal basis for its authority to
20 maintain the material in confidence;
21 "(B) the materials are to be used for purposes
22 of investigating, or engaging in enforcement pro-
23 ceedings related to, possible violations of—
24 "(i) foreign laws prohibiting fraudulent or
25 deceptive commercial practices or other prac-

1 tices substantially similar to practices prohib-
2 ited by any law administered by the Commis-
3 sion;
4 "(ii) a law administered by the Commis-
5 sion, if disclosure of the material would further
6 a Commission investigation or enforcement pro-
7 ceeding; or
8 "(iii) with the approval of the Attorney
9 General, other foreign criminal laws, if such
10 foreign criminal laws are offenses defined in or
11 covered by a criminal mutual legal assistance
12 treaty in force between the government of the
13 United States and the foreign law enforcement
14 agency's government;
15 "(C) the appropriate Federal banking agency
16 (as defined in section 3(q) of the Federal Deposit
17 Insurance Act (12 U.S.C. 1813(q))) or, in the case
18 of a Federal credit union, the National Credit Union
19 Administration, has given its prior approval if the
20 materials to be provided under subparagraph (B)
21 are requested by the foreign law enforcement agency
22 for the purpose of investigating, or engaging in en-
23 forcement proceedings based on, possible violations
24 of law by a bank, a savings and loan institution de-
25 scribed in section 18(f)(3) of the Federal Trade

1 Commission Act (15 U.S.C. 57a(f)(3)), or a Federal
2 credit union described in section 18(f)(4) of the Fed-
3 eral Trade Commission Act (15 U.S.C. 57a(f)(4));
4 and
5 "(D) the foreign law enforcement agency is not
6 from a country that the Secretary of State has de-
7 termined, in accordance with section 6(j) of the Ex-
8 port Administration Act of 1979 (50 U.S.C. App.
9 2405(j)), has repeatedly provided support for acts of
10 international terrorism, unless and until such deter-
11 mination is rescinded pursuant to section 6(j)(4) of
12 that Act (50 U.S.C. App. 2405(j)(4)).
13 Nothing in the preceding sentence authorizes the disclo-
14 sure of material obtained in connection with the adminis-
15 tration of the Federal antitrust laws or foreign antitrust
16 laws (as defined in paragraphs (5) and (7), respectively,
17 of section 12 of the International Antitrust Enforcement
18 Assistance Act of 1994 (15 U.S.C. 6211)) to any officer
19 or employee of a foreign law enforcement agency.".
20 (b) INFORMATION SUPPLIED BY AND ABOUT FOR-
21 EIGN SOURCES.—Section 21(f) of the Federal Trade Com-
22 mission Act (15 U.S.C. 57b–2(f)) is amended to read as
23 follows—
24 "(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

1 "(1) IN GENERAL.—Any material which is re-
2 ceived by the Commission in any investigation, a
3 purpose of which is to determine whether any person
4 may have violated any provision of the laws adminis-
5 tered by the Commission, and which is provided pur-
6 suant to any compulsory process under this Act or
7 which is provided voluntarily in place of such com-
8 pulsory process shall not be required to be disclosed
9 under section 552 of title 5, United States Code, or
10 any other provision of law, except as provided in
11 paragraph (2)(B) of this section.
12 "(2) MATERIAL OBTAINED FROM A FOREIGN
13 SOURCE.—
14 "(A) Except as provided in subparagraph
15 (B) of this paragraph, the Commission shall not
16 be required to disclose under section 552 of
17 title 5, United States Code, or any other provi-
18 sion of law—
19 "(i) any material obtained from a for-
20 eign law enforcement agency or other for-
21 eign government agency, if the foreign law
22 enforcement agency or other foreign gov-
23 ernment agency has requested confidential
24 treatment, or has precluded such disclosure

1 under other use limitations, as a condition
2 of providing the material;
3 "(ii) any material reflecting a con-
4 sumer complaint obtained from any other
5 foreign source, if that foreign source sup-
6 plying the material has requested confiden-
7 tial treatment as a condition of providing
8 the material; or
9 "(iii) any material reflecting a con-
10 sumer complaint submitted to a Commis-
11 sion reporting mechanism sponsored in
12 part by foreign law enforcement agencies
13 or other foreign government agencies.
14 "(B) Nothing in this subsection shall au-
15 thorize the Commission to withhold information
16 from the Congress or prevent the Commission
17 from complying with an order of a court of the
18 United States in an action commenced by the
19 United States or the Commission.".
20 **SEC. 7. CONFIDENTIALITY, DELAYED NOTICE OF PROCESS.**
21 (a) IN GENERAL.—The Federal Trade Commission
22 Act (15 U.S.C. 41 et seq.) is amended by inserting after
23 section 21 the following:

1 **"SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF**
2 **COMPULSORY PROCESS FOR CERTAIN THIRD**
3 **PARTIES.**
4 "(a) APPLICATION WITH OTHER LAWS.—The Right
5 to Financial Privacy Act (12 U.S.C. 3401 et seq.) and
6 chapter 121 of title 18, United States Code, shall apply
7 with respect to the Commission, except as otherwise pro-
8 vided in this section.
9 "(b) PROCEDURES FOR DELAY OF NOTIFICATION OR
10 PROHIBITION OF DISCLOSURE.—The procedures for delay
11 of notification or prohibition of disclosure under the Right
12 to Financial Privacy Act (12 U.S.C. 3401 et seq.) and
13 chapter 121 of title 18, United States Code, including pro-
14 cedures for extensions of such delays or prohibitions, shall
15 be available to the Commission, provided that, notwith-
16 standing any provision therein—
17 "(1) a court may issue an order delaying notifi-
18 cation or prohibiting disclosure (including extending
19 such an order) in accordance with the procedures of
20 section 1109 of the Right to Financial Privacy Act
21 (12 U.S.C. 3409) (if notification would otherwise be
22 required under that Act), or section 2705 of title 18,
23 United States Code, (if notification would otherwise
24 be required under chapter 121 of that title), if the
25 presiding judge or magistrate judge finds that there
26 is reason to believe that such notification or disclo-

1 sure may cause an adverse result, as defined in sub-
2 section (g); and
3 "(2) if notification would otherwise be required
4 under chapter 121 of title 18, United States Code,
5 the Commission may delay notification (including ex-
6 tending such a delay) upon the execution of a writ-
7 ten certification in accordance with the procedures
8 of section 2705 of that title if the Commission finds
9 that there is reason to believe that notification may
10 cause an adverse result, as defined in subsection (g).
11 "(c) EX PARTE APPLICATION BY COMMISSION.—
12 "(1) IN GENERAL.—If neither notification nor
13 delayed notification by the Commission is required
14 under the Right to Financial Privacy Act (12 U.S.C.
15 3401 et seq.) or chapter 121 of title 18, United
16 States Code, the Commission may apply ex parte to
17 a presiding judge or magistrate judge for an order
18 prohibiting the recipient of compulsory process
19 issued by the Commission from disclosing to any
20 other person the existence of the process, notwith-
21 standing any law or regulation of the United States,
22 or under the constitution, or any law or regulation,
23 of any State, political subdivision of a State, terri-
24 tory of the United States, or the District of Colum-
25 bia. The presiding judge or magistrate judge may

1 enter such an order granting the requested prohibi-
2 tion of disclosure for a period not to exceed 60 days
3 if there is reason to believe that disclosure may
4 cause an adverse result, as defined in subsection (g).
5 The presiding judge or magistrate judge may grant
6 extensions of this order of up to 30 days each in ac-
7 cordance with this subsection, except that in no
8 event shall the prohibition continue in force for more
9 than a total of 9 months.
10 "(2) APPLICATION.—This subsection shall
11 apply only in connection with compulsory process
12 issued by the Commission where the recipient of
13 such process is not a subject of the investigation or
14 proceeding at the time such process is issued.
15 "(3) LIMITATION.—No order issued under this
16 subsection shall prohibit any recipient from dis-
17 closing to a Federal agency that the recipient has re-
18 ceived compulsory process from the Commission.
19 "(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If
20 neither notification nor delayed notification by the Com-
21 mission is required under the Right to Financial Privacy
22 Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18,
23 United States Code, the recipient of compulsory process
24 issued by the Commission under this Act shall not be lia-
25 ble under any law or regulation of the United States, or

1 under the constitution, or any law or regulation, of any
2 State, political subdivision of a State, territory of the
3 United States, or the District of Columbia, or under any
4 contract or other legally enforceable agreement, for failure
5 to provide notice to any person that such process has been
6 issued or that the recipient has provided information in
7 response to such process. The preceding sentence does not
8 exempt any recipient from liability for—
9 "(1) the underlying conduct reported;
10 "(2) a failure to comply with the record reten-
11 tion requirements under section 1104(c) of the
12 Right to Financial Privacy Act (12 U.S.C. 3404),
13 where applicable; or
14 "(3) any failure to comply with any obligation
15 the recipient may have to disclose to a Federal agen-
16 cy that the recipient has received compulsory process
17 from the Commission or intends to provide or has
18 provided information to the Commission in response
19 to such process.
20 "(c) VENUE AND PROCEDURE.—
21 "(1) IN GENERAL.—All judicial proceedings ini-
22 tiated by the Commission under the Right to Finan-
23 cial Privacy Act (12 U.S.C. 3401 et seq.), chapter
24 121 of title 18, United States Code, or this section
25 may be brought in the United States District Court

1 for the District of Columbia or any other appro-
2 priate United States District Court. All ex parte ap-
3 plications by the Commission under this section re-
4 lated to a single investigation may be brought in a
5 single proceeding.
6 "(2) IN CAMERA PROCEEDINGS.—Upon applica-
7 tion by the Commission, all judicial proceedings pur-
8 suant to this section shall be held in camera and the
9 records thereof sealed until expiration of the period
10 of delay or such other date as the presiding judge
11 or magistrate judge may permit.
12 "(f) SECTION NOT TO APPLY TO ANTITRUST INVES-
13 TIGATIONS OR PROCEEDINGS.—This section shall not
14 apply to an investigation or proceeding related to the ad-
15 ministration of Federal antitrust laws or foreign antitrust
16 laws as defined in paragraphs (5) and (7), respectively,
17 of section 12 of the International Antitrust Enforcement
18 Assistance Act of 1994 (15 U.S.C. 6211).
19 "(g) ADVERSE RESULT DEFINED.—For purposes of
20 this section the term 'adverse result' means—
21 "(1) endangering the life or physical safety of
22 an individual;
23 "(2) flight from prosecution;
24 "(3) the destruction of, or tampering with, evi-
25 dence;

"(4) the intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

"(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

"(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

"(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.".

(b) CONFORMING AMENDMENT.—Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (C) by striking "or" after the semicolon;

(2) in subparagraph (D) by inserting "or" after the semicolon; and

(3) by inserting after subparagraph (D) the following:

"(E) under section 21A of this Act;".

SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is further amended by adding after section 21A (as added by section 7 of this Act) the following:

"SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

"(a) IN GENERAL.—

"(1) NO LIABILITY FOR PROVIDING CERTAIN MATERIAL.—An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

"(A) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

"(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

1 shall not be liable to any person under any law or
2 regulation of the United States, or under the con-
3 stitution, or any law or regulation, of any State, po-
4 litical subdivision of a State, territory of the United
5 States, or the District of Columbia, for such provi-
6 sion of material or for any failure to provide notice
7 of such provision of material or of intention to pro-
8 vide material.
9 "(2) LIMITATIONS.—Nothing in this subsection
10 shall be construed to exempt any such entity from
11 liability—
12 "(A) for the underlying conduct reported;
13 or
14 "(B) to any Federal agency for providing
15 such material or for any failure to comply with
16 any obligation the entity may have to notify a
17 Federal agency prior to providing such material
18 to the Commission.
19 "(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity
20 described in paragraph (1) of subsection (d) shall, in ac-
21 cordance with section 5318(g)(3) of title 31, United States
22 Code, be exempt from liability for making a voluntary dis-
23 closure to the Commission of any possible violation of law
24 or regulation, including—

1 "(1) a disclosure regarding assets, including as-
2 sets located in foreign jurisdictions—
3 "(A) related to possibly fraudulent or de-
4 ceptive commercial practices;
5 "(B) related to persons involved in such
6 practices; or
7 "(C) otherwise subject to recovery by the
8 Commission; or
9 "(2) a disclosure regarding suspicious
10 chargeback rates related to possibly fraudulent or
11 deceptive commercial practices.
12 "(c) CONSUMER COMPLAINTS.—Any entity described
13 in subsection (d) that voluntarily provides consumer com-
14 plaints sent to it, or information contained therein, to the
15 Commission shall not be liable to any person under any
16 law or regulation of the United States, or under the con-
17 stitution, or any law or regulation, of any State, political
18 subdivision of a State, territory of the United States, or
19 the District of Columbia, for such provision of material
20 or for any failure to provide notice of such provision of
21 material or of intention to so provide material. This sub-
22 section shall not provide any exemption from liability for
23 the underlying conduct.
24 "(d) APPLICATION.—This section applies to the fol-
25 lowing entities, whether foreign or domestic:

"(1) A financial institution as defined in section 5312 of title 31, United States Code.

"(2) To the extent not included in paragraph (1) a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

"(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

"(4) An Internet service provider or provider of telephone services.".

SEC. 9. STAFF EXCHANGES.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by adding after section 25 the following new section:

"SEC. 25A. STAFF EXCHANGES.

"(a) IN GENERAL.—The Commission may—

"(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 2

of this Act, or section 3101 or section 3109 of title 5, United States Code; and

"(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

"(b) RECIPROCITY AND REIMBURSEMENT.—The staff arrangements described in subsections (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

"(c) STANDARDS OF CONDUCT.—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.".

SEC. 10. INFORMATION SHARING WITH FINANCIAL REGULATORS.

Section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412(e)) is amended by inserting "the Federal Trade Commission," after "the Securities and Exchange Commission,".

1 **SEC. 11. PRESERVATION OF EXISTING AUTHORITY.**

2 The authority provided by this Act, and by the Fed-
3 eral Trade Commission Act (15 U.S.C. 41 et seq.) and
4 the Right to Financial Privacy Act (12 U.S.C. 3401 et
5 seq.), as such Acts are amended by this Act, is in addition
6 to, and not in lieu of, any other authority vested in the
7 Federal Trade Commission or any other officer of the
8 United States.

9 **SEC. 12. REPORT.**

10 Not later than 3 years after the date of enactment
11 of this Act, the Federal Trade Commission shall transmit
12 to Congress a report describing its use of and experience
13 with the authority granted by this Act, along with any rec-
14 ommendations for additional legislation. The report shall
15 include—

16 (1) the number of cross-border complaints re-
17 ceived by the Commission;

18 (2) identification of the foreign agencies to
19 which the Commission has provided nonpublic inves-
20 tigative information under this Act;

21 (3) the number of times the Commission has
22 used compulsory process on behalf of foreign law en-
23 forcement agencies pursuant to section 6 of the Fed-
24 eral Trade Commission Act (15 U.S.C. 46), as
25 amended by section 4 of this Act;

1 (4) a list of international agreements and
2 memoranda of understanding executed by the Com-
3 mission that relate to this Act;
4 (5) the number of times the Commission has
5 sought delay of notice pursuant to section 21A of
6 the Federal Trade Commission Act, as added by sec-
7 tion 7 of this Act, and the number of times a court
8 has granted a delay;
9 (6) a description of the types of information
10 private entities have provided voluntarily pursuant to
11 section 21B of the Federal Trade Commission Act,
12 as added by section 8 of this Act;
13 (7) a description of the results of cooperation
14 with foreign law enforcement agencies under section
15 21 of the Federal Trade Commission Act (15 U.S.C.
16 57–2) as amended by section 6 of this Act;
17 (8) an analysis of whether the lack of an ex-
18 emption from the disclosure requirements of section
19 552 of title 5, United States Code, with regard to
20 information or material voluntarily provided relevant
21 to possible unfair or deceptive acts or practices, has
22 hindered the Commission in investigating or engag-
23 ing in enforcement proceedings against such prac-
24 tices; and

1 (9) a description of Commission litigation
2 brought in foreign courts.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the Chair recognizes himself for 5 minutes.

As previously noted in my opening statement, this amendment in the nature of a substitute reflects an interagency consensus emanating from negotiations between the Justice Department, the FTC, the State Department, and the OMB, and I urge Members to support its adoption and yield back the balance of my time.

Are there any second degree amendments to the amendment in the nature of a substitute? If there are none, the question is on agreeing to the amendment in the nature of a substitute offered by the Chair. Those in favor will say aye. Opposed, no. The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to.

A reporting quorum is not present. Without objection, the previous question is ordered on favorably reporting the bill to the House.

[Intervening business.]

Chairman SENSENBRENNER. The unfinished business is the motion to report favorably the bill, H.R. 3143, as amended. A reporting quorum is present. All those in favor of reporting the bill favorably as amended will say aye. Opposed, no. The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional, dissenting, supplemental, or minority views.

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