

AMENDMENT TO H.R. 5233
OFFERED BY MR. HOLDING OF NORTH CAROLINA

Page 3, strike line 23 and all that follows through page 4, line 3, and insert the following:

1 “(IV) the applicant is likely to
2 succeed in showing that the person
3 against whom seizure would be or-
4 dered misappropriated the trade se-
5 cret by improper means, or conspired
6 to use improper means to misappro-
7 priate the trade secret, and is in pos-
8 session of the trade secret;

Page 13, add the following after line 2:

9 (g) **APPLICABILITY TO OTHER LAWS.**—This section
10 and the amendments made by this section shall not be con-
11 strued to be a law pertaining to intellectual property for
12 purposes of any other Act of Congress.

Add at the end the following:

1 **SEC. 3. REPORT ON THEFT OF TRADE SECRETS OCCUR-**
2 **RING ABROAD.**

3 (a) REPORTS.—Not later than 1 year after the date
4 of the enactment of this Act, and biannually thereafter,
5 the Attorney General, in consultation with the Intellectual
6 Property Enforcement Coordinator, the Director, and the
7 heads of other appropriate agencies, shall submit to the
8 Committees on the Judiciary of the House of Representa-
9 tives and the Senate, and make publicly available on the
10 Web site of the Department of Justice and disseminate
11 to the public through such other means as the Attorney
12 General may identify, a report on the following:

13 (1) The scope and breadth of the theft of the
14 trade secrets of United States companies occurring
15 outside of the United States.

16 (2) The extent to which theft of trade secrets
17 occurring outside of the United States is sponsored
18 by foreign governments, foreign instrumentalities, or
19 foreign agents.

20 (3) The threat posed by theft of trade secrets
21 occurring outside of the United States.

22 (4) The ability and limitations of trade secret
23 owners to prevent the misappropriation of trade se-
24 crets outside of the United States, to enforce any
25 judgment against foreign entities for theft of trade

1 secrets, and to prevent imports based on theft of
2 trade secrets overseas.

3 (5) A breakdown of the trade secret protections
4 afforded United States companies by each country
5 that is a trading partner of the United States and
6 enforcement efforts available and undertaken in each
7 such country, including a list identifying specific
8 countries where trade secret theft, laws, or enforce-
9 ment is a significant problem for United States com-
10 panies.

11 (6) Instances of the Federal Government work-
12 ing with foreign countries to investigate, arrest, and
13 prosecute entities and individuals involved in the
14 theft of trade secrets outside of the United States.

15 (7) Specific progress made under trade agree-
16 ments and treaties, including any new remedies en-
17 acted by foreign countries, to protect against theft
18 of trade secrets of United States companies outside
19 of the United States.

20 (8) Recommendations of legislative and execu-
21 tive branch actions that may be undertaken to—

22 (A) reduce the threat of and economic im-
23 pact caused by the theft of the trade secrets of
24 United States companies occurring outside of
25 the United States;

1 (B) educate United States companies re-
2 garding the threats to their trade secrets when
3 taken outside of the United States;

4 (C) provide assistance to United States
5 companies to reduce the risk of loss of their
6 trade secrets when taken outside of the United
7 States; and

8 (D) provide a mechanism for United States
9 companies to confidentially or anonymously re-
10 port the theft of trade secrets occurring outside
11 of the United States.

12 (b) DEFINITIONS.—In this section:

13 (1) DIRECTOR.—The term “Director” means
14 the Under Secretary of Commerce for Intellectual
15 Property and Director of the United States Patent
16 and Trademark Office.

17 (2) FOREIGN INSTRUMENTALITY, ETC.—The
18 terms “foreign instrumentality”, “foreign agent”,
19 and “trade secret” have the meanings given those
20 terms in section 1839 of title 18, United States
21 Code.

22 (3) STATE.—The term “State” includes the
23 District of Columbia and any commonwealth, terri-
24 tory, or possession of the United States.

1 (4) UNITED STATES COMPANY.—The term
2 “United States company” means an organization or-
3 ganized under the laws of the United States or a
4 State or political subdivision thereof.

