

AMENDMENT NO. _____ Calendar No. _____

Purpose: To require the imposition of sanctions with respect to foreign persons that have engaged in significant theft of trade secrets of United States persons.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. _____

To authorize appropriations for fiscal year 2021 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. VAN HOLLEN
(for himself and Mr. SASSE)

Viz:

1 At the appropriate place in title XII, insert the fol-
2 lowing:

3 **SEC. 12 ____ . IMPOSITION OF SANCTIONS WITH RESPECT TO**
4 **THEFT OF TRADE SECRETS OF UNITED**
5 **STATES PERSONS.**

6 (a) REPORT REQUIRED.—

7 (1) IN GENERAL.—Not later than 180 days
8 after the date of the enactment of this Act, and not
9 less frequently than every 180 days thereafter, the

1 President shall submit to the appropriate congres-
2 sional committees a report—

3 (A) identifying, for the 180-day period pre-
4 ceeding submission of the report—

5 (i) any foreign person that has en-
6 gaged in, or benefitted from, significant
7 and serial theft of trade secrets of United
8 States persons, if the theft of such trade
9 secrets is reasonably likely to result in, or
10 has materially contributed to, a significant
11 threat to the national security, foreign pol-
12 icy, or economic health or financial sta-
13 bility of the United States;

14 (ii) any foreign person that has mate-
15 rially assisted or sponsored such theft;

16 (iii) any foreign person that has pro-
17 vided financial, material, or technological
18 support for, or goods or services in support
19 of or to benefit from, such theft;

20 (iv) any entity owned or controlled by,
21 or that has acted or purported to act for
22 or on behalf of, directly or indirectly, any
23 foreign person identified under clause (i),
24 (ii), or (iii); and

1 (v) any chief executive officer or mem-
2 ber of the board of directors of any foreign
3 entity identified under clause (i), (ii), or
4 (iii); and

5 (B) describing the nature, objective, and
6 outcome of the theft of trade secrets each for-
7 eign person described in subparagraph (A)(i)
8 engaged in or benefitted from; and

9 (C) assessing whether any chief executive
10 officer or member of the board of directors de-
11 scribed in clause (v) of subparagraph (A) en-
12 gaged in, or benefitted from, activity described
13 in clause (i), (ii), or (iii) of that subparagraph.

14 (2) EXCEPTION.—The President is not required
15 to include in a report required by paragraph (1) the
16 name of any foreign person that is the subject of an
17 active United States law enforcement investigation.

18 (3) FORM OF REPORT.—Each report required
19 by paragraph (1) shall be submitted in unclassified
20 form but may include a classified annex.

21 (b) AUTHORITY TO IMPOSE SANCTIONS.—

22 (1) SANCTIONS APPLICABLE TO ENTITIES.—In
23 the case of a foreign entity identified under subpara-
24 graph (A) of subsection (a)(1) in the most recent re-

1 port submitted under that subsection, the President
2 shall impose one of the following:

3 (A) BLOCKING OF PROPERTY.—The Presi-
4 dent may, pursuant to the International Emer-
5 gency Economic Powers Act (50 U.S.C. 1701 et
6 seq.), block and prohibit all transactions in all
7 property and interests in property of the entity
8 if such property and interests in property are in
9 the United States, come within the United
10 States, or are or come within the possession or
11 control of a United States person.

12 (B) INCLUSION ON DENIED PERSONS
13 LIST.—The President may include the entity on
14 the Denied Persons List maintained by the Bu-
15 reau of Industry and Security of the Depart-
16 ment of Commerce pursuant to section
17 764.3(a)(2) of the Export Administration Regu-
18 lations.

19 (2) SANCTIONS APPLICABLE TO INDIVIDUALS.—
20 In the case of an individual identified under sub-
21 paragraph (A) of subsection (a)(1) in the most re-
22 cent report submitted under that subsection, the fol-
23 lowing shall apply:

24 (A) BLOCKING OF PROPERTY.—The Presi-
25 dent shall, pursuant to the International Emer-

1 agency Economic Powers Act (50 U.S.C. 1701 et
2 seq.), block and prohibit all transactions in all
3 property and interests in property of the indi-
4 vidual if such property and interests in property
5 are in the United States, come within the
6 United States, or are or come within the pos-
7 session or control of a United States person.

8 (B) VISA BAN; EXCLUSION.—The Sec-
9 retary of State shall deny a visa to the indi-
10 vidual and revoke, in accordance with section
11 221(i) of the Immigration and Nationality Act
12 (8 U.S.C. 1201(i)), any visa or other docu-
13 mentation of the individual, and the Secretary
14 of Homeland Security shall exclude the indi-
15 vidual from the United States.

16 (c) EXCEPTIONS.—

17 (1) INTELLIGENCE ACTIVITIES.—This section
18 shall not apply with respect to activities subject to
19 the reporting requirements under title V of the Na-
20 tional Security Act of 1947 (50 U.S.C. 3091 et seq.)
21 or any authorized intelligence activities of the United
22 States.

23 (2) EXCEPTION RELATING TO IMPORTATION OF
24 GOODS.—

1 (A) IN GENERAL.—The authority to im-
2 pose sanctions under paragraph (1)(A) or
3 (2)(A) of subsection (b) shall not include the
4 authority or a requirement to impose sanctions
5 on the importation of goods.

6 (B) GOOD DEFINED.—In this paragraph,
7 the term “good” means any article, natural or
8 manmade substance, material, supply, or manu-
9 factured product, including inspection and test
10 equipment, and excluding technical data.

11 (3) EXCEPTION TO COMPLY WITH INTER-
12 NATIONAL AGREEMENTS.—Subsection (b)(2)(B)
13 shall not apply with respect to the admission of an
14 individual to the United States if such admission is
15 necessary to comply with the obligations of the
16 United States under the Agreement regarding the
17 Headquarters of the United Nations, signed at Lake
18 Success June 26, 1947, and entered into force No-
19 vember 21, 1947, between the United Nations and
20 the United States, under the Convention on Con-
21 sular Relations, done at Vienna April 24, 1963, and
22 entered into force March 19, 1967, or under other
23 international agreements.

1 (d) NATIONAL SECURITY WAIVER.—The President
2 may waive the imposition of sanctions under subsection
3 (b) with respect to a person if the President—

4 (1) determines that such a waiver is in the na-
5 tional security interests of the United States; and

6 (2) submits to the appropriate congressional
7 committees a notification of the waiver and the rea-
8 sons for the waiver.

9 (e) TERMINATION OF SANCTIONS.—Sanctions im-
10 posed under subsection (b) with respect to a foreign per-
11 son identified in a report submitted under subsection (a)
12 shall terminate if the President certifies to the appropriate
13 congressional committees that the person is no longer en-
14 gaged in the activity identified in the report.

15 (f) IMPLEMENTATION; PENALTIES.—

16 (1) IMPLEMENTATION.—The President may ex-
17 ercise all authorities provided under sections 203
18 and 205 of the International Emergency Economic
19 Powers Act (50 U.S.C. 1702 and 1704) to carry out
20 this section.

21 (2) PENALTIES.—A person that violates, at-
22 tempts to violate, conspires to violate, or causes a
23 violation of paragraph (1)(A) or (2)(A) of subsection
24 (b) or any regulation, license, or order issued to
25 carry out that paragraph shall be subject to the pen-

1 alties set forth in subsections (b) and (c) of section
2 206 of the International Emergency Economic Pow-
3 ers Act (50 U.S.C. 1705) to the same extent as a
4 person that commits an unlawful act described in
5 subsection (a) of that section.

6 (g) DEFINITIONS.—In this section:

7 (1) APPROPRIATE CONGRESSIONAL COMMIT-
8 TEES.—The term “appropriate congressional com-
9 mittees” means—

10 (A) the Committee on Banking, Housing,
11 and Urban Affairs and the Committee on For-
12 eign Relations of the Senate; and

13 (B) the Committee on Financial Services
14 and the Committee on Foreign Affairs of the
15 House of Representatives.

16 (2) EXPORT ADMINISTRATION REGULATIONS.—
17 The term “Export Administration Regulations”
18 means subchapter C of chapter VII of title 15, Code
19 of Federal Regulations.

20 (3) FOREIGN ENTITY.—The term “foreign enti-
21 ty” means an entity that is not a United States per-
22 son.

23 (4) FOREIGN PERSON.—The term “foreign per-
24 son” means a person that is not a United States
25 person.

1 (5) TRADE SECRET.—The term “trade secret”
2 has the meaning given that term in section 1839 of
3 title 18, United States Code.

4 (6) PERSON.—The term “person” means an in-
5 dividual or entity.

6 (7) UNITED STATES PERSON.—The term
7 “United States person” means—

8 (A) a United States citizen or an alien law-
9 fully admitted for permanent residence to the
10 United States; or

11 (B) an entity organized under the laws of
12 the United States or of any jurisdiction within
13 the United States, including a foreign branch of
14 such an entity.