

118TH CONGRESS  
1ST SESSION

# H. R. 3136

To require notification and review of United States investment in foreign countries that may threaten the national security of the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2023

Ms. DELAURO (for herself, Mr. PASCRELL, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To require notification and review of United States investment in foreign countries that may threaten the national security of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Critical Capa-  
5 bilities Defense Act of 2023”.

6 **SEC. 2. PROTECTION OF NATIONAL CRITICAL CAPABILI-**  
7 **TIES.**

8 The Trade Act of 1974 (19 U.S.C. 2101 et seq.) is  
9 amended by adding at the end the following:

1 **“TITLE X—PROTECTION OF NA-**  
2 **TIONAL CRITICAL CAPABILI-**  
3 **TIES**

4 **“SEC. 1001. DEFINITIONS.**

5 “In this title:

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

9 “(A) the Committee on Finance, the Com-  
10 mittee on Banking, Housing, and Urban Af-  
11 fairs, the Select Committee on Intelligence, and  
12 the Committee on Foreign Relations of the Sen-  
13 ate; and

14 “(B) the Committee on Ways and Means,  
15 the Committee on Financial Services, the Per-  
16 manent Select Committee on Intelligence, and  
17 the Committee on Foreign Affairs of the House  
18 of Representatives.

19 “(2) COUNTRY OF CONCERN.—The term ‘coun-  
20 try of concern’ means, subject to such regulations as  
21 may be prescribed in accordance with section 1008,  
22 any country the government of which is engaged in  
23 a long-term pattern or serious instances of conduct  
24 significantly adverse to the national security of the  
25 United States or the security and safety of United

1 States persons, such as the People’s Republic of  
2 China, the Russian Federation, Iran, North Korea,  
3 Cuba, and the regime of Nicolás Maduro in Ven-  
4 ezuela.

5 “(3) COVERED ACTIVITY.—

6 “(A) IN GENERAL.—Subject to such regu-  
7 lations as may be prescribed in accordance with  
8 section 1008, and except as provided in sub-  
9 paragraph (B), the term ‘covered activity’  
10 means any activity engaged in by a United  
11 States person in a national critical capabilities  
12 sector that involves—

13 “(i) an acquisition of an equity inter-  
14 est or contingent equity interest, or mone-  
15 tary capital contribution, in a covered for-  
16 eign entity, directly or indirectly, by con-  
17 tractual commitment or otherwise, with the  
18 goal of generating income or gain;

19 “(ii) an arrangement for an interest  
20 in the short- or long-term debt obligations  
21 of a covered foreign entity that includes  
22 government rights that are characteristic  
23 of an equity investment, management, or  
24 other important rights;

1           “(iii) the establishment of a wholly  
2 owned subsidiary in a country of concern,  
3 such as a greenfield investment, for the  
4 purpose of production, design, testing,  
5 manufacturing, fabrication, development,  
6 or research related to one or more national  
7 critical capabilities sectors;

8           “(iv) the establishment of a joint ven-  
9 ture in a country of concern or with a cov-  
10 ered foreign entity for the purpose of pro-  
11 duction, design, testing, manufacturing,  
12 fabrication, development, or research in-  
13 volving one or more national critical capa-  
14 bilities sectors, or other contractual or  
15 other commitments involving a covered for-  
16 eign entity to jointly research and develop  
17 new innovation, including through the  
18 transfer of capital or intellectual property  
19 or other business proprietary information;

20           “(v) the acquisition by a United  
21 States person with a covered foreign entity  
22 of—

23                   “(I) operational cooperation, such  
24 as through supply or support arrange-  
25 ments;

1           “(II) the right to board represen-  
2           tation (as an observer, even if limited,  
3           or as a member) or an executive role  
4           (as may be defined through regula-  
5           tion) in a covered foreign entity;

6           “(III) the ability to direct or in-  
7           fluence such operational decisions as  
8           may be defined through such regula-  
9           tions;

10          “(IV) formal governance rep-  
11          resentation in any operating affiliate,  
12          like a portfolio company, of a covered  
13          foreign entity; or

14          “(V) a new relationship to share  
15          or provide business services, such as  
16          but not limited to financial services,  
17          marketing services, maintenance, or  
18          assembly functions, related to a na-  
19          tional critical capabilities sector;

20          “(vi) any activity by a recipient or  
21          beneficiary of financial assistance, includ-  
22          ing grants, tax incentives, or other types of  
23          funding, with respect to a covered foreign  
24          entity or a country of concern;

1           “(vii) any activity with respect to a  
2 covered foreign entity or a country of con-  
3 cern by an entity that benefits from annual  
4 procurement of more than an amount to be  
5 determined in regulations prescribed in ac-  
6 cordance with section 1008 in goods or  
7 services by a United States national secu-  
8 rity agency; or

9           “(viii) except as provided in subpara-  
10 graph (B), any other transaction involving  
11 a country of concern or with a covered for-  
12 eign entity defined in regulations pre-  
13 scribed in accordance with section 1008.

14           “(B) EXCEPTIONS.—The term ‘covered ac-  
15 tivity’ does not include—

16           “(i) any transaction the value of  
17 which the Committee determines is de-  
18 minimis;

19           “(ii) any category of transactions that  
20 the Committee determines is in the na-  
21 tional interest of the United States, as  
22 may be defined in regulations prescribed in  
23 accordance with section 1008; or

1           “(iii) any ordinary business trans-  
2           action as may be defined in such regula-  
3           tions.

4           “(4) COVERED FOREIGN ENTITY.—

5           “(A) IN GENERAL.—Subject to regulations  
6           prescribed in accordance with section 1008, and  
7           except as provided in subparagraph (B), the  
8           term ‘covered foreign entity’ means—

9           “(i) any entity that is incorporated in,  
10          has a principal place of business in, or is  
11          organized under the laws of a country of  
12          concern;

13          “(ii) any entity the equity securities of  
14          which are primarily traded on one or more  
15          exchanges in a country of concern;

16          “(iii) any entity in which any covered  
17          foreign entity holds, individually or in the  
18          aggregate, directly or indirectly, an owner-  
19          ship interest of greater than 50 percent; or

20          “(iv) any other entity that is not a  
21          United States person and that meets such  
22          criteria as may be specified by the Com-  
23          mittee in such regulations.

24          “(B) EXCEPTION.—The term ‘covered for-  
25          eign entity’ does not include any entity de-

1           scribed in subparagraph (A) that can dem-  
2           onstrate that a majority of the equity interest  
3           in the entity is ultimately owned by—

4                   “(i) nationals of the United States; or

5                   “(ii) nationals of such countries (other  
6           than countries of concern) as are identified  
7           for purposes of this subparagraph pursu-  
8           ant to regulations prescribed in accordance  
9           with section 1008.

10           “(5) NATIONAL CRITICAL CAPABILITIES SEC-  
11           TOR.—Subject to regulations prescribed in accord-  
12           ance with section 1008, the term ‘national critical  
13           capabilities sector’ includes sectors within the fol-  
14           lowing areas, as specified in such regulations:

15                   “(A) Semiconductor manufacturing and  
16           advanced packaging.

17                   “(B) Large-capacity batteries.

18                   “(C) Critical minerals and materials.

19                   “(D) Artificial intelligence.

20                   “(E) Quantum information science and  
21           technology.

22                   “(F) Active pharmaceutical ingredients.

23                   “(G) Automobile manufacturing.

24                   “(H) Any other sector as may be—



1           “(i) determined by the President to be  
2           a national critical capabilities sector based  
3           on the significance of the sector to the na-  
4           tional security of the United States; and

5           “(ii) included in such definition by the  
6           President through such regulations.

7           “(6) PARTY.—The term ‘party’, with respect to  
8           an activity, has the meaning given that term in reg-  
9           ulations prescribed in accordance with section 1008.

10          “(7) UNITED STATES.—The term ‘United  
11          States’ means the several States, the District of Co-  
12          lumbia, and any territory or possession of the  
13          United States.

14          “(8) UNITED STATES PERSON.—The term  
15          ‘United States person’ means—

16               “(A) an individual who is a citizen or na-  
17               tional of the United States or an alien lawfully  
18               admitted for permanent residence in the United  
19               States; and

20               “(B) any corporation, partnership, or other  
21               entity organized under the laws of the United  
22               States or the laws of any jurisdiction within the  
23               United States.

1 **“SEC. 1002. ADMINISTRATION OF UNITED STATES INVEST-**  
2 **MENT NOTIFICATION, REVIEW, AND PROHIBI-**  
3 **TION AUTHORITY.**

4 “(a) ESTABLISHMENT OF COMMITTEE ON NATIONAL  
5 CRITICAL CAPABILITIES.—

6 “(1) IN GENERAL.—The President shall estab-  
7 lish an interagency committee to administer this  
8 title, to be known as the ‘Committee on National  
9 Critical Capabilities’ (in this title referred to as the  
10 ‘Committee’).

11 “(2) DELEGATION.—The President may dele-  
12 gate the requirement under paragraph (1), and all  
13 or any portion of the authorities and functions under  
14 this title, to the head of an Executive department  
15 (as defined in section 101 of title 5, United States  
16 Code).

17 “(b) MEMBERSHIP.—The following agencies shall be  
18 represented on the Committee:

19 “(1) The Office of the United States Trade  
20 Representative.

21 “(2) The Department of Commerce.

22 “(3) The Department of State.

23 “(4) The Department of the Treasury.

24 “(5) The Department of Homeland Security.

25 “(6) The Department of Defense.

1           “(7) The Office of Science and Technology Pol-  
2       icy.

3           “(8) The Department of Justice.

4           “(9) The Department of Energy.

5           “(10) The Department of Health and Human  
6       Services.

7           “(11) The Department of Agriculture.

8           “(12) The Department of Labor.

9           “(13) The Office of the Director of National In-  
10      telligence.

11          “(14) Any other Federal agency the President  
12      determines appropriate, generally, or on a case-by-  
13      case basis.

14          “(c) DESIGNATION AS VOTING MEMBERS.—The  
15      heads of the agencies specified in subsection (b) shall be  
16      voting members of the Committee.

17          “(d) CHAIRPERSON.—The head of the Executive de-  
18      partment to which the President delegates authority under  
19      subsection (a) shall serve as the chairperson of the Com-  
20      mittee.

21          “(e) CONSULTATIONS.—In carrying out the duties of  
22      the chairperson of the Committee, the chairperson shall  
23      consult with the United States Trade Representative, the  
24      Secretary of Defense, the Secretary of Commerce, the Sec-  
25      retary of State, and the Secretary of the Treasury.

1 **“SEC. 1003. MANDATORY NOTIFICATION OF COVERED AC-**  
2 **TIVITIES; REVIEW AND ACTIONS TO MITI-**  
3 **GATE RISK.**

4 “(a) MANDATORY NOTIFICATION.—

5 “(1) IN GENERAL.—Subject to regulations pre-  
6 scribed in accordance with section 1008, beginning  
7 on the date that is 90 days after such regulations  
8 take effect, a United States person that plans to en-  
9 gage in a covered activity shall submit to the Com-  
10 mittee a complete written notification of the activity  
11 not later than 90 days before the anticipated initi-  
12 ation date of the activity.

13 “(2) CIRCULATION OF NOTIFICATION.—

14 “(A) IN GENERAL.—The Committee shall,  
15 upon receipt of a notification under paragraph  
16 (1), promptly inspect the notification for com-  
17 pleteness, and, if complete, immediately cir-  
18 culate the notification to each agency specified  
19 in section 1002(b).

20 “(B) INCOMPLETE NOTIFICATIONS.—If a  
21 notification submitted under paragraph (1) is  
22 incomplete, the Committee shall , unilaterally or  
23 at request of any member of the Committee,  
24 promptly inform the United States person that  
25 submits the notification that the notification is  
26 not complete and provide an explanation of rel-

1           evant material respects in which the notification  
2           is not complete.

3           “(C) REFERRAL TO ATTORNEY GEN-  
4           ERAL.—If the Committee has reason to believe  
5           that a covered activity that is the subject of a  
6           notification submitted under paragraph (1) may  
7           be prohibited under this title or regulations pre-  
8           scribed in accordance with section 1008, the  
9           President may refer the notification to the At-  
10          torney General for such action as the Attorney  
11          General may determine to be proper.

12          “(b) REVIEW.—

13           “(1) IN GENERAL.—Subject to regulations pre-  
14          scribed in accordance with section 1008, the Com-  
15          mittee may, beginning on the date that is 180 days  
16          after the date on which such regulations take effect,  
17          review a covered activity that is the subject of a no-  
18          tification under subsection (a) to determine if the  
19          activity poses a risk to the national security of the  
20          United States, including by considering factors spec-  
21          ified in section 1004.

22           “(2) NOTICE OF REVIEW.—Not later than 45  
23          days after receipt of a complete notification under  
24          subsection (a), the Committee shall notify the  
25          United States person that submitted the notification

1 of the decision of the Committee with respect to  
2 whether to initiate a review under paragraph (1) of  
3 the covered activity that is the subject of the notifi-  
4 cation.

5 “(3) INITIATION OF UNILATERAL REVIEW.—  
6 The Committee may initiate a unilateral review  
7 under paragraph (1) of a covered activity for which  
8 notification is not submitted under subsection (a).

9 “(c) MITIGATION.—

10 “(1) IN GENERAL.—If the Committee has rea-  
11 son to believe that a covered activity that is the sub-  
12 ject of a notification under subsection (a) or with re-  
13 spect to which the Committee initiates a unilateral  
14 review under subsection (b)(3) poses a risk to the  
15 national security of the United States, the Com-  
16 mittee may negotiate, enter into or impose, and en-  
17 force any agreement or condition with any party to  
18 the covered activity in order to mitigate any risk to  
19 the national security of the United States that arises  
20 as a result of the covered activity.

21 “(2) ABANDONMENT OF ACTIVITIES.—If a  
22 party to a covered activity has voluntarily chosen to  
23 abandon the activity, the Committee may negotiate,  
24 enter into or impose, and enforce any agreement or  
25 condition with any party to the covered activity for

1 purposes of effectuating such abandonment and  
2 mitigating any risk to the national security of the  
3 United States that arises as a result of the covered  
4 activity.

5 “(3) AGREEMENTS AND CONDITIONS RELATING  
6 TO COMPLETED ACTIVITIES.—While the Committee  
7 is conducting a review of a covered activity under  
8 subsection (b), the Committee may negotiate, enter  
9 into or impose, and enforce any agreement or condi-  
10 tion with any party to the covered activity in order  
11 to mitigate any interim risk to the national security  
12 of the United States that may arise as a result of  
13 the covered activity until such time that the Com-  
14 mittee has completed action with respect to the cov-  
15 ered activity under this title.

16 “(4) TREATMENT OF OUTDATED AGREEMENTS  
17 OR CONDITIONS.—The Committee shall periodically  
18 review the appropriateness of an agreement or condi-  
19 tion imposed under paragraph (1), (2), or (3) in  
20 mitigating the risk identified under subsection (b)(1)  
21 and terminate, phase out, or otherwise amend the  
22 agreement or condition if a risk no longer requires  
23 mitigation through the agreement or condition.

24 “(5) JURISDICTION.—The provisions of section  
25 706(b) shall apply to any mitigation agreement en-

1       tered into or condition imposed under paragraph (1),  
2       (2), or (3).

3       “(d) UNILATERAL ACTION BY THE COMMITTEE TO  
4 MITIGATE RISK POSED BY A COVERED ACTIVITY.—

5           “(1) IN GENERAL.—Subject to paragraphs (2)  
6       and (4), the Committee may take such action for  
7       such time as the Committee considers appropriate to  
8       address any risk to the national security of the  
9       United States posed by a covered activity that is the  
10      subject of a notification under subsection (a) or with  
11      respect to which the Committee initiates a unilateral  
12      review under subsection (b)(3), including—

13           “(A) approving the covered activity subject  
14      to a mitigation agreement entered into or condi-  
15      tions imposed under subsection (c); or

16           “(B) if the Committee attempts to mitigate  
17      the risk under subsection (c) and determines  
18      that mitigation is inadequate to protect the na-  
19      tional security of the United States, prohibiting  
20      the covered activity.

21           “(2) SEEKING ALTERNATIVE ENFORCEMENT.—

22      The Committee shall consider other existing meas-  
23      ures to address any risk described in paragraph (1)  
24      before taking any action under this subsection with  
25      respect to the covered activity.



1           “(3) ANNOUNCEMENT BY COMMITTEE.—Not  
2 later than 90 days after the date on which the Com-  
3 mittee initiates a review under subsection (b), the  
4 Committee shall announce the decision of the Com-  
5 mittee with respect to whether the Committee plans  
6 to take action pursuant to paragraph (1).

7           “(4) FINDINGS BY COMMITTEE.—The Com-  
8 mittee may exercise the authority under paragraph  
9 (1) with respect to a covered activity only if the  
10 Committee finds that—

11                   “(A) there is credible evidence that leads  
12 the Committee to believe that the covered activ-  
13 ity poses a risk to the national security of the  
14 United States; and

15                   “(B) provisions of law (other than this  
16 subsection and the International Emergency  
17 Economic Powers Act (50 U.S.C. 1701 et seq.))  
18 do not, in the judgment of the Committee pro-  
19 vide adequate and appropriate authority for the  
20 Committee to protect the national security with  
21 respect to the covered activity.

22           “(5) FACTORS TO BE CONSIDERED.—For pur-  
23 poses of determining whether to take action under  
24 paragraph (1), the Committee shall consider, among

1 other factors, each of the factors described in section  
2 1004, as appropriate.

3 “(6) PUBLIC DISCLOSURE.—The Committee  
4 shall publish in the Federal Register a notice of each  
5 exercise of the authority under paragraph (1).

6 “(e) AUTHORITY TO PROHIBIT AND REGULATE COV-  
7 ERED ACTIVITIES.—

8 “(1) AUTHORITY.—

9 “(A) IN GENERAL.—Subject to regulations  
10 prescribed in accordance with section 1008, and  
11 except as provided by paragraph (2), the Com-  
12 mittee may, on or after the date of the enact-  
13 ment of this title, prohibit or regulate any cov-  
14 ered activity or category of covered activities by  
15 any person, or with respect to any property,  
16 subject to the jurisdiction of the United States.

17 “(B) CRITERIA.—In exercising the author-  
18 ity under subparagraph (A) with respect to a  
19 covered activity or category of covered activities,  
20 the President may use—

21 “(i) criteria based on—

22 “(I) the nature of the covered ac-  
23 tivity or category of covered activities;

24 “(II) the nature of the covered  
25 foreign entity involved in the covered

1 activity or category of covered activi-  
2 ties, including the country of concern  
3 associated with the covered foreign  
4 entity; or

5 “(III) the nature of the national  
6 critical capabilities sector involved in  
7 the covered activity or category of cov-  
8 ered activities; or

9 “(ii) such other criteria as the Com-  
10 mittee determines may result in a covered  
11 activity or category of covered activities  
12 posing a risk to the national security of the  
13 United States.

14 “(2) EXCEPTIONS.—The Committee, pursuant  
15 to regulations prescribed in accordance with section  
16 1008—

17 “(A) may not prohibit under paragraph (1)  
18 a covered activity or category of covered activi-  
19 ties for the conduct of the official business of  
20 the Federal Government, the United Nations,  
21 or international financial institutions or multi-  
22 lateral development banks (including their spe-  
23 cialized agencies, programs, funds, and related  
24 organizations), or by employees, grantees, or  
25 contractors thereof; and

1           “(B) may authorize orders, directives, or  
2 licenses to permit a covered activity otherwise  
3 prohibited under paragraph (1), as the Com-  
4 mittee determines appropriate.

5           “(f) CONFIDENTIALITY OF INFORMATION.—

6           “(1) IN GENERAL.—Except as provided in para-  
7 graph (2), any information or documentary material  
8 and any information or materials derived from such  
9 information or documentary materials filed with the  
10 Committee pursuant to this section shall be exempt  
11 from disclosure under section 552 of title 5, United  
12 States Code, and no such information or documen-  
13 tary material may be made public.

14           “(2) EXCEPTIONS.—The exemption from disclo-  
15 sure provided by paragraph (1) shall not prevent the  
16 disclosure of the following:

17           “(A) Information relevant to any adminis-  
18 trative or judicial action or proceeding.

19           “(B) Information to Congress or any duly  
20 authorized committee or subcommittee of Con-  
21 gress.

22           “(C) Information important to the national  
23 security analysis or actions of the President to  
24 any domestic governmental entity, or to any  
25 foreign governmental entity of an ally or part-

1           ner of the United States, under the exclusive di-  
2           rection and authorization of the President, only  
3           to the extent necessary for national security  
4           purposes, and subject to appropriate confiden-  
5           tiality and classification requirements.

6           “(D) Information that the parties have  
7           consented to be disclosed to third parties.

8           “(g) RECORDKEEPING.—In taking action under this  
9           section with respect to a covered activity, the Committee  
10          may require any person—

11           “(1) to keep a full record of, and to furnish  
12          under oath, in the form of reports or otherwise, com-  
13          plete information relative to the covered activity be-  
14          fore, during, or after the completion of the covered  
15          activity, or as may be otherwise necessary to enforce  
16          the provisions of this title; and

17           “(2) to produce any books of account, records,  
18          contracts, letters, memoranda, or other papers rel-  
19          ative to the covered activity in the custody or control  
20          of the person.

21          **“SEC. 1004. FACTORS TO BE CONSIDERED.**

22           “The Committee, in reviewing and making a deter-  
23          mination with respect to a covered activity under section  
24          1003, shall consider any factors relating to the national

1 security of the United States that the Committee considers  
2 relevant, which may include—

3 “(1) the economic, intelligence, military, health,  
4 or agricultural interests of the United States;

5 “(2) the history of distortive or predatory  
6 trade-related practices in each country in which a  
7 covered activity occurs;

8 “(3) control and beneficial ownership (as deter-  
9 mined in accordance with section 847 of the Na-  
10 tional Defense Authorization Act for Fiscal Year  
11 2020 (Public Law 116–92; 10 U.S.C. 4819 note)) of  
12 each covered foreign entity that is a party to the  
13 covered activity;

14 “(4) the impact on the domestic industry and  
15 resulting resiliency, including the domestic human  
16 capital and supply chains, taking into consideration  
17 any pattern of foreign investment in the domestic in-  
18 dustry;

19 “(5) whether the covered activity could, directly  
20 or indirectly, support, enhance, or enable the capa-  
21 bilities of a country of concern or a covered foreign  
22 entity; and

23 “(6) any additional national security factors  
24 identified in regulations prescribed in accordance  
25 with section 1008.

1 **“SEC. 1005. SUPPLY CHAIN SENSITIVITIES.**

2 “The Committee shall determine the sensitivities and  
3 risks for sourcing of goods, materials, and technologies  
4 needed for national critical capabilities sectors in the  
5 United States, in accordance with the following:

6 “(1) The sourcing of least concern shall be for  
7 goods, materials, and technologies sourced, and sup-  
8 ply chains housed, in whole within countries that are  
9 allies of the United States.

10 “(2) The sourcing of greater concern shall be  
11 for goods, materials, and technologies sourced, and  
12 supply chains housed in part within countries of con-  
13 cern or from a covered foreign entity but for which  
14 substitute production is available from elsewhere at  
15 required scale to meet the needs of the United  
16 States, including in terms of surge capacity.

17 “(3) The sourcing of greatest concern shall be  
18 for goods, materials, and technologies sourced, and  
19 supply chains housed, wholly or in part, in countries  
20 of concern or from a covered foreign entity and for  
21 which substitute production is unavailable elsewhere  
22 at required scale.

23 **“SEC. 1006. REPORTING REQUIREMENTS.**

24 “(a) IN GENERAL.—Not later than 360 days after  
25 the date on which the regulations prescribed under section  
26 1008 take effect, and not less frequently than every 90

1 days thereafter, the Committee shall submit to the appro-  
2 priate congressional committees a report—

3 “(1) on the determination under section 1005  
4 with respect to sensitivities and risks for sourcing of  
5 goods, materials, and technologies described in that  
6 section;

7 “(2) providing, for the year preceding submis-  
8 sion of the report—

9 “(A) a summary of the notifications re-  
10 ceived under subsection (a) of section 1003 and  
11 reviews conducted pursuant to such notifica-  
12 tions;

13 “(B) a summary of reviews initiated under  
14 paragraph (1) or (3) of subsection (b) of that  
15 section;

16 “(C) a description of reviews during which  
17 the Committee determined no action was re-  
18 quired; and

19 “(D) a summary of—

20 “(i) mitigation agreements entered  
21 into and conditions imposed under sub-  
22 section (c) of that section; and

23 “(ii) other existing, relevant mitiga-  
24 tion measures that could be used to miti-  
25 gate the risk; and



1           “(3) assessing the overall impact of such re-  
2 views on national critical capabilities sectors, which  
3 may include recommendations on—

4           “(A) expansion of Federal programs to  
5 support or protect the production or supply of  
6 national critical capabilities sectors in the  
7 United States, including the potential of exist-  
8 ing legal authorities to address any related na-  
9 tional security concerns;

10           “(B) investments to enhance national crit-  
11 ical capabilities sectors and reduce dependency  
12 on countries of concern; and

13           “(C) the continuation, expansion, or modi-  
14 fication of the Committee.

15           “(b) REPORT ON SECTORS.—Not less frequently than  
16 annually, the Committee shall submit to the appropriate  
17 congressional committees a report describing—

18           “(1) the sectors determined by the President to  
19 be national critical capabilities sectors under section  
20 1001(5)(H); and

21           “(2) the reasons why each such sector was de-  
22 termined to be a national critical capabilities sector.

23           “(c) FORM OF REPORT.—Each report required by  
24 this section shall be submitted in unclassified form, but  
25 may include a classified annex.

1 **“SEC. 1007. PENALTIES AND ENFORCEMENT.**

2 “(a) PENALTIES.—

3 “(1) UNLAWFUL ACTS.—Subject to regulations  
4 prescribed in accordance with section 1008, it shall  
5 be unlawful—

6 “(A) to engage in a covered activity pro-  
7 hibited under this title or pursuant to such reg-  
8 ulations;

9 “(B) to fail to submit a notification under  
10 subsection (a) of section 1003 with respect to  
11 a covered activity or to submit other informa-  
12 tion as required by the Committee;

13 “(C) to make a material misstatement or  
14 to omit a material fact in any information sub-  
15 mitted to the Committee under this title;

16 “(D) to breach or violate a mitigation  
17 agreement entered into or condition imposed  
18 under subsection (c) of that section; or

19 “(E) to engage in any activity that evades  
20 or avoids, has the purpose of evading or avoid-  
21 ing, causes a violation of, or attempts to violate  
22 a prohibition under this title or pursuant to  
23 such regulations.

24 “(2) CIVIL PENALTIES.—A civil penalty may be  
25 imposed on any person who commits an unlawful act

1 described in paragraph (1) in an amount not to ex-  
2 ceed the greater of—

3 “(A) \$250,000; or

4 “(B) an amount that is twice the amount  
5 of the covered activity that is the basis of the  
6 violation with respect to which the penalty is  
7 imposed.

8 “(b) ENFORCEMENT.—The President may direct the  
9 Attorney General to seek appropriate relief, including di-  
10 vestment relief, in the district courts of the United States,  
11 in order to implement and enforce this title.

12 **“SEC. 1008. REQUIREMENT FOR REGULATIONS.**

13 “(a) IN GENERAL.—Not later than 360 days after  
14 the date of the enactment of this title, the Committee shall  
15 finalize regulations to carry out this title.

16 “(b) ELEMENTS.—Regulations prescribed to carry  
17 out this title shall include specific examples of the types  
18 of—

19 “(1) activities that will be considered to be cov-  
20 ered activities; and

21 “(2) the specific sectors and subsectors that  
22 may be considered to be national critical capabilities  
23 sectors, at the discretion of the Committee.

24 “(c) REQUIREMENTS FOR CERTAIN REGULATIONS.—

1           “(1) IN GENERAL.—The Committee shall pre-  
2       scribe regulations further defining the terms used in  
3       this title, including ‘covered activity’, ‘covered for-  
4       eign entity’, and ‘party’, in accordance with sub-  
5       chapter II of chapter 5 and chapter 7 of title 5,  
6       United States Code (commonly known as the ‘Ad-  
7       ministrative Procedure Act’).

8           “(2) MODIFICATIONS TO COUNTRIES OF CON-  
9       CERN.—The Committee shall prescribe regulations  
10      with respect to modifying the definition of the term  
11      ‘country of concern’. Such regulations shall establish  
12      a process for removing from the definition of that  
13      term a country that no longer meets the criteria  
14      under section 1001(2).

15      “(d) PUBLIC PARTICIPATION IN RULEMAKING.—The  
16      provisions of section 709 shall apply to any regulations  
17      issued under this title.

18      **“SEC. 1009. JUDICIAL REVIEW.**

19      “(a) IN GENERAL.—Except as provided in this sec-  
20      tion, and notwithstanding any other provision of law, an  
21      action taken under this title, or any action taken by an  
22      Executive department (as defined in section 101 of title  
23      5, United States Code) to implement such an action, shall  
24      not be subject to administrative review or judicial review,

1 including bid protests before the Government Account-  
2 ability Office or in any Federal court.

3       “(b) CIVIL ACTIONS.—A civil action challenging an  
4 action or finding under this title may be brought only in  
5 the United States Court of Appeals for the District of Co-  
6 lumbia Circuit. Not later than 60 days after a party is  
7 notified of an action by the Committee under this title,  
8 the party may file a petition for judicial review in the  
9 United States Court of Appeals for the District of Colum-  
10 bia claiming that the action is unlawful.

11       “(c) STANDARD OF REVIEW.—The court shall hold  
12 an action unlawful in response to a petition that the court  
13 finds to be arbitrary, capricious, an abuse of discretion,  
14 or otherwise not in accordance with law.

15       “(d) EXCLUSIVE JURISDICTION AND REMEDY.—The  
16 United States Court of Appeals for the District of Colum-  
17 bia Circuit shall have exclusive jurisdiction over claims  
18 arising under this title against the United States, any  
19 United States department or agency, or any component  
20 or official of any such department or agency, subject to  
21 review by the Supreme Court of the United States under  
22 section 1254 of title 28, United States Code. A determina-  
23 tion by the court under this section shall be the exclusive  
24 judicial remedy for any claim described in this section  
25 against the United States, any United States department

1 or agency, or any component or official of any such de-  
2 partment or agency.

3 “(e) ADMINISTRATIVE RECORD AND PROCEDURES.—

4 “(1) IN GENERAL.—The procedures described  
5 in this subsection shall apply to the review of a peti-  
6 tion under this section.

7 “(2) ADMINISTRATIVE RECORD.—

8 “(A) FILING OF RECORD.—The United  
9 States shall file with the court an administra-  
10 tive record, which shall consist of the informa-  
11 tion that the Committee relied upon in taking  
12 an action under this title.

13 “(B) UNCLASSIFIED, NONPRIVILEGED IN-  
14 FORMATION.—All unclassified information con-  
15 tained in the administrative record that is not  
16 otherwise privileged or subject to statutory pro-  
17 tections shall be provided to the petitioner with  
18 appropriate protections for any privileged or  
19 confidential trade secrets and commercial or fi-  
20 nancial information.

21 “(C) IN CAMERA AND EX PARTE.—The fol-  
22 lowing information may be included in the ad-  
23 ministrative record and shall be submitted only  
24 to the court ex parte and in camera:

25 “(i) Classified information.

1           “(ii) Sensitive security information, as  
2 defined by section 1520.5 of title 49, Code  
3 of Federal Regulations (or any successor  
4 regulation).

5           “(iii) Privileged law enforcement in-  
6 formation.

7           “(iv) Information obtained or derived  
8 from any activity authorized under the  
9 Foreign Intelligence Surveillance Act of  
10 1978 (50 U.S.C. 1801 et seq.), except  
11 that, with respect to such information,  
12 subsections (c), (e), (f), (g), and (h) of sec-  
13 tion 106 (50 U.S.C. 1806), subsections  
14 (d), (f), (g), (h), and (i) of section 305 (50  
15 U.S.C. 1825), subsections (c), (e), (f), (g),  
16 and (h) of section 405 (50 U.S.C. 1845),  
17 and section 706 (50 U.S.C. 1881e) of that  
18 Act shall not apply.

19           “(v) Information subject to privilege  
20 or protections under any other provision of  
21 law.

22           “(D) UNDER SEAL.—Any information that  
23 is part of the administrative record filed ex  
24 parte and in camera under subparagraph (C),  
25 or cited by the court in any decision, shall be

1 treated by the court consistent with the provi-  
2 sions of this paragraph and shall remain under  
3 seal and preserved in the records of the court  
4 to be made available consistent with those pro-  
5 visions in the event of further proceedings. In  
6 no event shall such information be released to  
7 the petitioner or as part of the public record.

8 “(f) RETURN.—After the expiration of the time to  
9 seek further review, or the conclusion of further pro-  
10 ceedings, the court shall return the administrative record,  
11 including any and all copies, to the United States.

12 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-  
13 tion shall be construed as limiting, superseding, or pre-  
14 venting the invocation of, any privileges or defenses that  
15 are otherwise available at law or in equity to protect  
16 against the disclosure of information.

17 “(h) DEFINITIONS.—In this subsection, the term  
18 ‘classified information’—

19 “(1) has the meaning given that term in section  
20 1(a) of the Classified Information Procedures Act  
21 (18 U.S.C. App.); and

22 “(2) includes—

23 “(A) any information or material that has  
24 been determined by the United States Govern-  
25 ment pursuant to an Executive order, statute,



1 or regulation to require protection against un-  
2 authorized disclosure for reasons of national se-  
3 curity; and

4 “(B) any Restricted Data, as defined in  
5 section 11 of the Atomic Energy Act of 1954  
6 (42 U.S.C. 2014).

7 **“SEC. 1010. MULTILATERAL ENGAGEMENT AND COORDINA-**  
8 **TION.**

9 “(a) IN GENERAL.—The President, in coordination  
10 with the United States Trade Representative, the Sec-  
11 retary of Commerce, the Secretary of State, and the Sec-  
12 retary of the Treasury, shall—

13 “(1) in coordination and consultation with rel-  
14 evant Federal agencies, conduct bilateral and multi-  
15 lateral engagement with the governments of coun-  
16 tries that are allies and partners of the United  
17 States to secure coordination of protocols and proce-  
18 dures with respect to covered activities with coun-  
19 tries of concern and covered foreign entities; and

20 “(2) upon adoption of protocols and procedures  
21 described in paragraph (1), work with those govern-  
22 ments to establish mechanisms for sharing informa-  
23 tion, including trends, with respect to such activities.

1       “(b) STRATEGY FOR DEVELOPMENT OF OUTBOUND  
2 REVIEW MECHANISMS.—The Committee, in consultation  
3 with the Attorney General, shall—

4               “(1) develop a strategy to work with countries  
5 that are allies and partners of the United States to  
6 develop mechanisms comparable to this title for the  
7 review of covered activities; and

8               “(2) provide technical assistance to those coun-  
9 tries with respect to the development of those mech-  
10 anisms.

11 **“SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.**

12       “(a) IN GENERAL.—There are authorized to be ap-  
13 propriated such sums as may be necessary to carry out  
14 this title, including to provide outreach to industry and  
15 persons affected by this title.

16       “(b) HIRING AUTHORITY.—The head of any agency  
17 specified in section 1002(b) may appoint, without regard  
18 to the provisions of sections 3309 through 3318 of title  
19 5, United States Code, candidates directly to positions in  
20 the competitive service (as defined in section 2102 of that  
21 title) in that agency. The primary responsibility of individ-  
22 uals in positions authorized under the preceding sentence  
23 shall be to administer this title.

1 **“SEC. 1012. RULE OF CONSTRUCTION WITH RESPECT TO**  
2 **FREE AND FAIR COMMERCE.**

3 “Nothing in this title may be construed to restrain  
4 or deter foreign investment in the United States, United  
5 States investment abroad, or trade in goods or services,  
6 if such investment and trade do not pose a risk to the  
7 national security of the United States.”

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