

117TH CONGRESS
1ST SESSION

S. 39

To ensure the continued strength and leadership of the United States in the research and development of key technologies for future wireless telecommunications standards and infrastructure by providing additional authority for sanctions against certain foreign entities that pose a threat to national security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2021

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To ensure the continued strength and leadership of the United States in the research and development of key technologies for future wireless telecommunications standards and infrastructure by providing additional authority for sanctions against certain foreign entities that pose a threat to national security, 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 “Protecting American
5 Innovation and Development Act of 2021”.

1 **SEC. 2. ADDRESSING THREATS TO NATIONAL SECURITY**
2 **WITH RESPECT TO WIRELESS COMMUNICA-**
3 **TIONS RESEARCH AND DEVELOPMENT.**

4 Chapter 4 of title II of the Trade Expansion Act of
5 1962 (19 U.S.C. 1862 et seq.) is amended by adding at
6 the end the following:

7 **“SEC. 234. STATEMENT OF POLICY.**

8 “It is the policy of the United States—

9 “(1) to ensure the continued strength and lead-
10 ership of the United States with respect to the re-
11 search and development of key technologies for fu-
12 ture wireless telecommunications standards and in-
13 frastructure;

14 “(2) that the national security of the United
15 States requires the United States to maintain its
16 leadership in the research and development of key
17 technologies for future wireless telecommunications
18 standards and infrastructure; and

19 “(3) that the national security and foreign pol-
20 icy of the United States requires that the importa-
21 tion of items that use, without a license, a claimed
22 invention protected by a patent that is essential for
23 the implementation of a wireless communications
24 standard and is held by a United States person, be
25 controlled to ensure the achievement of the policies
26 described in paragraphs (1) and (2).

1 **“SEC. 235. LIST OF FOREIGN ENTITIES THAT THREATEN NA-**
2 **TIONAL SECURITY WITH RESPECT TO WIRE-**
3 **LESS COMMUNICATIONS RESEARCH AND DE-**
4 **VELOPMENT.**

5 “(a) IN GENERAL.—The Secretary of Commerce (in
6 this section referred to as the ‘Secretary’) shall establish
7 and maintain a list of each foreign entity that the Sec-
8 retary determines—

9 “(1)(A) uses, without a license, a claimed in-
10 vention protected by a patent that is essential for
11 the implementation of a wireless communications
12 standard and is held by a covered person; and

13 “(B) is a person of concern or has as its ulti-
14 mate parent a person of concern; or

15 “(2) is a successor to an entity described in
16 paragraph (1).

17 “(b) WATCH LIST.—

18 “(1) IN GENERAL.—The Secretary shall estab-
19 lish and maintain a watch list of each foreign enti-
20 ty—

21 “(A)(i) that is a person of concern or has
22 as its ultimate parent a person of concern; and

23 “(ii) with respect to which a covered per-
24 son has made the demonstration described in
25 paragraph (2) in a petition submitted to the

1 Secretary for the inclusion of the entity on the
2 list; or

3 “(B) that is a successor to an entity de-
4 scribed in subparagraph (A).

5 “(2) DEMONSTRATION DESCRIBED.—

6 “(A) IN GENERAL.—A covered person has
7 made a demonstration described in this para-
8 graph if the person has reasonably dem-
9 onstrated to the Secretary that—

10 “(i) the person owns at least one un-
11 expired patent that is essential for the im-
12 plementation of a wireless communications
13 standard;

14 “(ii) a foreign entity that is a person
15 of concern, or has as its ultimate parent a
16 person of concern, has been, for a period
17 of more than 180 days, selling wireless
18 communications devices in or into the
19 United States, directly or indirectly, that
20 are claimed, labeled, marketed, or adver-
21 tised as complying with that standard;

22 “(iii) the covered person has offered
23 to the foreign entity or any of its affili-
24 ates—

1 “(I) a license to the person’s
2 portfolio of patents that are essential
3 to that standard; or

4 “(II) to enter into binding arbi-
5 tration to resolve the terms of such a
6 license; and

7 “(iv) the foreign entity has not exe-
8 cuted a license agreement or an agreement
9 to enter into such arbitration, as the case
10 may be, by the date that is 180 days after
11 the covered person made such an offer.

12 “(B) DEMONSTRATION OF ESSEN-
13 TIALITY.—A covered person may demonstrate
14 under subparagraph (A)(i) that the person
15 owns at least one unexpired patent that is es-
16 sential for the implementation of a wireless
17 communications standard by providing to the
18 Secretary any of the following:

19 “(i) A decision by a court or arbitral
20 tribunal that a patent owned by the person
21 is essential for the implementation of that
22 standard.

23 “(ii) A determination by an inde-
24 pendent patent evaluator not hired by the
25 person that a patent owned by the person

1 is essential for the implementation of that
2 standard.

3 “(iii) A showing that wireless commu-
4 nications device manufacturers together
5 accounting for a significant portion of the
6 United States or world market for such de-
7 vices have entered into agreements for li-
8 censes to the person’s portfolio of patents
9 that are essential for the implementation
10 of that standard.

11 “(iv) A showing that the person has
12 previously granted licenses to the foreign
13 entity described in subparagraph (A)(ii) or
14 any of its affiliates with respect to a rea-
15 sonably similar portfolio of the person’s
16 patents that are essential for the imple-
17 mentation of that standard.

18 “(C) ACCOUNTING OF WIRELESS COMMU-
19 NICATIONS DEVICE MARKET.—A showing de-
20 scribed in subparagraph (B)(iii) may be made
21 either by including or excluding wireless com-
22 munications device manufacturers that are per-
23 sons of concern.

24 “(3) PROCEDURES.—

1 “(A) ADDING A FOREIGN ENTITY TO THE
2 WATCH LIST.—

3 “(i) IN GENERAL.—The Secretary
4 may add a foreign entity to the watch list
5 under paragraph (1) only after notice and
6 opportunity for an agency hearing on the
7 record in accordance with (except as pro-
8 vided in clause (ii)) sections 554 through
9 557 of title 5, United States Code.

10 “(ii) MATTERS CONSIDERED AT HEAR-
11 ING.—An agency hearing conducted under
12 clause (i)—

13 “(I) shall be limited to consider-
14 ation of—

15 “(aa) whether the dem-
16 onstration described in paragraph
17 (2) has been reasonably made;
18 and

19 “(bb) the amount of bond to
20 be required in accordance with
21 section 236; and

22 “(II) may not include the presen-
23 tation or consideration of legal or eq-
24 uitable defenses or counterclaims.

1 “(B) ADMINISTRATIVE PROCEDURE.—Ex-
2 cept as provided in subparagraph (A), the func-
3 tions exercised under this section and section
4 236 shall not be subject to sections 551, 553
5 through 559, or 701 through 706 of title 5,
6 United States Code.

7 “(c) MOVEMENT BETWEEN LISTS.—A foreign entity
8 on the watch list required by subsection (b)(1) may be
9 moved to the list required by subsection (a), pursuant to
10 procedures established by the Secretary, on or after the
11 date that is one year after being included on the watch
12 list if the foreign entity is not able to reasonably dem-
13 onstrate that it has entered into a patent license agree-
14 ment or a binding arbitration agreement with each covered
15 person that has made the demonstration described in sub-
16 section (b)(2) with respect to the entity.

17 “(d) REMOVAL FROM LISTS.—A foreign entity on the
18 list required by subsection (a) or on the watch list required
19 by subsection (b)(1) may petition the Secretary to be re-
20 moved from that list on the basis that the conditions that
21 led to the inclusion of the foreign entity on the list no
22 longer exist. The burden of proof shall be on the foreign
23 entity.

24 “(e) DEFINITIONS.—In this section:

1 “(1) AFFILIATE.—The term ‘affiliate’, with re-
2 spect to an entity, means any entity that owns or
3 controls, is owned or controlled by, or is under com-
4 mon ownership or control with, the entity.

5 “(2) COUNTRY OF CONCERN.—The term ‘coun-
6 try of concern’ means a country with respect to
7 which the Secretary determines that—

8 “(A) persons in the country persistently
9 use, without obtaining a license, patents—

10 “(i) essential to the implementation of
11 wireless communications standards; and

12 “(ii) held by a covered person; and

13 “(B) that use of patents poses a threat
14 to—

15 “(i) the ability of the United States to
16 maintain a wireless communications re-
17 search and development infrastructure;
18 and

19 “(ii) the national security of the
20 United States, pursuant to the policy set
21 forth in section 234.

22 “(3) COVERED PERSON.—The term ‘covered
23 person’ means—

24 “(A) a covered United States person; or

1 “(B) an affiliate of a covered United
2 States person—

3 “(i) headquartered in, or organized
4 under the laws of, a country that is a
5 member of the European Union or the
6 North Atlantic Treaty Organization; and

7 “(ii) engaged in wireless communica-
8 tions research and development.

9 “(4) COVERED UNITED STATES PERSON.—The
10 term ‘covered United States person’ means a United
11 States person engaged in wireless communications
12 research and development in the United States.

13 “(5) PERSON OF CONCERN.—The term ‘person
14 of concern’ means a person that is—

15 “(A) an individual who is a citizen or na-
16 tional (as defined in section 101(a) of the Im-
17 migration and Nationality Act (8 U.S.C.
18 1101(a))) of a country of concern; or

19 “(B) an entity that is headquartered in, or
20 organized under the laws of, a country of con-
21 cern.

22 “(6) UNITED STATES PERSON.—The term
23 ‘United States person’ means—

1 “(A) an individual who is a United States
2 citizen or an alien lawfully admitted for perma-
3 nent residence to the United States;

4 “(B) an entity organized under the laws of
5 the United States or any jurisdiction within the
6 United States, including a foreign branch of
7 such an entity; or

8 “(C) any person in the United States.

9 “(7) WIRELESS COMMUNICATIONS STAND-
10 ARD.—The term ‘wireless communications standard’
11 means—

12 “(A) a cellular wireless telecommunications
13 standard, including such a standard promul-
14 gated by the 3rd Generation Partnership
15 Project (commonly known as ‘3GPP’) or the
16 3rd Generation Partnership Project 2 (com-
17 monly known as ‘3GPP2’); or

18 “(B) a wireless local area network stand-
19 ard, including such a standard designated as
20 IEEE 802.11 as developed by the Institute of
21 Electrical and Electronics Engineers (commonly
22 known as the ‘IEEE’).

1 **“SEC. 236. IMPORT SANCTIONS WITH RESPECT TO CERTAIN**
2 **FOREIGN ENTITIES THAT THREATEN NA-**
3 **TIONAL SECURITY.**

4 “(a) IN GENERAL.—Any foreign entity on the list re-
5 quired by section 235(a) may be subject to such controls
6 on the importing of goods or technology into the United
7 States as the President may prescribe.

8 “(b) ENTRY UNDER BOND.—

9 “(1) IN GENERAL.—Unless otherwise prescribed
10 by the President, a product described in paragraph
11 (2) may not enter the United States except under
12 bond prescribed by the Secretary of Commerce in an
13 amount determined by the Secretary to be sufficient
14 to protect from injury a covered United States per-
15 son that made the demonstration described in sec-
16 tion 235(b)(2) with respect to the entity that has
17 been selling the product directly or indirectly in or
18 into the United States.

19 “(2) PRODUCTS DESCRIBED.—A product de-
20 scribed in this paragraph is a wireless communica-
21 tions device—

22 “(A) produced or sold by—

23 “(i) a foreign entity on the watch list
24 required by section 235(b);

25 “(ii) a successor of such an entity; or

1 “(iii) an affiliate of an entity de-
2 scribed in clause (i) or (ii); and

3 “(B) that is claimed, labeled, marketed, or
4 advertised as complying with a wireless commu-
5 nications standard that was the basis for the in-
6 clusion of the foreign entity on the watch list.

7 “(c) FORFEITURE OF BOND.—

8 “(1) IN GENERAL.—If a foreign entity on the
9 watch list required by section 235(b) is moved to the
10 list required by section 235(a) and becomes subject
11 to controls under subsection (a), a bond paid under
12 subsection (b) shall be forfeited to a covered United
13 States person that made the demonstration de-
14 scribed in section 235(b)(2) with respect to the enti-
15 ty.

16 “(2) TERMS AND CONDITIONS.—The Secretary
17 of Commerce shall prescribe the procedures and any
18 terms or conditions under which bonds will be for-
19 feited under paragraph (1).

20 “(d) DEFINITIONS.—In this section, the terms ‘affil-
21 iate’ and ‘covered United States person’ have the mean-
22 ings given those terms in section 235(d).”.

1 **SEC. 3. CONTROLS ON IMPORTS OF GOODS OR TECH-**
2 **NOLOGY AGAINST PERSONS THAT RAISE NA-**
3 **TIONAL SECURITY CONCERNS.**

4 Section 233 of the Trade Expansion Act of 1962 (19
5 U.S.C. 1864) is amended to read as follows:

6 **“SEC. 233. IMPORT SANCTIONS FOR EXPORT VIOLATIONS.**

7 “(a) IN GENERAL.—A person described in subsection
8 (b) may be subject to such controls on the importing of
9 goods or technology into the United States as the Presi-
10 dent may prescribe.

11 “(b) PERSONS DESCRIBED.—A person described in
12 this subsection is a person that—

13 “(1) violates any national security export con-
14 trol imposed under section 1755 of the Export Con-
15 trol Reform Act of 2018 (50 U.S.C. 4814) or any
16 regulation, order, or license issued under that sec-
17 tion; or

18 “(2) raises a national security concern under—

19 “(A) section 235 or any regulation, order,
20 or license issued under that section; or

21 “(B) the Export Control Reform Act of
22 2018 (50 U.S.C. 4801 et seq.) or any regula-
23 tion, order, or license issued under that Act.”.

○