

118TH CONGRESS
1ST SESSION

S. 686

To authorize the Secretary of Commerce to review and prohibit certain transactions between persons in the United States and foreign adversaries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2023

Mr. WARNER (for himself, Mr. THUNE, Ms. BALDWIN, Mrs. FISCHER, Mr. MANCHIN, Mr. MORAN, Mr. BENNET, Mr. SULLIVAN, Mrs. GILLIBRAND, Ms. COLLINS, Mr. HEINRICH, Mr. ROMNEY, and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To authorize the Secretary of Commerce to review and prohibit certain transactions between persons in the United States and foreign adversaries, 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 “Restricting the Emer-
5 gence of Security Threats that Risk Information and Com-
6 munications Technology Act” or the “RESTRICT Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) CLASSIFIED NATIONAL SECURITY INFORMA-
2 TION.—The term “classified national security infor-
3 mation” means information that has been deter-
4 mined pursuant to Executive Order 13526 (50
5 U.S.C. 3161 note; relating to classified national se-
6 curity information) or any predecessor or successor
7 order, to require protection against unauthorized
8 disclosure, and is marked to indicate such classified
9 status if in documentary form.

10 (2) CONTROLLING HOLDING.—The term “con-
11 trolling holding” means a holding with the power,
12 whether direct or indirect and whether exercised or
13 not exercised, to determine, direct, or decide impor-
14 tant matters affecting an entity.

15 (3) COVERED HOLDING.—The term “covered
16 holding”—

17 (A) means, regardless of how or when such
18 holding was or will be obtained or otherwise
19 come to have been held, a controlling holding
20 held, directly or indirectly, in an ICTS covered
21 holding entity by—

22 (i) a foreign adversary;

23 (ii) an entity subject to the jurisdic-
24 tion of, or organized under the laws of, a
25 foreign adversary; or

1 (iii) an entity owned, directed, or con-
2 trolled by an entity described in subpara-
3 graphs (i) or (ii); and

4 (B) includes any other holding, the struc-
5 ture of which is designed or intended to evade
6 or circumvent the application of this Act, sub-
7 ject to regulations prescribed by the Secretary.

8 (4) COVERED TRANSACTION.—

9 (A) IN GENERAL.—The term “covered
10 transaction” means a transaction in which an
11 entity described in subparagraph (B) has any
12 interest (including through an interest in a con-
13 tract for the provision of the technology or serv-
14 ice), or any class of such transactions.

15 (B) COVERED ENTITIES.—The entities de-
16 scribed in this subparagraph are:

17 (i) a foreign adversary;

18 (ii) an entity subject to the jurisdic-
19 tion of, or organized under the laws of, a
20 foreign adversary; and

21 (iii) an entity owned, directed, or con-
22 trolled by a person described in subpara-
23 graph (A) or (B).

24 (C) NON-EVASION.—The term “covered
25 transaction” includes any other transaction, the

1 structure of which is designed or intended to
2 evade or circumvent the application of this Act,
3 subject to regulations prescribed by the Sec-
4 retary.

5 (D) TIMING.—The term “covered trans-
6 action” includes a current, past, or potential fu-
7 ture transaction.

8 (5) CRITICAL INFRASTRUCTURE.—The term
9 “critical infrastructure” has the meaning given the
10 term in section 1016(e) of the USA PATRIOT Act
11 (42 U.S.C. 5195c(e)).

12 (6) ENTITY.—The term “entity” means any of
13 the following, whether established in the United
14 States or outside of the United States:

15 (A) A firm.

16 (B) A government, government agency,
17 government department, or government com-
18 mission.

19 (C) A labor union.

20 (D) A fraternal or social organization.

21 (E) A partnership.

22 (F) A trust.

23 (G) A joint venture.

24 (H) A corporation.

1 (I) A group, subgroup, or other association
2 or organization whether or not organized for
3 profit.

4 (7) EXECUTIVE DEPARTMENT AND AGENCY.—
5 The term “executive department and agency” has
6 the meaning given the term “Executive agency” in
7 section 105 of title 5, United States Code.

8 (8) FOREIGN ADVERSARY.—The term “foreign
9 adversary”—

10 (A) means any foreign government or re-
11 gime, determined by the Secretary, pursuant to
12 sections 3 and 5, to have engaged in a long-
13 term pattern or serious instances of conduct
14 significantly adverse to the national security of
15 the United States or the security and safety of
16 United States persons; and

17 (B) includes, unless removed by the Sec-
18 retary pursuant to section 6—

19 (i) the People’s Republic of China, in-
20 cluding the Hong Kong Special Adminis-
21 trative Region and Macao Special Adminis-
22 trative Region;

23 (ii) the Republic of Cuba;

24 (iii) the Islamic Republic of Iran;

1 (iv) the Democratic People’s Republic
2 of Korea;

3 (v) the Russian Federation; and

4 (vi) the Bolivarian Republic of Ven-
5 ezuela under the regime of Nicolás Maduro
6 Moros.

7 (9) HOLDING.—The term “holding”—

8 (A) means—

9 (i) an equity interest;

10 (ii) a stock;

11 (iii) a security;

12 (iv) a share;

13 (v) a partnership interest;

14 (vi) an interest in a limited liability
15 company;

16 (vii) a membership interest; or

17 (viii) any participation, right, or other
18 equivalent, however designated and of any
19 character; and

20 (B) includes, without limitation, any secu-
21 rity convertible into an ownership interest and
22 right, warrant, or option to acquire ownership
23 interests.

1 (10) ICTS COVERED HOLDING ENTITY.—The
2 term “ICTS covered holding entity” means any enti-
3 ty that—

4 (A) owns, controls, or manages information
5 and communications technology products or
6 services; and

7 (B)(i) has not less than 1,000,000 United
8 States-based annual active users at any point
9 during the year period preceding the date on
10 which the covered holding is referred to the
11 President; or

12 (ii) for which more than 1,000,000 units
13 have been sold to persons in the United States
14 before the date on which the covered holding is
15 referred to the President.

16 (11) INFORMATION AND COMMUNICATIONS
17 TECHNOLOGY PRODUCTS OR SERVICES.—The term
18 “information and communications technology prod-
19 ucts or services” means any hardware, software, or
20 other product or service primarily intended to fulfill
21 or enable the function of information or data proc-
22 essing, storage, retrieval, or communication by elec-
23 tronic means, including transmission, storage, and
24 display.

1 (12) MITIGATION MEASURE.—The term “miti-
2 gation measure” means a measure agreed to in an
3 agreement between any relevant party and the Fed-
4 eral Government, or ordered by the Federal Govern-
5 ment and of which any relevant party has been noti-
6 fied, in any matter addressed under this Act to ad-
7 dress any risk arising from a covered transaction or
8 associated with a covered holding.

9 (13) PERSON.—The term “person” means a
10 natural person, including a citizen or national of the
11 United States or of any foreign country.

12 (14) RELEVANT EXECUTIVE DEPARTMENT AND
13 AGENCY HEADS.—The term “relevant executive de-
14 partment and agency heads” means—

15 (A) the Secretary of Treasury;

16 (B) the Secretary of State;

17 (C) the Secretary of Defense;

18 (D) the Attorney General;

19 (E) the Secretary of Homeland Security;

20 (F) the United States Trade Representa-

21 tive;

22 (G) the Director of National Intelligence;

23 (H) the Administrator of General Services;

24 (I) the Chairman of the Federal Commu-

25 nications Commission; and

1 (J) the heads of other executive depart-
2 ments and agencies, as appropriate.

3 (15) RELEVANT COMMITTEES OF CONGRESS.—

4 The term “relevant committees of Congress”
5 means—

6 (A) the Committee on Commerce, Science,
7 and Transportation, the Committee on the Ju-
8 diciary, the Committee on Homeland Security
9 and Governmental Affairs, the Committee on
10 Foreign Relations, the Committee on Banking,
11 Housing, and Urban Affairs, the Committee on
12 Armed Services, the Committee on Rules and
13 Administration, and the Select Committee on
14 Intelligence of the Senate; and

15 (B) the Committee on Energy and Com-
16 merce, the Committee on the Judiciary, the
17 Committee on Homeland Security, the Com-
18 mittee on Oversight and Accountability, the
19 Committee on Foreign Affairs, the Committee
20 on Armed Services, the Committee on House
21 Administration, and the Permanent Select
22 Committee on Intelligence of the House of Rep-
23 resentatives.

24 (16) SECRETARY.—The term “Secretary”
25 means the Secretary of Commerce.

1 (17) TRANSACTION.—The term “transaction”
2 means any acquisition, importation, transfer, instal-
3 lation, dealing in, or use of any information and
4 communications technology product or service, in-
5 cluding ongoing activities such as managed services,
6 data transmission, software updates, repairs, or the
7 provision of data hosting services, or a class of such
8 transactions.

9 **SEC. 3. ADDRESSING INFORMATION AND COMMUNICATION**
10 **TECHNOLOGY PRODUCTS AND SERVICES**
11 **THAT POSE UNDUE OR UNACCEPTABLE RISK.**

12 (a) IN GENERAL.—The Secretary, in consultation
13 with the relevant executive department and agency heads,
14 is authorized to and shall take action to identify, deter,
15 disrupt, prevent, prohibit, investigate, or otherwise miti-
16 gate, including by negotiating, entering into, or imposing,
17 and enforcing any mitigation measure to address any risk
18 arising from any covered transaction by any person, or
19 with respect to any property, subject to the jurisdiction
20 of the United States that the Secretary determines—

21 (1) poses an undue or unacceptable risk of—

22 (A) sabotage or subversion of the design,
23 integrity, manufacturing, production, distribu-
24 tion, installation, operation, or maintenance of

1 information and communications technology
2 products and services in the United States;

3 (B) catastrophic effects on the security or
4 resilience of the critical infrastructure or digital
5 economy of the United States;

6 (C) interfering in, or altering the result or
7 reported result of a Federal election, as deter-
8 mined in coordination with the Attorney Gen-
9 eral, the Director of National Intelligence, the
10 Secretary of Treasury, and the Federal Election
11 Commission; or

12 (D) coercive or criminal activities by a for-
13 eign adversary that are designed to undermine
14 democratic processes and institutions or steer
15 policy and regulatory decisions in favor of the
16 strategic objectives of a foreign adversary to the
17 detriment of the national security of the United
18 States, as determined in coordination with the
19 Attorney General, the Director of National In-
20 telligence, the Secretary of Treasury, and the
21 Federal Election Commission; or

22 (2) otherwise poses an undue or unacceptable
23 risk to the national security of the United States or
24 the safety of United States persons.

25 (b) PROCEDURE.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Sec-
3 retary, in consultation with the relevant executive
4 department and agency heads, shall review any
5 transaction described in subsection (a) to—

6 (A) determine, not later than 180 days
7 after the date on which the Secretary initiates
8 such review, if such transaction poses an undue
9 or unacceptable risk under subsection (a)(2)
10 and qualifies as a covered transaction; and

11 (B) with respect to a transaction found to
12 pose an undue or unacceptable risk and qualify
13 as a covered transaction, determine whether—

14 (i) the covered transaction should be
15 prohibited; or

16 (ii) any other action should be taken
17 to mitigate the effects of the covered trans-
18 action.

19 (2) PUBLISHED EXPLANATIONS.—If prac-
20 ticable, and consistent with the national security and
21 law enforcement interests of the United States, in
22 coordination and in cooperation with the Director of
23 National Intelligence, the Secretary shall publish in-
24 formation in a declassified form to explain how a
25 covered transaction that the Secretary denied or oth-

1 erwise mitigated under paragraph (1) meets the cri-
 2 teria established under subsection (a) or section
 3 4(a).

4 (3) CERTAIN ADMINISTRATIVE PROCEDURE RE-
 5 QUIREMENTS INAPPLICABLE.—Section 553 of title
 6 5, United State Code, shall not apply to any regula-
 7 tion promulgated pursuant to paragraph (1).

8 **SEC. 4. ADDRESSING INFORMATION AND COMMUNICA-**
 9 **TIONS TECHNOLOGY PRODUCTS AND SERV-**
 10 **ICES HOLDINGS THAT POSE UNDUE OR UN-**
 11 **ACCEPTABLE RISK.**

12 (a) IN GENERAL.—The Secretary shall identify and
 13 refer to the President any covered holding that the Sec-
 14 retary determines, in consultation with the relevant execu-
 15 tive department and agency heads, poses an undue or un-
 16 acceptable risk to the national security of the United
 17 States or the security and safety of United States persons.

18 (b) PROCEDURE.—

19 (1) REVIEW AND REFERRAL.—The Secretary
 20 shall, by regulation, establish procedures by which
 21 the Secretary, in consultation with the relevant execu-
 22 tive department and agency heads, shall—

23 (A) conduct reviews of holdings to deter-
 24 mine if such holdings constitute covered hold-

1 ings that pose an undue or unacceptable risk
2 under subsection (a); and

3 (B) refer to the President covered holdings
4 that are determined under subsection (a) to
5 pose an undue or unacceptable risk.

6 (2) REFERRALS PRIOR TO ESTABLISHMENT OF
7 REGULATIONS.—At any time preceding the issuance
8 of regulations or establishment of procedures under
9 subparagraph (1), the Secretary may identify and
10 refer to the President a holding determined to be a
11 covered holding under subsection (a) for action by
12 the President pursuant to subsection (c) if the Sec-
13 retary, in the sole and unreviewable discretion of the
14 Secretary, determines that such referral would be in
15 the interest of national security.

16 (3) ADMINISTRATIVE PROCEDURE REQUIRE-
17 MENTS INAPPLICABLE.—Subchapter II of chapter 5,
18 and chapter 7, of title 5, United States Code (com-
19 monly known as the “Administrative Procedure
20 Act”) shall not apply to any referral by the Sec-
21 retary to the President of a covered holding.

22 (c) ACTION BY THE PRESIDENT.—

23 (1) IN GENERAL.—Subject to section 13, with
24 respect to any covered holding referred to the Presi-
25 dent under subsection (a), if the President deter-

1 mines that the covered holding poses an undue or
2 unacceptable risk to the national security of the
3 United States or the security and safety of United
4 States persons, the President may take such action
5 as the President considers appropriate to compel di-
6 vestment of, or otherwise mitigate the risk associ-
7 ated with, such covered holding to the full extent the
8 covered holding is subject to the jurisdiction of the
9 United States, with respect to—

10 (A) the United States operations, assets,
11 or property of the entity in which the covered
12 holding is held, or of any products or services
13 owned, controlled, designed, developed, manu-
14 factured, or supplied by the entity are used in
15 the United States;

16 (B) any tangible or intangible assets, wher-
17 ever located, are used to support or enable use
18 of the product or software of the entity in the
19 United States; and

20 (C) any data obtained or derived from use
21 of the product or software of the entity in the
22 United States.

23 (2) NON-DELEGABLE AUTHORITY.—The au-
24 thority to compel divestment of a covered holding
25 under paragraph (1) may only be exercised by the

1 President and may not be delegated to any other in-
2 dividual, except as described in paragraph (4).

3 (3) ANNOUNCEMENT.—If the President deter-
4 mines that action is required pursuant to paragraph
5 (1), the President shall announce the decision not
6 later than 30 days after the date on which the Sec-
7 retary refers the covered holding to the President
8 pursuant to subsection (a).

9 (4) ENFORCEMENT OF DIVESTMENT.—The
10 President may direct the Attorney General to seek
11 appropriate relief, including divestment relief, in the
12 district courts of the United States in order to im-
13 plement and enforce this subsection.

14 **SEC. 5. CONSIDERATIONS.**

15 (a) PRIORITY INFORMATION AND COMMUNICATIONS
16 TECHNOLOGY AREAS.—In carrying out sections 3 and 4,
17 the Secretary shall prioritize evaluation of—

18 (1) information and communications technology
19 products or services used by a party to a covered
20 transaction in a sector designated as critical infra-
21 structure in Policy Directive 21 (February 12, 2013;
22 relating to critical infrastructure security and resil-
23 ience);

1 (2) software, hardware, or any other product or
2 service integral to telecommunications products and
3 services, including—

4 (A) wireless local area networks;

5 (B) mobile networks;

6 (C) satellite payloads;

7 (D) satellite operations and control;

8 (E) cable access points;

9 (F) wireline access points;

10 (G) core networking systems;

11 (H) long-, short-, and back-haul networks;

12 or

13 (I) edge computer platforms;

14 (3) any software, hardware, or any other prod-
15 uct or service integral to data hosting or computing
16 service that uses, processes, or retains, or is ex-
17 pected to use, process, or retain, sensitive personal
18 data with respect to greater than 1,000,000 persons
19 in the United States at any point during the year
20 period preceding the date on which the covered
21 transaction is referred to the Secretary for review or
22 the Secretary initiates review of the covered trans-
23 action, including—

24 (A) internet hosting services;

1 (B) cloud-based or distributed computing
2 and data storage;

3 (C) machine learning, predictive analytics,
4 and data science products and services, includ-
5 ing those involving the provision of services to
6 assist a party utilize, manage, or maintain
7 open-source software;

8 (D) managed services; and

9 (E) content delivery services;

10 (4) internet- or network-enabled sensors,
11 webcams, end-point surveillance or monitoring de-
12 vices, modems and home networking devices if great-
13 er than 1,000,000 units have been sold to persons
14 in the United States at any point during the year
15 period preceding the date on which the covered
16 transaction is referred to the Secretary for review or
17 the Secretary initiates review of the covered trans-
18 action;

19 (5) unmanned vehicles, including drones and
20 other aeriels systems, autonomous or semi-autono-
21 mous vehicles, or any other product or service inte-
22 gral to the provision, maintenance, or management
23 of such products or services;

24 (6) software designed or used primarily for con-
25 necting with and communicating via the internet

1 that is in use by greater than 1,000,000 persons in
2 the United States at any point during the year pe-
3 riod preceding the date on which the covered trans-
4 action is referred to the Secretary for review or the
5 Secretary initiates review of the covered transaction,
6 including—

7 (A) desktop applications;

8 (B) mobile applications;

9 (C) gaming applications;

10 (D) payment applications; or

11 (E) web-based applications; or

12 (7) information and communications technology
13 products and services integral to—

14 (A) artificial intelligence and machine
15 learning;

16 (B) quantum key distribution;

17 (C) quantum communications;

18 (D) quantum computing;

19 (E) post-quantum cryptography;

20 (F) autonomous systems;

21 (G) advanced robotics;

22 (H) biotechnology;

23 (I) synthetic biology;

24 (J) computational biology; and

1 (K) e-commerce technology and services,
2 including any electronic techniques for accom-
3 plishing business transactions, online retail,
4 internet-enabled logistics, internet-enabled pay-
5 ment technology, and online marketplaces.

6 (b) CONSIDERATIONS RELATING TO UNDUE AND UN-
7 ACCEPTABLE RISKS.—In determining whether a covered
8 transaction poses an undue or unacceptable risk under
9 section 3(a) or 4(a), the Secretary—

10 (1) shall, as the Secretary determines appro-
11 priate and in consultation with appropriate agency
12 heads, consider, where available—

13 (A) any removal or exclusion order issued
14 by the Secretary of Homeland Security, the
15 Secretary of Defense, or the Director of Na-
16 tional Intelligence pursuant to recommendations
17 of the Federal Acquisition Security Council pur-
18 suant to section 1323 of title 41, United States
19 Code;

20 (B) any order or license revocation issued
21 by the Federal Communications Commission
22 with respect to a transacting party, or any con-
23 sent decree imposed by the Federal Trade Com-
24 mission with respect to a transacting party;

1 (C) any relevant provision of the Defense
2 Federal Acquisition Regulation and the Federal
3 Acquisition Regulation, and the respective sup-
4 plements to those regulations;

5 (D) any actual or potential threats to the
6 execution of a national critical function identi-
7 fied by the Director of the Cybersecurity and
8 Infrastructure Security Agency;

9 (E) the nature, degree, and likelihood of
10 consequence to the public and private sectors of
11 the United States that would occur if
12 vulnerabilities of the information and commu-
13 nications technologies services supply chain
14 were to be exploited; and

15 (F) any other source of information that
16 the Secretary determines appropriate; and

17 (2) may consider, where available, any relevant
18 threat assessment or report prepared by the Director
19 of National Intelligence completed or conducted at
20 the request of the Secretary.

21 **SEC. 6. DESIGNATION OF FOREIGN ADVERSARIES.**

22 (a) IN GENERAL.—

23 (1) DESIGNATION.—The Secretary may, in con-
24 sultation with the Director of National Intelligence,
25 designate any foreign government or regime as a

1 foreign adversary if the Secretary finds that the for-
2 eign government or regime is engaged in a long-term
3 pattern or serious instances of conduct significantly
4 adverse to the national security of the United States
5 or security and safety of United States persons.

6 (2) REMOVAL OF DESIGNATION.—The Sec-
7 retary may, in consultation with the Director of Na-
8 tional Intelligence, remove the designation of any
9 foreign government or regime as a foreign adversary,
10 including any foreign government or regime identi-
11 fied in section 2(8), if the Secretary finds that the
12 foreign government or regime is no longer engaged
13 in a long-term pattern or serious instances of con-
14 duct significantly adverse to the national or eco-
15 nomic security of the United States or security and
16 safety of United States persons in a manner that
17 would warrant designation as a foreign adversary.

18 (b) NOTICE.—Not later than 15 days before the date
19 on which the Secretary makes or removes a designation
20 under subsection (a), the Secretary shall, by classified
21 communication, notify the President pro tempore, Major-
22 ity Leader, and Minority Leader of the Senate, the Speak-
23 er and Minority Leader of the House of Representatives,
24 and the relevant committees of Congress, in writing, of
25 the intent to designate a foreign government or regime

1 as a foreign adversary under this section, together with
2 the findings made under subsection (a) with respect to the
3 foreign government or regime and the factual basis there-
4 for.

5 **SEC. 7. RESOLUTION OF DISAPPROVAL OF DESIGNATION**
6 **OR REMOVAL OF DESIGNATION OF A FOR-**
7 **EIGN ADVERSARY.**

8 (a) DEFINITION.—In this section—

9 (1) the term “covered joint resolution” means a
10 joint resolution of disapproval of designation or a
11 joint resolution of disapproval of removal of designa-
12 tion;

13 (2) the term “joint resolution of disapproval of
14 designation” means a joint resolution the matter
15 after the resolving clause of which is as follows:
16 “That Congress disapproves the designation by the
17 Secretary of Commerce of _____ as a foreign ad-
18 versary for purposes of the Securing the Information
19 and Communications Technology and Services Sup-
20 ply Chain Act of 2023, and such designation shall
21 have no force or effect until the Secretary of Com-
22 merce provides specific evidence to the relevant com-
23 mittees of Congress regarding the removal of des-
24 ignation under section 6(a) of that Act.” (The blank
25 space being appropriately filled in with the name of

1 the foreign person of which the Secretary has des-
2 igned as a foreign adversary of for purposes of
3 this Act); and

4 (3) the term “joint resolution of disapproval of
5 removal of designation” means a joint resolution the
6 matter after the resolving clause of which is as fol-
7 lows: “That Congress disapproves the removal of
8 designation by the Secretary of Commerce of _____
9 as a foreign adversary for purposes of the Securing
10 the Information and Communications Technology
11 and Services Supply Chain Act of 2023, and such
12 removal shall have no force or effect until the Sec-
13 retary of Commerce provides specific evidence to the
14 relevant committees of Congress regarding the re-
15 moval of designation under section 6(a) of that
16 Act.” (The blank space being appropriately filled in
17 with the name of the foreign government or regime
18 of which the Secretary has removed the designation
19 as a foreign adversary of for purposes of this Act).

20 (b) EXPEDITED CONSIDERATION OF LEGISLATION.—

21 (1) INITIATION.—In the event the Secretary
22 designates a foreign government or regime as a for-
23 eign adversary or removes such designation as a for-
24 eign adversary, a joint resolution of disapproval of
25 designation or a joint resolution of disapproval of re-

1 removal of designation, as applicable, that is intro-
2 duced during the 60-calendar day period thereafter
3 shall be entitled to expedited consideration pursuant
4 to this subsection.

5 (2) INTRODUCTION.—During the 60-calendar
6 day period provided for in paragraph (1), a covered
7 joint resolution may be introduced—

8 (A) in the Senate, by the Majority Leader
9 (or the designee of the Majority Leader) or the
10 Minority Leader (or the designee of the Minor-
11 ity Leader); and

12 (B) in the House of Representatives, by
13 the Speaker or the Minority Leader.

14 (3) FLOOR CONSIDERATION IN HOUSE OF REP-
15 RESENTATIVES.—

16 (A) REPORTING AND DISCHARGE.—If a
17 relevant committee of the House to which a cov-
18 ered joint resolution has been referred has not
19 reported such covered joint resolution within 10
20 legislative days after the date of referral, that
21 committee shall be discharged from further con-
22 sideration thereof.

23 (B) PROCEEDING TO CONSIDERATION.—
24 Beginning on the third legislative day after
25 each committee to which covered joint resolu-

1 tion has been referred reports the covered joint
2 resolution to the House or has been discharged
3 from further consideration thereof, it shall be in
4 order to move to proceed to consider the cov-
5 ered joint resolution in the House. All points of
6 order against the motion are waived. Such a
7 motion shall not be in order after the House
8 has disposed of a motion to proceed on the cov-
9 ered joint resolution with regard to the same
10 agreement. The previous question shall be con-
11 sidered as ordered on the motion to its adoption
12 without intervening motion. The motion shall
13 not be debatable. A motion to reconsider the
14 vote by which the motion is disposed of shall
15 not be in order.

16 (C) CONSIDERATION.—The covered joint
17 resolution shall be considered as read. All
18 points of order against the covered joint resolu-
19 tion and against its consideration are waived.
20 The previous question shall be considered as or-
21 dered on the covered joint resolution to final
22 passage without intervening motion except 2
23 hours of debate equally divided and controlled
24 by the sponsor of the covered joint resolution
25 (or a designee) and an opponent. A motion to

1 reconsider the vote on passage of the covered
2 joint resolution shall not be in order.

3 (4) CONSIDERATION IN THE SENATE.—

4 (A) COMMITTEE REFERRAL.—A covered
5 joint resolution introduced in the Senate shall
6 be referred to the relevant committees of the
7 Senate.

8 (B) REPORTING AND DISCHARGE.—If a
9 relevant committee of the Senate has not re-
10 ported such covered joint resolution within 10
11 session days after the date of referral of such
12 legislation, that committee shall be discharged
13 from further consideration of such legislation
14 and the covered joint resolution shall be placed
15 on the appropriate calendar.

16 (C) PROCEEDING TO CONSIDERATION.—
17 Notwithstanding Rule XXII of the Standing
18 Rules of the Senate, it is in order at any time
19 after each committee authorized to consider
20 covered joint resolution reports it to the Senate
21 or has been discharged from its consideration
22 (even though a previous motion to the same ef-
23 fect has been disagreed to) to move to proceed
24 to the consideration of the covered joint resolu-
25 tion, and all points of order against covered

1 joint resolution (and against consideration of
2 the covered joint resolution) are waived. The
3 motion to proceed is not debatable. The motion
4 is not subject to a motion to postpone. A mo-
5 tion to reconsider the vote by which the motion
6 is agreed to or disagreed to shall not be in
7 order. If a motion to proceed to the consider-
8 ation of the covered joint resolution is agreed
9 to, the covered joint resolution shall remain the
10 unfinished business until disposed of.

11 (D) DEBATE.—Debate on covered joint
12 resolution, and on all debatable motions and ap-
13 peals in connection therewith, shall be limited
14 to not more than 10 hours, which shall be di-
15 vided equally between the majority and minority
16 leaders or their designees. A motion to further
17 limit debate is in order and not debatable. An
18 amendment to, or a motion to postpone, or a
19 motion to proceed to the consideration of other
20 business, or a motion to recommit the covered
21 joint resolution is not in order.

22 (E) VOTE ON PASSAGE.—The vote on pas-
23 sage shall occur immediately following the con-
24 clusion of the debate on the covered joint reso-
25 lution and a single quorum call at the conclu-

1 sion of the debate, if requested in accordance
2 with the rules of the Senate.

3 (F) RULINGS OF THE CHAIR ON PROCE-
4 DURE.—Appeals from the decisions of the Chair
5 relating to the application of the rules of the
6 Senate, as the case may be, to the procedure re-
7 lating to a covered joint resolution shall be de-
8 cided without debate.

9 (G) CONSIDERATION OF VETO MES-
10 SAGES.—Debate in the Senate of any veto mes-
11 sage with respect to a covered joint resolution,
12 including all debatable motions and appeals in
13 connection with such covered joint resolution,
14 shall be limited to 10 hours, to be equally di-
15 vided between, and controlled by, the Majority
16 Leader and the Minority Leader or their des-
17 ignees.

18 (5) RULES RELATING TO SENATE AND HOUSE
19 OF REPRESENTATIVES.—

20 (A) COORDINATION WITH ACTION BY
21 OTHER HOUSE.—If, before the passage by one
22 House of a covered joint resolution of that
23 House, that House receives a covered joint reso-
24 lution from the other House, then the following
25 procedures shall apply:

1 (i) The covered joint resolution of the
2 other House shall not be referred to a com-
3 mittee.

4 (ii) With respect to covered joint reso-
5 lution of the House receiving the legisla-
6 tion—

7 (I) the procedure in that House
8 shall be the same as if no covered
9 joint resolution had been received
10 from the other House; but

11 (II) the vote on passage shall be
12 on the covered joint resolution of the
13 other House.

14 (B) TREATMENT OF A COVERED JOINT
15 RESOLUTION OF OTHER HOUSE.—If one House
16 fails to introduce a covered joint resolution
17 under this section, the covered joint resolution
18 of the other House shall be entitled to expedited
19 floor procedures under this section.

20 (C) TREATMENT OF COMPANION MEAS-
21 URES.—If, following passage of the covered
22 joint resolution in the Senate, the Senate then
23 receives a companion measure from the House
24 of Representatives, the companion measure
25 shall not be debatable.

1 (c) RULES OF SENATE AND HOUSE OF REPRESENTA-
2 TIVES.—Subsection (b) is enacted by Congress—

3 (1) as an exercise of the rulemaking power of
4 the Senate and the House of Representatives, re-
5 spectively, and as such are deemed a part of the
6 rules of each House, respectively, but applicable only
7 with respect to the procedure to be followed in that
8 House in the case of legislation described in those
9 sections, and supersede other rules only to the ex-
10 tent that they are inconsistent with such rules; and

11 (2) with full recognition of the constitutional
12 right of either House to change the rules (so far as
13 relating to the procedure of that House) at any time,
14 in the same manner, and to the same extent as in
15 the case of any other rule of that House.

16 (d) EFFECT OF COVERED JOINT RESOLUTION.—

17 (1) JOINT RESOLUTIONS OF DISAPPROVAL OF
18 DESIGNATION.—A joint resolution of disapproval of
19 designation that is enacted in accordance with this
20 section shall remove the designation as a foreign ad-
21 versary of a foreign government or regime that is
22 the subject of the joint resolution of disapproval of
23 designation for purposes of this Act.

24 (2) JOINT RESOLUTIONS OF DISAPPROVAL OF
25 REMOVAL OF DESIGNATION.—A joint resolution of

1 disapproval of removal of designation that is enacted
2 in accordance with this section shall prohibit the re-
3 moval of designation as a foreign adversary of a for-
4 eign government or regime that is the subject of the
5 joint resolution of disapproval of removal of designa-
6 tion for purposes of this Act.

7 **SEC. 8. IMPLEMENTING AUTHORITIES.**

8 (a) REGULATIONS.—In carrying out the responsibil-
9 ities under this Act, the Secretary may establish such
10 rules, regulations, and procedures as the Secretary con-
11 siders appropriate.

12 (b) CLASSES OF TRANSACTIONS.—In conducting re-
13 views, promulgating regulations, implementing prohibi-
14 tions or other mitigation measures, or otherwise carrying
15 out the responsibilities under this Act, the Secretary may
16 take action with respect to both individual covered trans-
17 actions and classes of covered transactions.

18 (c) OTHER AUTHORITIES.—

19 (1) IN GENERAL.—The Secretary may issue
20 guidance, including advisory opinions, and establish
21 procedures to carry out this Act.

22 (2) LISTS OF FOREIGN PERSONS.—The Sec-
23 retary may create lists of foreign persons that may
24 be subject to prohibitions or restrictions and related

1 mechanisms to revise and update such lists periodi-
2 cally.

3 (3) ADDITIONAL AUTHORITY.—The Secretary
4 may undertake any other action as necessary to
5 carry out the responsibilities under this Act that is
6 not otherwise prohibited by law.

7 (d) ADVISORY COMMITTEES.—The Secretary may ap-
8 point technical advisory committees to advise the Sec-
9 retary in carrying out the responsibilities under this Act.
10 Chapter 10 of part 1 of title 5, United States Code, shall
11 not apply to any meeting of such an advisory committee
12 held pursuant to this subsection.

13 **SEC. 9. INFORMATION TO BE FURNISHED.**

14 (a) IN GENERAL.—The Secretary may require any
15 party to a transaction or holding under review or inves-
16 tigation pursuant to this Act to furnish under oath, in the
17 form of reports or otherwise, at any time as may be re-
18 quired by the Secretary, complete information relative to
19 any act, transaction, or holding, subject to the provisions
20 of this Act.

21 (b) AUTHORITY.—In carrying out this Act, the Sec-
22 retary may—

23 (1) require that information or reports required
24 to be submitted under subsection (a) include the
25 production of any documents relating to any act,

1 transaction, or property relating to a transaction or
2 holding under review or investigation;

3 (2) require information or reports required to
4 be submitted under subsection (a) before, during, or
5 after consummation of a transaction or holding
6 under review or investigation; and

7 (3) conduct investigations, hold hearings, ad-
8 minister oaths, examine witnesses, receive evidence,
9 take depositions, and require by subpoena the at-
10 tendance and testimony of witnesses and the produc-
11 tion of any documents relating to any transaction or
12 holding under review or investigation, regardless of
13 whether any report has been required or filed in con-
14 nection therewith, including through another person
15 or agency.

16 (c) FORMAT.—Any person producing any document
17 to the Secretary pursuant to this section shall produce the
18 document in a format useable to the Department of Com-
19 merce, which may be detailed in the request for documents
20 or otherwise agreed to by the parties.

21 (d) CONFIDENTIALITY AND DISCLOSURE OF INFOR-
22 MATION.—

23 (1) IN GENERAL.—Subject to paragraph (2),
24 any information or document not otherwise publicly
25 or commercially available that has been submitted to

1 the Secretary under this Act shall not be released
2 publicly except to the extent required by Federal
3 law.

4 (2) DISCLOSURE.—Notwithstanding paragraph
5 (1), the Secretary may disclose information or docu-
6 ments that are not otherwise publicly or commer-
7 cially available in the following circumstances:

8 (A) Pursuant to an administrative or judi-
9 cial proceeding, including any judicial review
10 under section 12.

11 (B) Pursuant to an Act of Congress.

12 (C) Pursuant to a request from a relevant
13 committee of Congress.

14 (D) Pursuant to a request from any Fed-
15 eral, State, or local governmental entity, or to
16 any foreign government entity of a United
17 States ally or partner, if such request is impor-
18 tant to the national security analysis or actions
19 of the Secretary, but only to the extent nec-
20 essary for national security purposes, and sub-
21 ject to appropriate confidentiality and classifica-
22 tion requirements.

23 (E) If any party to whom the information
24 or documents pertain consents to such disclo-
25 sure.

1 (F) If the Secretary determines, in the sole
2 and unreviewable discretion of the Secretary,
3 that the release of such information is in the
4 national interest of the United States.

5 (G) Any other purpose authorized by Fed-
6 eral law.

7 **SEC. 10. ENFORCEMENT.**

8 (a) INVESTIGATIONS.—

9 (1) IN GENERAL.—The President shall rely on,
10 including by delegation, the Secretary, and the heads
11 of other Federal agencies, as appropriate, to conduct
12 investigations of violations of any authorization,
13 order, mitigation measure, regulation, or prohibition
14 issued under this Act.

15 (2) ACTIONS BY DESIGNEES.—In conducting in-
16 vestigations described in paragraph (1), designated
17 officers or employees of Federal agencies described
18 that paragraph may, to the extent necessary or ap-
19 propriate to enforce this Act, exercise such authority
20 as is conferred upon them by any other Federal law,
21 subject to policies and procedures approved by the
22 Attorney General.

23 (b) PERMITTED ACTIVITIES.—Officers and employ-
24 ees of agencies authorized to conduct investigations under
25 subsection (a) may—

1 (1) inspect, search, detain, seize, or impose
2 temporary denial orders with respect to items, in
3 any form, or conveyances on which it is believed that
4 there are items that have been, are being, or are
5 about to be imported into the United States in viola-
6 tion of this Act or any other applicable Federal law;

7 (2) require, inspect, and obtain books, records,
8 and any other information from any person subject
9 to the provisions of this Act or other applicable Fed-
10 eral law;

11 (3) administer oaths or affirmations and, by
12 subpoena, require any person to appear and testify
13 or to appear and produce books, records, and other
14 writings, or both; and

15 (4) obtain court orders and issue legal process
16 to the extent authorized under chapters 119, 121,
17 and 206 of title 18, United States Code, or any
18 other applicable Federal law.

19 (c) ENFORCEMENT OF SUBPOENAS.—In the case of
20 contumacy by, or refusal to obey a subpoena issued to,
21 any person under subsection (b)(3), a district court of the
22 United States, after notice to such person and a hearing,
23 shall have jurisdiction to issue an order requiring such
24 person to appear and give testimony or to appear and
25 produce books, records, and other writings, regardless of

1 format, that are the subject of the subpoena. Any failure
2 to obey such order of the court may be punished by such
3 court as a contempt thereof.

4 (d) ACTIONS BY THE ATTORNEY GENERAL.—The At-
5 torney General may bring an action in an appropriate dis-
6 trict court of the United States for appropriate relief, in-
7 cluding declaratory and injunctive, or divestment relief,
8 against any person who violates this Act or any regulation,
9 order, direction, mitigation measure, prohibition, or other
10 authorization or directive issued under this Act. In any
11 such action, the limitations as described under section
12 12(b) shall apply.

13 **SEC. 11. PENALTIES.**

14 (a) UNLAWFUL ACTS.—

15 (1) IN GENERAL.—It shall be unlawful for a
16 person to violate, attempt to violate, conspire to vio-
17 late, or cause a violation of any regulation, order, di-
18 rection, mitigation measure, prohibition, or other au-
19 thorization or directive issued under this Act, includ-
20 ing any of the unlawful acts described in paragraph
21 (2).

22 (2) SPECIFIC UNLAWFUL ACTS.—The unlawful
23 acts described in this paragraph are the following:

24 (A) No person may engage in any conduct
25 prohibited by or contrary to, or refrain from en-

1 gaging in any conduct required by any regula-
2 tion, order, direction, mitigation measure, pro-
3 hibition, or other authorization or directive
4 issued under this Act.

5 (B) No person may cause or aid, abet,
6 counsel, command, induce, procure, permit, or
7 approve the doing of any act prohibited by, or
8 the omission of any act required by any regula-
9 tion, order, direction, mitigation measure, pro-
10 hibition, or other authorization or directive
11 issued under, this Act.

12 (C) No person may solicit or attempt a vio-
13 lation of any regulation, order, direction, miti-
14 gation measure, prohibition, or authorization or
15 directive issued under this Act.

16 (D) No person may conspire or act in con-
17 cert with 1 or more other person in any manner
18 or for any purpose to bring about or to do any
19 act that constitutes a violation of any regula-
20 tion, order, direction, mitigation measure, pro-
21 hibition, or other authorization or directive
22 issued under this Act.

23 (E) No person may, whether directly or in-
24 directly through any other person, make any
25 false or misleading representation, statement,

1 or certification, or falsify or conceal any mate-
2 rial fact, to the Department of Commerce or
3 any official of any other executive department
4 or agency—

5 (i) in the course of an investigation or
6 other action subject to this Act, or any
7 regulation, order, direction, mitigation
8 measure, prohibition, or other authoriza-
9 tion or directive issued thereunder; or

10 (ii) in connection with the prepara-
11 tion, submission, issuance, use, or mainte-
12 nance of any report filed or required to be
13 filed pursuant to this Act, or any regula-
14 tion, order, direction, mitigation measure,
15 prohibition, or other authorization or direc-
16 tive issued thereunder.

17 (F) No person may engage in any trans-
18 action or take any other action with intent to
19 evade the provisions of this Act, or any regula-
20 tion, order, direction, mitigation measure, pro-
21 hibition, or other authorization or directive
22 issued thereunder.

23 (G) No person may fail or refuse to comply
24 with any reporting or recordkeeping require-
25 ment of this Act, or any regulation, order, di-

1 rection, mitigation measure, prohibition, or
2 other authorization or directive issued there-
3 under.

4 (H) Except as specifically authorized in
5 this subchapter, any regulation, order, direc-
6 tion, mitigation measure, or other authorization
7 or directive issued thereunder or in writing by
8 the Department of Commerce, no person may
9 alter any order, direction, mitigation measure,
10 or other authorization or directive issued under
11 this Act or any related regulation.

12 (3) ADDITIONAL REQUIREMENTS.—

13 (A) CONTINUATION OF EFFECT.—For pur-
14 poses of paragraph (2)(E), any representation,
15 statement, or certification made by any person
16 shall be deemed to be continuing in effect until
17 the person notifies the Department of Com-
18 merce or relevant executive department or agen-
19 cy in accordance with subparagraph (B).

20 (B) NOTIFICATION.—Any person who
21 makes a representation, statement, or certifi-
22 cation to the Department of Commerce or any
23 official of any other executive department or
24 agency relating to any order, direction, mitiga-
25 tion measure, prohibition, or other authoriza-

1 tion or directive issued under this Act shall no-
2 tify the Department of Commerce or the rel-
3 evant executive department or agency, in writ-
4 ing, of any change of any material fact or in-
5 tention from that previously represented, stat-
6 ed, or certified, immediately upon receipt of any
7 information that would lead a reasonably pru-
8 dent person to know that a change of material
9 fact or intention had occurred or may occur in
10 the future.

11 (b) CIVIL PENALTIES.—The Secretary may impose
12 the following civil penalties on a person for each violation
13 by that person of this Act or any regulation, order, direc-
14 tion, mitigation measure, prohibition, or other authoriza-
15 tion issued under this Act:

16 (1) A fine of not more than \$250,000 or an
17 amount that is twice the value of the transaction
18 that is the basis of the violation with respect to
19 which the penalty is imposed, whichever is greater.

20 (2) Revocation of any mitigation measure or
21 authorization issued under this Act to the person.

22 (c) CRIMINAL PENALTIES.—

23 (1) IN GENERAL.—A person who willfully com-
24 mits, willfully attempts to commit, or willfully con-
25 spires to commit, or aids or abets in the commission

1 of an unlawful act described in subsection (a) shall,
2 upon conviction, be fined not more than \$1,000,000,
3 or if a natural person, may be imprisoned for not
4 more than 20 years, or both.

5 (2) CIVIL FORFEITURE.—

6 (A) FORFEITURE.—

7 (i) IN GENERAL.—Any property, real
8 or personal, tangible or intangible, used or
9 intended to be used, in any manner, to
10 commit or facilitate a violation or at-
11 tempted violation described in paragraph
12 (1) shall be subject to forfeiture to the
13 United States.

14 (ii) PROCEEDS.—Any property, real
15 or personal, tangible or intangible, consti-
16 tuting or traceable to the gross proceeds
17 taken, obtained, or retained, in connection
18 with or as a result of a violation or at-
19 tempted violation described in paragraph
20 (1) shall be subject to forfeiture to the
21 United States.

22 (B) PROCEDURE.—Seizures and forfeitures
23 under this subsection shall be governed by the
24 provisions of chapter 46 of title 18, United
25 States Code, relating to civil forfeitures, except

1 that such duties as are imposed on the Sec-
2 retary of Treasury under the customs laws de-
3 scribed in section 981(d) of title 18, United
4 States Code, shall be performed by such offi-
5 cers, agents, and other persons as may be des-
6 ignated for that purpose by the Secretary of
7 Homeland Security or the Attorney General.

8 (3) CRIMINAL FORFEITURE.—

9 (A) FORFEITURE.—Any person who is
10 convicted under paragraph (1) shall, in addition
11 to any other penalty, forfeit to the United
12 States—

13 (i) any property, real or personal, tan-
14 gible or intangible, used or intended to be
15 used, in any manner, to commit or facili-
16 tate the violation or attempted violation of
17 paragraph (1); and

18 (ii) any property, real or personal,
19 tangible or intangible, constituting or
20 traceable to the gross proceeds taken, ob-
21 tained, or retained, in connection with or
22 as a result of the violation.

23 (B) PROCEDURE.—The criminal forfeiture
24 of property under this paragraph, including any
25 seizure and disposition of the property, and any

1 related judicial proceeding, shall be governed by
2 the provisions of section 413 of the Controlled
3 Substances Act (21 U.S.C. 853), except sub-
4 sections (a) and (d) of that section.

5 **SEC. 12. JUDICIAL REVIEW.**

6 (a) DEFINITION.—In this section, the term “classi-
7 fied information”—

8 (1) has the meaning given the term in section
9 1(a) of the Classified Information Procedures Act
10 (18 U.S.C. App.); and

11 (2) includes—

12 (A) any information or material that has
13 been determined by the Federal Government
14 pursuant to an Executive order, statute, or reg-
15 ulation to require protection against unauthor-
16 ized disclosure for reasons of national security;
17 and

18 (B) any restricted data, as defined in sec-
19 tion 11 of the Atomic Energy Act of 1954 (42
20 U.S.C. 2014).

21 (b) ADMINISTRATIVE AND JUDICIAL REVIEW.—Not-
22 withstanding any other provision of law, actions taken by
23 the President and the Secretary, and the findings of the
24 President and the Secretary, under this Act shall not be
25 subject to administrative review or judicial review in any

1 Federal court, except as otherwise provided in this section.
2 Actions taken by the Secretary under this Act shall not
3 be subject to sections 551, 553 through 559, and 701
4 through 707 of title 5, United States Code.

5 (c) PETITIONS.—

6 (1) IN GENERAL.—Not later than 60 days after
7 the Secretary takes action under section 3(a), or the
8 President takes action under section 4(c), an ag-
9 grieved person may apply for review by filing a peti-
10 tion for review in the United States Court of Ap-
11 peals for the District of Columbia Circuit.

12 (2) STANDARD OF REVIEW.—The court shall
13 not disturb any action taken by the Secretary under
14 section 3(a), or by the President under section 4(c),
15 unless the petitioner demonstrates that the action is
16 unconstitutional or in patent violation of a clear and
17 mandatory statutory command.

18 (d) EXCLUSIVE JURISDICTION.—The United States
19 Court of Appeals for the District of Columbia Circuit shall
20 have exclusive jurisdiction over claims arising under this
21 Act against the United States, any executive department
22 or agency, or any component or official of an executive
23 department or agency, subject to review by the Supreme
24 Court of the United States under section 1254 of title 28,
25 United States Code.

1 (e) ADMINISTRATIVE RECORD AND PROCEDURE.—

2 (1) IN GENERAL.—The procedures described in
3 this subsection shall apply to the review of a petition
4 for review under this section.

5 (2) FILING OF RECORD.—The United States
6 shall file with the court an administrative record,
7 which shall consist of the information that the ap-
8 propriate official relied upon in taking a final action
9 under this Act.

10 (3) UNCLASSIFIED, NONPRIVILEGED INFORMA-
11 TION.—All unclassified information contained in the
12 administrative record filed pursuant to paragraph
13 (2) that is not otherwise privileged or subject to
14 statutory protections shall be provided to the peti-
15 tioner with appropriate protections for any privileged
16 or confidential trade secrets and commercial or fi-
17 nancial information.

18 (4) IN CAMERA AND EX PARTE REVIEW.—The
19 following information may be included in the admin-
20 istrative record and shall be submitted only to the
21 court ex parte and in camera:

22 (A) Sensitive security information, as de-
23 fined by section 1520.5 of title 49, Code of
24 Federal Regulations.

1 (B) Privileged law enforcement informa-
2 tion.

3 (C) Information obtained or derived from
4 any activity authorized under the Foreign Intel-
5 ligence Surveillance Act of 1978 (50 U.S.C.
6 1801 et seq.), except that, with respect to such
7 information, subsections (c), (e), (f), (g), and
8 (h) of section 106 (50 U.S.C. 1806), sub-
9 subsections (d), (f), (g), (h), and (i) of section 305
10 (50 U.S.C. 1825), subsections (c), (e), (f), (g),
11 and (h) of section 405 (50 U.S.C. 1845), and
12 section 706 (50 U.S.C. 1881e) of that Act shall
13 not apply.

14 (D) Information subject to privilege or pro-
15 tections under any other provision of law, in-
16 cluding the Currency and Foreign Transactions
17 Reporting Act of 1970 (31 U.S.C. 5311 et
18 seq.).

19 (5) INFORMATION UNDER SEAL.—Any informa-
20 tion that is part of the administrative record filed ex
21 parte and in camera under paragraph (4), or cited
22 by the court in any decision, shall be treated by the
23 court consistent with the provisions of this section.
24 In no event shall such information be released to the
25 petitioner or as part of the public record.

1 (6) RETURN.—After the expiration of the time
2 to seek further review, or the conclusion of further
3 proceedings, the court shall return the administra-
4 tive record, including any and all copies, to the
5 United States.

6 (f) EXCLUSIVE REMEDY.—A determination by the
7 court under this section shall be the exclusive judicial rem-
8 edy for any claim described in this section against the
9 United States, any executive department or agency, or any
10 component or official of any such executive department or
11 agency.

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 **SEC. 13. RELATIONSHIP TO OTHER LAWS.**

18 (a) IN GENERAL.—Except as expressly provided
19 herein, nothing in this Act shall be construed to alter or
20 affect any other authority, process, regulation, investiga-
21 tion, enforcement measure, or review provided by or estab-
22 lished under any other provision of Federal law, including
23 the Federal Acquisition Regulation or the International
24 Emergency Economic Powers Act (50 U.S.C. 1701 et

1 seq.), or any other authority of the President or Congress
2 under the Constitution of the United States.

3 (b) RELATIONSHIP TO SECTION 721 OF THE DE-
4 FENSE PRODUCTION ACT OF 1950.—

5 (1) IN GENERAL.—Notwithstanding section
6 721(d)(4)(B) of the Defense Production Act of 1950
7 (50 U.S.C. 4565(d)(4)(B)), nothing in this Act shall
8 prevent or preclude the President or the Committee
9 on Foreign Investment in the United States from ex-
10 ercising any authority under section 721 of the De-
11 fense Production Act of 1950 (50 U.S.C. 4565 et
12 seq.), as would be available in the absence of this
13 Act.

14 (2) AUTHORITY OF THE PRESIDENT.—The
15 President may not exercise any authority under sec-
16 tion 4 with respect to a covered holding that directly
17 resulted from a transaction if—

18 (A) the Committee on Foreign Investment
19 in the United States reviewed the transaction
20 (or a broader transaction that included the
21 transaction) as a covered transaction (as de-
22 fined in section 721(a)(4) of the Defense Pro-
23 duction Act of 1950 (50 U.S.C. 4565(a)(4))
24 and its implementing regulations; and

1 (B) under section 721 of the Defense Pro-
2 duction Act of 1950 (50 U.S.C. 4565)—

3 (i) the Committee on Foreign Invest-
4 ment in the United States cleared the
5 transaction and notified the parties to the
6 transaction (or a broader transaction that
7 included the transaction) that the Com-
8 mittee on Foreign Investment in the
9 United States completed all action with re-
10 spect to the transaction (or a broader
11 transaction that included the transaction);
12 or

13 (ii) the President announced a deci-
14 sion declining to take action with respect
15 to the transaction (or a broader trans-
16 action that included the transaction).

17 (3) COORDINATION.—The Secretary shall ad-
18 dress coordination with respect to review by the
19 Committee on Foreign Investment in the United
20 States in implementing the procedures under this
21 Act.

22 (c) LIMITATION OF AUTHORITY OF THE SEC-
23 RETARY.—The Secretary may not initiate a review of any
24 transaction that involves the acquisition of an information

1 and communications technology product or service by a
2 United States person as a party to a transaction—

3 (1) authorized under a United States govern-
4 ment-industrial security program; or

5 (2) to meet an articulable national security or
6 law enforcement requirement.

7 **SEC. 14. TRANSITION.**

8 All delegations, rules, regulations, orders, determina-
9 tions, licenses, or other forms of administrative action
10 taken by the Secretary made, issued, conducted, or al-
11 lowed to become effective under Executive Order 13873
12 of May 19, 2019 and the International Emergency Eco-
13 nomic Powers Act (50 U.S.C. 1701 et seq.), including reg-
14 ulations issued under part 7 of subtitle A of title 15, Code
15 of Federal Regulations, and are in effect as of the date
16 of enactment of this Act, shall continue in effect according
17 to their terms and as if made, issued, conducted, or al-
18 lowed to become effective pursuant to the authority of this
19 Act, until modified, superseded, set aside, or revoked
20 under the authority of this Act, without regard to any re-
21 striction or limitation under the International Emergency
22 Economic Powers Act (50 U.S.C. 1701 et seq.).

23 **SEC. 15. MISCELLANEOUS.**

24 (a) **PAPERWORK REDUCTION ACT.**—The require-
25 ments of chapter 35 of title 44, United States Code (com-

1 monly referred to as the “Paperwork Reduction Act”),
2 shall not apply to any action by the Secretary to imple-
3 ment this Act.

4 (b) APPOINTMENT OF CANDIDATES.—To expedite
5 the ability of the Secretary to implement this Act, the Sec-
6 retary may appoint, without regard to the provisions of
7 sections 3309 through 3318 of title 5, United States Code,
8 candidates directly to positions in the competitive service
9 (as defined in section 212 of that title).

10 (c) ADMINISTRATIVE PROCEDURES.—Except with re-
11 spect to a civil penalty imposed pursuant to section 9(b)
12 of this Act, the functions exercised under this Act shall
13 not be subject to sections 551, 553 through 559, and 701
14 through 706 of title 5, United States Code.

15 (d) PROTECTED INFORMATION IN CIVIL ACTIONS.—
16 If a civil action challenging an action or finding under this
17 Act is brought, and the court determines that protected
18 information in the administrative record, including classi-
19 fied or other information subject to privilege or protections
20 under any provision of law, is necessary to resolve the ac-
21 tion, that information shall be submitted ex parte and in
22 camera to the court and the court shall maintain that in-
23 formation under seal. This subsection does not confer or
24 imply any right to judicial review.

1 (e) APPLICABILITY OF USE OF INFORMATION PROVI-
2 SIONS.—The use of information provisions of sections 106,
3 305, 405, and 706 of the Foreign Intelligence Surveillance
4 Act of 1978 (50 U.S.C. 1806, 1825, 1845, and 1881e)
5 shall not apply in a civil action brought under this Act.

6 (f) NO RIGHT OF ACCESS.—

7 (1) IN GENERAL.—No provision of this Act
8 shall be construed to create a right to obtain access
9 to information in the possession of the Federal Gov-
10 ernment that was considered in making a determina-
11 tion under this Act that a transaction is a covered
12 transaction or interest or to prohibit, mitigate, or
13 take action against a covered transaction or interest,
14 including any classified national security information
15 or sensitive but unclassified information.

16 (2) INAPPLICABILITY OF FOIA.—Any informa-
17 tion submitted to the Federal Government by a
18 party to a covered transaction in accordance with
19 this Act, as well as any information the Federal
20 Government may create relating to review of the cov-
21 ered transaction, is exempt from disclosure under
22 section 552 of title 5, United States Code (com-
23 monly referred to as the “Freedom of Information
24 Act”).

1 **SEC. 16. SEVERABILITY.**

2 If any provision of this Act, or the application of such
3 provision to any person or circumstance is held to be in-
4 valid, the remainder of this Act, and the application of
5 the remaining provisions of this Act to any person or cir-
6 cumstance, shall not be affected.

7 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as may be necessary to carry out this Act.

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