

115TH CONGRESS
2D SESSION

H. R. 6001

To safeguard certain technology and intellectual property in the United States from export to or influence by the People's Republic of China and to protect United States industry from unfair competition by the People's Republic of China, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2018

Mr. CONAWAY (for himself and Mr. RYAN of Ohio) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Financial Services, the Judiciary, Foreign Affairs, and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To safeguard certain technology and intellectual property in the United States from export to or influence by the People's Republic of China and to protect United States industry from unfair competition by the People's Republic of China, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fair Trade with China Enforcement Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Sense of Congress.
 Sec. 3. Statement of policy.

TITLE I—SAFEGUARDS AGAINST FOREIGN INFLUENCE IN
 UNITED STATES NATIONAL AND ECONOMIC SECURITY BY THE
 PEOPLE'S REPUBLIC OF CHINA

- Sec. 101. Establishment of list of certain products receiving support from Gov-
 ernment of People's Republic of China pursuant to Made in
 China 2025 policy.
 Sec. 102. Prohibition on export to People's Republic of China of national secu-
 rity sensitive technology and intellectual property.
 Sec. 103. Imposition of shareholder cap on Chinese investors in United States
 corporations.
 Sec. 104. Prohibition on use of certain telecommunications services or equip-
 ment.

TITLE II—FAIR TRADE ENFORCEMENT ACTIONS WITH RESPECT
 TO THE PEOPLE'S REPUBLIC OF CHINA

- Sec. 201. Countervailing duties with respect to certain industries in the Peo-
 ple's Republic of China.
 Sec. 202. Repeal of reduced withholding rates for residents of China.
 Sec. 203. Taxation of obligations of the United States held by the Government
 of the People's Republic of China.
 Sec. 204. Surtax on certain income derived from China.

TITLE III—STOPPING FOREIGN BUSINESSES SANCTUARY ACT OF
 2018

- Sec. 301. Short title.
 Sec. 302. Jurisdiction over certain foreign entities.
 Sec. 303. Commercial activity of affiliate entities.

3 **SEC. 2. SENSE OF CONGRESS.**

4 It is the sense of Congress that—

5 (1) since joining the World Trade Organization
 6 in 2001, the People's Republic of China has offered
 7 the United States a contradictory bargain, which
 8 promised openness in the global trade order, but
 9 through state mercantilism delivered a severely im-
 10 balanced trading relationship;

1 (2) it was erroneous for the United States Gov-
2 ernment to have ignored the contradictions and risks
3 of free trade with the People’s Republic of China on
4 the assumption that the People’s Republic of China
5 would liberalize economically and politically;

6 (3) benefitting enormously from a more open
7 global economy to drive its own industries, the Gov-
8 ernment of the People’s Republic of China and the
9 Communist Party of the People’s Republic of China
10 have only tightened their grip on power, brutally
11 suppressing dissent at home and pursuing policies
12 abroad that are a far cry from being a responsible
13 global stakeholder;

14 (4) malevolent economic behavior by persons in
15 the People’s Republic of China is made clear by the
16 theft of intellectual property from the United States,
17 as Chinese theft of United States intellectual prop-
18 erty alone costs the United States nearly
19 \$600,000,000,000 annually, according to the United
20 States Trade Representative;

21 (5) stealing United States intellectual property
22 advances the “Made in China 2025” initiative of the
23 Government of the People’s Republic of China to
24 eventually dominate global exports in 10 critical sec-
25 tors, namely artificial intelligence and next-genera-

1 tion information technology, robotics, new-energy ve-
2 hicles, biotechnology, energy and power generation,
3 aerospace, high-tech shipping, advanced railway, new
4 materials, and agricultural machinery, among oth-
5 ers;

6 (6) the targets of the Made in China 2025 ini-
7 tiative reveal the goal of the People's Republic of
8 China for the near-total displacement of advanced
9 manufacturing in the United States; and

10 (7) the United States Government should act to
11 strengthen the position of the United States in its
12 policy toward the People's Republic of China in
13 order to create a more balanced economic relation-
14 ship by safeguarding strategic assets from Chinese
15 influence, reducing Chinese involvement in the
16 United States economy, and encouraging United
17 States companies to produce domestically, instead of
18 in the People's Republic of China.

19 **SEC. 3. STATEMENT OF POLICY.**

20 It is the policy of the United States—

21 (1) to impose restrictions on Chinese invest-
22 ment in the United States in strategic industries
23 targeted by the Made in China 2025 initiative set
24 forth by the Government of the People's Republic of
25 China;

1 (2) to tax Chinese investment in the United
2 States due to its negative effect on the United
3 States trade deficit and wages of workers in the
4 United States;

5 (3) to increase the cost of transnational produc-
6 tion operations in the People's Republic of China in
7 a manner consistent with the economic cost of the
8 risk of loss of unique access by the United States to
9 intellectual property, technology, and industrial base;
10 and

11 (4) to support democratization in and the
12 human rights of the people of Hong Kong, including
13 the findings and declarations set forth under section
14 2 of the United States-Hong Kong Policy Act of
15 1992 (22 U.S.C. 5701).

1 **TITLE I—SAFEGUARDS AGAINST**
2 **FOREIGN INFLUENCE IN**
3 **UNITED STATES NATIONAL**
4 **AND ECONOMIC SECURITY BY**
5 **THE PEOPLE’S REPUBLIC OF**
6 **CHINA**

7 **SEC. 101. ESTABLISHMENT OF LIST OF CERTAIN PRODUCTS**
8 **RECEIVING SUPPORT FROM GOVERNMENT**
9 **OF PEOPLE’S REPUBLIC OF CHINA PURSU-**
10 **ANT TO MADE IN CHINA 2025 POLICY.**

11 (a) IN GENERAL.—Chapter 8 of title I of the Trade
12 Act of 1974 (19 U.S.C. 2241 et seq.) is amended by add-
13 ing at the end the following:

14 **“SEC. 183. LIST OF CERTAIN PRODUCTS RECEIVING SUP-**
15 **PORT FROM GOVERNMENT OF PEOPLE’S RE-**
16 **PUBLIC OF CHINA.**

17 “(a) IN GENERAL.—Not later than 120 days after
18 the date of the enactment of the Fair Trade with China
19 Enforcement Act, and every year thereafter, the United
20 States Trade Representative shall set forth a list of prod-
21 ucts manufactured or produced in, or exported from, the
22 People’s Republic of China that are determined by the
23 Trade Representative to receive support from the Govern-
24 ment of the People’s Republic of China pursuant to the
25 Made in China 2025 industrial policy of that Government.

1 “(b) CRITERIA FOR LIST.—

2 “(1) IN GENERAL.—The Trade Representative
3 shall include in the list required by subsection (a)
4 the following products:

5 “(A) Any product specified in the following
6 documents set forth by the Government of the
7 People’s Republic of China:

8 “(i) Notice on Issuing Made in China
9 2025.

10 “(ii) China Manufacturing 2025.

11 “(iii) Notice on Issuing the 13th Five-
12 year National Strategic Emerging Indus-
13 tries Development Plan.

14 “(iv) Guiding Opinion on Promoting
15 International Industrial Capacity and
16 Equipment Manufacturing Cooperation.

17 “(v) Any other document that ex-
18 presses a national strategy or stated goal
19 in connection with the Made in China 2025
20 industrial policy set forth by the Govern-
21 ment of the People’s Republic of China,
22 the Communist Party of China, or another
23 entity or individual capable of impacting
24 the national strategy of the People’s Re-
25 public of China.

1 “(B) Any product receiving support from
2 the Government of the People’s Republic of
3 China that has or will in the future displace net
4 exports of like products by the United States,
5 as determined by the Trade Representative.

6 “(2) INCLUDED PRODUCTS.—In addition to
7 such products as the Trade Representative shall in-
8 clude pursuant to paragraph (1) in the list required
9 by subsection (a), the Trade Representative shall in-
10 clude products in the following industries:

11 “(A) Civil aircraft.

12 “(B) Motor car and vehicle.

13 “(C) Advanced medical equipment.

14 “(D) Advanced construction equipment.

15 “(E) Agricultural machinery.

16 “(F) Railway equipment.

17 “(G) Diesel locomotive.

18 “(H) Moving freight.

19 “(I) Semiconductor.

20 “(J) Lithium battery manufacturing.

21 “(K) Artificial intelligence.

22 “(L) High-capacity computing.

23 “(M) Quantum computing.

24 “(N) Robotics.

25 “(O) Biotechnology.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
 2 for the Trade Act of 1974 is amended by inserting after
 3 the item relating to section 182 the following:

“Sec. 183. List of certain products receiving support from Government of People’s Republic of China.”.

4 **SEC. 102. PROHIBITION ON EXPORT TO PEOPLE’S REPUB-**
 5 **LIC OF CHINA OF NATIONAL SECURITY SEN-**
 6 **SITIVE TECHNOLOGY AND INTELLECTUAL**
 7 **PROPERTY.**

8 (a) IN GENERAL.—The Secretary of Commerce shall
 9 prohibit the export to the People’s Republic of China of
 10 any national security sensitive technology or intellectual
 11 property subject to the jurisdiction of the United States
 12 or exported by any person subject to the jurisdiction of
 13 the United States.

14 (b) DEFINITIONS.—In this section:

15 (1) INTELLECTUAL PROPERTY.—The term “in-
 16 tellectual property” includes patents, copyrights,
 17 trademarks, or trade secrets.

18 (2) NATIONAL SECURITY SENSITIVE TECH-
 19 NOLOGY OR INTELLECTUAL PROPERTY.—The term
 20 “national security sensitive technology or intellectual
 21 property” includes the following:

22 (A) Technology or intellectual property
 23 that would make a significant contribution to
 24 the military potential of the People’s Republic

1 of China that would prove detrimental to the
2 national security of the United States.

3 (B) Technology or intellectual property
4 necessary to protect the economy of the United
5 States from the excessive drain of scarce mate-
6 rials and to reduce the serious inflationary im-
7 pact of demand from the People’s Republic of
8 China.

9 (C) Technology or intellectual property
10 that is a component of the production of prod-
11 ucts included in the most recent list required
12 under section 183 of the Trade Act of 1974, as
13 added by section 101(a), determined in con-
14 sultation with the United States Trade Rep-
15 resentative.

16 (3) TECHNOLOGY.—The term “technology” in-
17 cludes goods or services relating to information sys-
18 tems, internet-based services, production-enhancing
19 logistics, robotics, artificial intelligence, bio-
20 technology, or computing.

1 **SEC. 103. IMPOSITION OF SHAREHOLDER CAP ON CHINESE**
2 **INVESTORS IN UNITED STATES CORPORA-**
3 **TIONS.**

4 Section 13(d) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78m(d)) is amended by adding at the end the
6 following:

7 “(7)(A) In this paragraph, the term ‘covered issuer’
8 means any issuer that produces components that may be
9 used in the production of goods manufactured or produced
10 in, or exported from, the People’s Republic of China and
11 included in the most recent list required under section 183
12 of the Trade Act of 1974, determined in consultation with
13 the United States Trade Representative.

14 “(B) No covered issuer that is incorporated under the
15 laws of a State, or whose principal place of business is
16 within a State, may be majority-owned by a person whose
17 principal place of business is in the People’s Republic of
18 China.

19 “(C) The prohibition in subparagraph (B) shall apply
20 to any acquisition on or after the date of enactment of
21 this paragraph.”.

22 **SEC. 104. PROHIBITION ON USE OF CERTAIN TELE-**
23 **COMMUNICATIONS SERVICES OR EQUIP-**
24 **MENT.**

25 (a) FINDINGS.—Congress makes the following find-
26 ings:

1 (1) In its 2011 “Annual Report to Congress on
2 Military and Security Developments Involving the
3 People’s Republic of China”, the Department of De-
4 fense stated, “China’s defense industry has benefited
5 from integration with a rapidly expanding civilian
6 economy and science and technology sector, particu-
7 larly elements that have access to foreign technology.
8 Progress within individual defense sectors appears
9 linked to the relative integration of each, through
10 China’s civilian economy, into the global production
11 and R&D chain . . . Information technology compa-
12 nies in particular, including Huawei, Datang, and
13 Zhongxing, maintain close ties to the PLA.”.

14 (2) In a 2011 report titled “The National Secu-
15 rity Implications of Investments and Products from
16 the People’s Republic of China in the Telecommuni-
17 cations Sector”, the United States China Economic
18 and Security Review Commission stated that
19 “[n]ational security concerns have accompanied the
20 dramatic growth of China’s telecom sector. . . . Ad-
21 ditionally, large Chinese companies—particularly
22 those ‘national champions’ prominent in China’s
23 ‘going out’ strategy of overseas expansion—are di-
24 rectly subject to direction by the Chinese Communist

1 Party, to include support for PRC state policies and
2 goals.”.

3 (3) The Commission further stated in its report
4 that “[f]rom this point of view, the clear economic
5 benefits of foreign investment in the U.S. must be
6 weighed against the potential security concerns re-
7 lated to infrastructure components coming under the
8 control of foreign entities. This seems particularly
9 applicable in the telecommunications industry, as
10 Chinese companies continue systematically to ac-
11 quire significant holdings in prominent global and
12 U.S. telecommunications and information technology
13 companies.”.

14 (4) In its 2011 Annual Report to Congress, the
15 United States China Economic and Security Review
16 Commission stated that “[t]he extent of the state’s
17 control of the Chinese economy is difficult to quan-
18 tify . . . There is also a category of companies that,
19 though claiming to be private, are subject to state
20 influence. Such companies are often in new markets
21 with no established SOE leaders and enjoy favorable
22 government policies that support their development
23 while posing obstacles to foreign competition. Exam-
24 ples include Chinese telecoms giant Huawei and

1 such automotive companies as battery maker BYD
2 and vehicle manufacturers Geely and Chery.”.

3 (5) In the bipartisan “Investigative Report on
4 the United States National Security Issues Posed by
5 Chinese Telecommunication Companies Huawei and
6 ZTE” released in 2012 by the Permanent Select
7 Committee on Intelligence of the House of Rep-
8 resentatives, it was recommended that “U.S. govern-
9 ment systems, particularly sensitive systems, should
10 not include Huawei or ZTE equipment, including in
11 component parts. Similarly, government contrac-
12 tors—particularly those working on contracts for
13 sensitive U.S. programs—should exclude ZTE or
14 Huawei equipment in their systems.”.

15 (6) General Michael Hayden, who served as Di-
16 rector of the Central Intelligence Agency and Direc-
17 tor of the National Security Agency, stated in July
18 2013 that Huawei had “shared with the Chinese
19 state intimate and extensive knowledge of foreign
20 telecommunications systems it is involved with”.

21 (7) The Federal Bureau of Investigation, in a
22 February 2015 Counterintelligence Strategy Part-
23 nership Intelligence Note stated that, “[w]ith the ex-
24 panded use of Huawei Technologies Inc. equipment
25 and services in U.S. telecommunications service pro-

1 vider networks, the Chinese Government’s potential
2 access to U.S. business communications is dramati-
3 cally increasing. Chinese Government-supported tele-
4 communications equipment on U.S. networks may be
5 exploited through Chinese cyber activity, with Chi-
6 na’s intelligence services operating as an advanced
7 persistent threat to U.S. networks.”.

8 (8) The Federal Bureau of Investigation fur-
9 ther stated in its February 2015 counterintelligence
10 note that “China makes no secret that its cyber war-
11 fare strategy is predicated on controlling global com-
12 munications network infrastructure”.

13 (9) At a hearing before the Committee on
14 Armed Services of the House of Representatives on
15 September 30, 2015, Deputy Secretary of Defense
16 Robert Work, responding to a question about the
17 use of Huawei telecommunications equipment, stat-
18 ed, “In the Office of the Secretary of Defense, abso-
19 lutely not. And I know of no other—I don’t believe
20 we operate in the Pentagon, any [Huawei] systems
21 in the Pentagon.”.

22 (10) At that hearing, the Commander of the
23 United States Cyber Command, Admiral Mike Rog-
24 ers, responding to a question about why such
25 Huawei telecommunications equipment is not used,

1 stated, “As we look at supply chain and we look at
2 potential vulnerabilities within the system, that it is
3 a risk we felt was unacceptable.”.

4 (11) In March 2017, ZTE Corporation pled
5 guilty to conspiring to violate the International
6 Emergency Economic Powers Act by illegally ship-
7 ping United States-origin items to Iran, paying the
8 United States Government a penalty of
9 \$892,360,064 for activity between January 2010
10 and January 2016.

11 (12) The Office of Foreign Assets Control of
12 the Department of the Treasury issued a subpoena
13 to Huawei as part of a Federal investigation of al-
14 leged violations of trade restrictions on Cuba, Iran,
15 and Sudan.

16 (b) PROHIBITION ON AGENCY USE OR PROCURE-
17 MENT.—The head of an agency may not procure or obtain,
18 may not extend or renew a contract to procure or obtain,
19 and may not enter into a contract (or extend or renew
20 a contract) with an entity that uses, or contracts with any
21 other entity that uses, any equipment, system, or service
22 that uses covered telecommunications equipment or serv-
23 ices as a substantial or essential component of any system,
24 or as critical technology as part of any system.

1 (c) REPORT.—Not later than one year after the date
2 of the enactment of this Act, and annually thereafter, the
3 Secretary of Commerce, in consultation with the Secretary
4 of Defense and the United States Trade Representative,
5 shall submit to Congress a report on sales by the Govern-
6 ment of the People’s Republic of China of covered tele-
7 communications equipment or services through partial
8 ownership or any other methods.

9 (d) DEFINITIONS.—In this section:

10 (1) AGENCY.—The term “agency” has the
11 meaning given that term in section 551 of title 5,
12 United States Code.

13 (2) COVERED TELECOMMUNICATIONS EQUIP-
14 MENT OR SERVICES.—The term “covered tele-
15 communications equipment or services” means any
16 of the following:

17 (A) Telecommunications equipment pro-
18 duced by Huawei Technologies Company, ZTE
19 Corporation, or any other Chinese telecom enti-
20 ty identified by the Director of National Intel-
21 ligence, the Secretary of Defense, or the Direc-
22 tor of the Federal Bureau of Investigation as a
23 security concern (or any subsidiary or affiliate
24 of any such entity).

1 (B) Telecommunications services provided
2 by such entities or using such equipment.

3 (C) Telecommunications equipment or
4 services produced or provided by an entity that
5 the head of the relevant agency reasonably be-
6 lieves to be an entity owned or controlled by, or
7 otherwise connected to, the Government of the
8 People's Republic of China.

9 **TITLE II—FAIR TRADE EN-**
10 **FORCEMENT ACTIONS WITH**
11 **RESPECT TO THE PEOPLE'S**
12 **REPUBLIC OF CHINA**

13 **SEC. 201. COUNTERVAILING DUTIES WITH RESPECT TO**
14 **CERTAIN INDUSTRIES IN THE PEOPLE'S RE-**
15 **PUBLIC OF CHINA.**

16 (a) POLICY.—It is the policy of the United States—

17 (1) to reduce the import of finished goods from
18 the People's Republic of China relating to the Made
19 in China 2025 plan set forth by the Government of
20 the People's Republic of China; and

21 (2) to encourage allies of the United States to
22 reduce the import of finished goods from the Peo-
23 ple's Republic of China relating to the Made in
24 China 2025 plan.

1 (b) INCLUSION OF MADE IN CHINA 2025 PRODUCTS
2 IN DEFINITION OF COUNTERVAILABLE SUBSIDY.—Para-
3 graph (5) of section 771 of the Tariff Act of 1930 (19
4 U.S.C. 1677) is amended by adding at the end the fol-
5 lowing:

6 “(G) TREATMENT OF CERTAIN CHINESE
7 MERCHANDISE.—Notwithstanding any other
8 provision of this title, if a person presents evi-
9 dence in a petition filed under section 702(b)
10 that merchandise covered by the petition is
11 manufactured or produced in, or exported from,
12 the People’s Republic of China and included in
13 the most recent list required under section 183
14 of the Trade Act of 1974, determined in con-
15 sultation with the United States Trade Rep-
16 resentative, the administering authority shall
17 determine that a countervailable subsidy is
18 being provided with respect to that merchan-
19 dise.”.

20 (c) INCLUSION OF MADE IN CHINA 2025 PRODUCTS
21 IN DEFINITION OF MATERIAL INJURY.—Paragraph
22 (7)(F) of such section is amended by adding at the end
23 the following:

24 “(iv) TREATMENT OF CERTAIN CHI-
25 NESE MERCHANDISE.—Notwithstanding

1 any other provision of this title, if a peti-
2 tion filed under section 702(b) alleges that
3 an industry in the United States is materi-
4 ally injured or threatened with material in-
5 jury or that the establishment of an indus-
6 try in the United States is materially re-
7 tarded by reason of imports of merchan-
8 dise manufactured or produced in, or ex-
9 ported from, the People’s Republic of
10 China and included in the most recent list
11 required under section 183 of the Trade
12 Act of 1974, determined in consultation
13 with the United States Trade Representa-
14 tive, the Commission shall determine that
15 material injury or such a threat exists.”.

16 **SEC. 202. REPEAL OF REDUCED WITHHOLDING RATES FOR**
17 **RESIDENTS OF CHINA.**

18 (a) IN GENERAL.—Section 894 of the Internal Rev-
19 enue Code of 1986 is amended—

20 (1) by striking “The provisions of” in sub-
21 section (a) and inserting “Except as otherwise pro-
22 vided in this section, the provisions of”, and

23 (2) by adding at the end the following new sub-
24 section:

1 “(d) EXCEPTION FOR PEOPLE’S REPUBLIC OF
2 CHINA.—

3 “(1) IN GENERAL.—The rates of tax imposed
4 under sections 871 and 881, and the rates of with-
5 holding tax imposed under chapter 3, with respect to
6 any resident of the People’s Republic of China shall
7 be determined without regard to any provision of the
8 Agreement between the Government of the United
9 States of America and the Government of the Peo-
10 ple’s Republic of China for the Avoidance of Double
11 Taxation and the Prevention of Tax Evasion with
12 Respect to Taxes on Income, signed at Beijing on
13 April 30, 1984.

14 “(2) REGULATIONS.—The Secretary shall pro-
15 mulgate regulations to prevent the avoidance of the
16 purposes of this subsection through the use of for-
17 eign entities.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to income received after the date
20 of the enactment of this Act.

21 **SEC. 203. TAXATION OF OBLIGATIONS OF THE UNITED**
22 **STATES HELD BY THE GOVERNMENT OF THE**
23 **PEOPLE’S REPUBLIC OF CHINA.**

24 (a) IN GENERAL.—Section 892 of the Internal Rev-
25 enue Code of 1986 is amended by redesignating subsection

1 (c) as subsection (d) and by inserting after subsection (b)
2 the following new subsection:

3 “(c) EXCEPTION.—This section shall not apply to the
4 Government of the People’s Republic of China.”.

5 (b) CENTRAL BANK.—Section 895 of the Internal
6 Revenue Code of 1986 is amended—

7 (1) by striking “Income” and inserting the fol-
8 lowing:

9 “(a) IN GENERAL.—Income”, and

10 (2) by adding at the end the following new sub-
11 section:

12 “(b) EXCEPTION.—This section shall not apply to the
13 any central bank of the People’s Republic of China.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to income received or derived after
16 the date of the enactment of this Act.

17 **SEC. 204. SURTAX ON CERTAIN INCOME DERIVED FROM**
18 **CHINA.**

19 (a) IN GENERAL.—Subpart D of part II of sub-
20 chapter N of chapter 1 of the Internal Revenue Code of
21 1986 is amended by adding at the end the following new
22 section:

1 **“SEC. 899. IMPOSITION OF SURTAX ON CERTAIN INCOME**
 2 **FROM CHINA.**

3 “(a) IN GENERAL.—In addition to other taxes, there
 4 is imposed on the China source income of any applicable
 5 United States person a tax equal to 2 percent of such in-
 6 come.

7 “(b) APPLICABLE UNITED STATES PERSON.—For
 8 purposes of this subsection, the term ‘applicable United
 9 States person’ means any United States person who—

10 “(1) holds an investment through a partnership
 11 with a resident of the People’s Republic of China, or

12 “(2) participates in a joint shareholding venture
 13 with a resident of the People’s Republic of China.

14 “(c) CHINA SOURCE INCOME.—For purposes of this
 15 section, the term ‘China source income’ means any
 16 amount received from sources within the People’s Republic
 17 of China which is attributable to an investment described
 18 in subsection (b)(1) or a venture described in subsection
 19 (b)(2). Such amount shall be reduced so as to take into
 20 account deductions (including taxes) properly allocable to
 21 such income under rules similar to the rules of section
 22 954(b)(5).”.

23 (b) TAX NOT TREATED AS PART OF REGULAR TAX
 24 LIABILITY.—Section 26(b)(2) of such Code is amended by
 25 striking “and” at the end of subparagraph (X), by striking
 26 the period at the end of subparagraph (Y) and inserting

1 “, and”, and by adding at the end the following new sub-
 2 paragraph:

3 “(Z) section 899 (relating to surtax on cer-
 4 tain income from China).”.

5 (c) CLERICAL AMENDMENT.—The table of sections
 6 for subpart D of part II of subchapter N of chapter 1
 7 of such Code is amended by adding at the end the fol-
 8 lowing new item:

“Sec. 899. Imposition of surtax on certain income from China.”.

9 (d) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to income received after the date
 11 of the enactment of this Act.

12 **TITLE III—STOPPING FOREIGN** 13 **BUSINESSES SANCTUARY ACT** 14 **OF 2018**

15 **SEC. 301. SHORT TITLE.**

16 This title may be cited as the “Stopping Foreign
 17 Businesses Sanctuary Act of 2018”.

18 **SEC. 302. JURISDICTION OVER CERTAIN FOREIGN ENTI-** 19 **TIES.**

20 Section 1605 of title 28, United States Code, is
 21 amended by inserting after subsection (d) the following:

22 “(e) Notwithstanding any other provision of law, an
 23 entity is not immune from the jurisdiction of the courts
 24 of the United States or of the States if the entity—

1 “(1) is incorporated in a foreign state in which
2 state-owned or state-controlled entities commonly en-
3 gage in commercial activity; and

4 “(2) conducts commercial activity in the United
5 States.”.

6 **SEC. 303. COMMERCIAL ACTIVITY OF AFFILIATE ENTITIES.**

7 Section 1603(d) of title 28, United States Code, is
8 amended—

9 (1) by inserting “(1)” before “A”; and

10 (2) by adding at the end the following:

11 “(2) For purposes of this chapter, a commercial
12 activity of an agency or instrumentality of a foreign
13 state, or of an entity described in section 1605(e),
14 shall be attributable to any corporate affiliate of the
15 agency, instrumentality, or entity that—

16 “(A) directly or indirectly owns a majority
17 of shares of the agency, instrumentality, or en-
18 tity; and

19 “(B) is also an agency or instrumentality
20 of a foreign state, or an entity described in sec-
21 tion 1605(e).”.

○