

117TH CONGRESS
1ST SESSION

S. 1294

To authorize the imposition of sanctions with respect to foreign persons that have engaged in significant theft of trade secrets of United States persons, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2021

Mr. VAN HOLLEN (for himself and Mr. SASSE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To authorize the imposition of sanctions with respect to foreign persons that have engaged in significant theft of trade secrets of United States persons, 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 Intellectual Property Act of 2021”.

1 **SEC. 2. IMPOSITION OF SANCTIONS WITH RESPECT TO**
2 **THEFT OF TRADE SECRETS OF UNITED**
3 **STATES PERSONS.**

4 (a) REPORT REQUIRED.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act, and not
7 less frequently than annually thereafter, the Presi-
8 dent shall submit to the appropriate congressional
9 committees a report—

10 (A) identifying any foreign person the
11 President determines, during the period speci-
12 fied in paragraph (2)—

13 (i) has knowingly engaged in, or bene-
14 fitted from, significant theft of trade se-
15 crets of United States persons, if the theft
16 of such trade secrets—

17 (I) occurred on or after such date
18 of enactment; and

19 (II) is reasonably likely to result
20 in, or has materially contributed to, a
21 significant threat to the national secu-
22 rity, foreign policy, or economic health
23 or financial stability of the United
24 States;

25 (ii) has provided significant financial,
26 material, or technological support for, or

goods or services in support of or to benefit significantly from, such theft;

(iii) is an entity that is owned or controlled by, or that has acted or purported to act for or on behalf of, directly or indirectly, any foreign person identified under clause (i) or (ii); or

(iv) is a chief executive officer or member of the board of directors of any foreign entity identified under clause (i) or (ii);

(B) describing the nature, objective, and outcome of the theft of trade secrets each foreign person described in subparagraph (A)(i) engaged in or benefitted from; and

(C) assessing whether any chief executive officer or member of the board of directors described in clause (iv) of subparagraph (A) engaged in, or benefitted from, activity described in clause (i) or (ii) of that subparagraph.

(2) PERIOD SPECIFIED.—The period specified in this paragraph is—

(A) in the case of the first report required by paragraph (1), the period beginning on the date of the enactment of this Act and ending on

1 the date on which the report is required to be
2 submitted; and

3 (B) in the case of each subsequent report
4 required by paragraph (1), the one-year period
5 preceding the date on which the report is re-
6 quired to be submitted.

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

10 (b) AUTHORITY TO IMPOSE SANCTIONS.—

11 (1) SANCTIONS APPLICABLE TO ENTITIES.—In
12 the case of a foreign entity identified under subpara-
13 graph (A) of subsection (a)(1) in the most recent re-
14 port submitted under that subsection, the President
15 shall impose not less than 5 of the following:

16 (A) BLOCKING OF PROPERTY.—The Presi-
17 dent may, pursuant to the International Emer-
18 gency Economic Powers Act (50 U.S.C. 1701 et
19 seq.), block and prohibit all transactions in all
20 property and interests in property of the entity
21 if such property and interests in property are in
22 the United States, come within the United
23 States, or are or come within the possession or
24 control of a United States person.

1 (B) INCLUSION ON ENTITY LIST.—The
2 President may include the entity on the entity
3 list maintained by the Bureau of Industry and
4 Security of the Department of Commerce and
5 set forth in Supplement No. 4 to part 744 of
6 the Export Administration Regulations, for ac-
7 tivities contrary to the national security or for-
8 eign policy interests of the United States.

9 (C) EXPORT-IMPORT BANK ASSISTANCE
10 FOR EXPORTS TO SANCTIONED PERSONS.—The
11 President may direct the Export-Import Bank
12 of the United States not to give approval to the
13 issuance of any guarantee, insurance, extension
14 of credit, or participation in the extension of
15 credit in connection with the export of any
16 goods or services to the entity.

17 (D) LOANS FROM UNITED STATES FINAN-
18 CIAL INSTITUTIONS.—The President may pro-
19 hibit any United States financial institution
20 from making loans or providing credits to the
21 entity totaling more than \$10,000,000 in any
22 12-month period unless the person is engaged
23 in activities to relieve human suffering and the
24 loans or credits are provided for such activities.

1 (E) LOANS FROM INTERNATIONAL FINAN-
 2 CIAL INSTITUTIONS.—The President may direct
 3 the United States executive director to each
 4 international financial institution to use the
 5 voice and vote of the United States to oppose
 6 any loan from the international financial insti-
 7 tution that would benefit the entity.

8 (F) PROHIBITIONS ON FINANCIAL INSTITU-
 9 TIONS.—The following prohibitions may be im-
 10 posed against the entity if the entity is a finan-
 11 cial institution:

12 (i) PROHIBITION ON DESIGNATION AS
 13 PRIMARY DEALER.—Neither the Board of
 14 Governors of the Federal Reserve System
 15 nor the Federal Reserve Bank of New
 16 York may designate, or permit the continu-
 17 ation of any prior designation of, the fi-
 18 nancial institution as a primary dealer in
 19 United States Government debt instru-
 20 ments.

21 (ii) PROHIBITION ON SERVICE AS A
 22 REPOSITORY OF GOVERNMENT FUNDS.—
 23 The financial institution may not serve as
 24 agent of the United States Government or

1 serve as repository for United States Gov-
2 ernment funds.

3 The imposition of either sanction under clause
4 (i) or (ii) shall be treated as one sanction for
5 purposes of this subsection, and the imposition
6 of both such sanctions shall be treated as 2
7 sanctions for purposes of this subsection.

8 (G) PROCUREMENT SANCTION.—The
9 United States Government may not procure, or
10 enter into any contract for the procurement of,
11 any goods or services from the entity.

12 (H) FOREIGN EXCHANGE.—The President
13 may, pursuant to such regulations as the Presi-
14 dent may prescribe, prohibit any transactions in
15 foreign exchange that are subject to the juris-
16 diction of the United States and in which the
17 entity has any interest.

18 (I) BANKING TRANSACTIONS.—The Presi-
19 dent may, pursuant to such regulations as the
20 President may prescribe, prohibit any transfers
21 of credit or payments between financial institu-
22 tions or by, through, or to any financial institu-
23 tion, to the extent that such transfers or pay-
24 ments are subject to the jurisdiction of the

1 United States and involve any interest of the
2 entity.

3 (J) BAN ON INVESTMENT IN EQUITY OR
4 DEBT OF SANCTIONED PERSON.—The President
5 may, pursuant to such regulations or guidelines
6 as the President may prescribe, prohibit any
7 United States person from investing in or pur-
8 chasing significant amounts of equity or debt
9 instruments of the entity.

10 (K) EXCLUSION OF CORPORATE OFFI-
11 CERS.—The President may direct the Secretary
12 of State to deny a visa to, and the Secretary of
13 Homeland Security to exclude from the United
14 States, any alien that the President determines
15 is a corporate officer or principal of, or a share-
16 holder with a controlling interest in, the entity.

17 (L) SANCTIONS ON PRINCIPAL EXECUTIVE
18 OFFICERS.—The President may impose on the
19 principal executive officer or officers of the enti-
20 ty, or on individuals performing similar func-
21 tions and with similar authorities as such offi-
22 cer or officers, any of the sanctions under this
23 paragraph.

24 (2) SANCTIONS APPLICABLE TO INDIVIDUALS.—

25 In the case of an alien identified under subpara-

graph (A) of subsection (a)(1) in the most recent report submitted under that subsection, the following shall apply:

(A) BLOCKING OF PROPERTY.—The President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of the alien if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(B) INELIGIBILITY FOR VISAS, ADMISSION, OR PAROLE.—

(i) VISAS, ADMISSION, OR PAROLE.—

An alien described in subparagraph (A) of subsection (a)(1) is—

(I) inadmissible to the United

States;

(II) ineligible to receive a visa or

other documentation to enter the

United States; and

(III) otherwise ineligible to be

admitted or paroled into the United

States or to receive any other benefit

1 under the Immigration and Nation-
2 ality Act (8 U.S.C. 1101 et seq.).

3 (ii) CURRENT VISAS REVOKED.—

4 (I) IN GENERAL.—An alien de-
5 scribed in subparagraph (A) of sub-
6 section (a)(1) is subject to revocation
7 of any visa or other entry documenta-
8 tion regardless of when the visa or
9 other entry documentation is or was
10 issued.

11 (II) IMMEDIATE EFFECT.—A rev-
12 ocation under subclause (I) shall—

13 (aa) take effect pursuant to
14 section 221(i) of the Immigration
15 and Nationality Act (8 U.S.C.
16 1201(i)); and

17 (bb) cancel any other valid
18 visa or entry documentation that
19 is in the alien's possession.

20 (c) NATIONAL INTEREST WAIVER.—The President
21 may waive the imposition of sanctions under subsection
22 (b) with respect to a person if the President—

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

1 (2) not more than 15 days after issuing the
2 waiver, submits to the appropriate congressional
3 committees a notification of the waiver and the rea-
4 sons for the waiver.

5 (d) TERMINATION OF SANCTIONS.—Sanctions im-
6 posed under subsection (b) with respect to a foreign per-
7 son identified in a report submitted under subsection (a)
8 shall terminate if the President certifies to the appropriate
9 congressional committees, before the termination takes ef-
10 fect, that the person is no longer engaged in the activity
11 identified in the report.

12 (e) IMPLEMENTATION; PENALTIES.—

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

18 (2) PENALTIES.—A person that violates, at-
19 tempts to violate, conspires to violate, or causes a
20 violation of this part or any regulation, license, or
21 order issued to carry out this section shall be subject
22 to the penalties set forth in subsections (b) and (c)
23 of section 206 of the International Emergency Eco-
24 nomic Powers Act (50 U.S.C. 1705) to the same ex-

1 tent as a person that commits an unlawful act de-
2 scribed in subsection (a) of that section.

3 (f) EXCEPTIONS.—

4 (1) INTELLIGENCE ACTIVITIES.—This section
5 shall not apply with respect to activities subject to
6 the reporting requirements under title V of the Na-
7 tional Security Act of 1947 (50 U.S.C. 3091 et seq.)
8 or any authorized intelligence activities of the United
9 States.

10 (2) LAW ENFORCEMENT ACTIVITIES.—Sanctions
11 under this section shall not apply with respect
12 to any authorized law enforcement activities of the
13 United States.

14 (3) EXCEPTION TO COMPLY WITH INTER-
15 NATIONAL AGREEMENTS.—Sanctions under this sec-
16 tion shall not apply with respect to the admission of
17 an alien to the United States if such admission is
18 necessary to comply with the obligations of the
19 United States under the Agreement regarding the
20 Headquarters of the United Nations, signed at Lake
21 Success June 26, 1947, and entered into force No-
22 vember 21, 1947, between the United Nations and
23 the United States, or the Convention on Consular
24 Relations, done at Vienna April 24, 1963, and en-

1 tered into force March 19, 1967, or other inter-
2 national obligations.

3 (4) EXCEPTION RELATING TO IMPORTATION OF
4 GOODS.—

5 (A) IN GENERAL.—The authority or a re-
6 quirement to impose sanctions under this sec-
7 tion shall not include the authority or a require-
8 ment to impose sanctions on the importation of
9 goods.

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

15 (g) DEFINITIONS.—In this section:

16 (1) ADMISSION; ADMITTED; ALIEN; LAWFULLY
17 ADMITTED FOR PERMANENT RESIDENCE.—The
18 terms “admission”, “admitted”, “alien”, and “law-
19 fully admitted for permanent residence” have the
20 meanings given those terms in section 101 of the
21 Immigration and Nationality Act (8 U.S.C. 1101).

22 (2) APPROPRIATE CONGRESSIONAL COMMIT-
23 TEES.—The term “appropriate congressional com-
24 mittees” means—

1 (A) the Committee on Banking, Housing,
2 and Urban Affairs and the Committee on For-
3 eign Relations of the Senate; and

4 (B) the Committee on Financial Services
5 and the Committee on Foreign Affairs of the
6 House of Representatives.

7 (3) EXPORT ADMINISTRATION REGULATIONS.—
8 The term “Export Administration Regulations”
9 means subchapter C of chapter VII of title 15, Code
10 of Federal Regulations.

11 (4) FOREIGN ENTITY.—The term “foreign enti-
12 ty” means an entity that is not a United States per-
13 son.

14 (5) FOREIGN PERSON.—The term “foreign per-
15 son” means any person that is not a United States
16 person.

17 (6) KNOWINGLY.—The term “knowingly”, with
18 respect to conduct, a circumstance, or a result,
19 means that a person has actual knowledge, or should
20 have known, of the conduct, the circumstance, or the
21 result.

22 (7) PERSON.—The term “person” means an in-
23 dividual or entity.

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

4 (9) UNITED STATES PERSON.—The term
5 “United States person” means—

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

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

13 (C) any person in the United States.

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