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1ST SESSION

S. 2067

To amend the Tariff Act of 1930 to provide procedures for national security exclusion from the United States of articles or components of articles that contain, were produced using, benefit from, or use trade secrets misappropriated or acquired through improper means by a foreign agent or foreign instrumentality, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2021

Mr. CORNYN (for himself, Mr. COONS, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Tariff Act of 1930 to provide procedures for national security exclusion from the United States of articles or components of articles that contain, were produced using, benefit from, or use trade secrets misappropriated or acquired through improper means by a foreign agent or foreign instrumentality, 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 “Stopping and Exclud-
5 ing Chinese Rip-offs and Exports with United States

1 Trade Secrets Act of 2021” or the “SECRETS Act of
2 2021”.

3 **SEC. 2. NATIONAL SECURITY EXCLUSION FOR ARTICLES OR**
4 **COMPONENTS OF ARTICLES THAT CONTAIN,**
5 **WERE PRODUCED USING, BENEFIT FROM, OR**
6 **USE TRADE SECRETS MISAPPROPRIATED OR**
7 **ACQUIRED THROUGH IMPROPER MEANS BY A**
8 **FOREIGN AGENT OR FOREIGN INSTRUMENTALITY.**
9

10 (a) NATIONAL SECURITY EXCLUSION.—Title III of
11 the Tariff Act of 1930 is amended by inserting after sec-
12 tion 341 (19 U.S.C. 1341) the following:

13 **“SEC. 342. NATIONAL SECURITY EXCLUSION FOR ARTICLES**
14 **OR COMPONENTS OF ARTICLES THAT CON-**
15 **TAIN, WERE PRODUCED USING, BENEFIT**
16 **FROM, OR USE TRADE SECRETS MISAPPRO-**
17 **PRIATED OR ACQUIRED THROUGH IM-**
18 **PROPER MEANS BY A FOREIGN AGENT OR**
19 **FOREIGN INSTRUMENTALITY.**

20 “(a) IN GENERAL.—Upon a determination under
21 subsection (c)(1), and subject to the procedures required
22 under subsection (d), the Commission shall direct the ex-
23 clusion from the United States of, on the basis of national
24 security, imports of articles that contain, were produced
25 using, benefit from, or use any trade secret acquired

1 through improper means or misappropriation by a foreign
2 agent or foreign instrumentality.

3 “(b) INTERAGENCY COMMITTEE ON TRADE SE-
4 CRETS.—

5 “(1) IN GENERAL.—There is established an
6 Interagency Committee on Trade Secrets (in this
7 section referred to as the ‘Committee’) to carry out
8 the review and submission of allegations under para-
9 graph (5) and such other duties as the President
10 may designate as necessary to carry out this section.

11 “(2) MEMBERSHIP.—

12 “(A) IN GENERAL.—The Committee shall
13 be comprised of the following voting members
14 (or the designee of any such member):

15 “(i) The Secretary of the Treasury.

16 “(ii) The Secretary of Homeland Se-
17 curity.

18 “(iii) The Secretary of Commerce.

19 “(iv) The Attorney General.

20 “(v) The Intellectual Property En-
21 forcement Coordinator.

22 “(vi) The United States Trade Rep-
23 resentative.

24 “(vii) The head of such other Federal
25 agency or other executive office as the

1 President determines appropriate, gen-
2 erally or on a case-by-case basis.

3 “(B) DIRECTOR OF NATIONAL INTEL-
4 LIGENCE.—

5 “(i) IN GENERAL.—The Director of
6 National Intelligence shall serve as an ex
7 officio, nonvoting member of the Com-
8 mittee.

9 “(ii) NOTICE.—The Director of Na-
10 tional Intelligence shall be provided with
11 all notices received by the Committee re-
12 garding allegations under paragraph (5)
13 but shall serve no policy role on the Com-
14 mittee other than to provide analysis un-
15 less serving on the Committee under sub-
16 paragraph (A)(vii).

17 “(3) CHAIRPERSON.—The Attorney General
18 shall serve as the chairperson of the Committee.

19 “(4) MEETINGS.—The Committee shall meet
20 upon the direction of the President or upon the call
21 of the chairperson, without regard to section 552b of
22 title 5, United States Code (if otherwise applicable).

23 “(5) UNFAIR TRADE PRACTICE REVIEW.—The
24 Committee shall—

1 “(A) review upon complaint under oath by
2 the owner of a trade secret or on its own initia-
3 tive any allegations that an article imported or
4 to be imported into the United States is a cov-
5 ered article; and

6 “(B) if the Committee decides to proceed
7 with those allegations, submit to the Commis-
8 sion a report including those allegations.

9 “(c) EX PARTE PRELIMINARY REVIEW, INVESTIGA-
10 TION, AND DETERMINATION.—

11 “(1) EX PARTE PRELIMINARY REVIEW.—Not
12 later than 30 days after receipt of an allegation con-
13 tained in a report under subsection (b)(5)(B) with
14 respect to an article imported or to be imported into
15 the United States, the Commission shall conduct a
16 confidential, ex parte, preliminary review to deter-
17 mine whether there is a reasonable indication the ar-
18 ticle is more likely than not a covered article.

19 “(2) INVESTIGATION.—

20 “(A) IN GENERAL.—Not later than 150
21 days after an affirmative determination under
22 paragraph (1), the Commission shall conduct
23 an ex parte, in-depth investigation, which may
24 include a hearing at the discretion of the Com-

mission, to consider if that determination should be extended under paragraph (3).

“(B) ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.—

“(i) IN GENERAL.—As part of an investigation conducted under subparagraph (A) with respect to an allegation contained in a report under subsection (b)(5)(B), the Director of National Intelligence, at the request of the Commission, shall expeditiously carry out a thorough analysis of the allegation and shall incorporate the views of appropriate intelligence agencies with respect to the allegation.

“(ii) TIMING.—Not later than 20 days after the date on which the Commission begins an investigation under subparagraph (A), the Director of National Intelligence shall submit to the Commission the analysis requested under clause (i).

“(iii) SUPPLEMENTATION OR AMENDMENT.—Any analysis submitted under clause (i) may be supplemented or amended as the Director of National Intelligence considers necessary or appropriate or upon

request by the Commission for additional information.

“(iv) BEGINNING OF ANALYSIS BEFORE INVESTIGATION.—The Director of National Intelligence may begin an analysis under clause (i) of an allegation contained in a report under subsection (b)(5)(B) before investigation by the Commission of the allegation under subparagraph (A), in accordance with applicable law.

“(3) EXTENSION, MODIFICATION, OR TERMINATION.—

“(A) IN GENERAL.—The Commission may extend, modify, or terminate a determination under paragraph (1) for good cause and as necessary and appropriate, as determined by the Commission in consultation with the Committee and based on the findings of the investigation conducted under paragraph (2).

“(B) RECONSIDERATION.—The Commission shall reconsider any extension, modification, or termination under subparagraph (A) of a determination under paragraph (1) upon the request of the Committee.

1 “(4) CONSIDERATION.—In conducting a pre-
2 liminary review under paragraph (1) or an investiga-
3 tion under paragraph (2) with respect to an article,
4 the Commission may consider the following:

5 “(A) If the article contains, was produced
6 using, benefits from, or uses any trade secret
7 acquired through improper means or misapprop-
8 riation by a foreign agent or foreign instru-
9 mentality.

10 “(B) The national security and policy in-
11 terests of the United States, as established by
12 the Committee for purposes of this section.

13 “(5) DISCLOSURE OF CONFIDENTIAL INFORMA-
14 TION.—

15 “(A) IN GENERAL.—Information submitted
16 to the Commission or exchanged among the in-
17 terested persons in connection with a prelimi-
18 nary review under paragraph (1) or an inves-
19 tigation under paragraph (2), including by the
20 owner of the trade secret with respect to which
21 the review or investigation is connected, may
22 not be disclosed (except under a protective
23 order issued under regulations of the Commis-
24 sion that authorizes limited disclosure of such

1 information) to any person other than a person
2 described in subparagraph (B).

3 “(B) EXCEPTION.—Notwithstanding the
4 prohibition under subparagraph (A), informa-
5 tion described in that subparagraph may be dis-
6 closed to—

7 “(i) an officer or employee of the
8 Commission who is directly concerned
9 with—

10 “(I) carrying out the preliminary
11 review, investigation, or related pro-
12 ceeding in connection with which the
13 information is submitted;

14 “(II) the administration or en-
15 forcement of a national security exclu-
16 sion order issued under subsection
17 (d);

18 “(III) a proceeding for the modi-
19 fication or rescission of a national se-
20 curity exclusion order issued under
21 subsection (d); or

22 “(IV) maintaining the adminis-
23 trative record of the preliminary re-
24 view, investigation, or related pro-
25 ceeding;

1 “(ii) an officer or employee of the
2 United States Government who is directly
3 involved in the review under subsection
4 (d)(2); or

5 “(iii) an officer or employee of U.S.
6 Customs and Border Protection who is di-
7 rectly involved in administering an exclu-
8 sion from entry under subsection (d) re-
9 sulting from the preliminary review, inves-
10 tigation, or related proceeding in connec-
11 tion with which the information is sub-
12 mitted.

13 “(6) PUBLICATION OF RESULTS.—Not later
14 than 30 days after a determination under paragraph
15 (1) or an extension under paragraph (3), the Com-
16 mission shall publish notice of the determination or
17 extension, as the case may be, in the Federal Reg-
18 ister.

19 “(7) DESIGNATION OF LEAD AGENCY FROM
20 COMMITTEE.—

21 “(A) IN GENERAL.—The Attorney General
22 shall designate, as appropriate, a Federal agen-
23 cy or agencies represented on the Committee to
24 be the lead agency or agencies on behalf of the

1 Committee for each action under paragraphs
2 (1) through (3).

3 “(B) DUTIES.—The duties of the lead
4 agency or agencies designated under subpara-
5 graph (A), with respect to an action under
6 paragraphs (1) through (3), shall include assist-
7 ing in the action and coordinating activity be-
8 tween the Committee and the Commission.

9 “(8) CONSULTATION.—

10 “(A) IN GENERAL.—In conducting an ac-
11 tion under paragraphs (1) through (3), the
12 Commission shall consult with the heads of
13 such other Federal agencies (or their designees)
14 as the Commission determines appropriate on
15 the basis of the facts and circumstances of the
16 action.

17 “(B) COOPERATION.—The heads of Fed-
18 eral agencies consulted under subparagraph (A)
19 for an action, and the agency or agencies des-
20 ignated under paragraph (7)(A), shall cooperate
21 with the Commission in conducting the action,
22 including by—

23 “(i) producing documents and wit-
24 nesses for testimony; and

1 “(ii) assisting with any complaint or
2 report or any analysis by the Committee.

3 “(9) INTERACTION WITH INTELLIGENCE COM-
4 MUNITY.—The Director of National Intelligence
5 shall ensure that the intelligence community (as de-
6 fined in section 3 of the National Security Act of
7 1947 (50 U.S.C. 3003)) remains engaged in the col-
8 lection, analysis, and dissemination to the Commis-
9 sion of any additional relevant information that may
10 become available during the course of any action
11 conducted under paragraphs (1) through (3).

12 “(10) RULE OF CONSTRUCTION REGARDING
13 SUBMISSION OF ADDITIONAL INFORMATION.—Noth-
14 ing in this subsection shall be construed as prohib-
15 iting any interested person to an allegation described
16 in subsection (b)(5) from submitting additional in-
17 formation concerning the allegation while an action
18 under paragraphs (1) through (3) with respect to
19 the allegation is ongoing.

20 “(d) PROCEDURES FOR NATIONAL SECURITY EX-
21 CLUSION.—

22 “(1) IN GENERAL.—If the Commission deter-
23 mines under subsection (c)(1) that it is more likely
24 than not that an article to be imported into the
25 United States is a covered article, not later than 30

1 days after receipt of the allegation described in that
2 subsection with respect to that determination, the
3 Commission shall—

4 “(A) direct through an order that the arti-
5 cle concerned be excluded from entry into the
6 United States under subsection (a); and

7 “(B) notify the President of that deter-
8 mination.

9 “(2) PRESIDENTIAL REVIEW.—If, before the
10 end of the 15-day period beginning on the day after
11 the date on which the President is notified under
12 paragraph (1)(B) of the determination of the Com-
13 mission under subsection (c)(1), the President dis-
14 approves of that determination and notifies the
15 Commission of that disapproval, effective on the
16 date of that notice, that determination shall have no
17 force or effect.

18 “(3) ACTION BY SECRETARY OF THE TREAS-
19 URY.—

20 “(A) NOTIFICATION.—Upon expiration of
21 the 15-day period described in paragraph (2),
22 or notification from the President of approval
23 of the determination of the Commission under
24 subsection (c)(1) before the expiration of that
25 period, the Commission shall notify the Sec-

1 retary of the Treasury and the Secretary of
2 Homeland Security of its action under sub-
3 section (a) to direct the exclusion of covered ar-
4 ticles from entry.

5 “(B) REFUSAL OF ENTRY.—Upon receipt
6 of notice under subparagraph (A) regarding the
7 exclusion of covered articles from entry, the
8 Secretary of the Treasury and the Secretary of
9 Homeland Security shall refuse the entry of
10 those articles.

11 “(4) CONTINUATION IN EFFECT.—Any exclu-
12 sion from entry of covered articles under subsection
13 (a) shall continue in effect until the Commission—

14 “(A) determines that the conditions that
15 led to such exclusion from entry do not exist;
16 and

17 “(B) notifies the Secretary of the Treasury
18 and the Secretary of Homeland Security of that
19 determination.

20 “(5) MODIFICATION OR RESCISSION.—

21 “(A) IN GENERAL.—An interested person
22 may petition the Commission for a modification
23 or rescission of an exclusion order under sub-
24 section (a).

1 “(B) REVISITATION OF EXCLUSION.—The
2 Commission may modify or rescind the exclu-
3 sion at any time at the discretion of the Com-
4 mission.

5 “(C) BURDEN OF PROOF.—The burden of
6 proof in any proceeding before the Commission
7 regarding a petition made by an interested per-
8 son under subparagraph (A) shall be on the in-
9 terested person.

10 “(D) RELIEF.—A modification or rescis-
11 sion for which a petition is made under sub-
12 paragraph (A) may be granted by the Commis-
13 sion—

14 “(i) on the basis of new evidence or
15 evidence that could not have been pre-
16 sented at the prior proceeding; or

17 “(ii) on grounds that would permit re-
18 lief from a judgment or order under the
19 Federal Rules of Civil Procedure.

20 “(E) EVIDENTIARY STANDARD.—A modi-
21 fication or rescission may be made under sub-
22 paragraph (A) if an interested person provides
23 to the Commission clear and convincing evi-
24 dence that such a modification or rescission
25 should be made.

1 “(e) CIVIL ACTIONS.—

2 “(1) IN GENERAL.—A civil action challenging a
3 determination by the Commission under subsection
4 (a) may be brought only—

5 “(A) in the United States Court of Appeals
6 for the Federal Circuit; and

7 “(B) not later than 60 days after a peti-
8 tion for modification or rescission under sub-
9 section (d)(5) with respect to that determina-
10 tion has been conclusively decided.

11 “(2) PROCEDURES FOR REVIEW OF PRIVILEGED
12 INFORMATION.—If a civil action challenging an de-
13 termination under subsection (a) is brought under
14 paragraph (1) and the court determines that pro-
15 tected information in the administrative record, in-
16 cluding classified or other information subject to
17 privilege or protections under law, is necessary to re-
18 solve the challenge, that information shall be sub-
19 mitted ex parte and in camera to the court and the
20 court shall maintain that information under seal.

21 “(3) APPLICABILITY OF USE OF INFORMATION
22 PROVISIONS.—The use of information provisions of
23 sections 106, 305, 405, and 706 of the Foreign In-
24 telligence Surveillance Act of 1978 (50 U.S.C. 1806,
25 1825, 1845, and 1881e) shall not apply in a civil ac-

1 tion challenging an investigation or determination
2 under this subsection.

3 “(f) INAPPLICABILITY OF THE ADMINISTRATIVE
4 PROCEDURE ACT.—

5 “(1) IN GENERAL.—The requirements of sub-
6 chapter II of chapter 5 of title 5, United States
7 Code, shall not apply to—

8 “(A) an action conducted by the Commis-
9 sion under paragraphs (1) through (3) of sub-
10 section (c); or

11 “(B) the procedures for exclusion under
12 paragraphs (4) and (5) of subsection (d).

13 “(2) ADJUDICATION.—Any adjudication under
14 this section shall not be subject to the requirements
15 of sections 554, 556, and 557 of title 5, United
16 States Code.

17 “(g) FREEDOM OF INFORMATION ACT EXCEPTION.—
18 Section 552 of title 5, United States Code (commonly re-
19 ferred to as the ‘Freedom of Information Act’), shall not
20 apply to the activities conducted under this section.

21 “(h) EXCLUSION.—Any exclusion under this section
22 shall not be subject to section 1581 of title 28, United
23 States Code.

1 “(i) REGULATIONS.—The Commission may prescribe
2 such regulations as the Commission considers necessary
3 and appropriate to carry out this section.

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated such sums as may be
6 necessary to carry out this section.

7 “(k) DEFINITIONS.—In this section:

8 “(1) ARTICLE.—The term ‘article’ includes any
9 article or component of an article.

10 “(2) COVERED ARTICLE.—The term ‘covered
11 article’ means an article subject to exclusion from
12 the United States under subsection (a).

13 “(3) FOREIGN AGENT; FOREIGN INSTRUMEN-
14 TALITY; IMPROPER MEANS; MISAPPROPRIATION;
15 OWNER; TRADE SECRET.—The terms ‘foreign agent’,
16 ‘foreign instrumentality’, ‘improper means’, ‘mis-
17 appropriation’, ‘owner’, and ‘trade secret’ have the
18 meanings given those terms in section 1839 of title
19 18, United States Code.

20 “(4) INTERESTED PERSON.—The term ‘inter-
21 ested person’, with respect to an allegation under
22 subsection (b)(5), means a person named in the alle-
23 gation or otherwise identified by the Commission as
24 having a material interest with respect to the allega-
25 tion.”.

- 1 (b) CLERICAL AMENDMENT.—The table of contents
2 for the Tariff Act of 1930 is amended by inserting after
3 the item relating to section 341 the following:

“Sec. 342. National security exclusion for articles or components of articles
that contain, were produced using, benefit from, or use trade
secrets misappropriated or acquired through improper means
by a foreign agent or foreign instrumentality.”.

