Title: To require reviews of United States investment in foreign countries that may threaten national critical capabilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Critical Capabilities Defense Act of 2022”.

SEC. 2. NATIONAL CRITICAL CAPABILITIES.

(a) In General.—The Trade Act of 1974 (19 U.S.C. 2101 et seq.) is amended by adding at the end the following:

“TITLE X—NATIONAL CRITICAL CAPABILITIES

“SEC. 1001. DEFINITIONS.

“In this title:

“(1) AFFILIATED WITH A COUNTRY OF CONCERN.—An entity shall be deemed ‘affiliated with a country of concern’ when—

“(A) either the country of concern or an entity influenced by a country of concern directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting stock or shares;

“(B) any entity that is subject to substantial influence from either the country of concern or an entity influenced by a country of concern;

“(C) any entity domiciled in a country of concern and an entity influenced by a country of concern share an employee that is in a position of material decision making;

“(D) the country of concern or an entity influenced by a country of concern has the power to direct or decide matters affecting the entity’s management or operations in a manner that could materially affect the commercial decisions or business interests or any important matter of that entity;

“(E) any entity that is part of an entity that is headquartered in the country of concern, including a subsidiary, a holding company, an entity that is [tied] through contracts, or a variable interest entity;

“(F) any entity domiciled in a country of concern, whether directly or indirectly, that receives, benefits from, transfers, causes to be transferred, allows access to or facilitates access to trade secrets belonging to a United States person, intelligence information, national security information, controlled unclassified information, or sensitive information either to or from the entity domiciled in a country of concern or an entity influenced by a country of concern;

“(G) any entity is influenced by a national of the country of concern or an entity domiciled in the country of concern; or
“(H) such other factors that the Committee determines allows for influence or control over such entity.

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Finance, [the Committee on Banking, Housing, and Urban Affairs], and the Committee on Foreign Relations of the Senate; and

“(B) the Committee on Ways and Means, [the Committee on Financial Services], and the Committee on Foreign Affairs of the House of Representatives.

“(3) COMMITTEE.—The term ‘Committee’ means the Committee on National Critical Capabilities established under section 1002.

“(4) COUNTRY OF CONCERN.—The term ‘country of concern’ has the meaning given the term ‘foreign adversary’ in section 8(c)(2) of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1607(c)(2)), including the People’s Republic of China, Russia, Iran, North Korea, Cuba, and Venezuela.

“(5) COVERED ACTIVITY.—

“(A) IN GENERAL.—Except as provided by subparagraph (B), the term ‘covered activity’ means any of the following activities that are ongoing or proposed as of the effective date of this title:

“(i) Any activity by a United States person or a foreign entity or an affiliate of a United States person or an affiliate of a foreign person that—

“(I) builds, develops, produces, manufactures, fabricates, refurbishes, expands, shifts, services, manages, operates, utilizes, sells, or relocates a national critical capability to or in a country of concern;

“(II) shares, discloses, contributes, transfers, or licenses to an entity of concern any design, technology, intellectual property, or know-how, including through open-source technology platforms or research and development, that supports, contributes to, or enables a national critical capability by an entity of concern or in a country of concern; or

“(III) invests in, provides capital to, or consults for, or gives any guidance, related to enhancing the capabilities or facilitating access to financial resources for a national critical capability for an entity of concern or a country of concern.

“(ii) Any activity by a recipient or beneficiary of financial assistance, including grants, tax incentives, or other types of funding, under [the Bipartisan Innovation Act/placeholder for short title of larger package] with respect to an entity of concern or in a country of concern.

“(iii) Any activity by an entity that benefits from annual procurement of more than [_____] in goods or services by a United States national security agency with respect to an entity of concern or in a country of concern.

“(B) EXCEPTIONS.—
“(i) IN GENERAL.—The term ‘covered activity’ does not include—

“(I) any transaction the value of which the Committee determines is [de minimis];

“(II) an ordinary business transaction; or

“(III) any transaction that occurred before the effective date of this title.

“(ii) ORDINARY BUSINESS TRANSACTION DEFINED.—For purposes of clause (i),
the term ‘ordinary business transaction’ means—

“(I) the sale or license of a finished item and the provision of associated
support to a customer, distributor, or reseller;

“(II) the sale or license to a customer of a product and the provision of
integration or similar services, if the United States person generally makes
such services available to all of its customers;

“(III) the transfer of equipment and the provision of associated support to
operating such equipment that could not result in a foreign person using the
equipment to produce a critical technology;

“(IV) the procurement by the United States person of goods and services,
including manufacturing services, from a foreign person that has no rights to
exploit any intellectual property contributed by the United States person
other than to supply goods and services to the United States person; or

“(V) a transaction identified as an ordinary business transaction in
regulations prescribed by the Committee.

“(C) REGULATIONS.—

“(i) IN GENERAL.—The Committee shall prescribe regulations further defining
the term ‘covered activity’ in accordance with subchapter II of chapter 5 and
chapter 7 of title 5, United States Code (commonly known as the ‘Administrative
Procedure Act’).

“(ii) INCLUSIONS.—The regulations prescribed by the Committee under clause
(i) shall—

“(I) identify the national critical capabilities subject to this paragraph
based on criteria intended to limit application of this paragraph to the subset
of national critical capabilities that is likely to pose an unacceptable risk to
the national security of the United States; and

“(II) enumerate, quantify, prioritize, and set forth sufficient allowances of
specific types and examples of such capabilities.

“(iii) COORDINATION.—In prescribing regulations under clause (i), the
Committee shall coordinate with the United States Trade Representative, the
Under Secretary of Commerce for Industry and Security, the Committee on
Foreign Investment in the United States, and other Federal agencies as appropriate
to avoid duplication of effort and regulation.

“(6) CRITICAL INFRASTRUCTURE.—The term ‘critical infrastructure’ has the meaning
given that term in the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c).

“(7) ENTITY OF CONCERN.—The term ‘entity of concern’ means an entity—

“(A) that is influenced by a country of concern; or

“(B) that is directly or indirectly affiliated with a country of concern.

“(8) FOREIGN ENTITY.—

“(A) IN GENERAL.—Except as provided by subparagraph (B), the term ‘foreign entity’ means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign country if—

“(i) its principal place of business is outside the United States; or

“(ii) its equity securities are primarily traded on one or more foreign exchanges.

“(B) EXCEPTION.—The term ‘foreign entity’ does not include any entity described in subparagraph (A) that can demonstrate that—

“(i) a majority of the equity interest in such entity is ultimately owned by nationals of the United States; and

“(ii) the entity is not an entity of concern.

“(9) FOREIGN PERSON.—The term ‘foreign person’ means—

“(A) any foreign national, foreign government, or foreign entity; or

“(B) any entity that is subject to the control of a foreign national, foreign government, or foreign entity.

[“(10) NATIONAL CRITICAL CAPABILITIES.—]

[“(A) IN GENERAL.—The term ‘national critical capabilities’ means—]

[“(i) supply chains identified under Executive Order 14017 (86 Fed. Reg. 11849; relating to America’s supply chains), as amended on or after the date of the enactment of this title, including—]

[“(I) semiconductor manufacturing and advanced packaging;]

[“(II) large-capacity batteries;]

[“(III) critical minerals and materials;]

[“(IV) pharmaceuticals and active pharmaceutical ingredients;]

[“(ii) technologies identified by the Director of National Intelligence as critical and emerging technologies, including—]

[“(I) artificial intelligence;]

[“(II) bioeconomy; and]

[“(III) quantum information science and technology;]

[“(iii) the manufacturing and other capabilities necessary to produce critical goods and materials and other essential goods and materials, as defined in section]
6 of Executive Order 14017, underlying supply chains identified under that Executive Order;]

[“(iv) sectors specified in the Critical and Emerging Technologies List Update of the National Science and Technology Council, dated February 2022; and]

[“(v) industries, technologies, and supply chains the Committee identifies as national critical capabilities under subparagraph (B).]

[“(B) INCLUSION OF ADDITIONAL INDUSTRIES, TECHNOLOGIES, AND SUPPLY CHAINS.—]

[“(i) REGULATIONS.—No later than 180 days after the date of the enactment of this title, the Committee shall prescribe regulations to identify industries, technologies, and supply chains for purposes of subparagraph (A)(v).]

[“(ii) REPORT REQUIRED.—Not less frequently than annually, the Committee shall submit to the appropriate congressional committees a report describing all of the industries, technologies, and supply chains that the Committee considered identifying for purposes of subparagraph (A)(v) and the reasons why each such industry, technology, or supply chain was or was not so identified.]"
“(A) an individual who is a citizen or national of the United States or alien admitted
for permanent residence in the United States; and

“(B) any corporation, partnership, or entity organized under the laws of the United
States or the laws of any jurisdiction within the United States.

“SEC. 1002. COMMITTEE ON NATIONAL CRITICAL
CAPABILITIES.

“(a) In General.—There is established a committee, to be known as the ‘Committee on
National Critical Capabilities’, which shall carry out this title and such other assignments as the
President may designate.

“(b) Membership.—

“(1) In General.—The Committee shall be comprised of the head, or a designee of the
head, of each of the following:

“(A) The Office of the United States Trade Representative.
“(B) The Department of Commerce.
“(C) The Department of State.
“(D) The Department of the Treasury.
“(F) The Department of Defense.
“(G) The Office of Science and Technology Policy.
“(H) The Department of Justice.
“(I) The Department of Energy.
“(J) The Department of Health and Human Services.
“(K) The Department of Agriculture.
“(L) The Department of Labor.
“(M) Any other Federal department or agency the President determines appropriate,
generally, or on a case-by-case basis.

“(2) Ex Officio Members.—

“(A) In General.—In addition to the members of the Committee specified in
paragraph (1), the following shall, except as provided in subparagraph (B), be
nonvoting, ex officio members of the Committee:

“(i) The Director of National Intelligence.
“(iii) The Director of the National Institute of Standards and Technology.
“(iv) The Director of the Centers for Disease Control and Prevention.
“(v) The Director of the National Institute of Allergy and Infectious Diseases.
“(viii) The Chairperson of the Commodity Futures Trading Commission.
“(ix) The Administrator of the Federal Aviation Administration.
“(B) DESIGNATION AS VOTING MEMBERS.—The chairperson of the Committee may designate any of the officials specified in clauses (ii) through (ix) of subparagraph (A) as voting members of the Committee.
“(c) Chairperson.—
“(1) IN GENERAL.—The [President or President’s designee/Secretary of ___] shall serve as the chairperson of the Committee.
“(2) CONSULTATIONS.—In carrying out the duties of the chairperson of the Committee, the chairperson shall consult with the [United States Trade Representative, the Secretary of Defense, the Secretary of Commerce, the Secretary of State, and the Secretary of the Treasury].
“(d) Designation of Officials To Carry Out Duties Related to Committee.—The head of each agency represented on the Committee shall designate an official, at or equivalent to the level of Assistant Secretary in the Department of the Treasury, who is appointed by the President, by and with the advice and consent of the Senate, to carry out such duties related to the Committee as the head of the agency may assign.

“(a) Mandatory Notification.—Beginning on the day after the date on which the Committee finalizes regulations under this title, a United States person or foreign entity that engages in or plans to engage in a covered activity shall submit a written notification of the activity to the Committee [45 days] before engaging in the covered activity.
“(b) Immediate Circulation of Notifications.—
“(1) IN GENERAL.—The chairperson of the Committee shall, upon receipt of a notification under subsection (a), promptly inspect and immediately circulate the notification to all members (including ex officio members) of the Committee.
“(2) INCOMPLETE NOTIFICATIONS.—If a notification submitted under subsection (a) is incomplete, the chairperson of the Committee shall, at request of any member of the Committee, promptly inform the parties to the covered activity that is the subject of the notification that the notification is not complete and provide an explanation of all material respects in which the notification is not complete.
“(c) Review.—
“(1) IN GENERAL.—The Committee may—
“(A) review an activity to determine if the activity is likely to result in an unacceptable risk to one or more national critical capabilities, including by considering factors specified in section 1005; and
“(B) if the Committee determines under subparagraph (A) that the activity poses an unacceptable risk described in that subparagraph, the chairperson shall—

“(i) notify the United States person or foreign entity that engages in or plans to engage in a covered activity of that determination not later than [45] days after receiving the notification under subsection (a) with respect to the activity, if applicable; and

“(ii) make recommendations—

[“(I) to the President for appropriate action that may be taken to address or mitigate that risk—]

[“(aa) under existing authorities, including—]

[“(AA) the Export Control Reform Act of 2018 (50 U.S.C. 4801) or the Export Administration Regulations;]

[“(BB) the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or other statutes, regulations, or executive orders providing for the imposition of sanctions; and]

[“(CC) the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.); and]

“(bb) if the Committee determines such authorities do not provide adequate and appropriate authority to address or mitigate that risk, under this title; and

“(II) to Congress for the establishment or expansion of Federal programs to support the production or supply of goods, materials, and technologies described in section 1001(a)(10)(A) in the United States.

“(2) UNILATERAL INITIATION OF REVIEW.—The Committee may initiate a review under paragraph (1) of a covered activity for which written notification is not submitted under subsection (a).

[“(3) INITIATION OF REVIEW BY REQUEST FROM CONGRESS.—The Committee shall initiate a review under paragraph (1) of a covered activity if the chairperson and the ranking member of one of the appropriate congressional committees jointly request the Committee to review the transaction.]

[“(d) Mitigation.—]

[“(1) AGREEMENTS AND CONDITIONS.—]

[“(A) IN GENERAL.—Before the President takes action under section 1004 with respect to a covered activity, the Committee may, or the agency under whose jurisdiction the covered activity primarily occurs (in this subsection referred to as the ‘lead agency’) may, in coordination with the Committee, negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered activity in order to mitigate any risk to the national security of the United States that arises as a result of the covered activity.]

[“(B) ABANDONMENT OF ACTIVITIES.—If a party to a covered activity has voluntarily
chosen to abandon the activity, the Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered activity for purposes of effectuating such abandonment and mitigating any risk to the national security of the United States that arises as a result of the covered activity.

[(C) AGREEMENTS AND CONDITIONS RELATING TO COMPLETED ACTIVITIES.—The Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to a completed covered activity in order to mitigate any interim risk to the national security of the United States that may arise as a result of the covered activity until such time that the Committee has completed action.]

[(2) CONGRESSIONAL NOTIFICATION.—Upon entering into or imposing an agreement under paragraph (1) with respect to a covered activity, the Committee or lead agency shall provide to the appropriate congressional committees—]

[(A) the text of the agreement; and]

[(B) upon receiving a request from the chairperson and the ranking member of a committee that initiated a review of the covered activity under subsection (b)(3), any material relevant to the negotiation of the agreement.]

“Confidentiality of Information.—

“(1) IN GENERAL.—Except as provided in paragraph (2), any information or documentary material and any information or materials derived from such information or documentary materials filed with the Committee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public.

“(2) EXCEPTIONS.—The exemption from disclosure provided by paragraph (1) shall not prevent the disclosure of the following:

“(A) Information relevant to any administrative or judicial action or proceeding.

“(B) Information to Congress or any duly authorized committee or subcommittee of Congress.

“(C) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements.

“(D) Information that the parties have consented to be disclosed to third parties.

“SEC. 1004. ACTION BY THE PRESIDENT.

“(a) In General.—Subject to subsection (d), the President shall take such action for such time as the President considers appropriate to address any unacceptable risk posed by a covered activity to one or more national critical capabilities[, including mitigating, suspending or prohibiting the covered activity].
“(b) Seeking Alternate Enforcement.—The President shall consider other existing measures to address unacceptable risk before taking action [to mitigate, prohibit, or suspend an activity] described in subsection (a).

“(c) Report.—The President shall report to the appropriate congressional committees the manner and extent to which, if action is not taken [to mitigate, prohibit, or suspend an activity] described in subsection (a), other existing measures could be used to mitigate the unacceptable risk described in such subsection.

“(d) Announcement by the President.—The President shall announce the decision on whether or not to take action pursuant to subsection (a) with respect to a covered activity not later than 15 days after the date on which the review of the activity under section 1003 is completed.

“(e) Enforcement.—The President may direct the Attorney General of the United States to seek appropriate relief, including divestment relief, in the district courts of the United States, in order to implement and enforce this section.

“(f) Findings of the President.—The President may exercise the authority conferred by subsection (a) [to mitigate, suspend, or prohibit a covered activity] only if the President finds that—

“(1) there is credible evidence that leads the President to believe that the covered activity poses an unacceptable risk to one or more national critical capabilities; and

“(2) provisions of law (other than this section) do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect such capabilities.

“(g) Factors To Be Considered.—For purposes of determining whether to take action under subsection (a), the President shall consider, among other factors, each of the factors described in section 1005, as appropriate.

“(h) Public Disclosure.—Each exercise of the authority conferred by subsection (a) shall be published in the Federal Register.

“SEC. 1005. FACTORS TO BE CONSIDERED.

“The Committee, in reviewing and making a determination with respect to a covered activity under section 1003, and the President, in determining whether to take action under section 1004 with respect to a covered activity, shall consider any factors relating to national critical capabilities that the Committee or the President considers relevant, including—

“(1) the economic, national security, intelligence, military, health, and agricultural interests of the United States;

“(2) the history of distortive or predatory trade practices in each country in which a covered activity occurs;

“(3) control and beneficial ownership (as determined in accordance with section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 4819 note)) of each foreign person that is a party to the transaction;

“(4) impact on the domestic industry and resulting resiliency, including the domestic skills base, taking into consideration any pattern of foreign investment in the domestic industry; and
“(5) if the activity could, directly or indirectly, support, enhance, or enable the
capabilities of a country of concern or entity of concern.

“SEC. 1006. SUPPLY CHAIN SENSITIVITIES.

“The Committee shall determine the sensitivities and risks for sourcing of goods, materials,
and technologies described in section 1001(a)(10)(A), in accordance with the following:

“(1) The sourcing of least concern shall be for goods, materials, and technologies
sourced, and supply chains housed, in whole within countries that are allies of the United
States.

“(2) The sourcing of greater concern shall be for goods, materials, and technologies
sourced, and supply chains housed, in part within countries of concern or from an entity of
concern but for which substitute production is available from elsewhere at required scale to
meet United States needs, including in terms of surge capacity.

“(3) The sourcing of greatest concern shall be for goods, materials, and technologies
sourced, and supply chains housed, wholly or in part in countries of concern or from an
entity of concern and for which substitute production is unavailable elsewhere at required
scale.

“SEC. 1007. ANNUAL REPORT.

“(a) In General.—Not later than 90 days after the date of the enactment of the National
Critical Capabilities Defense Act of 2022, and annually thereafter, the Committee shall submit to
the appropriate congressional committees a report—

“(1) on the determination under section 1006 with respect to sensitivities and risks for
sourcing of goods, materials, and technologies described in section 1001(a)(10)(A);

“(2) describing, for the year preceding submission of the report—

“(A) the notifications received under subsection (a) of section 1003 and reviews
conducted pursuant to such notifications;

“(B) reviews initiated under paragraph (2) or (3) of subsection (b) of that section;

“(C) actions recommended by the Committee under subsection (b)(1)(B) of that
section as a result of such reviews; and

“(D) reviews during which the Committee determined no action was required; and

“(3) assessing the overall impact of such reviews on national critical capabilities
including recommendations on—

“(A) expansion of Federal programs to support or protect the production or supply
of national critical capabilities in the United States, including the potential of existing
legal authorities to address any related national security concerns;

“(B) investments to enhance national critical capabilities and reduce dependency on
countries of concern; and

“(C) regarding the continuation, expansion, or modification of the Committee
established under this title.
“(b) Form of Report.—The report required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

“SEC. 1008. REQUIREMENT FOR REGULATIONS.

“(a) In General.—The Committee shall prescribe regulations to carry out this title.

“(b) Elements.—Regulations prescribed to carry out this title shall—

“(1) provide for the imposition of civil penalties up to $250,000 for any violation of this title, including for—

“(A) any violation of a mitigation agreement entered into under section 1003(c) or conditions imposed pursuant to such an agreement;

“(B) any failure to submit a notification under section 1003(a) with respect to a covered activity or to submit information as required by the Committee;

“(C) any material omission from or material misstatement included in any information submitted to the Committee under this title; and

“(D) related party activities or activities intended to limit the coverage of this title; and

“(2) include specific examples of the types of—

“(A) the activities that will be considered to be covered activities; and

“(B) the supply chains, technologies, goods, materials, sectors, and industries that will be considered to be national critical capabilities.

“SEC. 1009. MULTILATERAL ENGAGEMENT AND COORDINATION.

“(a) In General.—The [chairperson of the Committee,] in consultation with the [United States Trade Representative, the Secretary of Commerce, and the Secretary of State] shall—

“(1) in coordination and consultation with relevant Federal agencies, conduct multilateral engagement with the governments of countries that are allies and partners of the United States to secure coordination of protocols and procedures with respect to covered activities with countries of concern and entities of concern; and

“(2) upon adoption of protocols and procedures described in paragraph (1), work with those governments to establish mechanisms for sharing information with respect to such activities.

“(b) Strategy for Development of Outbound Review Mechanisms.—The Committee shall—

“(1) develop a strategy to work with countries that are allies and partners of the United States to develop mechanisms comparable to this title [for the review of covered activities]; and

“(2) provide technical assistance to those countries with respect to the development of those mechanisms.
“SEC. 1010. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated such sums as may be necessary to carry out this title, including to provide outreach to industry and persons affected by this title.

“SEC. 1011. EFFECTIVE DATE.

“This title shall take effect on the date that is [180 days] after the date of enactment of this title.

“SEC. 1012. RULE OF CONSTRUCTION WITH RESPECT TO FREE AND FAIR COMMERCE.

“Nothing in this title is intended to restrain or deter foreign investment in the United States, United States investment abroad, or trade in goods or services, if such investment and trade do not pose an unacceptable risk to a national critical capability.”.

(b) Clerical Amendment.—The table of contents for the Trade Act of 1974 is amended by adding at the end the following:

“TITLE X—NATIONAL CRITICAL CAPABILITIES

“Sec.1001.Definitions.
“Sec.1002.Committee on National Critical Capabilities.
“Sec.1003.[Mandatory notification and review] of covered activities.
“Sec.1004.Action by the President.
“Sec.1005.Factors to be considered.
“Sec.1006.Supply chain sensitivities.
“Sec.1007.Annual report.
“Sec.1008.Requirement for regulations.
“Sec.1009.Multilateral engagement and coordination.
“Sec.1010.Authorization of appropriations.
“Sec.1011.Effective date.
“Sec.1012.Rule of construction with respect to free and fair commerce.”.