

AMENDMENT NO. _____ Calendar No. _____

Purpose: To require notification of certain investments in a foreign country that may threaten United States national critical technologies.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

H. R. 7900

To authorize appropriations for fiscal year 2023 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by
_____ to the amendment (No. 5499)
proposed by Mr. REED

Viz:

1 At the end of subtitle D of title XII, add the fol-
2 lowing:

3 **SEC. 1254. TRANSPARENCY IN OUTBOUND INVESTMENT IN**
4 **NATIONAL CRITICAL TECHNOLOGIES.**

5 The Defense Production Act of 1950 (50 U.S.C.
6 4501 et seq.) is amended by adding at the end the fol-
7 lowing:

1 **“TITLE VIII—OUTBOUND INVEST-**
2 **MENT IN NATIONAL CRITICAL**
3 **TECHNOLOGIES**

4 **“SEC. 801. DEFINITIONS.**

5 “In this title:

6 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
7 TEES.—The term ‘appropriate congressional com-
8 mittees’ means—

9 “(A) the Committee on Banking, Housing,
10 and Urban Affairs of the Senate; and

11 “(B) the Committee on Financial Services
12 of the House of Representatives.

13 “(2) COUNTRY OF CONCERN.—The term ‘coun-
14 try of concern’ means the People’s Republic of
15 China.

16 “(3) COVERED FOREIGN ENTITY.—

17 “(A) IN GENERAL.—Subject to regulations
18 prescribed by the President in accordance with
19 section 806, and except as provided in subpara-
20 graph (B), the term ‘covered foreign entity’
21 means—

22 “(i) any entity that is incorporated in,
23 has a principal place of business in, or is
24 organized under the laws of, a country of
25 concern;

1 “(ii) any entity the equity securities of
2 which are primarily traded on one or more
3 exchanges in a country of concern; or

4 “(iii) any entity in which any entity
5 described in clause (i) or (ii), or a group
6 of such entities, holds, individually or in
7 aggregate, directly or indirectly, an owner-
8 ship interest of greater than 50 percent.

9 “(B) EXCEPTION.—The term ‘covered for-
10 eign entity’ shall not include any entity de-
11 scribed in subparagraph (A)(ii) that can dem-
12 onstrate that a majority of the equity interest
13 in such entity is ultimately owned by nationals
14 of the United States or individuals who are not
15 nationals of a country of concern, as defined in
16 regulations prescribed by the President.

17 “(4) COVERED INVESTMENT.—

18 “(A) IN GENERAL.—Subject to such regu-
19 lations as may be prescribed by the President
20 in accordance with section 806, and except as
21 provided in subparagraph (C), the term ‘cov-
22 ered investment’ means any investment engaged
23 in by a United States person on or after the ef-
24 fective date of such regulations—

25 “(i) that involves—

1 “(I) a direct acquisition of an equity
2 interest or contingent equity interest
3 in, or monetary capital contribution
4 in, a covered foreign entity;

5 “(II) an arrangement for an interest
6 in the short- or long-term debt
7 obligations of a covered foreign entity
8 that include government rights characteristic
9 of an equity investment, management,
10 or other important
11 rights;

12 “(III) the establishment of a
13 wholly owned subsidiary in a country
14 of concern;

15 “(IV) the establishment of a joint
16 venture in a country of concern or
17 with a covered foreign entity; or

18 “(V) any deceptive or structured
19 arrangement attempting to evade falling
20 into a category described in any of
21 subclauses (I) through (IV); and

22 “(ii) if—

23 “(I) the covered foreign entity
24 the investment is in, or that is formed
25 as a result of the investment, pro-

1 duces, designs, tests, manufactures,
2 fabricates, or develops a national crit-
3 ical technology; and

4 “(II) as a result of the invest-
5 ment, the United States person im-
6 parts management or procedural
7 know-how to the entity described in
8 subclause (I) that would result in
9 product improvement or technology
10 development advances in such tech-
11 nology.

12 “(B) EXCEPTIONS.—The term ‘covered in-
13 vestment’ does not include—

14 “(i) any transaction for which the
15 President determines the value is de mini-
16 mis;

17 “(ii) any category of transactions that
18 the President determines is in the national
19 interest of the United States, as may be
20 defined by the President through regula-
21 tions;

22 “(iii) the acquisition by a United
23 States person of a multinational corpora-
24 tion that is not headquartered in a country

1 of concern but has subsidiaries or other as-
2 sets located in a country of concern;

3 “(iv) basic research collaboration, in-
4 cluding open source research;

5 “(v) sharing of publicly available
6 know-how, including in standards organiza-
7 tions related to a country of concern; or

8 “(vi) any transaction that occurred
9 before the effective date of regulations pre-
10 scribed in accordance with section 806.

11 “(5) EXPORT ADMINISTRATION REGULA-
12 TIONS.—The term ‘Export Administration Regula-
13 tions’ has the meaning given that term in section
14 1742 of the Export Control Reform Act of 2018 (50
15 U.S.C. 4801).

16 “(6) NATIONAL CRITICAL TECHNOLOGY.—The
17 term ‘national critical technology’ means a tech-
18 nology that—

19 “(A) relates to semiconductors, artificial
20 intelligence, or quantum computing; and

21 “(B) if the technology were produced in
22 the United States, would be—

23 “(i)(I) included on the Commerce
24 Control List maintained by the Bureau of
25 Industry and Security and set forth in

1 Supplement No. 1 to part 774 of the Ex-
2 port Administration Regulations; or

3 “(II) identified as an emerging and
4 foundational technology pursuant to sec-
5 tion 1758 of the Export Control Reform
6 Act of 2018 (50 U.S.C. 4817); and

7 “(ii) subject to the requirement for a
8 license under the Export Administration
9 Regulations for a United States person to
10 export the technology to a country of con-
11 cern.

12 “(7) UNITED STATES.—The term ‘United
13 States’ means the several States, the District of Co-
14 lumbia, and any territory or possession of the
15 United States.

16 “(8) UNITED STATES PERSON.—The term
17 ‘United States person’ means—

18 “(A) an individual who is a citizen or na-
19 tional of the United States or alien admitted for
20 permanent residence in the United States; and

21 “(B) any corporation, partnership, or enti-
22 ty organized under the laws of the United
23 States or the laws of any jurisdiction within the
24 United States.

1 **“SEC. 802. ADMINISTRATION OF INVESTMENT NOTIFICA-**
2 **TION AUTHORITY.**

3 “The President shall delegate the authorities and
4 functions under this title to the Assistant Secretary of the
5 Treasury for Investment Security.

6 **“SEC. 803. MANDATORY NOTIFICATION OF COVERED IN-**
7 **VESTMENTS.**

8 “(a) MANDATORY NOTIFICATION.—

9 “(1) IN GENERAL.—Subject to regulations pre-
10 scribed by the President in accordance with section
11 806, on and after the effective date of such regula-
12 tions, a United States person that plans to engage
13 in a covered investment shall submit to the Presi-
14 dent a complete written notification of the invest-
15 ment not later than 15 days after the date of the
16 start of the covered investment.

17 “(2) INSPECTION OF NOTIFICATION.—The
18 President shall—

19 “(A) upon receipt of a notification under
20 paragraph (1), promptly inspect the notification
21 for completeness; and

22 “(B) if the notification is incomplete,
23 promptly inform the United States person that
24 submits the notification that the notification is
25 not complete and provide an explanation of rel-

1 evant material respects in which the notification
2 is not complete.

3 “(b) CONFIDENTIALITY OF INFORMATION.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), any information or documentary material
6 and any information or materials derived from such
7 information or documentary materials filed with the
8 President pursuant to this section shall be exempt
9 from disclosure under section 552 of title 5, United
10 States Code, and no such information or documen-
11 tary material may be made public.

12 “(2) EXCEPTIONS.—The exemption from disclo-
13 sure provided by paragraph (1) shall not prevent the
14 disclosure of the following:

15 “(A) Information relevant to any adminis-
16 trative or judicial action or proceeding.

17 “(B) Information to the chairman and
18 ranking member of the appropriate congres-
19 sional committees.

20 “(C) Information important to the national
21 security analysis or actions of the President to
22 any domestic governmental entity, or to any
23 foreign governmental entity of a United States
24 ally or partner, under the exclusive direction
25 and authorization of the President, only to the

1 extent necessary for national security purposes,
2 and subject to appropriate confidentiality and
3 classification requirements.

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

6 **“SEC. 804. ANNUAL REPORT.**

7 “(a) IN GENERAL.—Not later than one year after the
8 date on which the regulations required by section 806 take
9 effect, and annually thereafter, the President shall submit
10 to the appropriate congressional committees a report de-
11 scribing, for the year preceding submission of the report,
12 the notifications received under section 803(a).

13 “(b) FORM OF REPORT.—The report required by
14 subsection (a) shall be submitted in unclassified form, but
15 may include a classified annex.

16 **“SEC. 805. PENALTIES AND ENFORCEMENT.**

17 “(a) UNLAWFUL ACTS.—Subject to regulations pre-
18 scribed by the President in accordance with section 806,
19 the following shall be unlawful:

20 “(1) Failing to submit a notification under sec-
21 tion 803(a) with respect to a covered investment.

22 “(2) Making a material misstatement or to omit
23 a material fact in any information submitted to the
24 President under this title.

1 “(b) CIVIL PENALTIES.—A civil penalty may be im-
2 posed on any person that commits an unlawful act de-
3 scribed in subsection (a) in an amount not to exceed the
4 greater of—

5 “(1) \$250,000; or

6 “(2) an amount that is twice the amount of the
7 covered investment that is the basis of the violation
8 with respect to which the penalty is imposed.

9 **“SEC. 806. REQUIREMENT FOR REGULATIONS.**

10 “(a) IN GENERAL.—Not later than 12 months after
11 the date of the enactment of this title, the President shall
12 finalize regulations to carry out this title.

13 “(b) ELEMENTS.—Regulations prescribed to carry
14 out this title—

15 “(1) shall include specific examples of the types
16 of investments that will be considered to be covered
17 investments;

18 “(2) shall establish a de minimis value for
19 transactions that will not be considered to be cov-
20 ered investments under section 801(3)(B)(i); and

21 “(3) may include exceptions to the definition of
22 ‘national critical technology’ for technologies the
23 President determines do not pose a risk to the na-
24 tional security of the United States.

1 “(c) REQUIREMENTS FOR CERTAIN REGULATIONS.—
2 The President shall prescribe regulations further defining
3 the terms used in this title, including ‘covered investment’
4 and ‘covered foreign entity’.

5 **“SEC. 807. AUTHORIZATION OF APPROPRIATIONS.**

6 “(a) IN GENERAL.—There are authorized to be ap-
7 propriated such sums as may be necessary to carry out
8 this title, including to provide outreach to industry and
9 persons affected by this title.

10 “(b) HIRING AUTHORITY.—The Assistant Secretary
11 of the Treasury for Investment Security may appoint,
12 without regard to the provisions of sections 3309 through
13 3318 of title 5, United States Code, candidates directly
14 to positions in the competitive service (as defined in sec-
15 tion 2102 of that title). The primary responsibility of posi-
16 tions authorized under the preceding sentence shall be to
17 administer this title.

18 **“SEC. 808. EFFECTIVE DATE.**

19 “The notification requirements and associated pen-
20 alties provided for under this title shall take effect on the
21 date on which all regulations have been prescribed to carry
22 out this title in accordance with section 806.

1 **“SEC. 809. EFFECT ON INVESTMENT, TRADE, AND OTHER**
2 **LAWS.**

3 “(a) RULES OF CONSTRUCTION.—Nothing in this
4 title may be construed—

5 “(1) to restrain or deter foreign investment in
6 the United States, United States investment abroad,
7 or trade in goods or services, if such investment and
8 trade do not pose a risk to the national security of
9 the United States; or

10 “(2) to alter or affect the authorities or require-
11 ments under the Export Control Reform Act of 2018
12 (50 U.S.C. 4801 et seq.).

13 “(b) INTERNATIONAL EMERGENCY ECONOMIC POW-
14 ERS ACT.—The President may not use authorities under
15 the International Emergency Economic Powers Act (50
16 U.S.C. 1701 et seq.) to establish a mechanism for review-
17 ing, screening, or prohibiting outbound investment other
18 than the mechanism established by this title.”.