

116TH CONGRESS
1ST SESSION

S. 2118

To prohibit United States persons from dealing in certain information and communications technology or services from foreign adversaries and to require the approval of Congress to terminate certain export controls in effect with respect to Huawei Technologies Co. Ltd., and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2019

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

A BILL

To prohibit United States persons from dealing in certain information and communications technology or services from foreign adversaries and to require the approval of Congress to terminate certain export controls in effect with respect to Huawei Technologies Co. Ltd., 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 “Defending America’s
5 5G Future Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) EXPORT ADMINISTRATION REGULATIONS.—

4 The term “Export Administration Regulations”
5 means subchapter C of chapter VII of title 15, Code
6 of Federal Regulations.

7 (2) FOREIGN ADVERSARY.—The term “foreign
8 adversary” means any foreign government or foreign
9 person engaged in a long-term pattern or serious in-
10 stances of conduct significantly adverse to the na-
11 tional security or foreign policy interests of the
12 United States or security and safety of United
13 States persons.

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

17 (4) INFORMATION AND COMMUNICATIONS
18 TECHNOLOGY OR SERVICES.—The term “informa-
19 tion and communications technology or services”
20 means any hardware, software, or other product or
21 service primarily intended to fulfill or enable the
22 function of information or data processing, storage,
23 retrieval, or communication by electronic means, in-
24 cluding transmission, storage, and display.

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

1 (A) any United States citizen or alien law-
2 fully admitted for permanent residence in the
3 United States;

4 (B) any entity organized under the laws of
5 the United States or any jurisdiction within the
6 United States, including a foreign branch of
7 such an entity; or

8 (C) any person in the United States.

9 **SEC. 3. PROHIBITION ON DEALING IN INFORMATION AND**
10 **COMMUNICATIONS TECHNOLOGY OR SERV-**
11 **ICES FROM FOREIGN ADVERSARIES.**

12 (a) IN GENERAL.—No United States person may en-
13 gage in a transaction for the acquisition, importation,
14 transfer, installation, dealing in, or use of any information
15 and communications technology or service by a United
16 States person, or with respect to any property subject to
17 the jurisdiction of the United States, if—

18 (1) the transaction involves any property in
19 which any foreign country or foreign person has any
20 interest (including through an interest in a contract
21 for the provision of the technology or service);

22 (2) notwithstanding any contract entered into
23 or any license or permit issued before the date of the
24 enactment of this Act, the transaction is initiated or
25 pending on or after such date of enactment; and

1 (3) the Secretary of Commerce, in consultation
2 with the officials specified in subsection (b), deter-
3 mines that—

4 (A) the transaction involves information
5 and communications technology or services de-
6 signed, developed, manufactured, or supplied,
7 by persons owned by, controlled by, or subject
8 to the jurisdiction or direction of a foreign ad-
9 versary; and

10 (B) the transaction—

11 (i) poses an undue risk of sabotage to
12 or subversion of the design, integrity, man-
13 ufacturing, production, distribution, instal-
14 lation, operation, or maintenance of infor-
15 mation and communications technology or
16 services in the United States;

17 (ii) poses an undue risk of cata-
18 strophic effects on the security or resil-
19 iency of United States critical infrastruc-
20 ture or the digital economy of the United
21 States; or

22 (iii) otherwise poses an unacceptable
23 risk to the national security or foreign pol-
24 icy interests of the United States or the se-
25 curity and safety of United States persons.

1 (b) OFFICIALS SPECIFIED.—The officials specified in
2 this subsection are the following:

3 (1) The Secretary of the Treasury.

4 (2) The Secretary of State.

5 (3) The Secretary of Defense.

6 (4) The Attorney General.

7 (5) The Secretary of Homeland Security.

8 (6) The United States Trade Representative.

9 (7) The Director of National Intelligence.

10 (8) The Administrator of General Services.

11 (9) The Chairman of the Federal Communica-
12 tions Commission.

13 (10) The heads of such other Federal agencies
14 as the Secretary of Commerce considers appropriate.

15 (c) MITIGATION MEASURES.—The Secretary of Com-
16 merce, in consultation with the officials specified in sub-
17 section (b), as appropriate, may establish or negotiate
18 measures to mitigate concerns that are the basis for a de-
19 termination under subsection (a)(3). Such measures may
20 serve as a precondition to the approval of a transaction
21 or of a class of transactions that would otherwise be pro-
22 hibited by subsection (a).

23 (d) REGULATIONS.—

24 (1) IN GENERAL.—Not later than 150 days
25 after the date of the enactment of this Act, the Sec-

1 retary of Commerce, in consultation with the offi-
2 cials specified in subsection (b), shall prescribe regu-
3 lations to carry out this section.

4 (2) INCLUSIONS.—The regulations prescribed
5 under paragraph (1) may include regulations with
6 respect to—

7 (A) determining that countries or persons
8 are foreign adversaries for purposes of sub-
9 section (a)(3)(A);

10 (B) identifying persons owned by, con-
11 trolled by, or subject to the jurisdiction or di-
12 rection of foreign adversaries for purposes of
13 subsection (a)(3)(A);

14 (C) identifying technologies or countries
15 with respect to which transactions involving in-
16 formation and communications technology or
17 services warrant particular scrutiny under sub-
18 section (a);

19 (D) establishing procedures to license
20 transactions otherwise prohibited by subsection
21 (a);

22 (E) establishing criteria, consistent with
23 section 1 of this order, by which particular
24 technologies or participants in the market for
25 information and communications technology or

1 services may be recognized as categorically in-
2 cluded in or as categorically excluded from the
3 prohibition under subsection (a); and

4 (F) identifying a mechanism and relevant
5 factors for the negotiation of mitigation meas-
6 ures under subsection (c).

7 (e) IMPLEMENTATION; PENALTIES.—

8 (1) IMPLEMENTATION.—The Secretary of Com-
9 merce may exercise the authorities provided to the
10 President under sections 203 and 205 of the Inter-
11 national Emergency Economic Powers Act (50
12 U.S.C. 1702 and 1704) to the extent necessary to
13 carry out this section.

14 (2) PENALTIES.—A person that violates, at-
15 tempts to violate, conspires to violate, or causes a
16 violation of subsection (a) or any regulation, license,
17 or order issued to carry out that subsection shall be
18 subject to the penalties set forth in subsections (b)
19 and (c) of section 206 of the International Emer-
20 gency Economic Powers Act (50 U.S.C. 1705) to the
21 same extent as a person that commits an unlawful
22 act described in subsection (a) of that section.

1 **SEC. 4. CONTINUATION IN EFFECT OF EXPORT CONTROLS**
 2 **WITH RESPECT TO HUAWEI TECHNOLOGIES**
 3 **CO. LTD.**

4 (a) IN GENERAL.—The Secretary of Commerce shall
 5 not remove Huawei Technologies Co. Ltd., and its subsidi-
 6 aries and affiliates, from the entity list maintained by the
 7 Bureau of Industry and Security and set forth in Supple-
 8 ment No. 4 to part 744 of the Export Administration Reg-
 9 ulations, unless—

10 (1) the Secretary submits to Congress a request
 11 for approval of such removal; and

12 (2) there is enacted into law a joint resolution
 13 of approval under subsection (b).

14 (b) JOINT RESOLUTIONS OF APPROVAL.—

15 (1) JOINT RESOLUTION OF APPROVAL DE-
 16 FINED.—In this subsection, the term “joint resolu-
 17 tion of approval” means a joint resolution of either
 18 House of Congress the sole matter after the resolv-
 19 ing clause of which is as follows: “That Congress ap-
 20 proves the removal of Huawei Technologies Co. Ltd.,
 21 and its subsidiaries and affiliates, from the entity
 22 list maintained by the Bureau of Industry and Secu-
 23 rity and set forth in Supplement No. 4 to part 744
 24 of the Export Administration Regulations, pursuant
 25 to the request of the Secretary of Commerce for
 26 such removal submitted to Congress on _____.”,

1 with the blank space being filled with the appro-
2 priate date.

3 (2) INTRODUCTION; COMMITTEE REFERRAL.—A
4 joint resolution of approval—

5 (A) in the House of Representatives—

6 (i) may be introduced by the Speaker
7 or the minority leader; and

8 (ii) shall be referred to the Committee
9 on Financial Services; and

10 (B) in the Senate—

11 (i) may be introduced by the majority
12 leader or the minority leader; and

13 (ii) shall be referred to the Committee
14 on Banking, Housing, and Urban Affairs.

15 (3) COMMITTEE DISCHARGE AND FLOOR CON-
16 sideration.—The provisions of paragraphs (4), (5)
17 (other than subparagraph (A) of paragraph (5)),
18 and (6) of section 216(c) of the Countering Amer-
19 ica’s Adversaries Through Sanctions Act (22 U.S.C.
20 9511(c)) apply to a joint resolution of approval
21 under this subsection to the same extent as such
22 provisions apply to joint resolution of approval under
23 such section 216(c).

1 (4) RULES OF HOUSE OF REPRESENTATIVES
 2 AND SENATE.—This subsection is enacted by Con-
 3 gress—

4 (A) as an exercise of the rulemaking power
 5 of the Senate and the House of Representa-
 6 tives, respectively, and as such is deemed a part
 7 of the rules of each House, respectively, and su-
 8 persedes other rules only to the extent that it
 9 is inconsistent with such rules; and

10 (B) with full recognition of the constitu-
 11 tional right of either House to change the rules
 12 (so far as relating to the procedure of that
 13 House) at any time, in the same manner, and
 14 to the same extent as in the case of any other
 15 rule of that House.

16 **SEC. 5. CONGRESSIONAL DISAPPROVAL OF EXPORT LI-**
 17 **CENSES ISSUED TO HUAWEI TECHNOLOGIES**
 18 **CO. LTD., OR ITS SUBSIDIARIES OR AFFILI-**
 19 **ATES.**

20 (a) REPORT REQUIRED.—Not later than 15 days
 21 after issuing a license to or with respect to Huawei Tech-
 22 nologies Co. Ltd., or any of its subsidiaries or affiliates,
 23 pursuant to the Export Administration Regulations, the
 24 Secretary of Commerce shall submit to Congress a report
 25 on the license and the reasons for issuing the license.

1 (b) CONGRESSIONAL DISAPPROVAL.—A license de-
 2 scribed in subsection (a) shall have no force or effect on
 3 or after the date of the enactment of a joint resolution
 4 of disapproval under subsection (c).

5 (c) JOINT RESOLUTIONS OF DISAPPROVAL.—

6 (1) JOINT RESOLUTION OF DISAPPROVAL DE-
 7 FINED.—In this subsection, the term “joint resolu-
 8 tion of disapproval” means a joint resolution of ei-
 9 ther House of Congress the sole matter after the re-
 10 solving clause of which is as follows: “That Congress
 11 does not approve the license issued to or with re-
 12 spect to Huawei Technologies Co. Ltd., or one of its
 13 subsidiaries or affiliates, under the Export Adminis-
 14 tration Regulations, relating to _____, notice of
 15 which was submitted to Congress on _____.”, with
 16 the first blank space being filled with a brief descrip-
 17 tion of the items covered by the license and the sec-
 18 ond blank space being filled with the appropriate
 19 date.

20 (2) INTRODUCTION; COMMITTEE REFERRAL.—A
 21 joint resolution of disapproval—

22 (A) in the House of Representatives—

23 (i) may be introduced by the Speaker
 24 or the minority leader during the 30-day
 25 period beginning on the date on which the

1 report is submitted under subsection (a);
2 and

3 (ii) shall be referred to the Committee
4 on Financial Services; and
5 (B) in the Senate—

6 (i) may be introduced by the majority
7 leader or the minority leader during the
8 30-day period beginning on the date on
9 which the report is submitted under sub-
10 section (a); and

11 (ii) shall be referred to the Committee
12 on Banking, Housing, and Urban Affairs.

13 (3) COMMITTEE DISCHARGE AND FLOOR CON-
14 sideration.—The provisions of paragraphs (4), (5)
15 (other than subparagraph (A) of paragraph (5)),
16 and (6) of section 216(c) of the Countering Amer-
17 ica’s Adversaries Through Sanctions Act (22 U.S.C.
18 9511(c)) apply to a joint resolution of disapproval
19 under this subsection to the same extent as such
20 provisions apply to joint resolution of disapproval
21 under such section 216(c).

22 (4) RULES OF HOUSE OF REPRESENTATIVES
23 AND SENATE.—This subsection is enacted by Con-
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1 (A) as an exercise of the rulemaking power
2 of the Senate and the House of Representa-
3 tives, respectively, and as such is deemed a part
4 of the rules of each House, respectively, and su-
5 persedes other rules only to the extent that it
6 is inconsistent with such rules; and

7 (B) with full recognition of the constitu-
8 tional right of either House to change the rules
9 (so far as relating to the procedure of that
10 House) at any time, in the same manner, and
11 to the same extent as in the case of any other
12 rule of that House.

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