

118TH CONGRESS
1ST SESSION

S. 2678

To provide for an investment screening mechanism relating to covered sectors.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2023

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

A BILL

To provide for an investment screening mechanism relating to covered sectors.

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 “Outbound Investment
5 Transparency Act of 2023”.

6 **SEC. 2. PROTECTION OF COVERED SECTORS.**

7 The Defense Production Act of 1950 (50 U.S.C.
8 4501 et seq.) is amended by adding at the end the fol-
9 lowing:

1 **“TITLE VIII—PROTECTION OF**
2 **COVERED SECTORS**

3 **“SEC. 801. DEFINITIONS.**

4 “In this title:

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

8 “(A) the Committee on Armed Services,
9 the Committee on Finance, the Committee on
10 Banking, Housing, and Urban Affairs, the Se-
11 lect Committee on Intelligence, and the Com-
12 mittee on Foreign Relations of the Senate; and

13 “(B) the Committee on Armed Services,
14 the Committee on Ways and Means, the Com-
15 mittee on Financial Services, the Permanent
16 Select Committee on Intelligence, and the Com-
17 mittee on Foreign Affairs of the House of Rep-
18 resentatives.

19 “(2) COUNTRY OF CONCERN.—The term ‘coun-
20 try of concern’ means, subject to such regulations as
21 may be prescribed in accordance with section 806, a
22 country specified in section 4872(d)(2) of title 10,
23 United States Code.

24 “(3) COVERED ACTIVITY.—

1 “(A) IN GENERAL.—Subject to such regu-
2 lations as may be prescribed in accordance with
3 section 806, and except as provided in subpara-
4 graph (B), the term ‘covered activity’ means
5 any activity engaged in by a United States per-
6 son in a related to a covered sector that in-
7 volves—

8 “(i) an acquisition by such United
9 States person of an equity interest or con-
10 tingent equity interest, or monetary capital
11 contribution, in a covered foreign entity,
12 directly or indirectly, by contractual com-
13 mitment or otherwise, with the goal of gen-
14 erating income or gain;

15 “(ii) an arrangement for an interest
16 held by such United States person in the
17 short- or long-term debt obligations of a
18 covered foreign entity that includes govern-
19 ance rights that are characteristic of an
20 equity investment, management, or other
21 important rights, as defined in regulations
22 prescribed in accordance with section 806;

23 “(iii) the establishment of a wholly
24 owned subsidiary in a country of concern,
25 such as a greenfield investment, for the

1 purpose of production, design, testing,
2 manufacturing, fabrication, or development
3 related to one or more covered sectors;

4 “(iv) the establishment by such
5 United States person of a joint venture in
6 a country of concern or with a covered for-
7 eign entity for the purpose of production,
8 design, testing, manufacturing, fabrication,
9 or research involving one or more covered
10 sectors, or other contractual or other com-
11 mitments involving a covered foreign entity
12 to jointly research and develop new innova-
13 tion, including through the transfer of cap-
14 ital or intellectual property or other busi-
15 ness proprietary information; or

16 “(v) the acquisition by a United
17 States person with a covered foreign entity
18 of—

19 “(I) operational cooperation, such
20 as through supply or support arrange-
21 ments;

22 “(II) the right to board represen-
23 tation (as an observer, even if limited,
24 or as a member) or an executive role

1 (as may be defined through regula-
2 tion) in a covered foreign entity;

3 “(III) the ability to direct or in-
4 fluence such operational decisions as
5 may be defined through such regula-
6 tions;

7 “(IV) formal governance rep-
8 resentation in any operating affiliate,
9 like a portfolio company, of a covered
10 foreign entity; or

11 “(V) a new relationship to share
12 or provide business services, such as
13 but not limited to financial services,
14 marketing services, maintenance, or
15 assembly functions, related to a cov-
16 ered sectors.

17 “(B) EXCEPTIONS.—The term ‘covered ac-
18 tivity’ does not include—

19 “(i) any transaction the value of
20 which the Secretary of the Treasury deter-
21 mines is de minimis, as defined in regula-
22 tions prescribed in accordance with section
23 806;

24 “(ii) any category of transactions that
25 the Secretary determines is in the national

1 interest of the United States, as may be
2 defined in regulations prescribed in accord-
3 ance with section 806; or

4 “(iii) any ordinary or administrative
5 business transaction as may be defined in
6 such regulations.

7 “(4) COVERED FOREIGN ENTITY.—

8 “(A) IN GENERAL.—Subject to regulations
9 prescribed in accordance with section 806, and
10 except as provided in subparagraph (B), the
11 term ‘covered foreign entity’ means—

12 “(i) any entity that is incorporated in,
13 has a principal place of business in, or is
14 organized under the laws of a country of
15 concern;

16 “(ii) any entity the equity securities of
17 which are primarily traded in the ordinary
18 course of business on one or more ex-
19 changes in a country of concern;

20 “(iii) any entity in which any entity
21 described in subclause (i) or (ii) holds, in-
22 dividually or in the aggregate, directly or
23 indirectly, an ownership interest of greater
24 than 50 percent; or

1 “(iv) any other entity that is not a
 2 United States person and that meets such
 3 criteria as may be specified by the Sec-
 4 retary of the Treasury in such regulations.

5 “(B) EXCEPTION.—The term ‘covered for-
 6 eign entity’ does not include any entity de-
 7 scribed in subparagraph (A) that can dem-
 8 onstrate that a majority of the equity interest
 9 in the entity is ultimately owned by—

10 “(i) nationals of the United States; or

11 “(ii) nationals of such countries (other
 12 than countries of concern) as are identified
 13 for purposes of this subparagraph pursu-
 14 ant to regulations prescribed in accordance
 15 with section 806.

16 “(5) COVERED SECTORS.—Subject to regula-
 17 tions prescribed in accordance with section 806, the
 18 term ‘covered sectors’ includes sectors within the fol-
 19 lowing areas, as specified in such regulations:

20 “(A) Advanced semiconductors and micro-
 21 electronics.

22 “(B) Artificial intelligence.

23 “(C) Quantum information science and
 24 technology.

25 “(D) Hypersonics.

1 “(E) Satellite-based communications.

2 “(F) Networked laser scanning systems
3 with dual-use applications.

4 “(6) PARTY.—The term ‘party’, with respect to
5 an activity, has the meaning given that term in reg-
6 ulations prescribed in accordance with section 806.

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

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

13 “(A) an individual who is a citizen or na-
14 tional of the United States or an alien lawfully
15 admitted for permanent residence in the United
16 States; and

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

21 **“SEC. 802. ADMINISTRATION OF UNITED STATES INVEST-**
22 **MENT NOTIFICATION.**

23 “(a) IN GENERAL.—The President shall delegate the
24 authorities and functions under this title to the Secretary
25 of the Treasury.

1 “(b) COORDINATION.—In carrying out the duties of
2 the Secretary under this title, the Secretary shall—

3 “(1) coordinate with the Secretary of Com-
4 merce; and

5 “(2) consult with the United States Trade Rep-
6 resentative, the Secretary of Defense, the Secretary
7 of State, and the Director of National Intelligence.

8 **“SEC. 803. MANDATORY NOTIFICATION OF COVERED AC-**
9 **TIVITIES.**

10 “(a) MANDATORY NOTIFICATION.—

11 “(1) IN GENERAL.—Subject to regulations pre-
12 scribed in accordance with section 806, beginning on
13 the date that is 90 days after such regulations take
14 effect, a United States person that plans to engage
15 in a covered activity shall—

16 “(A) if such covered activity is not a se-
17 cured transaction, submit to the Secretary of
18 the Treasury a complete written notification of
19 the activity not later than 14 days before the
20 anticipated completion date of the activity; and

21 “(B) if such covered activity is a secured
22 transaction, submit to the Secretary of the
23 Treasury a complete written notification of the
24 activity not later than 14 days after the comple-
25 tion date of the activity.

1 “(2) CIRCULATION OF NOTIFICATION.—

2 “(A) IN GENERAL.—The Secretary shall,
3 upon receipt of a notification under paragraph
4 (1), promptly inspect the notification for com-
5 pleteness.

6 “(B) INCOMPLETE NOTIFICATIONS.—If a
7 notification submitted under paragraph (1) is
8 incomplete, the Secretary shall promptly inform
9 the United States person that submits the noti-
10 fication that the notification is not complete
11 and provide an explanation of relevant material
12 respects in which the notification is not com-
13 plete.

14 “(3) IDENTIFICATION OF NON-NOTIFIED ACTIV-
15 ITY.—The Secretary shall establish a process to
16 identify covered activity for which—

17 “(A) a notification is not submitted to the
18 Secretary under paragraph (1); and

19 “(B) information is reasonably available.

20 “(b) CONFIDENTIALITY OF INFORMATION.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), any information or documentary material
23 filed with the Secretary of the Treasury pursuant to
24 this section shall be exempt from disclosure under
25 section 552 of title 5, United States Code, and no

1 such information or documentary material may be
2 made public by any government agency or Member
3 of Congress.

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

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

9 “(B) Information provided to Congress or
10 any of the appropriate congressional commit-
11 tees.

12 “(C) Information important to the national
13 security analysis or actions of the President to
14 any domestic governmental entity, or to any
15 foreign governmental entity of an ally or part-
16 ner of the United States, under the direction
17 and authorization of the President or the Sec-
18 retary, only to the extent necessary for national
19 security purposes, and subject to appropriate
20 confidentiality and classification requirements.

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

23 **“SEC. 804. REPORTING REQUIREMENTS.**

24 “(a) IN GENERAL.—Not later than 360 days after
25 the date on which the regulations prescribed under section

1 806 take effect, and not less frequently than annually
2 thereafter, the Secretary of the Treasury shall submit to
3 the appropriate congressional committees a report that—

4 “(1) lists all notifications submitted under sec-
5 tion 803(a) during the year preceding submission of
6 the report and includes, with respect to each such
7 notification—

8 “(A) basic information on each party to
9 the covered activity with respect to which the
10 notification was submitted; and

11 “(B) the nature of the covered activity that
12 was the subject to the notification, including
13 the elements of the covered activity that neces-
14 sitated a notification;

15 “(2) includes a summary of those notifications,
16 disaggregated by sector, by covered activity, and by
17 country of concern;

18 “(3) provides additional context and informa-
19 tion regarding trends in the sectors, the types of
20 covered activities, and the countries involved in those
21 notifications;

22 “(4) includes a description of the national secu-
23 rity risks associated with—

24 “(A) the covered activities with respect to
25 which those notifications were submitted; or

1 “(B) categories of such activities; and

2 “(5) assesses the overall impact of those notifi-
3 cations, including recommendations for—

4 “(A) expanding existing Federal programs
5 to support the production or supply of covered
6 sectors in the United States, including the po-
7 tential of existing authorities to address any re-
8 lated national security concerns;

9 “(B) investments needed to enhance cov-
10 ered sectors and reduce dependence on coun-
11 tries of concern regarding those sectors; and

12 “(C) the continuation, expansion, or modi-
13 fication of the implementation and administra-
14 tion of this title, including recommendations
15 with respect to whether the definition of ‘coun-
16 try of concern’ under section 801(2) should be
17 amended to add or remove countries.

18 “(b) FORM OF REPORT.—Each report required by
19 this section shall be submitted in unclassified form, but
20 may include a classified annex.

21 “(c) TESTIMONY REQUIRED.—Not later than one
22 year after the date of enactment of this title, and annually
23 thereafter, the Secretary of the Treasury and the Sec-
24 retary of Commerce shall each provide to the Committee
25 on Banking, Housing, and Urban Affairs of the Senate

1 and the Committee on Financial Services of the House of
2 Representatives testimony with respect to the national se-
3 curity threats relating to investments by the United States
4 persons in countries of concern and broader international
5 capital flows.

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

7 “(a) PENALTIES WITH RESPECT TO UNLAWFUL
8 ACTS.—Subject to regulations prescribed in accordance
9 with section 806, it shall be unlawful—

10 “(1) to fail to submit a notification under sub-
11 section (a) of section 803 with respect to a covered
12 activity or to submit other information as required
13 by the Secretary of the Treasury; or

14 “(2) to make a material misstatement or to
15 omit a material fact in any information submitted to
16 the Secretary under this title.

17 “(b) ENFORCEMENT.—The President may direct the
18 Attorney General to seek appropriate relief in the district
19 courts of the United States, in order to implement and
20 enforce this title.

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

22 “(a) IN GENERAL.—Not later than 360 days after
23 the date of the enactment of this title, the Secretary of
24 the Treasury shall finalize regulations to carry out this
25 title.

1 “(b) ELEMENTS.—Regulations prescribed to carry
 2 out this title shall include specific examples of the types
 3 of—

4 “(1) activities that will be considered to be cov-
 5 ered activities; and

6 “(2) the specific sectors and subsectors that
 7 may be considered to be covered sectors.

8 “(c) REQUIREMENTS FOR CERTAIN REGULATIONS.—
 9 The Secretary of the Treasury shall prescribe regulations
 10 further defining the terms used in this title, including ‘cov-
 11 ered activity’, ‘covered foreign entity’, and ‘party’, in ac-
 12 cordance with subchapter II of chapter 5 and chapter 7
 13 of title 5 (commonly known as the ‘Administrative Proce-
 14 dure Act’).

15 “(d) PUBLIC PARTICIPATION IN RULEMAKING.—The
 16 provisions of section 709 shall apply to any regulations
 17 issued under this title.

18 “(e) LOW-BURDEN REGULATIONS.—In prescribing
 19 regulations under this section, the Secretary of the Treas-
 20 ury shall structure the regulations—

21 “(1) to minimize the cost and complexity of
 22 compliance for affected parties;

23 “(2) to ensure the benefits of the regulations
 24 outweigh their costs;

1 “(3) to adopt the least burdensome alternative
2 that achieves regulatory objectives;

3 “(4) to prioritize transparency and stakeholder
4 involvement in the process of prescribing the regula-
5 tions; and

6 “(5) to regularly review and streamline existing
7 regulations to reduce redundancy and complexity.

8 **“SEC. 807. MULTILATERAL ENGAGEMENT AND COORDINA-**
9 **TION.**

10 “(a) IN GENERAL.—The President shall delegate the
11 authorities and functions under this section to the Sec-
12 retary of State.

13 “(b) AUTHORITIES.—The Secretary of State, in co-
14 ordination with the Secretary of the Treasury, the Sec-
15 retary of Commerce, the United States Trade Representa-
16 tive, and the Director of National Intelligence, shall—

17 “(1) conduct bilateral and multilateral engage-
18 ment with the governments of countries that are al-
19 lies and partners of the United States to ensure co-
20 ordination of protocols and procedures with respect
21 to covered activities with countries of concern and
22 covered foreign entities; and

23 “(2) upon adoption of protocols and procedures
24 described in paragraph (1), work with those govern-

1 ments to establish mechanisms for sharing informa-
 2 tion, including trends, with respect to such activities.

3 “(c) STRATEGY FOR DEVELOPMENT OF OUTBOUND
 4 INVESTMENT SCREENING MECHANISMS.—The Secretary
 5 of State, in coordination with the Secretary of the Treas-
 6 ury and in consultation with the Attorney General, shall—

7 “(1) develop a strategy to work with countries
 8 that are allies and partners of the United States to
 9 develop mechanisms comparable to this title for the
 10 notification of covered activities; and

11 “(2) provide technical assistance to those coun-
 12 tries with respect to the development of those mech-
 13 anisms.

14 “(d) REPORT.—Not later than 90 days after the de-
 15 velopment of the strategy required by subsection (b), and
 16 annually thereafter for a period of 5 years, the Secretary
 17 of State shall submit to the appropriate congressional
 18 committees a report that includes the strategy, the status
 19 of implementing the strategy, and a description of any im-
 20 pediments to the establishment of mechanisms comparable
 21 to this title by allies and partners.

22 **“SEC. 808. AUTHORIZATION OF APPROPRIATIONS.**

23 “(a) IN GENERAL.—There are authorized to be ap-
 24 propriated such sums as may be necessary to carry out

1 this title, including to provide outreach to industry and
 2 persons affected by this title.

3 “(b) **HIRING AUTHORITY.**—The head of any agency
 4 designated as a lead agency under section 802(b) may ap-
 5 point, without regard to the provisions of sections 3309
 6 through 3318 of title 5, United States Code, not more
 7 than 25 candidates directly to positions in the competitive
 8 service (as defined in section 2102 of that title) in that
 9 agency. The primary responsibility of individuals in posi-
 10 tions authorized under the preceding sentence shall be to
 11 administer this title.

12 **“SEC. 809. RULE OF CONSTRUCTION WITH RESPECT TO**
 13 **FREE AND FAIR COMMERCE.**

14 “Nothing in this title may be construed to restrain
 15 or deter foreign investment in the United States, United
 16 States investment abroad, or trade in goods or services,
 17 if such investment and trade do not pose a risk to the
 18 national security of the United States.”.

○