

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. 3952

To require the imposition of sanctions with respect to foreign persons that have engaged in significant theft of trade secrets of United States persons, 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 IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. VAN HOLLEN (for himself and
Mr. SASSE)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting American
5 Intellectual Property Act of 2020”.

6 **SEC. 2. IMPOSITION OF SANCTIONS WITH RESPECT TO**
7 **THEFT OF TRADE SECRETS OF UNITED**
8 **STATES PERSONS.**

9 (a) REPORT REQUIRED.—

10 (1) IN GENERAL.—Not later than 180 days
11 after the date of the enactment of this Act, and not

1 less frequently than every 180 days thereafter, the
2 President shall submit to the appropriate congres-
3 sional committees a report—

4 (A) identifying, for the 180-day period pre-
5 ceeding submission of the report—

6 (i) any foreign person that has know-
7 ingly engaged in, or benefitted from, sig-
8 nificant theft of trade secrets of United
9 States persons, if the theft of such trade
10 secrets is reasonably likely to result in, or
11 has materially contributed to, a significant
12 threat to the national security, foreign pol-
13 icy, or economic health or financial sta-
14 bility of the United States;

15 (ii) any foreign person that has pro-
16 vided significant financial, material, or
17 technological support for, or goods or serv-
18 ices in support of or to benefit significantly
19 from, such theft;

20 (iii) any entity owned or controlled by,
21 or that has acted or purported to act for
22 or on behalf of, directly or indirectly, any
23 foreign person identified under clause (i)
24 or (ii); and

1 (iv) any foreign person that is a chief
2 executive officer or member of the board of
3 directors of any foreign entity identified
4 under clause (i) or (ii); and

5 (B) describing the nature, objective, and
6 outcome of the theft of trade secrets each for-
7 eign person described in subparagraph (A)(i)
8 engaged in or benefitted from; and

9 (C) assessing whether any chief executive
10 officer or member of the board of directors de-
11 scribed in clause (iv) of subparagraph (A) en-
12 gaged in, or benefitted from, activity described
13 in clause (i) or (ii) of that subparagraph.

14 (2) FORM OF REPORT.—Each report required
15 by paragraph (1) shall be submitted in unclassified
16 form but may include a classified annex.

17 (b) AUTHORITY TO IMPOSE SANCTIONS.—

18 (1) SANCTIONS APPLICABLE TO ENTITIES.—In
19 the case of a foreign entity identified under subpara-
20 graph (A) of subsection (a)(1) in the most recent re-
21 port submitted under that subsection, the President
22 shall impose one of the following:

23 (A) BLOCKING OF PROPERTY.—The Presi-
24 dent may, pursuant to the International Emer-
25 gency Economic Powers Act (50 U.S.C. 1701 et

1 seq.), block and prohibit all transactions in all
2 property and interests in property of the entity
3 if such property and interests in property are in
4 the United States, come within the United
5 States, or are or come within the possession or
6 control of a United States person.

7 (B) INCLUSION ON ENTITY LIST.—The
8 President may include the entity on the entity
9 list maintained by the Bureau of Industry and
10 Security of the Department of Commerce and
11 set forth in Supplement No. 4 to part 744 of
12 the Export Administration Regulations, for ac-
13 tivities contrary to the national security or for-
14 eign policy interests of the United States.

15 (2) SANCTIONS APPLICABLE TO INDIVIDUALS.—
16 In the case of an individual identified under sub-
17 paragraph (A) of subsection (a)(1) in the most re-
18 cent report submitted under that subsection, the fol-
19 lowing shall apply:

20 (A) BLOCKING OF PROPERTY.—The Presi-
21 dent shall, pursuant to the International Emer-
22 gency Economic Powers Act (50 U.S.C. 1701 et
23 seq.), block and prohibit all transactions in all
24 property and interests in property of the indi-
25 vidual if such property and interests in property

1 are in the United States, come within the
2 United States, or are or come within the pos-
3 session or control of a United States person.

4 (B) VISA BAN; EXCLUSION.—The Sec-
5 retary of State shall deny a visa to the indi-
6 vidual and revoke, in accordance with section
7 221(i) of the Immigration and Nationality Act
8 (8 U.S.C. 1201(i)), any visa or other docu-
9 mentation of the individual, and the Secretary
10 of Homeland Security shall exclude the indi-
11 vidual from the United States.

12 (c) IMPLEMENTATION; PENALTIES.—

13 (1) IMPLEMENTATION.—The President may ex-
14 ercise all authorities provided under sections 203
15 and 205 of the International Emergency Economic
16 Powers Act (50 U.S.C. 1702 and 1704) to carry out
17 this section.

18 (2) PENALTIES.—A person that violates, at-
19 tempts to violate, conspires to violate, or causes a
20 violation of paragraph (1)(A) or (2)(A) of subsection
21 (b) or any regulation, license, or order issued to
22 carry out that paragraph shall be subject to the pen-
23 alties set forth in subsections (b) and (c) of section
24 206 of the International Emergency Economic Pow-
25 ers Act (50 U.S.C. 1705) to the same extent as a

1 person that commits an unlawful act described in
2 subsection (a) of that section.

3 (d) NATIONAL INTEREST WAIVER.—The President
4 may waive the imposition of sanctions under subsection
5 (b) with respect to a person if the President—

6 (1) determines that such a waiver is in the na-
7 tional interests of the United States; and

8 (2) not more than 15 days after issuing the
9 waiver, submits to the appropriate congressional
10 committees a notification of the waiver and the rea-
11 sons for the waiver.

12 (e) TERMINATION OF SANCTIONS.—Sanctions im-
13 posed under subsection (b) with respect to a foreign per-
14 son identified in a report submitted under subsection (a)
15 shall terminate if the President certifies to the appropriate
16 congressional committees, before the termination takes ef-
17 fect, that the person is no longer engaged in the activity
18 identified in the report.

19 (f) EXCEPTIONS.—

20 (1) INTELLIGENCE ACTIVITIES.—This section
21 shall not apply with respect to activities subject to
22 the reporting requirements under title V of the Na-
23 tional Security Act of 1947 (50 U.S.C. 3091 et seq.)
24 or any authorized intelligence activities of the United
25 States.

1 (2) LAW ENFORCEMENT ACTIVITIES.—Sanctions under this section shall not apply with respect
2 to any authorized law enforcement activities of the
3 United States.

5 (3) EXCEPTION TO COMPLY WITH INTERNATIONAL AGREEMENTS.—Subsection (b)(2)(B)
6 shall not apply with respect to the admission of an
7 individual to the United States if such admission is
8 necessary to comply with the obligations of the
9 United States under the Agreement regarding the
10 Headquarters of the United Nations, signed at Lake
11 Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and
12 the United States, under the Convention on Consular Relations, done at Vienna April 24, 1963, and
13 entered into force March 19, 1967, or under other
14 international agreements.

18 (g) EXCEPTION RELATING TO IMPORTATION OF
19 GOODS.—

20 (1) IN GENERAL.—The authority or a requirement to impose sanctions under this section shall
21 not include the authority or a requirement to impose
22 sanctions on the importation of goods.

24 (2) GOOD DEFINED.—In this paragraph, the
25 term “good” means any article, natural or manmade

1 substance, material, supply, or manufactured prod-
2 uct, including inspection and test equipment, and ex-
3 cluding technical data.

4 (h) DEFINITIONS.—In this section:

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

8 (A) the Committee on Banking, Housing,
9 and Urban Affairs and the Committee on For-
10 eign Relations of the Senate; and

11 (B) the Committee on Financial Services
12 and the Committee on Foreign Affairs of the
13 House of Representatives.

14 (2) EXPORT ADMINISTRATION REGULATIONS.—
15 The term “Export Administration Regulations”
16 means subchapter C of chapter VII of title 15, Code
17 of Federal Regulations.

18 (3) FOREIGN ENTITY.—The term “foreign enti-
19 ty” means an entity that is not a United States per-
20 son.

21 (4) FOREIGN PERSON.—The term “foreign per-
22 son” means a person that is not a United States
23 person.

1 (5) TRADE SECRET.—The term “trade secret”
2 has the meaning given that term in section 1839 of
3 title 18, United States Code.

4 (6) PERSON.—The term “person” means an in-
5 dividual or entity.

6 (7) UNITED STATES PERSON.—The term
7 “United States person” means—

8 (A) a United States citizen or an alien law-
9 fully admitted for permanent residence to the
10 United States;

11 (B) an entity organized under the laws of
12 the United States or of any jurisdiction within
13 the United States, including a foreign branch of
14 such an entity; or

15 (C) any person in the United States.