

113TH CONGRESS  
1ST SESSION

# S. 1111

To combat cyber espionage of intellectual property of United States persons,  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 6, 2013

Mr. JOHNSON of Wisconsin introduced the following bill; which was read twice  
and referred to the Committee on the Judiciary

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## A BILL

To combat cyber espionage of intellectual property of United  
States persons, 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 “Cyber Economic Espio-  
5 nage Accountability Act”.

6 **SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) The United States faces persistent cyber es-  
9 pionage of intellectual property from foreign govern-  
10 ments that threatens United States economic and

1 national security interests, results in an unfair com-  
2 petitive advantage for foreign companies, and is a  
3 major contributor to the loss of manufacturing jobs  
4 in the United States.

5 (2) Cyber espionage of intellectual property by  
6 foreign actors is one of the most pressing issues fac-  
7 ing innovators and entrepreneurs in the United  
8 States today.

9 (3) The National Counterintelligence Executive  
10 stated in its October 2011 biennial economic espio-  
11 nage report that “Chinese actors are the world’s  
12 most active and persistent perpetrators of economic  
13 espionage” and that “United States private sector  
14 firms and cybersecurity specialists have reported an  
15 onslaught of computer network intrusions that have  
16 originated in China”.

17 (4) The National Counterintelligence Executive  
18 also stated that “Russia’s intelligence services are  
19 conducting a range of activities to collect economic  
20 information and technology from U.S. targets”.

21 (5) The People’s Republic of China, the Rus-  
22 sian Federation, and other countries threaten the  
23 privacy of United States citizens by accessing and  
24 exploiting personally identifiable information  
25 through cyber economic espionage.

1           (6) The People’s Republic of China, the Rus-  
2           sian Federation, and other countries responsible for  
3           such cyber economic espionage are members of the  
4           World Trade Organization (WTO) and have agreed  
5           to comply with the global system of rules and obliga-  
6           tions governing the international commerce and  
7           trade among member states.

8           (7) The United States has recognized the mem-  
9           bership of the People’s Republic of China, the Rus-  
10          sian Federation, and other countries into the WTO  
11          by granting them Permanent Normal Trade Rela-  
12          tions (PNTR) status under United States law.

13          (8) Cyber economic espionage undermines the  
14          cooperative relationships between the United States  
15          and countries tolerating or encouraging such activi-  
16          ties.

17          (b) SENSE OF CONGRESS.—It is the sense of Con-  
18          gress that—

19                (1) cyber economic espionage should be a pri-  
20                ority issue in all economic and diplomatic discussions  
21                with the People’s Republic of China, including dur-  
22                ing all meetings of the U.S.-China Strategic and  
23                Economic Dialogue, and with the Russian Federa-  
24                tion and other countries determined to encourage,

1 tolerate, or conduct such cyber economic espionage  
2 at appropriate bilateral meetings;

3 (2) the United States should intensify diplo-  
4 matic efforts in appropriate international fora such  
5 as the United Nations, the Organisation for Eco-  
6 nomic Cooperation and Development (OECD), and  
7 summits such as the G–8 and G–20 summits, to ad-  
8 dress the harm to the international economic order  
9 by cyber economic espionage; and

10 (3) the Department of Justice should increase  
11 its efforts to bring economic espionage criminal  
12 cases against offending foreign actors, with penalties  
13 to include both fines and imprisonment, as well as  
14 encourage further cooperation among countries to  
15 address cyber economic espionage through criminal  
16 prosecutions.

17 **SEC. 3. IDENTIFICATION OF PERSONS RESPONSIBLE FOR**  
18 **CYBER ESPIONAGE OF INTELLECTUAL PROP-**  
19 **ERTY OF UNITED STATES PERSONS.**

20 (a) IN GENERAL.—Not later than 120 days after the  
21 date of the enactment of this Act, the President shall sub-  
22 mit to the appropriate congressional committees a list of  
23 persons who are officials of a foreign government or per-  
24 sons acting on behalf of a foreign government that the  
25 President determines, based on credible information—

1           (1) are responsible for cyber espionage of intel-  
2           lectual property of United States persons; or

3           (2) acted as an agent of or on behalf of a per-  
4           son in a matter relating to an activity described in  
5           paragraph (1).

6           (b) UPDATES.—The President shall submit to the ap-  
7           propriate congressional committees an update of the list  
8           required by subsection (a) as new information becomes  
9           available.

10          (c) FORM.—

11           (1) IN GENERAL.—The list required by sub-  
12           section (a) shall be submitted in unclassified form.

13           (2) EXCEPTION.—The name of a person to be  
14           included in the list required by subsection (a) may  
15           be submitted in a classified annex only if the Presi-  
16           dent—

17                   (A) determines that it is vital for the na-  
18                   tional security interests of the United States to  
19                   do so;

20                   (B) uses the annex in such a manner con-  
21                   sistent with congressional intent and the pur-  
22                   poses of this Act; and

23                   (C) 15 days prior to submitting the name  
24                   in a classified annex, provides to the appro-  
25                   priate congressional committees notice of, and a

1 justification for, including or continuing to in-  
2 clude each person in the classified annex despite  
3 any publicly available credible information indi-  
4 cating that the person engaged in an activity  
5 described in paragraph (1) or (2) of subsection  
6 (a).

7 (3) PUBLIC AVAILABILITY.—The unclassified  
8 portion of the list required by subsection (a) shall be  
9 made available to the public and published in the  
10 Federal Register.

11 (d) REMOVAL FROM LIST.—A person may be re-  
12 moved from the list required by subsection (a) if the Presi-  
13 dent determines and reports to the appropriate congres-  
14 sional committees not less than 15 days prior to the re-  
15 moval of the person from the list that credible information  
16 exists that the person did not engage in the activity for  
17 which the person was added to the list.

18 (e) REQUESTS BY CHAIRPERSON AND RANKING  
19 MEMBER OF APPROPRIATE CONGRESSIONAL COMMIT-  
20 TEES.—

21 (1) IN GENERAL.—Not later than 120 days  
22 after receiving a written request from the chair-  
23 person and ranking member of one of the appro-  
24 priate congressional committees with respect to  
25 whether a person meets the criteria for being added

1 to the list required by subsection (a), the President  
2 shall submit a response to the chairperson and rank-  
3 ing member of the committee which made the re-  
4 quest with respect to the status of the person.

5 (2) FORM.—The President may submit a re-  
6 sponse required by paragraph (1) in classified form  
7 if the President determines that it is necessary for  
8 the national security interests of the United States  
9 to do so.

10 (3) REMOVAL.—If the President removes from  
11 the list required by subsection (a) a person who has  
12 been placed on the list at the request of the chair-  
13 person and ranking member of one of the appro-  
14 priate congressional committees, the President shall  
15 provide the chairperson and ranking member with  
16 any information that contributed to the removal de-  
17 cision. The President may submit such information  
18 in classified form if the President determines that  
19 such is necessary for the national security interests  
20 of the United States.

21 (f) NONAPPLICABILITY OF CONFIDENTIALITY RE-  
22 QUIREMENT WITH RESPECT TO VISA RECORDS.—The  
23 President shall publish the list required by subsection (a)  
24 without regard to the requirements of section 222(f) of  
25 the Immigration and Nationality Act (8 U.S.C. 1202(f))

1 with respect to confidentiality of records pertaining to the  
2 issuance or refusal of visas or permits to enter the United  
3 States.

4 **SEC. 4. INADMISSIBILITY OF CERTAIN ALIENS.**

5 (a) **INELIGIBILITY FOR VISAS.**—An alien is ineligible  
6 to receive a visa to enter the United States and ineligible  
7 to be admitted to the United States if the alien is on the  
8 list required by section 3(a).

9 (b) **CURRENT VISAS REVOKED.**—The Secretary of  
10 State, in consultation with the Secretary of Homeland Se-  
11 curity, shall revoke, in accordance with section 221(i) of  
12 the Immigration and Nationality Act (8 U.S.C. 1201(i)),  
13 the visa or other documentation of any alien who would  
14 be ineligible to receive such a visa or documentation under  
15 subsection (a) of this section.

16 (c) **WAIVER FOR NATIONAL SECURITY INTERESTS.**—

17 (1) **IN GENERAL.**—The Secretary of State may  
18 waive the application of subsection (a) or (b) in the  
19 case of an alien if—

20 (A) the Secretary determines that such a  
21 waiver—

22 (i) is necessary to permit the United  
23 States to comply with the Agreement be-  
24 tween the United Nations and the United  
25 States of America regarding the Head-

1           quarters of the United Nations, signed  
2           June 26, 1947, and entered into force No-  
3           vember 21, 1947, or other applicable inter-  
4           national obligations of the United States;  
5           or

6                   (ii) is in the national security interests  
7           of the United States; and

8           (B) prior to granting such a waiver, the  
9           Secretary provides to the appropriate congres-  
10          sional committees notice of, and a justification  
11          for, the waiver.

12          (2) **TIMING FOR CERTAIN WAIVERS.**—Notifica-  
13          tion under subparagraph (B) of paragraph (1) shall  
14          be made not later than 15 days prior to granting a  
15          waiver under such paragraph if the Secretary grants  
16          such waiver in the national security interests of the  
17          United States in accordance with subparagraph  
18          (A)(ii) of such paragraph.

19          (d) **REGULATORY AUTHORITY.**—The Secretary of  
20          State shall prescribe such regulations as are necessary to  
21          carry out this section.

22          **SEC. 5. FINANCIAL MEASURES.**

23          (a) **FREEZING OF ASSETS.**—

24                  (1) **IN GENERAL.**—The President shall exercise  
25          all powers granted by the International Emergency

1 Economic Powers Act (50 U.S.C. 1701 et seq.) (ex-  
2 cept that the requirements of section 202 of such  
3 Act (50 U.S.C. 1701) shall not apply) to the extent  
4 necessary to freeze and prohibit all transactions in  
5 all property and interests in property of a person  
6 who is on the list required by section 3(a) of this  
7 Act if such property and interests in property are in  
8 the United States, come within the United States, or  
9 are or come within the possession or control of a  
10 United States person.

11 (2) EXCEPTION.—Paragraph (1) shall not  
12 apply to persons included on the classified annex  
13 under section 3(c)(2) if the President determines  
14 that such an exception is vital for the national secu-  
15 rity interests of the United States.

16 (b) WAIVER FOR NATIONAL SECURITY INTERESTS.—  
17 The Secretary of the Treasury may waive the application  
18 of subsection (a) if the Secretary determines that such a  
19 waiver is in the national security interests of the United  
20 States. Not less than 15 days prior to granting such a  
21 waiver, the Secretary shall provide to the appropriate con-  
22 gressional committees notice of, and a justification for, the  
23 waiver.

24 (c) ENFORCEMENT.—

1           (1) PENALTIES.—A person that violates, at-  
2           tempts to violate, conspires to violate, or causes a  
3           violation of this section or any regulation, license, or  
4           order issued to carry out this section shall be subject  
5           to the penalties set forth in subsections (b) and (c)  
6           of section 206 of the International Emergency Eco-  
7           nomic Powers Act (50 U.S.C. 1705) to the same ex-  
8           tent as a person that commits an unlawful act de-  
9           scribed in subsection (a) of such section.

10           (2) REQUIREMENTS FOR FINANCIAL INSTITU-  
11           TIONS.—Not later than 120 days after the date of  
12           the enactment of this Act, the Secretary of the  
13           Treasury shall prescribe or amend regulations as  
14           needed to require each financial institution that is a  
15           United States person and has within its possession  
16           or control assets that are property or interests in  
17           property of a person who is on the list required by  
18           section 3(a) to certify to the Secretary that, to the  
19           best of the knowledge of the financial institution, the  
20           financial institution has frozen all assets within the  
21           possession or control of the financial institution that  
22           are required to be frozen pursuant to subsection (a).

23           (d) SPECIALLY DESIGNATED NATIONALS LIST.—The  
24           Secretary of the Treasury shall include on the list of spe-  
25           cially designated nationals and blocked persons main-

1 tained by the Office of Foreign Assets Control of the De-  
2 partment of the Treasury each person who is on the list  
3 required by section 3(a) of this Act.

4 (e) REGULATORY AUTHORITY.—The Secretary of the  
5 Treasury shall issue such regulations, licenses, and orders  
6 as are necessary to carry out this section.

7 **SEC. 6. REPORT TO CONGRESS.**

8 Not later than one year after the date of the enact-  
9 ment of this Act and annually thereafter, the Secretary  
10 of State and the Secretary of the Treasury shall submit  
11 to the appropriate congressional committees a report on—

12 (1) the actions taken to carry out this Act, in-  
13 cluding—

14 (A) the number of persons added to or re-  
15 moved from the list required by section 3(a)  
16 during the year preceding the report, the dates  
17 on which such persons have been added or re-  
18 moved, and the reasons for adding or removing  
19 them; and

20 (B) if few or no such persons have been  
21 added to that list during that year, the reasons  
22 for not adding more such persons to the list;  
23 and

24 (2) efforts by the executive branch to encourage  
25 the governments of other countries to impose sanc-

1 tions that are similar to the sanctions imposed under  
2 this Act.

3 **SEC. 7. DEFINITIONS.**

4 In this Act:

5 (1) ADMITTED; ALIEN.—The terms “admitted”  
6 and “alien” have the meanings given those terms in  
7 section 101 of the Immigration and Nationality Act  
8 (8 U.S.C. 1101).

9 (2) APPROPRIATE CONGRESSIONAL COMMIT-  
10 TEES.—The term “appropriate congressional com-  
11 mittees” means—

12 (A) the Committee on Armed Services, the  
13 Committee on Financial Services, the Com-  
14 mittee on Foreign Affairs, the Committee on  
15 Homeland Security, the Committee on the Judi-  
16 ciary, and the Permanent Select Committee on  
17 Intelligence of the House of Representatives;  
18 and

19 (B) the Committee on Armed Services, the  
20 Committee on Banking, Housing, and Urban  
21 Affairs, the Committee on Foreign Relations,  
22 the Committee on Homeland Security and Gov-  
23 ernmental Affairs, the Committee on the Judi-  
24 ciary, and the Select Committee on Intelligence  
25 of the Senate.

1           (3) FINANCIAL INSTITUTION.—The term “fi-  
2           nancial institution” has the meaning given that term  
3           in section 5312 of title 31, United States Code.

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

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

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

○