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

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Cyber Economic Espionage Accountability Act”.

SEC. 2. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds the following:

(1) The United States faces persistent cyber espionage of intellectual property from foreign governments that threatens United States economic and
national security interests, results in an unfair competitive advantage for foreign companies, and is a major contributor to the loss of manufacturing jobs in the United States.

(2) Cyber espionage of intellectual property by foreign actors is one of the most pressing issues facing innovators and entrepreneurs in the United States today.

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

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

(5) The People’s Republic of China, the Russian Federation, and other countries threaten the privacy of United States citizens by accessing and exploiting personally identifiable information through cyber economic espionage.
(6) The People’s Republic of China, the Russian Federation, and other countries responsible for such cyber economic espionage are members of the World Trade Organization (WTO) and have agreed to comply with the global system of rules and obligations governing the international commerce and trade among member states.

(7) The United States has recognized the membership of the People’s Republic of China, the Russian Federation, and other countries into the WTO by granting them Permanent Normal Trade Relations (PNTR) status under United States law.

(8) Cyber economic espionage undermines the cooperative relationships between the United States and countries tolerating or encouraging such activities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) cyber economic espionage should be a priority issue in all economic and diplomatic discussions with the People’s Republic of China, including during all meetings of the U.S.-China Strategic and Economic Dialogue, and with the Russian Federation and other countries determined to encourage,
tolerate, or conduct such cyber economic espionage at appropriate bilateral meetings;

(2) the United States should intensify diplomatic efforts in appropriate international fora such as the United Nations, the Organisation for Economic Cooperation and Development (OECD), and summits such as the G–8 and G–20 summits, to address the harm to the international economic order by cyber economic espionage; and

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

SEC. 3. IDENTIFICATION OF PERSONS RESPONSIBLE FOR CYBER ESPIONAGE OF INTELLECTUAL PROPERTY OF UNITED STATES PERSONS.

(a) In General.—Not later than 120 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a list of persons who are officials of a foreign government or persons acting on behalf of a foreign government that the President determines, based on credible information—
(1) are responsible for cyber espionage of intellectual property of United States persons; or

(2) acted as an agent of or on behalf of a person in a matter relating to an activity described in paragraph (1).

(b) Updates.—The President shall submit to the appropriate congressional committees an update of the list required by subsection (a) as new information becomes available.

(c) Form.—

(1) In general.—The list required by subsection (a) shall be submitted in unclassified form.

(2) Exception.—The name of a person to be included in the list required by subsection (a) may be submitted in a classified annex only if the President—

(A) determines that it is vital for the national security interests of the United States to do so;

(B) uses the annex in such a manner consistent with congressional intent and the purposes of this Act; and

(C) 15 days prior to submitting the name in a classified annex, provides to the appropriate congressional committees notice of, and a
justification for, including or continuing to include each person in the classified annex despite any publicly available credible information indicating that the person engaged in an activity described in paragraph (1) or (2) of subsection (a).

(3) Public availability.—The unclassified portion of the list required by subsection (a) shall be made available to the public and published in the Federal Register.

(d) Removal from list.—A person may be removed from the list required by subsection (a) if the President determines and reports to the appropriate congressional committees not less than 15 days prior to the removal of the person from the list that credible information exists that the person did not engage in the activity for which the person was added to the list.

(e) Requests by chairperson and ranking member of appropriate congressional committees.—

(1) In general.—Not later than 120 days after receiving a written request from the chairperson and ranking member of one of the appropriate congressional committees with respect to whether a person meets the criteria for being added
to the list required by subsection (a), the President shall submit a response to the chairperson and ranking member of the committee which made the request with respect to the status of the person.

(2) FORM.—The President may submit a response required by paragraph (1) in classified form if the President determines that it is necessary for the national security interests of the United States to do so.

(3) REMOVAL.—If the President removes from the list required by subsection (a) a person who has been placed on the list at the request of the chairperson and ranking member of one of the appropriate congressional committees, the President shall provide the chairperson and ranking member with any information that contributed to the removal decision. The President may submit such information in classified form if the President determines that such is necessary for the national security interests of the United States.

(f) NONAPPLICABILITY OF CONFIDENTIALITY REQUIREMENT WITH RESPECT TO VISA RECORDS.—The President shall publish the list required by subsection (a) without regard to the requirements of section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f))
with respect to confidentiality of records pertaining to the
issuance or refusal of visas or permits to enter the United
States.

SEC. 4. INADMISSIBILITY OF CERTAIN ALIENS.

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

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

(e) WAIVER FOR NATIONAL SECURITY INTERESTS.—

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

(A) the Secretary determines that such a
waiver—

(i) is necessary to permit the United
States to comply with the Agreement be-
tween the United Nations and the United
States of America regarding the Head-
quarters of the United Nations, signed
June 26, 1947, and entered into force No-

vember 21, 1947, or other applicable inter-
national obligations of the United States;

or

(ii) is in the national security interests

of the United States; and

(B) prior to granting such a waiver, the

Secretary provides to the appropriate congres-
sional committees notice of, and a justification

for, the waiver.

(2) Timing for certain waivers.—Notifica-
tion under subparagraph (B) of paragraph (1) shall
be made not later than 15 days prior to granting a
waiver under such paragraph if the Secretary grants
such waiver in the national security interests of the
United States in accordance with subparagraph
(A)(ii) of such paragraph.

(d) Regulatory Authority.—The Secretary of
State shall prescribe such regulations as are necessary to
carry out this section.

SEC. 5. FINANCIAL MEASURES.

(a) Freezing of Assets.—

(1) In general.—The President shall exercise
all powers granted by the International Emergency
Economic Powers Act (50 U.S.C. 1701 et seq.) (except that the requirements of section 202 of such Act (50 U.S.C. 1701) shall not apply) to the extent necessary to freeze and prohibit all transactions in all property and interests in property of a person who is on the list required by section 3(a) of this Act if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(2) Exception.—Paragraph (1) shall not apply to persons included on the classified annex under section 3(c)(2) if the President determines that such an exception is vital for the national security interests of the United States.

(b) Waiver for National Security Interests.—The Secretary of the Treasury may waive the application of subsection (a) if the Secretary determines that such a waiver is in the national security interests of the United States. Not less than 15 days prior to granting such a waiver, the Secretary shall provide to the appropriate congressional committees notice of, and a justification for, the waiver.

(c) Enforcement.—
(1) Penalties.—A person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulation, license, or order issued to carry out this section shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of such section.

(2) Requirements for financial institutions.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe or amend regulations as needed to require each financial institution that is a United States person and has within its possession or control assets that are property or interests in property of a person who is on the list required by section 3(a) to certify to the Secretary that, to the best of the knowledge of the financial institution, the financial institution has frozen all assets within the possession or control of the financial institution that are required to be frozen pursuant to subsection (a).

(d) Specially Designated Nationals List.—The Secretary of the Treasury shall include on the list of specially designated nationals and blocked persons main-
tained by the Office of Foreign Assets Control of the De-
partment of the Treasury each person who is on the list
required by section 3(a) of this Act.

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

SEC. 6. REPORT TO CONGRESS.

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

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

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

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

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

ections.
lations that are similar to the sanctions imposed under this Act.

SEC. 7. DEFINITIONS.

In this Act:

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

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Armed Services, the Committee on Financial Services, the Committee on Foreign Affairs, the Committee on Homeland Security, the Committee on the Judiciary, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Select Committee on Intelligence of the Senate.
(3) FINANCIAL INSTITUTION.—The term “financial institution” has the meaning given that term in section 5312 of title 31, United States Code.

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

(A) a United States citizen or an alien lawfully admitted for permanent residence to the United States; or

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