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To require the Director of National Intelligence to develop a watch list and a priority watch list of foreign countries that engage in economic or industrial espionage in cyberspace with respect to United States trade secrets or proprietary information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2013

Mr. LEVIN (for himself, Mr. MCCAIN, Mr. COBURN, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To require the Director of National Intelligence to develop a watch list and a priority watch list of foreign countries that engage in economic or industrial espionage in cyberspace with respect to United States trade secrets or proprietary information, 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 “Deter Cyber Theft
5 Act”.

1 **SEC. 2. ACTIONS TO ADDRESS FOREIGN ECONOMIC OR IN-**
2 **DUSTRIAL ESPIONAGE IN CYBERSPACE.**

3 (a) REPORT REQUIRED.—

4 (1) IN GENERAL.—Not later than 180 days
5 after the date of the enactment of this Act, and an-
6 nually thereafter, the Director of National Intel-
7 ligence shall submit to the appropriate congressional
8 committees a report on foreign economic and indus-
9 trial espionage in cyberspace during the 12-month
10 period preceding the submission of the report that—

11 (A) identifies—

12 (i) foreign countries that engage in
13 economic or industrial espionage in cyber-
14 space with respect to trade secrets or pro-
15 prietary information owned by United
16 States persons;

17 (ii) foreign countries identified under
18 clause (i) that the Director determines en-
19 gage in the most egregious economic or in-
20 dustrial espionage in cyberspace with re-
21 spect to such trade secrets or proprietary
22 information (in this section referred to as
23 “priority foreign countries”);

24 (iii) technologies or proprietary infor-
25 mation developed by United States persons
26 that—

1 (I) are targeted for economic or
2 industrial espionage in cyberspace;
3 and

4 (II) to the extent practicable,
5 have been appropriated through such
6 espionage;

7 (iv) articles manufactured or other-
8 wise produced using technologies or propri-
9 etary information described in clause
10 (iii)(II);

11 (v) services provided using such tech-
12 nologies or proprietary information; and

13 (vi) foreign entities, including entities
14 owned or controlled by the government of
15 a foreign country, that request, engage in,
16 support, facilitate, or benefit from the ap-
17 propriation through economic or industrial
18 espionage in cyberspace of technologies or
19 proprietary information developed by
20 United States persons;

21 (B) describes the economic or industrial
22 espionage engaged in by the foreign countries
23 identified under clauses (i) and (ii) of subpara-
24 graph (A); and

25 (C) describes—

1 (i) actions taken by the Director and
2 other Federal agencies to decrease the
3 prevalence of economic or industrial espio-
4 nage in cyberspace; and

5 (ii) the progress made in decreasing
6 the prevalence of such espionage.

7 (2) DETERMINATION OF FOREIGN COUNTRIES
8 ENGAGING IN ECONOMIC OR INDUSTRIAL ESPIONAGE
9 IN CYBERSPACE.—For purposes of clauses (i) and
10 (ii) of paragraph (1)(A), the Director shall identify
11 a foreign country as a foreign country that engages
12 in economic or industrial espionage in cyberspace
13 with respect to trade secrets or proprietary informa-
14 tion owned by United States persons if the govern-
15 ment of the foreign country—

16 (A) engages in economic or industrial espio-
17 nage in cyberspace with respect to trade se-
18 crets or proprietary information owned by
19 United States persons; or

20 (B) facilitates, supports, fails to prosecute,
21 or otherwise permits such espionage by—

22 (i) individuals who are citizens or resi-
23 dents of the foreign country; or

24 (ii) entities that are organized under
25 the laws of the foreign country or are oth-

1 erwise subject to the jurisdiction of the
2 government of the foreign country.

3 (3) PRIORITIZATION OF COLLECTION AND
4 ANALYSIS OF INFORMATION.—The President shall
5 direct the Director to make it a priority for the in-
6 telligence community to collect and analyze informa-
7 tion in order to identify articles described in clause
8 (iv) of paragraph (1)(A), services described in clause
9 (v) of that paragraph, and entities described in
10 clause (vi) of that paragraph.

11 (4) FORM OF REPORT.—Each report required
12 by paragraph (1) shall be submitted in unclassified
13 form but may contain a classified annex.

14 (b) ACTION BY PRESIDENT.—

15 (1) IN GENERAL.—Not later than 120 days
16 after each report required by subsection (a)(1) is
17 submitted, the President shall direct U.S. Customs
18 and Border Protection to exclude from entry into
19 the United States an article described in paragraph
20 (2) if the President determines the exclusion of the
21 article is warranted—

22 (A) for the enforcement of intellectual
23 property rights; or

24 (B) to protect the integrity of the Depart-
25 ment of Defense supply chain.

1 (2) ARTICLE DESCRIBED.—An article described
2 in this paragraph is an article—

3 (A) identified under subsection
4 (a)(1)(A)(iv);

5 (B) produced or exported by an entity
6 that—

7 (i) is owned or controlled by the gov-
8 ernment of a priority foreign country; and

9 (ii) produces or exports articles that
10 are the same as or similar to articles man-
11 ufactured or otherwise produced using
12 technologies or proprietary information
13 identified under subsection (a)(1)(A)(iii);
14 or

15 (C) produced or exported by an entity
16 identified under subsection (a)(1)(A)(vi).

17 (c) CONSISTENCY WITH INTERNATIONAL AGREE-
18 MENTS.—This section shall be applied in a manner that
19 is consistent with the obligations of the United States
20 under international agreements.

21 (d) DEFINITIONS.—In this section:

22 (1) APPROPRIATE CONGRESSIONAL COMMIT-
23 TEES.—The term “appropriate congressional com-
24 mittees” means—

1 (A) the Committee on Armed Services, the
2 Committee on Homeland Security and Govern-
3 mental Affairs, the Committee on Finance, the
4 Committee on Foreign Relations, and the Select
5 Committee on Intelligence of the Senate; and

6 (B) the Committee on Armed Services, the
7 Committee on Homeland Security, the Com-
8 mittee on Foreign Affairs, the Committee on
9 Ways and Means, and the Permanent Select
10 Committee on Intelligence of the House of Rep-
11 resentatives.

12 (2) CYBERSPACE.—The term “cyberspace”—

13 (A) means the interdependent network of
14 information technology infrastructures; and

15 (B) includes the Internet, telecommuni-
16 cations networks, computer systems, and em-
17 bedded processors and controllers.

18 (3) ECONOMIC OR INDUSTRIAL ESPIONAGE.—

19 The term “economic or industrial espionage”
20 means—

21 (A) stealing a trade secret or proprietary
22 information or appropriating, taking, carrying
23 away, or concealing, or by fraud, artifice, or de-
24 ception obtaining, a trade secret or proprietary
25 information without the authorization of the

1 owner of the trade secret or proprietary infor-
2 mation;

3 (B) copying, duplicating, downloading,
4 uploading, destroying, transmitting, delivering,
5 sending, communicating, or conveying a trade
6 secret or proprietary information without the
7 authorization of the owner of the trade secret
8 or proprietary information; or

9 (C) knowingly receiving, buying, or pos-
10 sessing a trade secret or proprietary informa-
11 tion that has been stolen or appropriated, ob-
12 tained, or converted without the authorization
13 of the owner of the trade secret or proprietary
14 information.

15 (4) INTELLIGENCE COMMUNITY.—The term
16 “intelligence community” has the meaning given
17 that term in section 3(4) of the National Security
18 Act of 1947 (50 U.S.C. 401a(4)).

19 (5) OWN.—The term “own”, with respect to a
20 trade secret or proprietary information, means to
21 hold rightful legal or equitable title to, or license in,
22 the trade secret or proprietary information.

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

1 (7) PROPRIETARY INFORMATION.—The term
2 “proprietary information” means competitive bid
3 preparations, negotiating strategies, executive
4 emails, internal financial data, strategic business
5 plans, technical designs, manufacturing processes,
6 source code, data derived from research and develop-
7 ment investments, and other commercially valuable
8 information that a person has developed or obtained
9 if—

10 (A) the person has taken reasonable meas-
11 ures to keep the information confidential; and

12 (B) the information is not generally known
13 or readily ascertainable through proper means
14 by the public.

15 (8) TECHNOLOGY.—The term “technology” has
16 the meaning given that term in section 16 of the Ex-
17 port Administration Act of 1979 (50 U.S.C. App.
18 2415) (as in effect pursuant to the International
19 Emergency Economic Powers Act (50 U.S.C. 1701
20 et seq.)).

21 (9) TRADE SECRET.—The term “trade secret”
22 has the meaning given that term in section 1839 of
23 title 18, United States Code.

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

1 (A) an individual who is a citizen of the
2 United States or an alien lawfully admitted for
3 permanent residence to the United States; or

4 (B) an entity organized under the laws of
5 the United States or any jurisdiction within the
6 United States.

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