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1ST SESSION

S. 1965

To authorize actions with respect to foreign countries engaged in illicit trade in tobacco products or their precursors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2019

Mr. WICKER (for himself and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To authorize actions with respect to foreign countries engaged in illicit trade in tobacco products or their precursors, 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 “Combating the Illicit
5 Trade in Tobacco Products Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 (A) the Committee on Financial Services,
2 the Committee on Foreign Affairs, and the
3 Committee on the Judiciary of the House of
4 Representatives; and

5 (B) the Committee on Banking, Housing,
6 and Urban Affairs, the Committee on Foreign
7 Relations, and the Committee on the Judiciary
8 of the Senate.

9 (2) FOREIGN PERSON.—The term “foreign per-
10 son” means a person that is not a United States
11 person.

12 (3) ILLICIT TRADE IN TOBACCO PRODUCTS OR
13 THEIR PRECURSORS.—The term “illicit trade in to-
14 bacco products or their precursors” means any prac-
15 tice or conduct prohibited by law that relates to pro-
16 duction, shipment, receipt, possession, distribution,
17 sale, or purchase of tobacco products or their pre-
18 cursors, including any practice or conduct intended
19 to facilitate such activity.

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

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

1 (A) a United States citizen or an alien law-
2 fully admitted for permanent residence to the
3 United States; or

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

8 **SEC. 3. FINDINGS.**

9 Congress makes the following findings:

10 (1) The illicit trade in tobacco products or their
11 precursors is a multibillion dollar business that fuels
12 organized crime, fosters public corruption, under-
13 mines public health goals, and finances terrorist
14 groups that threaten global security and stability.

15 (2) According to an estimate by the World
16 Health Organization, one in every 10 cigarettes
17 smoked is illegal.

18 (3) The Center for Public Integrity states,
19 “while one 40-foot container of cigarettes (con-
20 taining 10 million sticks) can be produced in China
21 for just \$100,000, the street value of such a con-
22 tainer smuggled into the United States is up to \$2
23 million.”.

24 (4) According to the International Criminal Po-
25 lice Organization (commonly known as “Interpol”),

1 the trade in illicit cigarettes accounts for 11.6 per-
2 cent of global consumption, equaling
3 657,000,000,000 cigarettes a year.

4 (5) According to the Department of State re-
5 port entitled “The Global Illicit Trade in Tobacco:
6 A Threat to National Security”, cigarette smuggling
7 enables corruption and undermines good governance.

8 (6) According to that Department of State re-
9 port, illicit trade in tobacco products or their precur-
10 sors costs governments and taxpayers between
11 \$40,000,000,000 and \$50,000,000,000 annually in
12 tax revenues.

13 (7) According to that Department of State re-
14 port, the illicit trade in tobacco products or their
15 precursors facilitates other crimes and provides
16 funding for additional criminal activities, including
17 money laundering, bulk cash smuggling, and the
18 trafficking in humans, weapons, drugs, antiquities,
19 diamonds, and counterfeit goods.

20 (8) The report entitled “Illicit Trade: Con-
21 verging Criminal Networks” by the Organisation for
22 Economic Co-operation and Development stated that
23 cigarettes present a high-profit margin and are
24 among the most commonly traded products on the
25 black market due to the relative ease of production

1 and movement, along with low detection rates and
2 penalties.

3 (9) According to the Department of State re-
4 port entitled, “The Global Illicit Trade in Tobacco:
5 A Threat to National Security”, illicit trade in to-
6 bacco products or their precursors can be transna-
7 tional, with proceeds earned domestically and sent
8 overseas to finance attacks against United States in-
9 terests, or earned domestically by foreign actors who
10 can operate more easily from within the country.

11 (10) The Center for the Analysis of Terrorism
12 reports that nearly 15 terrorist organizations
13 throughout the world regularly have recourse in
14 large proportions to smuggling and counterfeiting
15 cigarettes to be financed, in particular the Pakistani
16 Taliban, Lashkar-E-Taiba, Al-Qaida au Maghreb
17 Islamique, Hezbollah, Hamas, the Revolutionary
18 Armed Forces of Colombia, the Kurdistan Workers’
19 Party, Euskadi Ta Askatasuna, and the Irish Re-
20 publican Army.

1 **SEC. 4. DESIGNATION OF AND ACTIONS WITH RESPECT TO**
 2 **FOREIGN COUNTRIES ENGAGED IN ILLICIT**
 3 **TRADE IN TOBACCO PRODUCTS OR THEIR**
 4 **PRECURSORS.**

5 (a) DESIGNATION.—Not later than one year after the
 6 date of the enactment of this Act, and annually thereafter,
 7 the Secretary of State, in consultation with the Secretary
 8 of Defense, the Attorney General, and the Secretary of
 9 the Treasury, shall—

10 (1) review the status of illicit trade in tobacco
 11 products or their precursors in each foreign country
 12 to determine whether—

13 (A) the country is a major source, point of
 14 transit, or consumer of illicit tobacco products
 15 or their precursors; or

16 (B)(i) the country meets the criteria of
 17 subparagraph (A); and

18 (ii) the government of the country has ac-
 19 tively engaged in or knowingly profited from the
 20 illicit trade in tobacco products or their precur-
 21 sors;

22 (2) designate each foreign country that—

23 (A) meets the criteria of subparagraph (A)
 24 of paragraph (1) as a focus country for illicit
 25 trade in tobacco products or their precursors

1 for purposes of providing assistance to the
2 country under subsection (b); and

3 (B) meets the criteria of subparagraph (B)
4 of paragraph (1) as a country of concern for il-
5 licit trade in tobacco products or their precur-
6 sors for purposes of withholding United States
7 development assistance and security assistance
8 to the country under subsection (c); and

9 (3) submit to the appropriate congressional
10 committees a report that includes—

11 (A) a list that identifies each foreign coun-
12 try designated as a focus country for illicit
13 trade in tobacco products or their precursors
14 under paragraph (2)(A); and

15 (B) a list that identifies each foreign coun-
16 try designated as a country of concern for illicit
17 trade in tobacco products or their precursors
18 under paragraph (2)(B).

19 (b) ASSISTANCE TO FOCUS COUNTRIES.—

20 (1) LAW ENFORCEMENT PROFESSIONAL TRAIN-
21 ING.—The Secretary of State, in coordination with
22 the heads of other relevant United States depart-
23 ments and agencies and nongovernmental organiza-
24 tions where appropriate, is authorized to provide as-
25 sistance to foreign countries designated as focus

1 countries for illicit trade in tobacco products or their
2 precursors under subsection (a)(2)(A) to improve the
3 effectiveness of law enforcement to combat the illicit
4 trade in tobacco products or their precursors.

5 (2) INVESTIGATIVE CAPACITY BUILDING.—The
6 Secretary of State, in coordination with the heads of
7 other relevant United States departments and agen-
8 cies, is authorized to establish and carry out pro-
9 grams to increase the capacity of law enforcement
10 and customs and border security offices in foreign
11 countries designated as focus countries for illicit
12 trade in tobacco products or their precursors under
13 subsection (a)(2)(A).

14 (c) PROHIBITION ON ASSISTANCE TO COUNTRIES OF
15 CONCERN.—

16 (1) IN GENERAL.—The Secretary of State may
17 not provide development assistance or security as-
18 sistance to foreign countries designated as countries
19 of concern for illicit trade in tobacco products or
20 their precursors under subsection (a)(2)(B).

21 (2) WAIVER.—The Secretary of State may
22 waive the application of paragraph (1) with respect
23 to a foreign country described in paragraph (1) if
24 the Secretary determines and certifies to the appro-
25 priate congressional committees that such waiver is

1 in the national security interests of the United
2 States.

3 (3) DEFINITIONS.—In this subsection:

4 (A) DEVELOPMENT ASSISTANCE.—The
5 term “development assistance” means assist-
6 ance authorized under—

7 (i) chapter 1 or 10 of part I of the
8 Foreign Assistance Act of 1961 (22 U.S.C.
9 2151 et seq. or 2293 et seq.); or

10 (ii) chapter 4 of part II of such Act
11 (22 U.S.C. 2346 et seq.).

12 (B) SECURITY ASSISTANCE.—The term
13 “security assistance” means assistance author-
14 ized under part II of the Foreign Assistance
15 Act of 1961 (22 U.S.C. 2301 et seq.).

16 **SEC. 5. IMPOSITION OF SANCTIONS WITH RESPECT TO FOR-**
17 **EIGN PERSONS RESPONSIBLE FOR ILLICIT**
18 **TRADE IN TOBACCO PRODUCTS OR THEIR**
19 **PRECURSORS.**

20 (a) IN GENERAL.—The President is authorized to
21 impose the sanctions described in subsection (b) with re-
22 spect to any foreign person the President determines,
23 based on credible evidence—

24 (1) is responsible for illicit trade in tobacco
25 products or their precursors;

1 (2) acted as an agent of or on behalf of a for-
2 foreign person in a matter relating to an activity de-
3 scribed in paragraph (1);

4 (3) is a government official, or a senior asso-
5 ciate of such an official, that is responsible for, or
6 complicit in, ordering, controlling, or otherwise di-
7 recting, the illicit trade in tobacco products or their
8 precursors, including acts of significant corruption,
9 bribery, or the facilitation or transfer of the pro-
10 ceeds of corruption to foreign jurisdictions; or

11 (4) has materially assisted, sponsored, or pro-
12 vided financial, material, or technological support
13 for, or goods or services in support of, an activity
14 described in paragraph (1), (2), or (3).

15 (b) SANCTIONS DESCRIBED.—The sanctions de-
16 scribed in this subsection are the following:

17 (1) INADMISSIBILITY TO UNITED STATES.—In
18 the case of a foreign person who is an individual—

19 (A) ineligibility to receive a visa to enter
20 the United States or to be admitted to the
21 United States; or

22 (B) if the individual has been issued a visa
23 or other documentation, revocation, in accord-
24 ance with section 221(i) of the Immigration and

1 Nationality Act (8 U.S.C. 1201(i)), of the visa
2 or other documentation.

3 (2) BLOCKING OF PROPERTY.—

4 (A) IN GENERAL.—The blocking, in ac-
5 cordance with the International Emergency
6 Economic Powers Act (50 U.S.C. 1701 et seq.),
7 of all transactions in all property and interests
8 in property of a foreign person if such property
9 and interests in property are in the United
10 States, come within the United States, or are or
11 come within the possession or control of a
12 United States person.

13 (B) INAPPLICABILITY OF NATIONAL EMER-
14 GENCY REQUIREMENT.—The requirements of
15 section 202 of the International Emergency
16 Economic Powers Act (50 U.S.C. 1701) shall
17 not apply for purposes of this section.

18 (C) EXCEPTION RELATING TO IMPORTA-
19 TION OF GOODS.—

20 (i) IN GENERAL.—The authority to
21 block and prohibit all transactions in all
22 property and interests in property under
23 subparagraph (A) shall not include the au-
24 thority to impose sanctions on the importa-
25 tion of goods.

1 (ii) GOOD DEFINED.—In this subpara-
2 graph, the term “good” means any article,
3 natural or man-made substance, supply or
4 manufactured product, including inspection
5 and test equipment, and excluding tech-
6 nical data.

7 (c) CONSIDERATION OF CERTAIN INFORMATION IN
8 IMPOSING SANCTIONS.—In determining whether to im-
9 pose sanctions under subsection (a), the President shall
10 consider—

11 (1) information provided by the chairperson and
12 ranking member of each of the appropriate congres-
13 sional committees; and

14 (2) credible information obtained by other coun-
15 tries and nongovernmental organizations that mon-
16 itor violations of human rights.

17 (d) REQUESTS BY CHAIRPERSON AND RANKING
18 MEMBER OF APPROPRIATE CONGRESSIONAL COMMIT-
19 TEES.—Not later than 120 days after receiving a written
20 request from the chairperson and ranking member of one
21 of the appropriate congressional committees with respect
22 to whether a foreign person has engaged in an activity
23 described in subsection (a), the President shall—

24 (1) determine if that person has engaged in
25 such an activity; and

1 (2) submit to the chairperson and ranking
2 member of that committee with respect to that de-
3 termination a report that includes—

4 (A) a statement of whether or not the
5 President imposed or intends to impose sanc-
6 tions with respect to the person; and

7 (B) if the President imposed or intends to
8 impose sanctions, a description of those sanc-
9 tions.

10 (e) EXCEPTION TO COMPLY WITH UNITED NATIONS
11 HEADQUARTERS AGREEMENT AND LAW ENFORCEMENT
12 OBJECTIVES.—Sanctions under subsection (b)(1) shall
13 not apply to an individual if admitting the individual into
14 the United States would further important law enforce-
15 ment objectives or is necessary to permit the United
16 States to comply with the Agreement regarding the Head-
17 quarters of the United Nations, signed at Lake Success
18 June 26, 1947, and entered into force November 21,
19 1947, between the United Nations and the United States,
20 or other applicable international obligations of the United
21 States.

22 (f) ENFORCEMENT OF BLOCKING OF PROPERTY.—
23 A person that violates, attempts to violate, conspires to
24 violate, or causes a violation of subsection (b)(2) or any
25 regulation, license, or order issued to carry out subsection

1 (b)(2) shall be subject to the penalties set forth in sub-
2 sections (b) and (c) of section 206 of the International
3 Emergency Economic Powers Act (50 U.S.C. 1705) to the
4 same extent as a person that commits an unlawful act de-
5 scribed in subsection (a) of that section.

6 (g) TERMINATION OF SANCTIONS.—The President
7 may terminate the application of sanctions under this sec-
8 tion with respect to a foreign person if the President deter-
9 mines and reports to the appropriate congressional com-
10 mittees not later than 15 days before the termination of
11 the sanctions that—

12 (1) credible information exists that the person
13 did not engage in the activity for which sanctions
14 were imposed;

15 (2) the person has been prosecuted appro-
16 priately for the activity for which sanctions were im-
17 posed;

18 (3) the person has credibly demonstrated a sig-
19 nificant change in behavior, has paid an appropriate
20 consequence for the activity for which sanctions were
21 imposed, and has credibly committed to not engage
22 in an activity described in subsection (a) in the fu-
23 ture; or

24 (4) the termination of the sanctions is in the
25 vital national security interests of the United States.

1 (h) REGULATORY AUTHORITY.—The President shall
2 issue such regulations, licenses, and orders as are nec-
3 essary to carry out this section.

4 (i) IDENTIFICATION OF SANCTIONABLE FOREIGN
5 PERSONS.—The Assistant Secretary of State for Inter-
6 national Narcotics and Law Enforcement Affairs, in con-
7 sultation with the Assistant Secretary of State for Con-
8 sular Affairs and other bureaus of the Department of
9 State, as appropriate, is authorized to submit to the Sec-
10 retary of State, for review and consideration, the names
11 of foreign persons who may meet the criteria described
12 in subsection (a).

13 **SEC. 6. REPORTS TO CONGRESS.**

14 (a) IN GENERAL.—Not later than 120 days after the
15 date of the enactment of this Act and annually thereafter,
16 the President shall submit to the appropriate congres-
17 sional committees a report that includes—

18 (1) a list of each foreign person with respect to
19 which the President imposed sanctions pursuant to
20 section 5 during the year preceding the submission
21 of the report;

22 (2) a description of the type of sanctions im-
23 posed with respect to each such foreign person;

24 (3) the number of foreign persons with respect
25 to which the President—

1 (A) imposed sanctions under section 5 dur-
2 ing that year; and

3 (B) terminated sanctions under section 5
4 during that year;

5 (4) the dates on which such sanctions were im-
6 posed or terminated, as the case may be;

7 (5) the reasons for imposing or terminating
8 such sanctions; and

9 (6) a description of the efforts of the President
10 to encourage the governments of other countries to
11 impose sanctions that are similar to the sanctions
12 authorized by section 5.

13 (b) FORM OF REPORT.—

14 (1) IN GENERAL.—Each report required by
15 subsection (a) shall be submitted in unclassified
16 form, but may include a classified annex.

17 (2) EXCEPTION.—The name of a foreign person
18 to be included in the list required by subsection
19 (a)(1) may be submitted in the classified annex au-
20 thorized by paragraph (1) only if the President—

21 (A) determines that it is vital for the na-
22 tional security interests of the United States to
23 do so;

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

4 (C) not later than 15 days before submit-
 5 ting the name in a classified annex, provides to
 6 the appropriate congressional committees notice
 7 of, and a justification for, including the name
 8 in the classified annex despite any publicly
 9 available credible information indicating that
 10 the person engaged in an activity described in
 11 section 5(a).

12 (c) PUBLIC AVAILABILITY.—

13 (1) IN GENERAL.—The unclassified portion of
 14 the report required by subsection (a) shall be made
 15 available to the public, including through publication
 16 in the Federal Register.

17 (2) NONAPPLICABILITY OF CONFIDENTIALITY
 18 REQUIREMENT WITH RESPECT TO VISA RECORDS.—

19 The President shall publish the list required by sub-
 20 section (a)(1) without regard to the requirements of
 21 section 222(f) of the Immigration and Nationality
 22 Act (8 U.S.C. 1202(f)) with respect to confiden-
 23 tiality of records pertaining to the issuance or re-
 24 fusal of visas or permits to enter the United States.

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