

117TH CONGRESS
2D SESSION

S. _____

To require reviews of United States investment in foreign countries that may threaten national critical capabilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require reviews of United States investment in foreign countries that may threaten national critical capabilities, 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 “National Critical Capa-
5 bilities Defense Act of 2022”.

6 **SEC. 2. NATIONAL CRITICAL CAPABILITIES.**

7 (a) IN GENERAL.—The Trade Act of 1974 (19
8 U.S.C. 2101 et seq.) is amended by adding at the end
9 the following:

1 **“TITLE X—NATIONAL CRITICAL**
2 **CAPABILITIES**

3 **“SEC. 1001. DEFINITIONS.**

4 “In this title:

5 “(1) AFFILIATED WITH A COUNTRY OF CON-
6 CERN.—An entity shall be deemed ‘affiliated with a
7 country of concern’ when—

8 “(A) either the country of concern or an
9 entity influenced by a country of concern di-
10 rectly or indirectly owns, controls, or holds with
11 power to vote, five percent or more of the out-
12 standing voting stock or shares;

13 “(B) any entity that is subject to substan-
14 tial influence from either the country of concern
15 or an entity influenced by a country of concern;

16 “(C) any entity domiciled in a country of
17 concern and an entity influenced by a country
18 of concern share an employee that is in a posi-
19 tion of material decision making;

20 “(D) the country of concern or an entity
21 influenced by a country of concern has the
22 power to direct or decide matters affecting the
23 entity’s management or operations in a manner
24 that could materially affect the commercial de-

1 cisions or business interests or any important
2 matter of that entity;

3 “(E) any entity that is part of an entity
4 that is headquartered in the country of concern,
5 including a subsidiary, a holding company, an
6 entity that is **[tied]** through contracts, or a
7 variable interest entity;

8 “(F) any entity domiciled in a country of
9 concern, whether directly or indirectly, that re-
10 ceives, benefits from, transfers, causes to be
11 transferred, allows access to or facilitates access
12 to trade secrets belonging to a United States
13 person, intelligence information, national secu-
14 rity information, controlled unclassified infor-
15 mation, or sensitive information either to or
16 from the entity domiciled in a country of con-
17 cern or an entity influenced by a country of
18 concern;

19 “(G) any entity is influenced by a national
20 of the country of concern or an entity domiciled
21 in the country of concern; or

22 “(H) such other factors that the Com-
23 mittee determines allows for influence or control
24 over such entity.

1 “(2) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term ‘appropriate congressional com-
3 mittees’ means—

4 “(A) the Committee on Finance, [the
5 Committee on Banking, Housing, and Urban
6 Affairs], and the Committee on Foreign Rela-
7 tions of the Senate; and

8 “(B) the Committee on Ways and Means,
9 [the Committee on Financial Services], and
10 the Committee on Foreign Affairs of the House
11 of Representatives.

12 “(3) COMMITTEE.—The term ‘Committee’
13 means the Committee on National Critical Capabili-
14 ties established under section 1002.

15 “(4) COUNTRY OF CONCERN.—The term ‘coun-
16 try of concern’ has the meaning given the term ‘for-
17 eign adversary’ in section 8(c)(2) of the Secure and
18 Trusted Communications Networks Act of 2019 (47
19 U.S.C. 1607(c)(2)), including the People’s Republic
20 of China, Russia, Iran, North Korea, Cuba, and
21 Venezuela.

22 “(5) COVERED ACTIVITY.—

23 “(A) IN GENERAL.—Except as provided by
24 subparagraph (B), the term ‘covered activity’
25 means any of the following activities that are

1 ongoing or proposed as of the effective date of
2 this title:

3 “(i) Any activity by a United States
4 person or a foreign entity or an affiliate of
5 a United States person or an affiliate of a
6 foreign person that—

7 “(I) builds, develops, produces,
8 manufactures, fabricates, refurbishes,
9 expands, shifts, services, manages, op-
10 erates, utilizes, sells, or relocates a
11 national critical capability to or in a
12 country of concern;

13 “(II) shares, discloses, contrib-
14 utes, transfers, or licenses to an entity
15 of concern any design, technology, in-
16 tellectual property, or know-how, in-
17 cluding through open-source tech-
18 nology platforms or research and de-
19 velopment, that supports, contributes
20 to, or enables a national critical capa-
21 bility by an entity of concern or in a
22 country of concern; or

23 “(III) invests in, provides capital
24 to, or consults for, or gives any guid-
25 ance, related to enhancing the capa-

1 bilities or facilitating access to finan-
2 cial resources for a national critical
3 capability for an entity of concern or
4 a country of concern.

5 “(ii) Any activity by a recipient or
6 beneficiary of financial assistance, includ-
7 ing grants, tax incentives, or other types of
8 funding, under **【the Bipartisan Innovation**
9 **Act/placeholder for short title of larger**
10 **package】** with respect to an entity of con-
11 cern or in a country of concern.

12 “(iii) Any activity by an entity that
13 benefits from annual procurement of more
14 than **【\$_____】** in goods or services by a
15 United States national security agency
16 with respect to an entity of concern or in
17 a country of concern.

18 “(B) EXCEPTIONS.—

19 “(i) IN GENERAL.—The term ‘covered
20 activity’ does not include—

21 “(I) any transaction the value of
22 which the Committee determines is
23 **【de minimis】**;

24 **【“(II) an ordinary business**
25 **transaction; or】**

1 【“(III) any transaction that oc-
2 curred before the effective date of this
3 title.】

4 【“(ii) ORDINARY BUSINESS TRANS-
5 ACTION DEFINED.—For purposes of clause
6 (i), the term ‘ordinary business trans-
7 action’ means—】

8 【“(I) the sale or license of a fin-
9 ished item and the provision of associ-
10 ated support to a customer, dis-
11 tributor, or reseller;】

12 【“(II) the sale or license to a
13 customer of a product and the provi-
14 sion of integration or similar services,
15 if the United States person generally
16 makes such services available to all of
17 its customers;】

18 【“(III) the transfer of equipment
19 and the provision of associated sup-
20 port to operate such equipment that
21 could not result in a foreign person
22 using the equipment to produce a crit-
23 ical technology;】

24 【“(IV) the procurement by the
25 United States person of goods and

1 services, including manufacturing
2 services, from a foreign person that
3 has no rights to exploit any intellec-
4 tual property contributed by the
5 United States person other than to
6 supply goods and services to the
7 United States person; or】

8 【“(V) a transaction identified as
9 an ordinary business transaction in
10 regulations prescribed by the Com-
11 mittee.】

12 “(C) REGULATIONS.—

13 “(i) IN GENERAL.—The Committee
14 shall prescribe regulations further defining
15 the term ‘covered activity’ in accordance
16 with subchapter II of chapter 5 and chap-
17 ter 7 of title 5, United States Code (com-
18 monly known as the ‘Administrative Proce-
19 dure Act’).

20 【“(ii) INCLUSIONS.—The regulations
21 prescribed by the Committee under clause
22 (i) shall—】

23 【“(I) identify the national crit-
24 ical capabilities subject to this para-
25 graph based on criteria intended to

1 limit application of this paragraph to
2 the subset of national critical capabili-
3 ties that is likely to pose an unaccept-
4 able risk to the national security of
5 the United States; and】

6 【“(II) enumerate, quantify,
7 prioritize, and set forth sufficient al-
8 lowances of specific types and exam-
9 ples of such capabilities.】

10 “(iii) COORDINATION.—In prescribing
11 regulations under clause (i), the Committee
12 shall coordinate with the United States
13 Trade Representative, the Under Secretary
14 of Commerce for Industry and Security,
15 the Committee on Foreign Investment in
16 the United States, and other Federal agen-
17 cies as appropriate to avoid duplication of
18 effort and regulation.

19 “(6) CRITICAL INFRASTRUCTURE.—The term
20 ‘critical infrastructure’ has the meaning given that
21 term in the Critical Infrastructure Protection Act of
22 2001 (42 U.S.C. 5195e).

23 “(7) ENTITY OF CONCERN.—The term ‘entity
24 of concern’ means an entity—

1 “(A) that is influenced by a country of
2 concern; or

3 “(B) that is directly or indirectly affiliated
4 with a country of concern.

5 “(8) FOREIGN ENTITY.—

6 “(A) IN GENERAL.—Except as provided by
7 subparagraph (B), the term ‘foreign entity’
8 means any branch, partnership, group or sub-
9 group, association, estate, trust, corporation or
10 division of a corporation, or organization orga-
11 nized under the laws of a foreign country if—

12 “(i) its principal place of business is
13 outside the United States; or

14 “(ii) its equity securities are primarily
15 traded on one or more foreign exchanges.

16 “(B) EXCEPTION.—The term ‘foreign enti-
17 ty’ does not include any entity described in sub-
18 paragraph (A) that can demonstrate that—

19 “(i) a majority of the equity interest
20 in such entity is ultimately owned by na-
21 tionals of the United States; and

22 “(ii) the entity is not an entity of con-
23 cern.

24 “(9) FOREIGN PERSON.—The term ‘foreign per-
25 son’ means—

1 “(A) any foreign national, foreign govern-
2 ment, or foreign entity; or

3 “(B) any entity that is subject to the con-
4 trol of a foreign national, foreign government,
5 or foreign entity.

6 **【“(10) NATIONAL CRITICAL CAPABILITIES.—】**

7 **【“(A) IN GENERAL.—The term ‘national**
8 **critical capabilities’ means—】**

9 **【“(i) supply chains identified under**
10 **Executive Order 14017 (86 Fed. Reg.**
11 **11849; relating to America’s supply**
12 **chains), as amended on or after the date of**
13 **the enactment of this title, including—】**

14 **【“(I) semiconductor manufac-**
15 **turing and advanced packaging;】**

16 **【“(II) large-capacity batteries;】**

17 **【“(III) critical minerals and ma-**
18 **terials;】**

19 **【“(IV) pharmaceuticals and ac-**
20 **tive pharmaceutical ingredients;】**

21 **【“(ii) technologies identified by the**
22 **Director of National Intelligence as critical**
23 **and emerging technologies, including—】**

24 **【“(I) artificial intelligence;】**

25 **【“(II) bioeconomy; and】**

1 【“(III) quantum information
2 science and technology;】

3 【“(iii) the manufacturing and other
4 capabilities necessary to produce critical
5 goods and materials and other essential
6 goods and materials, as defined in section
7 6 of Executive Order 14017, underlying
8 supply chains identified under that Execu-
9 tive Order;】

10 【“(iv) sectors specified in the Critical
11 and Emerging Technologies List Update of
12 the National Science and Technology
13 Council, dated February 2022; and】

14 【“(v) industries, technologies, and
15 supply chains the Committee identifies as
16 national critical capabilities under subpara-
17 graph (B).】

18 【“(B) INCLUSION OF ADDITIONAL INDUS-
19 TRIES, TECHNOLOGIES, AND SUPPLY CHAINS.—
20 】

21 【“(i) REGULATIONS.—Not later than
22 180 days after the date of the enactment
23 of this title, the Committee shall prescribe
24 regulations to identify industries, tech-

1 nologies, and supply chains for purposes of
2 subparagraph (A)(v).】

3 【“(ii) REPORT REQUIRED.—Not less
4 frequently than annually, the Committee
5 shall submit to the appropriate congress-
6 sional committees a report describing all of
7 the industries, technologies, and supply
8 chains that the Committee considered iden-
9 tifying for purposes of subparagraph
10 (A)(v) and the reasons why each such in-
11 dustry, technology, or supply chain was or
12 was not so identified.】

13 “(11) NATIONAL SECURITY.—The term ‘na-
14 tional security’ includes—

15 “(A) national security, as defined in sec-
16 tion 721(a) of the Defense Production Act of
17 1950 (50 U.S.C. 4565(a));

18 “(B) national defense, as defined in section
19 702 of that Act (c).

20 “(12) PARTY.—The term ‘party’, with respect
21 to an activity, has the meaning given that term in
22 regulations prescribed by the Committee.

23 “(13) UNACCEPTABLE RISK.—The term ‘unac-
24 ceptable risk’ includes—

1 “(A) sabotage to or subversion of the de-
2 sign, integrity, manufacturing, production, dis-
3 tribution, installation, operation, or mainte-
4 nance of information and communications tech-
5 nology or services in the United States;

6 “(B) catastrophic effects on the security or
7 resiliency of United States critical infrastruc-
8 ture or the digital economy of the United
9 States;

10 “(C) the national security of the United
11 States or the security and safety of United
12 States persons; or

13 “(D) the development of a critical capa-
14 bility in a country of concern by a United
15 States person that has resulted or would result
16 in—

17 “(i) the country of concern possessing
18 dependence, advantage, or concentration
19 over the United States in the case of a
20 conflict; or

21 “(ii) the threat of trade-restrictive
22 measures between the country of concern
23 and the United States.

24 “(14) UNITED STATES.—The term ‘United
25 States’ means the several States, the District of Co-

1 lumbia, and any territory or possession of the
2 United States.

3 “(15) UNITED STATES PERSON.—The term
4 ‘United States person’ means—

5 “(A) an individual who is a citizen or na-
6 tional of the United States or alien admitted for
7 permanent residence in the United States; and

8 “(B) any corporation, partnership, or enti-
9 ty organized under the laws of the United
10 States or the laws of any jurisdiction within the
11 United States.

12 **“SEC. 1002. COMMITTEE ON NATIONAL CRITICAL CAPABILI-**
13 **TIES.**

14 “(a) IN GENERAL.—There is established a com-
15 mittee, to be known as the ‘Committee on National Crit-
16 ical Capabilities’, which shall carry out this title and such
17 other assignments as the President may designate.

18 “(b) MEMBERSHIP.—

19 “(1) IN GENERAL.—The Committee shall be
20 comprised of the head, or a designee of the head, of
21 each of the following:

22 “(A) The Office of the United States
23 Trade Representative.

24 “(B) The Department of Commerce.

25 “(C) The Department of State.

1 “(D) The Department of the Treasury.

2 “(E) The Department of Homeland Secu-
3 rity.

4 “(F) The Department of Defense.

5 “(G) The Office of Science and Technology
6 Policy.

7 “(H) The Department of Justice.

8 “(I) The Department of Energy.

9 “(J) The Department of Health and
10 Human Services.

11 “(K) The Department of Agriculture.

12 “(L) The Department of Labor.

13 “(M) Any other Federal department or
14 agency the President determines appropriate,
15 generally, or on a case-by-case basis.

16 “(2) EX OFFICIO MEMBERS.—

17 “(A) IN GENERAL.—In addition to the
18 members of the Committee specified in para-
19 graph (1), the following shall, except as pro-
20 vided in subparagraph (B), be nonvoting, ex
21 officio members of the Committee:

22 “(i) The Director of National Intel-
23 ligence.

24 “(ii) The Administrator of the Fed-
25 eral Emergency Management Agency.

1 “(iii) The Director of the National In-
2 stitute of Standards and Technology.

3 “(iv) The Director of the Centers for
4 Disease Control and Prevention.

5 “(v) The Director of the National In-
6 stitute of Allergy and Infectious Diseases.

7 “(vi) The Chairperson of the Federal
8 Communications Commission.

9 “(vii) The Chairperson of the Securi-
10 ties and Exchange Commission.

11 “(viii) The Chairperson of the Com-
12 modity Futures Trading Commission.

13 “(ix) The Administrator of the Fed-
14 eral Aviation Administration.

15 “(B) DESIGNATION AS VOTING MEM-
16 BERS.—The chairperson of the Committee may
17 designate any of the officials specified in
18 clauses (ii) through (ix) of subparagraph (A) as
19 voting members of the Committee.

20 “(c) CHAIRPERSON.—

21 “(1) IN GENERAL.—The [President or Presi-
22 dent’s designee/Secretary of _____] shall serve as
23 the chairperson of the Committee.

24 “(2) CONSULTATIONS.—In carrying out the du-
25 ties of the chairperson of the Committee, the chair-

1 person shall consult with the **【United States Trade**
2 **Representative, the Secretary of Defense, the Sec-**
3 **retary of Commerce, the Secretary of State, and the**
4 **Secretary of the Treasury】.**

5 “(d) DESIGNATION OF OFFICIALS TO CARRY OUT
6 DUTIES RELATED TO COMMITTEE.—The head of each
7 agency represented on the Committee shall designate an
8 official, at or equivalent to the level of Assistant Secretary
9 in the Department of the Treasury, who is appointed by
10 the President, by and with the advice and consent of the
11 Senate, to carry out such duties related to the Committee
12 as the head of the agency may assign.

13 **“SEC. 1003. [MANDATORY NOTIFICATION AND REVIEW] OF**
14 **COVERED ACTIVITIES.**

15 “(a) MANDATORY NOTIFICATION.—Beginning on the
16 day after the date on which the Committee finalizes regu-
17 lations under this title, a United States person or foreign
18 entity that engages in or plans to engage in a covered ac-
19 tivity shall submit a written notification of the activity to
20 the Committee **【45 days】** before engaging in the covered
21 activity.

22 “(b) IMMEDIATE CIRCULATION OF NOTIFICA-
23 TIONS.—

24 “(1) IN GENERAL.—The chairperson of the
25 Committee shall, upon receipt of a notification under

1 subsection (a), promptly inspect and immediately
2 circulate the notification to all members (including
3 ex officio members) of the Committee.

4 “(2) INCOMPLETE NOTIFICATIONS.—If a notifi-
5 cation submitted under subsection (a) is incomplete,
6 the chairperson of the Committee shall, at request of
7 any member of the Committee, promptly inform the
8 parties to the covered activity that is the subject of
9 the notification that the notification is not complete
10 and provide an explanation of all material respects
11 in which the notification is not complete.

12 “(c) REVIEW.—

13 “(1) IN GENERAL.—The Committee may—

14 “(A) review an activity to determine if the
15 activity is likely to result in an unacceptable
16 risk to one or more national critical capabilities,
17 including by considering factors specified in sec-
18 tion 1005; and

19 “(B) if the Committee determines under
20 subparagraph (A) that the activity poses an un-
21 acceptable risk described in that subparagraph,
22 the chairperson shall—

23 “(i) notify the United States person
24 or foreign entity that engages in or plans
25 to engage in a covered activity of that de-

1 termination not later than **[45]** days after
2 receiving the notification under subsection
3 (a) with respect to the activity, if applica-
4 ble; and

5 “(ii) make recommendations—

6 **[“(I) to the President for appro-**
7 **priate action that may be taken to ad-**
8 **dress or mitigate that risk—]**

9 **[“(aa) under existing au-**
10 **thorities, including—]**

11 **[“(AA) the Export**
12 **Control Reform Act of 2018**
13 **(50 U.S.C. 4801) or the Ex-**
14 **port Administration Regula-**
15 **tions;]**

16 **[“(BB) the Inter-**
17 **national Emergency Eco-**
18 **nomie Powers Act (50**
19 **U.S.C. 1701 et seq.) or**
20 **other statutes, regulations,**
21 **or executive orders providing**
22 **for the imposition of sanc-**
23 **tions; and]**

1 **【“(1) AGREEMENTS AND CONDITIONS.—】**

2 **【“(A) IN GENERAL.—**Before the President
3 takes action under section 1004 with respect to
4 a covered activity, the Committee may, or the
5 agency under whose jurisdiction the covered ac-
6 tivity primarily occurs (in this subsection re-
7 ferred to as the ‘lead agency’) may, in coordina-
8 tion with the Committee, negotiate, enter into
9 or impose, and enforce any agreement or condi-
10 tion with any party to the covered activity in
11 order to mitigate any risk to the national secu-
12 rity of the United States that arises as a result
13 of the covered activity.】

14 **【“(B) ABANDONMENT OF ACTIVITIES.—**If
15 a party to a covered activity has voluntarily
16 chosen to abandon the activity, the Committee
17 or lead agency, as the case may be, may nego-
18 tiate, enter into or impose, and enforce any
19 agreement or condition with any party to the
20 covered activity for purposes of effectuating
21 such abandonment and mitigating any risk to
22 the national security of the United States that
23 arises as a result of the covered activity.】

24 **【“(C) AGREEMENTS AND CONDITIONS RE-**
25 **LATING TO COMPLETED ACTIVITIES.—**The

1 Committee or lead agency, as the case may be,
2 may negotiate, enter into or impose, and en-
3 force any agreement or condition with any
4 party to a completed covered activity in order to
5 mitigate any interim risk to the national secu-
6 rity of the United States that may arise as a
7 result of the covered activity until such time
8 that the Committee has completed action.】

9 【“(2) CONGRESSIONAL NOTIFICATION.—Upon
10 entering into or imposing an agreement under para-
11 graph (1) with respect to a covered activity, the
12 Committee or lead agency shall provide to the appro-
13 priate congressional committees—】

14 【“(A) the text of the agreement; and】

15 【“(B) upon receiving a request from the
16 chairperson and the ranking member of a com-
17 mittee that initiated a review of the covered ac-
18 tivity under subsection (b)(3), any material rel-
19 evant to the negotiation of the agreement.】

20 “(e) CONFIDENTIALITY OF INFORMATION.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), any information or documentary material
23 and any information or materials derived from such
24 information or documentary materials filed with the
25 Committee pursuant to this section shall be exempt

1 from disclosure under section 552 of title 5, United
2 States Code, and no such information or documen-
3 tary material may be made public.

4 “(2) EXCEPTIONS.—The exemption from disclo-
5 sure provided by paragraph (1) shall not prevent the
6 disclosure of the following:

7 “(A) Information relevant to any adminis-
8 trative or judicial action or proceeding.

9 “(B) Information to Congress or any duly
10 authorized committee or subcommittee of Con-
11 gress.

12 “(C) Information important to the national
13 security analysis or actions of the Committee to
14 any domestic governmental entity, or to any
15 foreign governmental entity of a United States
16 ally or partner, under the exclusive direction
17 and authorization of the chairperson, only to
18 the extent necessary for national security pur-
19 poses, and subject to appropriate confidentiality
20 and classification requirements.

21 “(D) Information that the parties have
22 consented to be disclosed to third parties.

23 **“SEC. 1004. ACTION BY THE PRESIDENT.**

24 “(a) IN GENERAL.—Subject to subsection (d), the
25 President shall take such action for such time as the

1 President considers appropriate to address any unaccept-
2 able risk posed by a covered activity to one or more na-
3 tional critical capabilities【, including mitigating, sus-
4 pending or prohibiting the covered activity】.

5 “(b) SEEKING ALTERNATE ENFORCEMENT.—The
6 President shall consider other existing measures to ad-
7 dress unacceptable risk before taking action 【to mitigate,
8 prohibit, or suspend an activity】 described in subsection
9 (a).

10 “(c) REPORT.—The President shall report to the ap-
11 propriate congressional committees the manner and extent
12 to which, if action is not taken 【to mitigate, prohibit, or
13 suspend an activity】 described in subsection (a), other ex-
14 isting measures could be used to mitigate the unacceptable
15 risk described in such subsection.

16 “(d) ANNOUNCEMENT BY THE PRESIDENT.—The
17 President shall announce the decision on whether or not
18 to take action pursuant to subsection (a) with respect to
19 a covered activity not later than 15 days after the date
20 on which the review of the activity under section 1003 is
21 completed.

22 “(e) ENFORCEMENT.—The President may direct the
23 Attorney General of the United States to seek appropriate
24 relief, including divestment relief, in the district courts of

1 the United States, in order to implement and enforce this
2 section.

3 “(f) FINDINGS OF THE PRESIDENT.—The President
4 may exercise the authority conferred by subsection (a) [to
5 mitigate, suspend, or prohibit a covered activity] only if
6 the President finds that—

7 “(1) there is credible evidence that leads the
8 President to believe that the covered activity poses
9 an unacceptable risk to one or more national critical
10 capabilities; and

11 “(2) provisions of law (other than this section)
12 do not, in the judgment of the President, provide
13 adequate and appropriate authority for the Presi-
14 dent to protect such capabilities.

15 “(g) FACTORS TO BE CONSIDERED.—For purposes
16 of determining whether to take action under subsection
17 (a), the President shall consider, among other factors,
18 each of the factors described in section 1005, as appro-
19 priate.

20 “(h) PUBLIC DISCLOSURE.—Each exercise of the au-
21 thority conferred by subsection (a) shall be published in
22 the Federal Register.

23 **“SEC. 1005. FACTORS TO BE CONSIDERED.**

24 “The Committee, in reviewing and making a deter-
25 mination with respect to a covered activity under section

1 1003, and the President, in determining whether to take
2 action under section 1004 with respect to a covered activ-
3 ity, shall consider any factors relating to national critical
4 capabilities that the Committee or the President considers
5 relevant, including—

6 “(1) the economic, national security, intel-
7 ligence, military, health, and agricultural interests of
8 the United States;

9 “(2) the history of distortive or predatory trade
10 practices in each country in which a covered activity
11 occurs;

12 “(3) control and beneficial ownership (as deter-
13 mined in accordance with section 847 of the Na-
14 tional Defense Authorization Act for Fiscal Year
15 2020 (Public Law 116–92; 10 U.S.C. 4819 note)) of
16 each foreign person that is a party to the trans-
17 action;

18 “(4) impact on the domestic industry and re-
19 sulting resiliency, including the domestic skills base,
20 taking into consideration any pattern of foreign in-
21 vestment in the domestic industry; and

22 “(5) if the activity could, directly or indirectly,
23 support, enhance, or enable the capabilities of a
24 country of concern or entity of concern.

1 **“SEC. 1006. SUPPLY CHAIN SENSITIVITIES.**

2 “The Committee shall determine the sensitivities and
3 risks for sourcing of goods, materials, and technologies de-
4 scribed in section 1001(a)(10)(A), in accordance with the
5 following:

6 “(1) The sourcing of least concern shall be for
7 goods, materials, and technologies sourced, and sup-
8 ply chains housed, in whole within countries that are
9 allies of the United States.

10 “(2) The sourcing of greater concern shall be
11 for goods, materials, and technologies sourced, and
12 supply chains housed, in part within countries of
13 concern or from an entity of concern but for which
14 substitute production is available from elsewhere at
15 required scale to meet United States needs, includ-
16 ing in terms of surge capacity.

17 “(3) The sourcing of greatest concern shall be
18 for goods, materials, and technologies sourced, and
19 supply chains housed, wholly or in part in countries
20 of concern or from an entity of concern and for
21 which substitute production is unavailable elsewhere
22 at required scale.

23 **“SEC. 1007. ANNUAL REPORT.**

24 “(a) IN GENERAL.—Not later than 90 days after the
25 date of the enactment of the National Critical Capabilities
26 Defense Act of 2022, and annually thereafter, the Com-

1 mittee shall submit to the appropriate congressional com-
2 mittees a report—

3 “(1) on the determination under section 1006
4 with respect to sensitivities and risks for sourcing of
5 goods, materials, and technologies described in sec-
6 tion 1001(a)(10)(A);

7 “(2) describing, for the year preceding submis-
8 sion of the report—

9 “(A) the notifications received under sub-
10 section (a) of section 1003 and reviews con-
11 ducted pursuant to such notifications;

12 “(B) reviews initiated under paragraph (2)
13 or (3) of subsection (b) of that section;

14 “(C) actions recommended by the Com-
15 mittee under subsection (b)(1)(B) of that sec-
16 tion as a result of such reviews; and

17 “(D) reviews during which the Committee
18 determined no action was required; and

19 “(3) assessing the overall impact of such re-
20 views on national critical capabilities including rec-
21 ommendations on—

22 “(A) expansion of Federal programs to
23 support or protect the production or supply of
24 national critical capabilities in the United
25 States, including the potential of existing legal

1 authorities to address any related national secu-
2 rity concerns;

3 “(B) investments to enhance national crit-
4 ical capabilities and reduce dependency on
5 countries of concern; and

6 “(C) regarding the continuation, expan-
7 sion, or modification of the Committee estab-
8 lished under this title.

9 “(b) FORM OF REPORT.—The report required by
10 paragraph (1) shall be submitted in unclassified form, but
11 may include a classified annex.

12 **“SEC. 1008. REQUIREMENT FOR REGULATIONS.**

13 “(a) IN GENERAL.—The Committee shall prescribe
14 regulations to carry out this title.

15 “(b) ELEMENTS.—Regulations prescribed to carry
16 out this title shall—

17 “(1) provide for the imposition of civil penalties
18 up to \$250,000 for any violation of this title, includ-
19 ing for—

20 “(A) any violation of a mitigation agree-
21 ment entered into under section 1003(c) or con-
22 ditions imposed pursuant to such an agreement;

23 “(B) any failure to submit a notification
24 under section 1003(a) with respect to a covered

1 activity or to submit information as required by
2 the Committee;

3 “(C) any material omission from or mate-
4 rial misstatement included in any information
5 submitted to the Committee under this title;
6 and

7 “(D) related party activities or activities
8 intended to limit the coverage of this title; and
9 “(2) include specific examples of the types of—

10 “(A) the activities that will be considered
11 to be covered activities; and

12 “(B) the supply chains, technologies,
13 goods, materials, sectors, and industries that
14 will be considered to be national critical capa-
15 bilities.

16 **“SEC. 1009. MULTILATERAL ENGAGEMENT AND COORDINA-**
17 **TION.**

18 “(a) IN GENERAL.—The [chairperson of the Com-
19 mittee,] in consultation with the [United States Trade
20 Representative, the Secretary of Commerce, and the Sec-
21 retary of State] shall—

22 “(1) in coordination and consultation with rel-
23 evant Federal agencies, conduct multilateral engage-
24 ment with the governments of countries that are al-
25 lies and partners of the United States to secure co-

1 ordination of protocols and procedures with respect
2 to covered activities with countries of concern and
3 entities of concern; and

4 “(2) upon adoption of protocols and procedures
5 described in paragraph (1), work with those govern-
6 ments to establish mechanisms for sharing informa-
7 tion with respect to such activities.

8 “(b) STRATEGY FOR DEVELOPMENT OF OUTBOUND
9 REVIEW MECHANISMS.—The Committee shall—

10 “(1) develop a strategy to work with countries
11 that are allies and partners of the United States to
12 develop mechanisms comparable to this title [for the
13 review of covered activities]; and

14 “(2) provide technical assistance to those coun-
15 tries with respect to the development of those mech-
16 anisms.

17 **“SEC. 1010. AUTHORIZATION OF APPROPRIATIONS.**

18 “There are authorized to be appropriated such sums
19 as may be necessary to carry out this title, including to
20 provide outreach to industry and persons affected by this
21 title.

22 **“SEC. 1011. EFFECTIVE DATE.**

23 “This title shall take effect on the date that is [180
24 days] after the date of enactment of this title.

1 **“SEC. 1012. RULE OF CONSTRUCTION WITH RESPECT TO**
2 **FREE AND FAIR COMMERCE.**

3 “Nothing in this title is intended to restrain or deter
4 foreign investment in the United States, United States in-
5 vestment abroad, or trade in goods or services, if such in-
6 vestment and trade do not pose an unacceptable risk to
7 a national critical capability.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
9 for the Trade Act of 1974 is amended by adding at the
10 end the following:

“TITLE X—NATIONAL CRITICAL CAPABILITIES

“Sec. 1001. Definitions.

“Sec. 1002. Committee on National Critical Capabilities.

“Sec. 1003. **【Mandatory notification and review】** of covered activities.

“Sec. 1004. Action by the President.

“Sec. 1005. Factors to be considered.

“Sec. 1006. Supply chain sensitivities.

“Sec. 1007. Annual report.

“Sec. 1008. Requirement for regulations.

“Sec. 1009. Multilateral engagement and coordination.

“Sec. 1010. Authorization of appropriations.

“Sec. 1011. Effective date.

“Sec. 1012. Rule of construction with respect to free and fair commerce.”.