

AMENDMENT TO
RULES COMMITTEE PRINT 117-31
OFFERED BY MR. BRENDAN F. BOYLE OF
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Add at the end of title IV of division K the following:

1 **SEC. 104002. ADDRESSING THREATS TO NATIONAL SECURITY WITH RESPECT TO WIRELESS COMMUNICATIONS RESEARCH AND DEVELOPMENT.**

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4 (a) IN GENERAL.—Chapter 4 of title II of the Trade
5 Expansion Act of 1962 (19 U.S.C. 1862 et seq.) is amended
6 ed by adding at the end the following:

7 **“SEC. 234. STATEMENT OF POLICY.**

8 “It is the policy of the United States—

9 “(1) to ensure the continued strength and leadership of the United States with respect to the research and development of key technologies for future wireless telecommunications standards and infrastructure;

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13
14 “(2) that the national security of the United
15 States requires the United States to maintain its
16 leadership in the research and development of key

1 technologies for future wireless telecommunications
2 standards and infrastructure; and

3 “(3) that the national security and foreign pol-
4 icy of the United States requires that the importa-
5 tion of items that use, without a license, a claimed
6 invention protected by a patent that is essential for
7 the implementation of a wireless communications
8 standard and is held by a United States person, be
9 controlled to ensure the achievement of the policies
10 described in paragraphs (1) and (2).

11 **“SEC. 235. LIST OF FOREIGN ENTITIES THAT THREATEN NA-**
12 **TIONAL SECURITY WITH RESPECT TO WIRE-**
13 **LESS COMMUNICATIONS RESEARCH AND DE-**
14 **VELOPMENT.**

15 “(a) IN GENERAL.—The Secretary of Commerce (in
16 this section referred to as the ‘Secretary’) shall establish
17 and maintain a list of each foreign entity that the Sec-
18 retary determines—

19 “(1)(A) uses, without a license, a claimed in-
20 vention protected by a patent that is essential for
21 the implementation of a wireless communications
22 standard and is held by a covered person; and

23 “(B) is a person of concern or has as its ulti-
24 mate parent a person of concern; or

1 “(2) is a successor to an entity described in
2 paragraph (1).

3 “(b) WATCH LIST.—

4 “(1) IN GENERAL.—The Secretary shall estab-
5 lish and maintain a watch list of each foreign enti-
6 ty—

7 “(A)(i) that is a person of concern or has
8 as its ultimate parent a person of concern; and

9 “(ii) with respect to which a covered per-
10 son has made the demonstration described in
11 paragraph (2) in a petition submitted to the
12 Secretary for the inclusion of the entity on the
13 list; or

14 “(B) that is a successor to an entity de-
15 scribed in subparagraph (A).

16 “(2) DEMONSTRATION DESCRIBED.—

17 “(A) IN GENERAL.—A covered person has
18 made a demonstration described in this para-
19 graph if the person has reasonably dem-
20 onstrated to the Secretary that—

21 “(i) the person owns at least one un-
22 expired patent that is essential for the im-
23 plementation of a wireless communications
24 standard;

1 “(ii) a foreign entity that is a person
2 of concern, or has as its ultimate parent a
3 person of concern, has been, for a period
4 of more than 180 days, selling wireless
5 communications devices in or into the
6 United States, directly or indirectly, that
7 are claimed, labeled, marketed, or adver-
8 tised as complying with that standard;

9 “(iii) the covered person has offered
10 to the foreign entity or any of its affili-
11 ates—

12 “(I) a license to the person’s
13 portfolio of patents that are essential
14 to that standard; or

15 “(II) to enter into binding arbi-
16 tration to resolve the terms of such a
17 license; and

18 “(iv) the foreign entity has not exe-
19 cuted a license agreement or an agreement
20 to enter into such arbitration, as the case
21 may be, by the date that is 180 days after
22 the covered person made such an offer.

23 “(B) DEMONSTRATION OF ESSEN-
24 TIALITY.—A covered person may demonstrate
25 under subparagraph (A)(i) that the person

1 owns at least one unexpired patent that is es-
2 sential for the implementation of a wireless
3 communications standard by providing to the
4 Secretary any of the following:

5 “(i) A decision by a court or arbitral
6 tribunal that a patent owned by the person
7 is essential for the implementation of that
8 standard.

9 “(ii) A determination by an inde-
10 pendent patent evaluator not hired by the
11 person that a patent owned by the person
12 is essential for the implementation of that
13 standard.

14 “(iii) A showing that wireless commu-
15 nications device manufacturers together
16 accounting for a significant portion of the
17 United States or world market for such de-
18 vices have entered into agreements for li-
19 censes to the person’s portfolio of patents
20 that are essential for the implementation
21 of that standard.

22 “(iv) A showing that the person has
23 previously granted licenses to the foreign
24 entity described in subparagraph (A)(ii) or
25 any of its affiliates with respect to a rea-

1 sonably similar portfolio of the person's
2 patents that are essential for the imple-
3 mentation of that standard.

4 “(C) ACCOUNTING OF WIRELESS COMMU-
5 NICATIONS DEVICE MARKET.—A showing de-
6 scribed in subparagraph (B)(iii) may be made
7 either by including or excluding wireless com-
8 munications device manufacturers that are per-
9 sons of concern.

10 “(3) PROCEDURES.—

11 “(A) ADDING A FOREIGN ENTITY TO THE
12 WATCH LIST.—

13 “(i) IN GENERAL.—The Secretary
14 may add a foreign entity to the watch list
15 under paragraph (1) only after notice and
16 opportunity for an agency hearing on the
17 record in accordance with (except as pro-
18 vided in clause (ii)) sections 554 through
19 557 of title 5, United States Code.

20 “(ii) MATTERS CONSIDERED AT HEAR-
21 ING.—An agency hearing conducted under
22 clause (i)—

23 “(I) shall be limited to consider-
24 ation of—

1 “(aa) whether the dem-
2 onstration described in paragraph
3 (2) has been reasonably made;
4 and

5 “(bb) the amount of bond to
6 be required in accordance with
7 section 236; and

8 “(II) may not include the presen-
9 tation or consideration of legal or eq-
10 uitable defenses or counterclaims.

11 “(B) ADMINISTRATIVE PROCEDURE.—Ex-
12 cept as provided in subparagraph (A), the func-
13 tions exercised under this section and section
14 236 shall not be subject to sections 551, 553
15 through 559, or 701 through 706 of title 5,
16 United States Code.

17 “(c) MOVEMENT BETWEEN LISTS.—A foreign entity
18 on the watch list required by subsection (b)(1) may be
19 moved to the list required by subsection (a), pursuant to
20 procedures established by the Secretary, on or after the
21 date that is one year after being included on the watch
22 list if the foreign entity is not able to reasonably dem-
23 onstrate that it has entered into a patent license agree-
24 ment or a binding arbitration agreement with each covered

1 person that has made the demonstration described in sub-
2 section (b)(2) with respect to the entity.

3 “(d) REMOVAL FROM LISTS.—A foreign entity on the
4 list required by subsection (a) or on the watch list required
5 by subsection (b)(1) may petition the Secretary to be re-
6 moved from that list on the basis that the conditions that
7 led to the inclusion of the foreign entity on the list no
8 longer exist. The burden of proof shall be on the foreign
9 entity.

10 “(e) DEFINITIONS.—In this section:

11 “(1) AFFILIATE.—The term ‘affiliate’, with re-
12 spect to an entity, means any entity that owns or
13 controls, is owned or controlled by, or is under com-
14 mon ownership or control with, the entity.

15 “(2) COUNTRY OF CONCERN.—The term ‘coun-
16 try of concern’ means a country with respect to
17 which the Secretary determines that—

18 “(A) persons in the country persistently
19 use, without obtaining a license, patents—

20 “(i) essential to the implementation of
21 wireless communications standards; and

22 “(ii) held by a covered person; and

23 “(B) that use of patents poses a threat
24 to—

1 “(i) the ability of the United States to
2 maintain a wireless communications re-
3 search and development infrastructure;
4 and

5 “(ii) the national security of the
6 United States, pursuant to the policy set
7 forth in section 234.

8 “(3) COVERED PERSON.—The term ‘covered
9 person’ means—

10 “(A) a covered United States person; or

11 “(B) an affiliate of a covered United
12 States person—

13 “(i) headquartered in, or organized
14 under the laws of, a country that is a
15 member of the European Union or the
16 North Atlantic Treaty Organization; and

17 “(ii) engaged in wireless communica-
18 tions research and development.

19 “(4) COVERED UNITED STATES PERSON.—The
20 term ‘covered United States person’ means a United
21 States person engaged in wireless communications
22 research and development in the United States.

23 “(5) PERSON OF CONCERN.—The term ‘person
24 of concern’ means a person that is—

1 “(A) an individual who is a citizen or na-
2 tional (as defined in section 101(a) of the Im-
3 migration and Nationality Act (8 U.S.C.
4 1101(a))) of a country of concern; or

5 “(B) an entity that is headquartered in, or
6 organized under the laws of, a country of con-
7 cern.

8 “(6) UNITED STATES PERSON.—The term
9 ‘United States person’ means—

10 “(A) an individual who is a United States
11 citizen or an alien lawfully admitted for perma-
12 nent residence to the United States;

13 “(B) an entity organized under the laws of
14 the United States or any jurisdiction within the
15 United States, including a foreign branch of
16 such an entity; or

17 “(C) any person in the United States.

18 “(7) WIRELESS COMMUNICATIONS STAND-
19 ARD.—The term ‘wireless communications standard’
20 means—

21 “(A) a cellular wireless telecommunications
22 standard, including such a standard promul-
23 gated by the 3rd Generation Partnership
24 Project (commonly known as ‘3GPP’) or the

1 3rd Generation Partnership Project 2 (com-
2 monly known as ‘3GPP2’); or

3 “(B) a wireless local area network stand-
4 ard, including such a standard designated as
5 IEEE 802.11 as developed by the Institute of
6 Electrical and Electronics Engineers (commonly
7 known as the ‘IEEE’).

8 **“SEC. 236. IMPORT SANCTIONS WITH RESPECT TO CERTAIN**
9 **FOREIGN ENTITIES THAT THREATEN NA-**
10 **TIONAL SECURITY.**

11 “(a) IN GENERAL.—Any foreign entity on the list re-
12 quired by section 235(a) may be subject to such controls
13 on the importing of goods or technology into the United
14 States as the President may prescribe.

15 “(b) ENTRY UNDER BOND.—

16 “(1) IN GENERAL.—Unless otherwise prescribed
17 by the President, a product described in paragraph
18 (2) may not enter the United States except under
19 bond prescribed by the Secretary of Commerce in an
20 amount determined by the Secretary to be sufficient
21 to protect from injury a covered United States per-
22 son that made the demonstration described in sec-
23 tion 235(b)(2) with respect to the entity that has
24 been selling the product directly or indirectly in or
25 into the United States.

1 “(2) PRODUCTS DESCRIBED.—A product de-
2 scribed in this paragraph is a wireless communica-
3 tions device—

4 “(A) produced or sold by—

5 “(i) a foreign entity on the watch list
6 required by section 235(b);

7 “(ii) a successor of such an entity; or

8 “(iii) an affiliate of an entity de-
9 scribed in clause (i) or (ii); and

10 “(B) that is claimed, labeled, marketed, or
11 advertised as complying with a wireless commu-
12 nications standard that was the basis for the in-
13 clusion of the foreign entity on the watch list.

14 “(c) FORFEITURE OF BOND.—

15 “(1) IN GENERAL.—If a foreign entity on the
16 watch list required by section 235(b) is moved to the
17 list required by section 235(a) and becomes subject
18 to controls under subsection (a), a bond paid under
19 subsection (b) shall be forfeited to a covered United
20 States person that made the demonstration de-
21 scribed in section 235(b)(2) with respect to the enti-
22 ty.

23 “(2) TERMS AND CONDITIONS.—The Secretary
24 of Commerce shall prescribe the procedures and any

1 terms or conditions under which bonds will be for-
2 feited under paragraph (1).

3 “(d) NON-INTEREST-BEARING BONDS.—A bond
4 under this section shall be non-interest-bearing.

5 “(e) DEFINITIONS.—In this section, the terms ‘affil-
6 iate’ and ‘covered United States person’ have the mean-
7 ings given those terms in section 235(d).”.

8 (b) CONTROLS ON IMPORTS OF GOODS OR TECH-
9 NOLOGY AGAINST PERSONS THAT RAISE NATIONAL SE-
10 CURITY CONCERNS.—Section 233 of the Trade Expansion
11 Act of 1962 (19 U.S.C. 1864) is amended to read as fol-
12 lows:

13 **“SEC. 233. IMPORT SANCTIONS FOR EXPORT VIOLATIONS.**

14 “(a) IN GENERAL.—A person described in subsection
15 (b) may be subject to such controls on the importing of
16 goods or technology into the United States as the Presi-
17 dent may prescribe.

18 “(b) PERSONS DESCRIBED.—A person described in
19 this subsection is a person that—

20 “(1) violates any national security export con-
21 trol imposed under section 1755 of the Export Con-
22 trol Reform Act of 2018 (50 U.S.C. 4814) or any
23 regulation, order, or license issued under that sec-
24 tion; or

25 “(2) raises a national security concern under—

1 “(A) section 235 or any regulation, order,
2 or license issued under that section; or

3 “(B) the Export Control Reform Act of
4 2018 (50 U.S.C. 4801 et seq.) or any regula-
5 tion, order, or license issued under that Act.”.

