

[DISCUSSION DRAFT]

118TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To authorize sanctions against certain persons engaged in proliferation or use of foreign commercial spyware, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. HIMES introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To authorize sanctions against certain persons engaged in proliferation or use of foreign commercial spyware, 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 Foreign  
5 Surveillance Spyware Sanctions Act”.

1 **SEC. 2. SANCTIONS AGAINST CERTAIN PERSONS ENGAGED**  
2 **IN PROLIFERATION OR USE OF FOREIGN**  
3 **COMMERCIAL SPYWARE.**

4 (a) POLICY.—It is the policy of the United States—

5 (1) to act decisively against counterintelligence  
6 threats posed by foreign commercial spyware by dis-  
7 couraging the activities of companies selling foreign  
8 commercial spyware to provide their services to users  
9 who act contrary to the national security or foreign  
10 policy interests of the United States;

11 (2) to act decisively against the individuals who  
12 lead entities selling foreign commercial spyware and  
13 who are reasonably believed to be involved or have  
14 been involved in activities contrary to the national  
15 security or foreign policy interests of the United  
16 States; and

17 (3) to deter the use of foreign commercial  
18 spyware for improper purposes, such as to—

19 (A) target and intimidate perceived oppo-  
20 nents;

21 (B) curb dissent;

22 (C) limit freedoms of expression, peaceful  
23 assembly, or association;

24 (D) enable other human rights abuses or  
25 suppression of civil liberties;

1 (E) track or target United States persons  
2 without proper legal authorization, safeguards,  
3 or oversight; or

4 **[(F) undermine United States national se-**  
5 **curity.]**

6 (b) DISCRETIONARY SANCTIONS.—In order to ad-  
7 vance the policy objectives under subsection (a), the Presi-  
8 dent may impose the sanctions described in subsection (c)  
9 with respect to—

10 (1) a covered entity that the President deter-  
11 mines to pose a risk to the national security of the  
12 United States which directly or indirectly develops,  
13 maintains, owns, operates, brokers, markets, sells,  
14 leases, licenses, or otherwise makes available  
15 spyware, including spyware that has enabled the tar-  
16 geting of United States Government officials or per-  
17 sonnel of the intelligence community;

18 (2) any foreign person who—

19 (A) is a current or former senior officer  
20 employed by a covered entity described in para-  
21 graph (1); and

22 (B) is responsible for or complicit in, or is  
23 directly or indirectly engaging in, the sale, leas-  
24 ing, licensing, or other provision of foreign com-  
25 mercial spyware, including spyware, that has

1 enabled the targeting of United States Govern-  
2 ment officials or personnel of the intelligence  
3 community;

4 (3) any foreign person who—

5 (A) is a current official of a foreign gov-  
6 ernment or is acting for or on behalf of such of-  
7 ficial; and

8 (B) is responsible for or complicit in, or is  
9 directly or indirectly engaging in, the targeting  
10 of **【United States persons】** through the use of  
11 foreign commercial spyware, including spyware  
12 that has enabled the targeting of United States  
13 Government officials or personnel of the intel-  
14 ligence community; or

15 (4) any foreign person that has knowingly and  
16 materially assisted, sponsored, or provided financial,  
17 material, or technological support for, or goods or  
18 services to or in support of a covered entity de-  
19 scribed in paragraph (1) or a foreign person de-  
20 scribed in paragraph (2) or (3).

21 (c) **SANCTIONS DESCRIBED.**—The sanctions de-  
22 scribed in this subsection are the following:

23 (1) **BLOCKING OF PROPERTY.**—The President  
24 may exercise all of the powers granted to the Presi-  
25 dent under the International Emergency Economic

1 Powers Act (50 U.S.C. 1701 et seq.) (except that  
2 the requirements of section 202 of such Act (50  
3 U.S.C. 1701) shall not apply) to the extent nec-  
4 essary to block and prohibit all transactions in prop-  
5 erty and interests in property of a person deter-  
6 mined by the President to be subject to subsection  
7 (b) if such property and interests in property are in  
8 the United States, come within the United States, or  
9 come within the possession or control of a United  
10 States person.

11 (2) INADMISSIBILITY TO THE UNITED STATES  
12 AND REVOCATION OF VISA OR OTHER DOCUMENTA-  
13 TION.—

14 (A) INELIGIBILITY FOR VISA, ADMISSION,  
15 OR PAROLE.—In the case of a foreign person  
16 determined by the President to be subject to  
17 subsection (b) who is an individual, the foreign  
18 person is—

19 (i) inadmissible to the United States;

20 (ii) ineligible to receive a visa or other  
21 documentation to enter the United States;  
22 and

23 (iii) otherwise ineligible to be admitted  
24 or paroled into the United States or to re-  
25 ceive any other benefit under the Immigra-

1                   tion and Nationality Act (8 U.S.C. 1101 et  
2                   seq.).

3                   (B) CURRENT VISA REVOKED.—In the case  
4                   of a foreign person determined by the President  
5                   to be subject to subsection (b) who is an indi-  
6                   vidual, the visa or other entry documentation of  
7                   the person shall be revoked, regardless of when  
8                   such visa or other entry documentation is or  
9                   was issued. A revocation under this subpara-  
10                  graph shall take effect immediately and auto-  
11                  matically cancel any other valid visa or entry  
12                  documentation that is in the person’s posses-  
13                  sion.

14                  (C) EXCEPTION TO COMPLY WITH INTER-  
15                  NATIONAL OBLIGATIONS.—Sanctions under this  
16                  subsection shall not apply with respect to a for-  
17                  eign person if—

18                         (i) admitting or paroling the person  
19                         into the United States is necessary to per-  
20                         mit the United States to comply with the  
21                         Agreement regarding the Headquarters of  
22                         the United Nations, signed at Lake Suc-  
23                         cess June 26, 1947, and entered into force  
24                         November 21, 1947, between the United

1 Nations and the United States, or other  
2 applicable international obligations; or

3 (ii) the President determines that it is  
4 necessary to provide an exception on hu-  
5 manitarian grounds or due to intelligence,  
6 law enforcement, or other Government in-  
7 terests.

8 (d) IMPLEMENTATION; PENALTIES.—

9 (1) IMPLEMENTATION.—The President may ex-  
10 ercise all authorities provided under sections 203  
11 and 205 of the International Emergency Economic  
12 Powers Act (50 U.S.C. 1702 and 1704) to carry out  
13 this section and shall issue such regulations, li-  
14 censes, and orders as are necessary to carry out this  
15 section.

16 (2) PENALTIES.—Any person that violates, at-  
17 tempts to violate, conspires to violate, or causes a  
18 violation of this section or any regulation, license, or  
19 order issued to carry out paragraph (1) shall be sub-  
20 ject to the penalties provided for in subsections (b)  
21 and (c) of section 206 of the International Emer-  
22 gency Economic Powers Act (50 U.S.C. 1705) to the  
23 same extent as a person that commits an unlawful  
24 act described in subsection (a) of that section.

1       **[(e) EXCEPTION RELATING TO IMPORTATION OF**  
2 **GOODS.—]**

3           **[(1) IN GENERAL.—**The authorities to impose  
4 sanctions authorized under this section shall not in-  
5 clude the authority to impose sanctions on the im-  
6 portation of goods.]

7           **[(2) GOOD DEFINED.—**In this subsection, the  
8 term “good” means any article, natural, or man-  
9 made substance, material, supply, or manufactured  
10 product, including inspection and test equipment,  
11 and excluding technical data.]

12       **(f) SUNSET.—**The requirements of this section shall  
13 terminate five years after the date of the enactment of  
14 this Act.

15       **(g) DEFINITIONS.—**In this section:

16           **(1) FOREIGN PERSON.—**The term “foreign per-  
17 son” means a person that is not a United States  
18 person.

19           **(2) UNITED STATES PERSON.—**The term  
20 “United States person” means—

21               **(A)** a United States citizen or an alien law-  
22 fully admitted for permanent residence to the  
23 United States; or

24               **(B)** an entity organized under the laws of  
25 the United States or of any jurisdiction within



1           the United States, including a foreign branch of  
2           such an entity.

3           (3) FOREIGN COMMERCIAL SPYWARE; FOREIGN  
4           COMPANY; SPYWARE; COVERED ENTITY.—The terms  
5           “foreign commercial spyware”, “foreign company”,  
6           “spyware”, and “covered entity” have the meanings  
7           given those terms in section 1102A of the National  
8           Security Act of 1947 (50 U.S.C. 3231 et seq.).