

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5557
OFFERED BY MR. HIMES OF CONNECTICUT**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Combatting Foreign
3 Surveillance Spyware Sanctions Act”.

**4 SEC. 2. SANCTIONS FOR PROLIFERATION OR USE OF FOR-
5 EIGN COMMERCIAL SPYWARE.**

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

7 (1) to act decisively against counterintelligence
8 threats posed by foreign commercial spyware by de-
9 grading the ability of companies selling foreign com-
10 mercial spyware to provide their services to users
11 who act contrary to the national security or foreign
12 policy interests of the United States;

13 (2) to act decisively against the individuals who
14 lead entities selling foreign commercial spyware and
15 who are involved in activities contrary to the na-
16 tional security or foreign policy interests of the
17 United States; and

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

3 (A) target and intimidate perceived oppo-
4 nents;

5 (B) curb dissent;

6 (C) limit freedoms of expression, peaceful
7 assembly, or association;

8 (D) enable other human rights abuses or
9 suppression of civil liberties; or

10 (E) track or target United States persons.

11 (b) DISCRETIONARY SANCTIONS.—In order to ad-
12 vance the policy objectives under subsection (a), the Presi-
13 dent may impose the sanctions described in subsection (c)
14 with respect to—

15 (1) a covered entity the President determines to
16 pose a risk to the national security of the United
17 States which knowingly develops, maintains, owns,
18 operates, brokers, markets, sells, leases, licenses, or
19 otherwise makes available spyware that has enabled
20 the targeting of United States Government officials,
21 or personnel of the intelligence community;

22 (2) any foreign person who—

23 (A) is a current or former senior officer of
24 an entity described in paragraph (1); and

1 (B) knowingly engages in the sale of for-
2 eign commercial spyware that allows for the
3 targeting of United States government officials,
4 or personnel of the intelligence community; or
5 (3) any foreign person who—

6 (A) is an official of a foreign government
7 or is acting for or on behalf of such official; and

8 (B) knowingly engages in the targeting of
9 United States Government officials, or per-
10 sonnel of the intelligence community through
11 the use of foreign commercial spyware.

12 (c) SANCTIONS DESCRIBED.—The sanctions de-
13 scribed in this subsection are the following:

14 (1) BLOCKING OF PROPERTY.—The President
15 may exercise all of the powers granted to the Presi-
16 dent under the International Emergency Economic
17 Powers Act (50 U.S.C. 1701 et seq.) (except that
18 the requirements of section 202 of such Act (50
19 U.S.C. 1701) shall not apply) to the extent nec-
20 essary to block and prohibit all transactions in prop-
21 erty and interests in property of a person deter-
22 mined by the President to be subject to subsection
23 (b) if such property and interests in property are in
24 the United States, come within the United States, or

1 come within the possession or control of a United
2 States person.

3 (2) INADMISSIBILITY TO THE UNITED STATES
4 AND REVOCATION OF VISA OR OTHER DOCUMENTA-
5 TION.—

6 (A) INELIGIBILITY FOR VISA, ADMISSION,
7 OR PAROLE.—In the case of a foreign person
8 determined by the President to be subject to
9 subsection (b) who is an individual, the foreign
10 person is—

11 (i) inadmissible to the United States;

12 (ii) ineligible to receive a visa or other
13 documentation to enter the United States;
14 and

15 (iii) otherwise ineligible to be admitted
16 or paroled into the United States or to re-
17 ceive any other benefit under the Immigra-
18 tion and Nationality Act (8 U.S.C. 1101 et
19 seq.).

20 (B) CURRENT VISA REVOKED.—In the case
21 of a foreign person determined by the President
22 to be subject to subsection (b) who is an indi-
23 vidual, the visa or other entry documentation of
24 the person shall be revoked, regardless of when
25 such visa or other entry documentation is or

1 was issued. A revocation under this subpara-
2 graph shall take effect immediately and auto-
3 matically cancel any other valid visa or entry
4 documentation that is in the person's posses-
5 sion.

6 (C) EXCEPTION TO COMPLY WITH INTER-
7 NATIONAL OBLIGATIONS.—Sanctions under this
8 subsection shall not apply with respect to a for-
9 eign person if admitting or paroling the person
10 into the United States is necessary to permit
11 the United States to comply with the Agree-
12 ment regarding the Headquarters of the United
13 Nations, signed at Lake Success June 26,
14 1947, and entered into force November 21,
15 1947, between the United Nations and the
16 United States, or other applicable international
17 obligations.

18 (d) IMPLEMENTATION; PENALTIES.—

19 (1) IMPLEMENTATION.—The President may ex-
20 ercise all authorities provided under sections 203
21 and 205 of the International Emergency Economic
22 Powers Act (50 U.S.C. 1702 and 1704) to carry out
23 this subsection and shall issue such regulations, li-
24 censes, and orders as are necessary to carry out this
25 subsection.

1 (2) PENALTIES.—Any person that violates, at-
2 tempts to violate, conspires to violate, or causes a
3 violation of this subsection or any regulation, license,
4 or order issued to carry out paragraph (1) shall be
5 subject to the penalties provided for in subsections
6 (b) and (c) of section 206 of the International
7 Emergency Economic Powers Act (50 U.S.C. 1705)
8 to the same extent as a person that commits an un-
9 lawful act described in subsection (a) of that section.

10 (e) INTELLIGENCE AND LAW ENFORCEMENT ACTIVI-
11 TIES.—Sanctions under this section shall not apply with
12 respect to—

13 (1) any activity subject to the reporting require-
14 ments under title V of the National Security Act of
15 1947 (50 U.S.C. 3091 et seq.); or

16 (2) any authorized intelligence or law enforce-
17 ment activities of the United States.

18 (f) UNITED STATES GOVERNMENT ACTIVITIES.—
19 Nothing in this Act may be construed to prohibit trans-
20 actions associated with the official business of the Federal
21 Government as carried out by employees, grantees, or con-
22 tractors.

23 (g) HUMANITARIAN ACTIVITIES.—The President may
24 not impose sanctions under this section with respect to
25 any person for conducting or facilitating a transaction for

1 the sale of agricultural commodities, food, medicine, or
2 medical devices or for the provision of humanitarian as-
3 sistance.

4 (h) EXCEPTION RELATING TO IMPORTATION OF
5 GOODS.—

6 (1) IN GENERAL.—The authorities to impose
7 sanctions authorized under this section shall not in-
8 clude the authority to impose sanctions on the im-
9 portation of goods.

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

15 (i) INTERNATIONAL FINANCIAL INSTITUTIONS.—The
16 Secretary of the Treasury may instruct the United States
17 Executive Director at the international financial institu-
18 tions (as defined under section 1701(c) of the Inter-
19 national Financial Institutions Act) to use the voice and
20 vote of the United States to oppose financial assistance
21 to a foreign government that the Secretary finds has tar-
22 geted United States government officials or personnel of
23 the intelligence community with foreign commercial
24 spyware.

1 (j) SUNSET.—The authority of the President to im-
2 pose a new sanction under subsection (b) shall terminate
3 on the date that is 7 years after the date of the enactment
4 of this Act.

5 (k) DEFINITIONS.—In this section:

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

12 (2) FOREIGN PERSON.—The term “foreign per-
13 son” means a person that is not a United States
14 person.

15 (3) KNOWINGLY.—The term “knowingly” with
16 respect to conduct, a circumstance, or a result,
17 means that a person has actual knowledge, or should
18 have known, of the conduct, the circumstance, or the
19 result.

20 (4) UNITED STATES PERSON.—The term
21 “United States person” means—

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

1 (B) an entity organized under the laws of
2 the United States or of any jurisdiction within
3 the United States, including a foreign branch of
4 such an entity; or

5 (C) a person in the United States

