

117TH CONGRESS
1ST SESSION

H. R. 5326

To impose sanctions with respect to Communist Chinese military and surveillance companies.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2021

Mr. BARR introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To impose sanctions with respect to Communist Chinese military and surveillance companies.

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 “Chinese Military and
5 Surveillance Company Sanctions Act of 2021”.

6 **SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Under Executive Order 13959 (85 Fed.
9 Reg. 73185; relating to addressing the threat from

1 securities investments that finance Communist Chi-
2 nese military companies) of November 17, 2020, the
3 President found that the People’s Republic of China
4 “increases the size of the country’s military-indus-
5 trial complex by compelling civilian Chinese compa-
6 nies to support its military and intelligence activi-
7 ties. Those companies, though remaining ostensibly
8 private and civilian, directly support the PRC’s mili-
9 tary, intelligence, and security apparatuses and aid
10 in their development and modernization.”. The
11 President further determined that “the PRC exploits
12 United States investors to finance the development
13 and modernization of its military.”. As a result, Ex-
14 ecutive Order 13959 restricted transactions in pub-
15 licly traded securities of Communist Chinese military
16 companies listed pursuant to section 1237 of the
17 Strom Thurmond National Defense Authorization
18 Act for Fiscal Year 1999 (50 U.S.C. 1701 note).

19 (2) Although Executive Order 13959 targets
20 transactions in public securities, it does not address
21 financing options for Communist Chinese military
22 companies through other forms of equity financing
23 or debt financing, nor does it limit transactions with
24 United States persons that may generate earnings in
25 a manner that facilitates company growth.

1 (3) Transaction restrictions pursuant to Execu-
2 tive Order 13959 have not withstood challenges in
3 court. On March 12, 2021, the United States Dis-
4 trict Court for the District of Columbia granted a
5 preliminary injunction preventing the application of
6 Executive Order 13959 to Xiaomi Corporation,
7 which the Department of Defense had listed as a
8 Communist Chinese military company, based on the
9 “high likelihood of success on the merits” that the
10 listing did not conform to the Administrative Proce-
11 dures Act and exceeded the authority granted under
12 section 1237 of the Strom Thurmond National De-
13 fense Authorization Act for Fiscal Year 1999. The
14 Department of Defense chose not to challenge the
15 ruling and removed the company from its listing.

16 (4) On May 5, 2021, the District Court further
17 enjoined the implementation of Executive Order
18 13959 with respect to Luokung Technology Corp.,
19 which the Department of Defense had originally
20 sought to list on January 14, 2021, and re-listed on
21 March 9, 2021. Consequently, the prohibitions of
22 Executive Order 13959 could not be applied to the
23 company.

24 (5) The Office of Foreign Assets Control
25 (OFAC) of the Department of the Treasury, by im-

1 posing asset blocking through the Specially Des-
2 ignated Nationals (SDN) List, is able to forbid vir-
3 tually any transaction between United States per-
4 sons and a designated entity, including debt and eq-
5 uity financing, the exchange of goods and services,
6 and the provision of material or technological sup-
7 port. Conversely, restrictions limited to publicly trad-
8 ed securities are less comprehensive, and in the case
9 of certain Chinese companies of concern, may be ir-
10 relevant if the companies do not issue such securi-
11 ties.

12 (6) While restrictions on public securities are
13 restricted to the dealings of United States persons,
14 OFAC's inclusion of a foreign entity on the SDN list
15 deters third-country persons from dealing with a
16 designated entity, amplifying the effects of United
17 States sanctions globally.

18 (7) OFAC has long devoted significant re-
19 sources to compiling evidence on SDNs that rou-
20 tinely withstand challenges in court, which enhances
21 the effectiveness of United States sanctions, encour-
22 ages allies to consider comparable measures, and
23 strengthens national security.

24 (8) On June 3, 2021, the President issued Ex-
25 ecutive Order 14032, which transferred responsi-

1 bility for naming Chinese military companies subject
2 to investment restrictions to the Secretary of the
3 Treasury, and expanded restrictions to entities oper-
4 ating in the surveillance technology sector of the
5 Chinese economy.

6 (b) SENSE OF CONGRESS.—It is the sense of the
7 Congress that the national emergency declared under Ex-
8 ecutive Order 13959 calls for the President to—

9 (1) more fully cut off financing avenues for
10 Communist Chinese military and surveillance compa-
11 nies;

12 (2) prevent adaptation by a company to partial
13 restrictions that limit themselves to publicly traded
14 securities;

15 (3) ensure that the United States assembles an
16 appropriate evidentiary basis to support the effec-
17 tiveness of sanctions;

18 (4) enhance the impact of economic sanctions
19 by deterring third-country persons from dealing with
20 the companies; and

21 (5) link the imposition of sanctions to clear ob-
22 jectives that serve to resolve the national emergency.

1 **SEC. 3. SANCTIONS WITH RESPECT TO COMMUNIST CHI-**
2 **NESE MILITARY AND SURVEILLANCE COMPA-**
3 **NIES.**

4 (a) IN GENERAL.—Not later than 180 days after the
5 date on which the first updated list is submitted under
6 section 1237(b) of the Strom Thurmond National Defense
7 Authorization Act for Fiscal Year 1999 (50 U.S.C. 1701
8 note) on or after the date of the enactment of this Act,
9 the President shall impose the sanctions described in sub-
10 section (b) with respect to—

11 (1) each person that is on such updated list;
12 and

13 (2) each foreign person listed in the Annex to
14 Executive Order 13959 (85 Fed. Reg. 73185; relat-
15 ing to addressing the threat from securities invest-
16 ments that finance Communist Chinese military
17 companies) of November 17, 2020, or determined by
18 the Secretary of the Treasury, in consultation with
19 the Secretary of State, and, as the Secretary of the
20 Treasury determines appropriate, the Secretary of
21 Defense, to engage in the activities described under
22 section 1(a)(i) or 1(a)(ii) of such Executive Order
23 13959,

24 if the President determines that the imposition of such
25 sanctions meets appropriate evidentiary standards and ad-
26 vances the objective of resolving the national emergency

1 described in Executive Order 13959 (85 Fed. Reg. 73185;
2 relating to addressing the threat from securities invest-
3 ments that finance Communist Chinese military compa-
4 nies) of November 17, 2020.

5 (b) SANCTIONS DESCRIBED.—The President shall ex-
6 ercise all of the powers granted to the President under
7 the International Emergency Economic Powers Act (50
8 U.S.C. 1701 et seq.) to the extent necessary to block and
9 prohibit all transactions in property and interests in prop-
10 erty of a person if such property and interests in prop-
11 erty—

12 (1) are in the United States;

13 (2) come within the United States; or

14 (3) come within the possession or control of a
15 United States person.

16 (c) PENALTIES.—The penalties set forth in section
17 206 of the International Emergency Economic Powers Act
18 (50 U.S.C. 1705) apply to violations of any license, order,
19 or regulation issued under this section.

20 (d) WAIVER.—The President may waive the applica-
21 tion of sanctions under this section if the President cer-
22 tifies in writing to the appropriate congressional commit-
23 tees that the waiver is in the national interest of the
24 United States, with an explanation of the reasons therefor.

1 (e) EXCEPTION FOR INTELLIGENCE ACTIVITIES.—
2 Sanctions under this section shall not apply to any activity
3 subject to the reporting requirements under title V of the
4 National Security Act of 1947 (50 U.S.C. 3091 et seq.)
5 or any authorized intelligence activities of the United
6 States.

7 (f) CONFORMING REQUIREMENT.—Not later than
8 180 days after the date of the enactment of this Act, the
9 President shall revoke the prohibitions described in section
10 1(a) of Executive Order 13959 that are duplicative of, less
11 restrictive than, or are otherwise made redundant by, the
12 sanctions described in this section.

13 (g) APPROPRIATE CONGRESSIONAL COMMITTEES
14 DEFINED.—In this section, the term “appropriate con-
15 gressional committees” means—

16 (1) the Committee on Foreign Affairs and the
17 Committee on Financial Services of the House of
18 Representatives; and

19 (2) the Committee on Foreign Relations and
20 the Committee on Banking, Housing, and Urban Af-
21 fairs of the Senate.

22 (h) SUNSET.—The authority to impose sanctions
23 under this section, and any sanctions imposed under this
24 section, shall terminate on the earlier of—

1 (1) the date that is 30 days after the date on
2 which the President repeals the national emergency
3 declared under Executive Order 13959; or

4 (2) the date that is 7 years after the date of the
5 enactment of this Act.

○