

117TH CONGRESS
1ST SESSION

H. R. 5046

To amend the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 to impose sanctions against governments of foreign states that engage in an act or acts of gross negligence with respect to state owned, operated, or directed chemical or biological programs.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 17, 2021

Mr. FEENSTRA introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Financial Services, and Oversight and Reform, 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 amend the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 to impose sanctions against governments of foreign states that engage in an act or acts of gross negligence with respect to state owned, operated, or directed chemical or biological programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Holding Countries Ac-
3 countable for Negligent Chemical and Biological Programs
4 Act”.

5 **SEC. 2. STATEMENT OF POLICY.**

6 It shall be the policy of the United States to impose
7 sanctions against governments of foreign states, and take
8 other measures if the governments of such foreign states
9 that engage in an act or acts of gross negligence with re-
10 spect to state owned, operated, or directed chemical or bio-
11 logical programs.

12 **SEC. 3. AMENDMENTS TO THE CHEMICAL AND BIOLOGICAL**
13 **WEAPONS CONTROL AND WARFARE ELIMI-**
14 **NATION ACT OF 1991.**

15 (a) **PURPOSES AND DEFINITIONS.**—Section 502 of
16 the Chemical and Biological Weapons Control and War-
17 fare Elimination Act of 1991 (22 U.S.C. 5601) is amend-
18 ed—

19 (1) in the section heading, by adding at the end
20 before the period the following: “**AND DEFINI-**
21 **TIONS**”;

22 (2) by striking “The purposes” and inserting
23 “(a) **PURPOSES.**—The purposes”;

24 (3) in paragraph (1)—

25 (A) by striking “or use” and insert “use”;

26 and

1 (B) by inserting “, or engage in an act or
2 acts of gross negligence with respect to a chem-
3 ical or biological program owned, controlled, or
4 directed by, or subject to the jurisdiction of the
5 government of a foreign state” after “nation-
6 als”; and

7 (4) by adding at the end the following:

8 “(b) DEFINITIONS.—In this Act:

9 “(1) GROSS NEGLIGENCE.—The term ‘gross
10 negligence’, with respect to an act or acts of a gov-
11 ernment of a foreign state, includes the government
12 knew, or should have known, the act or acts would
13 result in injury or damages to another foreign state
14 or other such foreign states.

15 “(2) FOREIGN STATE.—The term ‘foreign
16 state’—

17 “(A)(i) has the meaning given that term in
18 subsection (a) of section 1603 of title 28,
19 United States Code; and

20 “(ii) includes an ‘agency or instrumentality
21 of a foreign state’ as that term is defined in
22 subsection (b) of such section; and

23 “(B) includes an entity that is—

24 “(i)(I) directly or indirectly owned,
25 controlled, or beneficially owned by, or in

1 an official or unofficial capacity acting as
2 an agent of or on behalf of, the govern-
3 ment of a foreign state; or

4 “(II) received significant material
5 support from the government of a foreign
6 state; and

7 “(ii) engaged in providing commercial
8 services, shipping, manufacturing, pro-
9 ducing, or exporting.”.

10 (b) DETERMINATIONS REGARDING USE OF CHEM-
11 ICAL OR BIOLOGICAL WEAPONS.—Section 506 of the
12 Chemical and Biological Weapons Control and Warfare
13 Elimination Act of 1991 (22 U.S.C. 5604) is amended—

14 (1) in subsection (a)—

15 (A) by redesignating paragraph (3) as
16 paragraph (4);

17 (B) by inserting after paragraph (2) the
18 following:

19 “(3) ADDITIONAL DETERMINATION BY THE
20 PRESIDENT.—

21 “(A) WHEN DETERMINATION REQUIRED;
22 NATURE OF DETERMINATION.—Whenever cred-
23 ible information becomes available to the execu-
24 tive branch indicating a substantial possibility
25 that, on or after January 1, 2020, the govern-

1 ment of a foreign country has engaged in an
2 act or acts of gross negligence with respect to
3 a chemical or biological program owned, con-
4 trolled, or directed by, or subject to the jurisdic-
5 tion of the government of a foreign state, the
6 President shall, within 60 days after the receipt
7 of such information by the executive branch, de-
8 termine whether that government, on or after
9 such date, has engaged in an act or acts of
10 gross negligence with respect to a chemical or
11 biological program owned, controlled, or di-
12 rected by, or subject to the jurisdiction of the
13 government of a foreign state. Section 507 ap-
14 plies if the President determines that that gov-
15 ernment has so engaged in such act or acts of
16 gross negligence.

17 “(B) MATTERS TO BE CONSIDERED.—In
18 making the determination under subparagraph
19 (A), the President shall consider the following:

20 “(i) All physical and circumstantial
21 evidence available bearing on the possibility
22 that the government in question engaged
23 in an act or acts of gross negligence with
24 respect to a chemical or biological program
25 owned, controlled, or directed by, or sub-

1 ject to the jurisdiction of the government
2 of a foreign state.

3 “(ii) Whether evidence exists that
4 such program or programs have civilian
5 and military purposes or applications.

6 “(iii) Whether the government in
7 question attempted to conceal or otherwise
8 withhold information from other govern-
9 ments or international organizations re-
10 garding an act or acts of gross negligence.

11 “(iv) Whether, and to what extent,
12 the government in question is compliant
13 with its obligations under the Biological
14 and Toxin Weapons Convention or Conven-
15 tion on the Prohibition of the Develop-
16 ment, Production, Stockpiling and Use of
17 Chemical Weapons and on their Destruc-
18 tion, as applicable.

19 “(v) Whether, and to what extent, the
20 government in question is providing or oth-
21 erwise voluntarily disclosing substantive in-
22 formation to relevant international organi-
23 zations.”; and

24 (C) in paragraph (4) (as redesignated)—

1 (i) in the first sentence, by inserting
2 “or (3)” after “paragraph (1)”;

3 (ii) in the second sentence, by insert-
4 ing “under paragraph (1)” after “deter-
5 mination”; and

6 (iii) by adding at the end the fol-
7 lowing: “If the determination under para-
8 graph (3) is that a foreign government had
9 engaged in an act or acts of gross neg-
10 ligence with respect to a chemical or bio-
11 logical program owned, controlled, or di-
12 rected by, or subject to the jurisdiction of
13 the government of a foreign state, the re-
14 port shall specify the sanctions to be im-
15 posed pursuant to section 507A.”; and

16 (2) in subsection (b)—

17 (A) in paragraph (1)—

18 (i) by striking “whether a particular
19 foreign government” and inserting the fol-
20 lowing: “whether—

21 “(A) a particular foreign government”;

22 (ii) by striking the period at the end
23 and inserting “; or”; and

24 (iii) by adding at the end the fol-
25 lowing:

1 “(B) a particular foreign government, on
2 or after January 1, 2020, has engaged in an
3 act of acts of gross negligence with respect to
4 a chemical or biological program owned, con-
5 trolled, or directed by, or subject to the jurisdic-
6 tion of the government of a foreign state.”; and

7 (B) in paragraph (2)—

8 (i) in the first sentence—

9 (I) by striking “whether the spec-
10 ified government” and inserting the
11 following: “whether—

12 “(A) the specified government”;

13 (II) by striking the period at the
14 end and inserting “; or”; and

15 (III) by adding at the end the
16 following:

17 “(B) the specified government, on or after
18 January 1, 2020, has engaged in an act or acts
19 of gross negligence with respect to a chemical
20 or biological program owned, controlled, or di-
21 rected by, or subject to the jurisdiction of the
22 government of a foreign state.”; and

23 (ii) in the second sentence—

1 (I) by inserting “or (3)(B), as
2 applicable” after “subsection (a)(2)”;
3 and

4 (II) by moving the margin of the
5 second sentence so it has the same
6 level of indentation as margin of the
7 matter preceding subparagraph (A) of
8 the first sentence.

9 (c) SANCTIONS AGAINST FOREIGN STATES WITH RE-
10 SPECT TO CHEMICAL OR BIOLOGICAL PROGRAMS.—The
11 Chemical and Biological Weapons Control and Warfare
12 Elimination Act of 1991 (22 U.S.C. 5601 et seq.) is
13 amended by inserting after section 507 the following:

14 **“SEC. 507A. SANCTIONS AGAINST FOREIGN STATES WITH**
15 **RESPECT TO CHEMICAL OR BIOLOGICAL**
16 **PROGRAMS.**

17 “(a) INITIAL SANCTIONS.—

18 “(1) IN GENERAL.—If the President makes a
19 determination pursuant to section 506(a)(3) with re-
20 spect to the government of a foreign state, the Presi-
21 dent shall, within 30 days of making such deter-
22 mination, impose the sanctions described in para-
23 graph (2) with respect to the foreign state.

24 “(2) SANCTIONS DESCRIBED.—The sanctions
25 described in this paragraph are the following:

1 “(A) The United States Government shall
2 suspend all scientific cooperative programs and
3 efforts with the government of the foreign state.

4 “(B) The President shall prohibit the ex-
5 port to the foreign state of any goods, services
6 or technology under Category 1 and Category 2
7 of the Commerce Control List.

8 “(C) The United States Government may
9 not procure, or enter into any contract for the
10 procurement of, any goods or services from any
11 person operating in the chemical or biological
12 sectors of the foreign state.

13 “(b) INTERMEDIATE APPLICATION OF SANCTIONS.—

14 “(1) DETERMINATION.—Not later than 120
15 days after making a determination pursuant to sec-
16 tion 506(a)(3) with respect to a government of a for-
17 eign state, the President shall submit to the appro-
18 priate congressional committees a determination as
19 to whether—

20 “(A) such government has adequately ad-
21 dressed an act an act or acts of gross neg-
22 ligence with respect to a chemical or biological
23 program owned, controlled, or directed by, or
24 subject to the jurisdiction of the government of
25 a foreign state;

1 “(B) such government has developed or is
2 developing necessary measures to prevent any
3 future act or acts of gross negligence;

4 “(C) such government is providing or oth-
5 erwise voluntarily disclosing substantive infor-
6 mation to the United States and relevant inter-
7 national organizations; and

8 “(D) such government is compliant with
9 its obligations under the Biological and Toxin
10 Weapons Convention or the Convention on the
11 Prohibition of the Development, Production,
12 Stockpiling and Use of Chemical Weapons and
13 on their Destruction, as applicable.

14 “(2) EFFECT OF DETERMINATION.—If the
15 President is unable to certify that a government of
16 a foreign state has taken the actions described in
17 subparagraphs (A), (B), (C), and (D) of paragraph
18 (1), the President shall impose 2 or more of the
19 sanctions described in paragraph (3) with respect to
20 the government of the foreign state.

21 “(3) SANCTIONS DESCRIBED.—The sanctions
22 described in this paragraph are the following:

23 “(A) The United States Government shall
24 terminate assistance to the government of the
25 foreign state under the Foreign Assistance Act

1 of 1961 (22 U.S.C. 2151 et seq.), except for ur-
2 gent humanitarian assistance and food or other
3 agricultural commodities or products.

4 “(B) No sales of any defense articles, de-
5 fense services, or design and construction serv-
6 ices under the Arms Export Control Act (22
7 U.S.C. 2751 et seq.) may be made to the gov-
8 ernment of the foreign state.

9 “(C) No licenses for export of any item on
10 the United States Munitions List that include
11 the government of the foreign state as a party
12 to the license may be granted.

13 “(D) No exports of any goods or tech-
14 nologies controlled for national security reasons
15 under the Export Administration Regulations
16 may be made to the government of the foreign
17 state, except that such prohibition shall not
18 apply to any transaction subject to the report-
19 ing requirements of title V of the National Se-
20 curity Act of 1947 (50 U.S.C. 413 et seq.; re-
21 lating to congressional oversight of intelligence
22 activities).

23 “(E) The President may order the United
24 States Government not to issue any specific li-
25 cense and not to grant any other specific per-

1 mission or authority to export any goods or
2 technology to the government of the foreign
3 state under—

4 “(i) the Export Control Reform Act of
5 2018 (50 U.S.C. 4801 et seq.);

6 “(ii) the Arms Export Control Act (22
7 U.S.C. 2751 et seq.);

8 “(iii) the Atomic Energy Act of 1954
9 (42 U.S.C. 2011 et seq.); or

10 “(iv) any other statute that requires
11 the prior review and approval of the
12 United States Government as a condition
13 for the export or reexport of goods or serv-
14 ices.

15 “(c) FINAL APPLICATION OF SANCTIONS.—

16 “(1) DETERMINATION.—Not later than 210
17 days after making a determination pursuant to sec-
18 tion 506(a)(3) with respect to a government of a for-
19 eign state, the President shall submit to the appro-
20 priate congressional committees a determination as
21 to whether the government of the foreign state has
22 taken the actions described in subparagraphs (A),
23 (B), (C), and (D) of subsection (b)(1).

24 “(2) EFFECT OF DETERMINATION.—If the
25 President is unable to certify that a government of

1 a foreign state has taken the actions described in
2 subparagraphs (A), (B), (C), and (D) of subsection
3 (b)(1), the President shall impose the sanctions de-
4 scribed in paragraph (3) with respect to the govern-
5 ment of the foreign state.

6 “(3) SANCTIONS.—The sanctions described in
7 this paragraph are the following:

8 “(A) The President shall, pursuant to such
9 regulations as the President may prescribe, pro-
10 hibit any transactions in foreign exchange that
11 are subject to the jurisdiction of the United
12 States and in which the government of the for-
13 eign state has any interest.

14 “(B) The President shall, pursuant to such
15 regulations as the President may prescribe, pro-
16 hibit any transfers of credit or payments be-
17 tween one or more financial institutions or by,
18 through, or to any financial institution, to the
19 extent that such transfers or payments are sub-
20 ject to the jurisdiction of the United States and
21 involve any interest of the government of the
22 foreign state.

23 “(d) REMOVAL OF SANCTIONS.—The President shall
24 remove the sanctions imposed with respect to the govern-
25 ment of a foreign state pursuant to this section if the

1 President determines and so certifies to the Congress,
2 after the end of the 12-month period beginning on the date
3 on which sanctions were initially imposed on that govern-
4 ment of a foreign state pursuant to subsection (a), that—

5 “(1) such government has adequately addressed
6 an act an act or acts of gross negligence with re-
7 spect to a chemical or biological program owned,
8 controlled, or directed by, or subject to the jurisdic-
9 tion of the government of a foreign state;

10 “(2) such government has developed or is devel-
11 oping necessary measures to prevent any future act
12 or acts of gross negligence;

13 “(3) such government is providing or otherwise
14 voluntarily disclosing substantive information to the
15 United States and relevant international organiza-
16 tions; and

17 “(4) such government is compliant with its obli-
18 gations under the Biological and Toxin Weapons
19 Convention or Convention on the Prohibition of the
20 Development, Production, Stockpiling and Use of
21 Chemical Weapons and on their Destruction, as ap-
22 plicable; and

23 “(5) such government is making restitution to
24 those affected by an act or acts of gross negligence
25 with respect to a chemical or biological program

1 owned, controlled, or directed by, or subject to the
2 jurisdiction of the government of a foreign state, in-
3 cluding United States persons.

4 “(e) WAIVER.—

5 “(1) IN GENERAL.—The President may, for pe-
6 riods not to exceed 180 days, waive the imposition
7 of sanctions under this section if the President cer-
8 tifies to the appropriate congressional committees
9 that such waiver is vital to the national security in-
10 terests of the United States.

11 “(2) SUNSET.—The President may not exercise
12 the authority described in paragraph (1) beginning
13 on the date that is 4 years after the date of enact-
14 ment of this section.

15 “(f) APPROPRIATE CONGRESSIONAL COMMITTEES
16 DEFINED.—In this section, the term ‘appropriate congres-
17 sional committees’ means—

18 “(1) the Committee on Foreign Affairs and the
19 Committee on Financial Services of the House of
20 Representatives; and

21 “(2) the Committee on Foreign Relations and
22 the Committee on Banking, Housing, and Urban Af-
23 fairs of the Senate.”.

1 **SEC. 4. DETERMINATION REGARDING THE PEOPLE'S RE-**
2 **PUBLIC OF CHINA.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of the enactment of this Act, the President shall de-
5 termine whether reasonable grounds exist for concluding
6 that the Government of the People's Republic of China
7 meets the criteria for engaging in an act or acts of gross
8 negligence with respect to a chemical or biological program
9 owned, controlled, or directed by, or subject to the juris-
10 diction of that government under section 506(a)(3) of the
11 Chemical and Biological Weapons Control and Warfare
12 Elimination Act of 1991, as amended by section 3 of this
13 Act.

14 (b) REPORT REQUIRED.—

15 (1) IN GENERAL.—Not later than 30 days after
16 making a determination under subsection (a), the
17 President shall submit to the appropriate congress-
18 sional committees a report that includes the reasons
19 for the determination.

20 (2) FORM.—A report required by paragraph (1)
21 shall be submitted in unclassified form but may in-
22 clude a classified annex.

23 **SEC. 5. REGULATORY AUTHORITY.**

24 (a) IN GENERAL.—The President shall, not later
25 than 180 days after the date of the enactment of this Act,

1 prescribe regulations as necessary for the implementation
2 of this Act and the amendments made by this Act.

3 (b) NOTIFICATION TO CONGRESS.—Not later than 10
4 days before the prescription of regulations under sub-
5 section (a), the President shall notify the appropriate con-
6 gressional committees regarding the proposed regulations
7 and the provisions of this Act and the amendments made
8 by this Act that the regulations are implementing.

9 **SEC. 6. APPROPRIATE CONGRESSIONAL COMMITTEES DE-**
10 **FINED.**

11 In this Act, the term “appropriate congressional com-
12 mittees” means—

13 (1) the Committee on Foreign Affairs and the
14 Committee on Financial Services of the House of
15 Representatives; and

16 (2) the Committee on Foreign Relations and
17 the Committee on Banking, Housing, and Urban Af-
18 fairs of the Senate.

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