

119TH CONGRESS
1ST SESSION

H. R. ____

To require entities seeking a license to export advanced artificial intelligence chips to countries of concern to certify that United States persons have priority in acquiring those chips.

IN THE HOUSE OF REPRESENTATIVES

Mr. MOOLENAAR introduced the following bill; which was referred to the Committee on _____

A BILL

To require entities seeking a license to export advanced artificial intelligence chips to countries of concern to certify that United States persons have priority in acquiring those chips.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Guaranteeing Access and Innovation for National Artificial Intelligence Act of 2025” or the “GAIN AI Act of 2025”.

SEC. 2. PROHIBITION ON PRIORITIZING COUNTRIES OF CONCERN OVER UNITED STATES PERSONS FOR EXPORTS OF ADVANCED INTEGRATED CIRCUITS.

Part I of the Export Control Reform Act of 2018 (50 U.S.C. 4811 et seq.) is amended by inserting after section 1758 the following new section:

“SEC. 1758A. CONTROL OF EXPORTS OF CERTAIN ADVANCED INTEGRATED CIRCUITS.

“(a) LICENSE REQUIREMENT.—The Under Secretary of Commerce for Industry and Security shall require a license for the export, reexport, or in-country transfer of a covered advanced circuit or product to an entity located or headquartered in, or whose ultimate parent company is headquartered in, a country of concern.

“(b) CERTIFICATION OF PRIORITY FOR UNITED STATES CUSTOMERS FOR CERTAIN ADVANCED INTEGRATED CIRCUITS.—

“(1) CERTIFICATION REQUIREMENT.—The Under Secretary of Commerce for Industry and Security shall require a person submitting an application for a license under subsection (a) to certify in the application that such person provided a right of first refusal to United States persons.

“(2) DENIAL OF APPLICATIONS WITHOUT CERTIFICATION.—Such Under Secretary shall deny each application for a license under subsection (a) that does not include a certification described in paragraph (1).

“(3) IMPLEMENTATION.—Not later than 120 days after the date of the enactment of this section, such Under Secretary shall consult with the public and prescribe regulations providing guidance, based on such consultation, for complying with the certification requirement under paragraph (1), which shall include—

“(A) information that the person submitting an application for a license under subsection (a) is required to make available about transactions with entities described in subsection (a), and the form the public notice of such information must take, to ensure that United States persons can exercise a right of first refusal under paragraph (1);

“(B) procedures for United States persons to exercise a right of first refusal under paragraph (1), including—

“(i) how public notice of the right of first refusal shall be provided; and

“(ii) guidance on when a United States person should inform such Under Secretary that they are seeking to exercise a right of first refusal;

“(C) conditions upon which a person submitting an application for a license under subsection (a) may proceed with the transaction that such license is required for if a request to exercise a right of first refusal is not made in good faith or completed in the required timeframe;

“(D) recordkeeping requirements;

“(E) penalties for misrepresentation and concealment of material facts; and

“(F) guidance with respect to determining whether—

“(i) a United States person exercising a right of first refusal has taken a material step to complete a transaction within the required timeframe; and

“(ii) the export, reexport, or in-country transfer of a covered advanced circuit or product would create—

“(I) backlog of requests from United States persons for the covered advanced circuit or product with respect to which an application for a license is submitted under subsection (a) or a comparable covered advanced circuit or product; or

“(II) a reduction in the capacity of production lines for the production, for United States persons, of the covered advanced circuit or product with respect to which an application for a license is submitted under subsection (a) or a comparable covered advanced circuit or product; and

“(iii) a person submitting an application for a license under subsection (a) provides advantageous pricing or terms for the covered advanced circuit or product with respect to which such application is submitted for to foreign persons that are not provided to United States persons.

“(4) RULE OF CONSTRUCTION.—In the case of more than one United States person requesting to exercise a right of first refusal, nothing in this subsection shall be construed to authorize the Under Secretary of Commerce for Industry and Security, or any other Federal official, to allocate, prioritize,

or otherwise select one United States person over any other United States person submitting such a request.

“(c) EXEMPTION FROM CERTAIN LICENSE REQUIREMENT FOR TRUSTED UNITED STATES PERSONS.—

“(1) IN GENERAL.—The requirement for a license under sections 742.4 and 744.23 of title 15, Code of Federal Regulations shall not apply to the export, reexport, or in-country transfer of a covered advanced circuit or product if the covered advanced circuit or product—

“(A) is destined for a country that is not a country of concern; and

“(B) once in operation, remains under the ownership and control of a trusted United States person.

“(2) IMPLEMENTATION.—Not later than 120 days after the date of the enactment of this section, the Under Secretary of Commerce for Industry and Security shall consult with the public and, based on such consultation, prescribe regulations—

“(A) establishing the standards and requirements a United States person is required to meet to obtain a designation as a trusted United States person, which shall include—

“(i) establishment by the United States person of physical security, cybersecurity, and other measures designed to prevent the illicit transfer or diversion of covered circuits and products, or other violations of United States export control regulations;

“(ii) a requirement that the United States person may not transfer or install a majority of its aggregate total processing performance of covered circuits or products outside the United States;

“(iii) a requirement that not more than 10 percent of the ultimate beneficial ownership of the United States person may be held, directly or indirectly, by any entity that primarily resides, is domiciled, or conducts the majority of its business in a country of concern; and

“(iv) annual audit or attestation requirement to ensure compliance with this subparagraph; and

“(B) describing the process by which such Under Secretary shall approve such a designation under subparagraph (A).

“(d) DEFINITIONS.—In this section:

“(1) ADVANCED INTEGRATED CIRCUIT.—

“(A) IN GENERAL.—Subject to subparagraph (B), the term ‘advanced integrated circuit’ means—

“(i) an integrated circuit, computer, or other product—

“(I) classified under Export Control Classification Number 3A090 or 4A090 or related Export Control Classification Numbers; or

“(II) that is functionally equivalent or substantially similar to a circuit, computer, or product described in subclause (I); or

“(ii) an integrated circuit that has one or more digital processing units with—

“(I) a total processing performance of 4,800 or more;

“(II) a total processing performance of 2,400 or more and a performance density of 1.6 or more;

“(III) a total processing performance of 1,600 or more and a performance density of 3.2 or more; or

“(IV) a total DRAM bandwidth of 1,400 gigabytes per second or more, interconnect bandwidth of 1,100 gigabytes per second or more, or a sum of DRAM bandwidth and interconnect bandwidth of 1,700 gigabytes per second or more.

“(B) AUTHORITY TO UPDATE TECHNICAL PARAMETERS.—Beginning 24 months after the date of the enactment of this section, the Under Secretary of Commerce for Industry and Security may add new technical parameters for the definition of ‘advanced integrated circuit’ following publication of such parameters and a notice and comment period in the Federal Register.

“(2) COMMERCE CONTROL LIST.—The term ‘Commerce Control List’ means the list set forth in Supplement No. 1 to part 774 of title 15, Code of Federal Regulations.

“(3) COUNTRY OF CONCERN.—The term ‘country of concern’ means—

“(A) a country listed in Country Group D:5 or E in Supplement No. 1 to part 740 of title 15, Code of Federal Regulations;

“(B) the Macau Special Administrative Region of the People’s Republic of China; or

“(C) the Hong Kong Special Administrative Region of the People’s Republic of China.

“(4) COVERED ADVANCED CIRCUIT OR PRODUCT.—

“(A) IN GENERAL.—Except as provided by subparagraph (B), the term ‘covered advanced circuit or product’ means—

“(i) an advanced integrated circuit; or

“(ii) a product containing such a circuit.

“(B) EXCLUSION.—The term ‘covered advanced circuit or product’ does not include an advanced integrated circuit or a product containing such a circuit that is not designed or marketed for data centers.

“(5) PERFORMANCE DENSITY; TOTAL PROCESSING PERFORMANCE.—The terms ‘performance density’ and ‘total processing performance’ have the meanings given those terms in, and are calculated as provided for under, Export Control Classification Number 3A090 in the Commerce Control List set forth in Supplement No. 1 to part 774 of title 15, Code of Federal Regulations.

“(6) RIGHT OF FIRST REFUSAL.—

“(A) IN GENERAL.—The term ‘right of first refusal’ means the person applying for a license under subsection (a)—

“(i) provides, through public notice, not less than a 15-day period for United States persons to inquire about purchasing a covered advanced circuit or product that would otherwise be sold to an entity located or headquartered in, or whose ultimate parent company is headquartered in, a country of concern;

“(ii) provides preference to a United States person submitting an inquiry under clause (i), if such United States person—

“(I) requests to purchase any quantity of the covered advanced circuit or product with respect to which such application is submitted for on the terms such covered advanced circuit or product is offered for; and

“(II) takes material steps to complete such purchase within 15 business days of requesting to make such purchase;

“(iii) has no current backlog of requests from United States persons for the covered advanced circuit or product with respect to which such application is submitted for or a comparable covered advanced circuit or product;

“(iv) cannot reasonably foresee, based on material information known to such person, that the production and export, reexport, or in-country transfer of the covered advanced circuit or product with respect to which such application is submitted for will result, during the 12-month period following such export, reexport, or in-country transfer, in—

“(I) a backlog of requests described under clause (iii); or

“(II) a reduction in production line capacity for the production of a covered advanced circuit or product or a substantially similar covered advanced circuit or product, for United States persons; and

“(v) is not providing advantageous pricing or terms for the covered advanced circuit or product with respect to which such application is submitted for to foreign persons that are not provided to United States persons.

“(B) DEFINITIONS.—In this paragraph:

“(i) BACKLOG OF REQUESTS.—The term ‘backlog of requests’ means a request from any United States person for a covered advanced circuit or product that—

“(I) is formally documented through—

“(aa) a purchase order or enforceable contract; or

“(bb) a formal request for supply consistent with ordinary commercial practice that specifies quantity, price, and timeframe of delivery; and

“(II) is not fulfilled or will not be able to fulfill within a timeframe consistent with commercially standard production and delivery lead times.

“(ii) MATERIAL INFORMATION.—In this paragraph, the term ‘material information’ includes information disclosed to investors, shareholders, or in public filings.

“(7) TRUSTED UNITED STATES PERSON.—The term ‘trusted United States person’ means any United States person designated as a trusted United States person pursuant to subsection (c)(2).”.
