



SENATE CHINA BILL STATE OF PLAY: PART II

May 17, 2021

OVERVIEW

Previously, we provided a [review](#) of the Senate’s action on a variety of bills related to China. As an update to that memo, later today (Monday, May 17th) the full Senate is expected to begin consideration of China policy legislation. Majority Leader Schumer’s Endless Frontier Act, as amended, will serve as the base text. However, a substitute amendment is expected to be offered which will incorporate the Senate Foreign Relations Committee’s Strategic Competition Act as well as several other provisions. (As of the writing of this memo, the substitute is still being negotiated.)

Once the Senate proceeds to the Endless Frontier Act and its substitute, we anticipate the Senate will take at least two weeks to complete floor action. As is past practice, we expect the Senate to vote on tranches of amendments as negotiated by Leadership. Under the power sharing agreement between Democrats and Republicans, Leader Schumer cannot fill the “amendment tree” and present the bill as a take-it-or-leave-it exercise. As such, we expect a relatively robust amendment process. Note: this is not a reconciliation bill, so there is no vote-a-rama. The only amendments guaranteed a vote are germane amendments pending post-cloture.

This memo summarizes the Committee work to date and outlines some of the key areas we anticipate will be subject to debate and possible amendments.

SUMMARY OF COMMITTEE WORK

Senate Committee on Commerce, Science, and Technology

On Wednesday, May 12, the Senate Commerce, Science, and Technology Committee held a markup of the Endless Frontier Act ([S. 1260](#)). The bill as amended was reported favorably out of the committee by a vote of 24 – 4. All Committee Members voted in favor except for Sens. Mike Lee (R-UT), Ron Johnson (R-WI), Rick Scott (R-FL), and Cynthia Lummis (R-WY).

At the start of the markup, the Committee adopted the Cantwell-Wicker substitute amendment by voice vote. This amendment makes many changes to the original Endless Frontier Act. For instance, the substitute amendment authorizes about \$50 billion for the National Science Foundation and about \$45 billion for the new Directorate for Technology and Innovation, which is allocated in increasing amounts by fiscal year from 2022 to 2026, while the original Schumer-Young bill authorized \$100 billion for the new tech directorate. In addition to the reduction in funding, the Cantwell-Wicker substitute amendment was modified to include more than 40 amendments, to which the Chairwoman and Ranking Member had agreed to adopt prior to the markup.

During the Commerce Committee’s markup, members introduced more than 20 additional amendments, about half of which were adopted. One of the amendments with the most significant impact on the bill was an amendment introduced by Sen. Ben Ray Lujan (D-NM) related to the funding of the Directorate. Sen. Lujan explained his amendment would enhance coordination with the Department of Energy by giving the Department authority over part of the funding provided by the Directorate. This did not sit well with original sponsor Sen. Todd Young (R-IN), who asserted – since the amendment changed his intent to create a strong Directorate and instead gave authority to the Department of Energy – it was outside the jurisdiction of the Commerce Committee. Despite the contentious debate on the amendment, it received strong bipartisan support and was adopted with only five opposition votes. For a full summary of the amendments and votes during the markup, click [here](#).

Senate Committee on Foreign Relations

On April 21, the Senate Foreign Relations Committee voted the bipartisan Strategic Competition Act ([S.1169](#)) out of Committee by a vote of 21 – 1. All Members voted in favor except for Sen. Rand Paul (R-KY). For a full summary of the markup, click [here](#).

Among other priorities, key provisions of the bill include: calling for the U.S. to reassert its leadership within international organizations and other multilateral fora; prioritizing diplomatic and economic engagement and security assistance for the Indo-Pacific region; authorizing a broad range of human rights and civil society measures including supporting democracy in Hong Kong, autonomy for Tibet, and imposing sanctions with respect to forced labor, forced sterilization, and other abuses in Xinjiang; countering intellectual property (IP) violations and Chinese government subsidies; monitoring the use of Hong Kong to circumvent U.S. export controls; tracking the presence of Chinese companies in U.S. capital markets; and strengthening American competitiveness with investments in science and technology, global infrastructure development, and digital connectivity and cybersecurity partnerships.

Fourteen amendments were considered by the Committee, with a handful of others being tabled due to jurisdictional challenges, potential blue slip issues, or general prioritization. Amendments that passed include Sen. Jeanne Shaheen’s (D-NH) amendment to expand U.S. export promotion efforts to boost exports to Africa and Latin America by 200 percent in 10 years; Sen. Ed Markey’s (D-MA) amendment to require the Departments of Defense and State to develop a Climate Resilience Strategy for the Indo-Pacific; Sen. Jeff Merkley’s (D-OR) amendment establishing a five-year China Censorship Monitor Action Group; Sen. Ben Cardin’s (D-MD) amendment to remove the sunset on Global Magnitsky Sanctions; Sen. Markey’s amendment to require the State Department to issue a report on nuclear cooperation between China and Saudi Arabia; and Sen. Markey’s amendment requiring the State Department to begin negotiations on creating a parliamentary working group for legislators in the U.S., Australia, Japan and India.

Senate Committee on Banking, Housing, and Urban Affairs

On Thursday, May 13, Senate Committee on Banking, Housing and Urban Affairs Chairman Sherrod Brown (D-OH) and Ranking Member Pat Toomey (R-PA) announced the Meeting the China Challenge Act of 2021. The legislation is written as an amendment to the Endless Frontier Act. A one-pager released by the Committee leaders can be found [here](#).

The senators aim to address the realms of national security and financial services, with a particular focus on intensifying sanctions. Sanctions in the Brown-Toomey Amendment include provisions urging bolstered use of existing sanctions as well as new mandatory sanctions to combat cyber-attacks and theft of trade secrets and IP.

The legislation would also produce new reporting requirements, including: a review of export controls on items with critical capabilities that enable human rights abuses; a report on domestic shortfalls of industrial resources, materials, and critical technology items; reports on U.S. exposure to the Chinese government’s financial system; reports on Chinese state-owned enterprises; reports on China’s development of alternative cross-border payment systems and financial messaging services; and reports on investment reciprocity between the U.S. and China.

Additionally, the Brown-Toomey Amendment would establish an interagency task force to address Chinese market manipulation in the U.S.

Senate Committee on Finance

The Senate Finance Committee has not yet released its proposal, but Chairman Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) each highlighted several priorities in a hearing on April 22. Note: The Administration may have concerns about the direction Senate Finance is headed, so the policies outlined below may not be offered.

In his [opening statement](#), Chairman Wyden emphasized “Democrats and Republicans [on the Committee] are working on new legislation that will take concrete steps to boost this country’s competitiveness and level the playing field for American workers and businesses.” He listed trade enforcement and oversight, forced labor, counterfeit goods, supply chain security – particularly for semiconductors and medical products – and censorship as “issues that are front and center for this Committee.”

Ranking Member Crapo offered a similar list in his [opening statement](#). He focused heavily on tariffs, stating: “We need to cut tariffs on inputs that support American manufacturing, or on goods consumed by the American consumer, especially middle- and low-income families. We can achieve that through programs like the Miscellaneous Tariff Bill, and through thoughtful application of the Section 301 tariffs on China.” Additionally, Crapo advocated for reauthorization of the Generalized System of Preferences (GSP) program, strong IP protections, addressing censorship, and combating human rights abuses. Finally, he expressed support for new trade agreements, including at the World Trade Organization (WTO).

A full summary of the hearing can be found [here](#).

Senate Committee on Homeland Security and Governmental Affairs

On May 12, the Senate Homeland Security and Governmental Affairs Committee held a markup of several bills focused on U.S.-China competition. The bills primarily focused on domestic manufacturing, protecting IP, securing technology and enhancing cybersecurity.

One of the bills passed was the Safeguarding American Innovation Act ([S. 1351](#)), bipartisan legislation to help keep American taxpayer-funded research and IP from being stolen by foreign governments. Ranking Member Rob Portman (R-OH) emphasized he would not support the Endless Frontier Act without this measure, stating it would be a “grave mistake” to spend significant taxpayer funding without protecting the resulting innovation, IP and inventions. Sens. Kyrsten Sinema (D-AZ) and Alex Padilla (D-CA) were the only opposing votes recorded.

The Committee also considered multiple bills focused on “Buy America” provisions and bolstering domestic manufacturing. The Committee passed measures to apply Buy America rules to all taxpayer funded infrastructure and public works projects with an emphasis on iron, steel, and manufactured products; advance American artificial intelligence; bolster federal procurement of personal protective equipment (PPE); and ban federal procurement of unmanned aircraft systems (UAS) made in China.

Senate Health, Education, Labor, and Pensions Committee

The HELP Committee released a draft amendment that would address national security risks in biomedical research. We anticipate this language will be incorporated in either the substitute or on the floor as an amendment.

Text can be found [here](#).

OUTSTANDING ISSUES

Davis-Bacon

During consideration of the Endless Frontier Act, Sen. Gary Peters (D-MI) offered an amendment to address the global shortage of semiconductor technology. Sen. Peters asserted the need for a solution to re-shore domestic manufacturing and ensure American workers are making chips, especially chips related to the auto industry. He explained this amendment would make an addition to the Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America Act to create an additional incentive program to support mature semiconductor technology production. Sen. Peters asserted Congress must ensure continued domestic production of semiconductors, so the amendment strengthens the CHIPS Act without

undermining its ability to promote reshoring of advanced semiconductors. Sen. Peters' amendment included a provision that would apply Davis-Bacon wage requirements to some of the CHIPS Act funding. Nearly every Republican on the Commerce Committee expressed strong opposition to the inclusion of Davis-Bacon.

Sen. Young emphasized the inclusion of the Davis-Bacon would violate the agreement made in the CHIPS Act in last year's NDAA. Ranking Member Roger Wicker (R-MS) urged a no vote. He expressed hope for agreement before going to the floor regarding the CHIPS Act as a whole, noting Sen. Cornyn and others are working towards that objective.

In a surprise to many, Senator Blunt voted with the Democrats and the amendment passed. We expect this issue will be a significant source of controversy going forward.

Forced Labor

The Senate Committees on Finance and Foreign Relations have both indicated their desire to include provisions related to forced labor in the upcoming China package. The SFRC's Strategic Competition Act would impose sanctions on forced labor and other human rights abuses occurring in China's Xinjiang Uygur Autonomous Region (XUAR). On March 18, the Senate Finance Committee even held a full committee hearing solely on the issue of forced labor, where Members focused largely on products from the XUAR including cotton, tomatoes and solar-grade silicon. Silicon from Xinjiang was also raised during the more recent Senate Finance Committee hearing on U.S.-China trade. The situation in the XUAR has received a lot of attention from both sides of the aisle and relevant measures are likely to be included in the final package.

It is possible forced labor issues will be dealt with in stand-alone legislation sponsored by Senator Rubio.

Intellectual Property

Both China bills passed out of the Senate Foreign Relations and Commerce Committees include measures to strengthen protections against intellectual property theft. The Endless Frontier Act prohibits all intellectual property developed through the NSF or in programs funded by the bill from being transferred to any "foreign entity of concern." The legislation also requires the new tech directorate to establish an initiative with higher education institutions to support the protection of intellectual property.

The Strategic Competition Act proposes the publication of an intellectual property violators list. This list will identify Chinese-owned firms determined to have benefited from intellectual property theft from a U.S. economic sector or benefitted from an act or government policy of technology transfer of U.S. intellectual property. The list will include entities that have violated U.S. laws protecting intellectual property rights, as found by a U.S. court, and can also be based on credible information provided to the Committee on Foreign Investment in the United States (CFIUS) describing coercive conduct or theft of intellectual property.

Numerous members have discussed significantly strengthening provisions to counter Chinese theft of intellectual property. While the Senate Judiciary Committee will not formally have a negotiated, bipartisan piece of the China bill, look for Senators Cornyn and Graham, and perhaps others, to introduce amendments in this area.

Sanctions

A range of sanctions have been proposed as the Senate Committees work to mark up their bills. The Banking Committee has proposed intensifying existing sanctions as well as imposing new sanctions to combat IP theft and cyberattacks. As mentioned above, the Foreign Relations Committee is looking to remove the sunset on the Global Magnitsky Human Rights Accountability Act, which would allow the President to impose sanctions on entities involved in human rights abuses such as those occurring in the XUAR. During the markup of the SFRC bill, there was significant interest in strengthening mandatory sanctions. However, Chairman Menendez was concerned including these provisions would subject the bill to a "blue slip" from the House. This issue may come up again.

USA Telecom Act Funding

We expect funding for the USA Telecommunications Act will be added to the legislation at some point during the process. The Act establishes a program through which the Department of Commerce shall award grants to support the deployment and use of Open RAN (O-RAN) 5G networks throughout the United States. The authorizing language in the Act was passed and signed into law as part of the Fiscal Year 2021 National Defense Authorization Act (NDAA). However, funding for these grant programs has yet to be appropriated. We expect this funding to be included in the substitute amendment when the China competition bill reaches the Senate floor. The specific funding for O-RAN projects, which is officially called the Public Wireless Supply Chain Innovation Fund, will be appropriated at the higher \$1.5 billion level (the original USA Telecom amount was \$750 million). The funding that would bolster U.S. participation in O-RAN-related standards organizations will likely be combined with similar programs in the CHIPS Act in order to improve efficiency of the programs.