

## **China Legislative Package**

### **U.S. Innovation and Strategic Competition Act of 2021**

#### **Executive Summary**

China remains a top political issue in Washington and a rare opportunity for bipartisanship in the Senate. As Democrats and Republicans continue to negotiate over a deal on infrastructure, Congress has been working on wide-ranging legislation to address China and U.S. competitiveness called the *U.S. Innovation and Strategic Competition Act of 2021*. The package so far is comprised of several bills that deal with different aspects of the U.S.-China relationship, including R&D investment, sanctions, export controls, human rights, trade, and supply chains (more below). Other provisions include \$52 billion in CHIPS funding to bolster domestic semiconductor manufacturing and \$1.5 billion for the Department of Commerce to invest in open RAN 5G alternatives to Huawei and ZTE in the U.S. The Senate began floor consideration last week and is aiming to pass legislation by the end of this week, while the House of Representatives has not yet begun a similar effort. The politics and process for the legislation remain complex as potentially impactful amendments could be included with minimal debate, the absence of a hard deadline for passage, growing Republican pushback in the House, and other congressional priorities like infrastructure competing for floor time over the summer make final passage unlikely before Q3. This memo summarizes the state of play, key provisions, and amendments to watch for this week.

#### **State of Play**

The Senate has been working on China legislation since late March and began floor consideration last week. Despite attracting some criticism from Republicans about the scope of the package, the legislation has generally garnered bipartisan support in the upper chamber as it was written with Republican input. A substitute amendment with support from both Majority Leader Schumer (D-NY) and Minority Leader McConnell (R-KY) is now serving as the base text to be amended and incorporates the *Endless Frontier Act*, the semiconductor and 5G related provisions above, and the various committee products from the Foreign Relations, Banking, Homeland Security, HELP, Judiciary, and Appropriations Committees. Over 400 amendments have been filed so far in an open amendment process and once they have been voted on, the Senate will vote on the legislation as amended likely later this week or when the Senate returns after Memorial Day.

The China legislation is currently a Senate-only exercise with no signals that the House of Representatives has begun a similar comprehensive effort, though there have been limited committee hearings on aspects of the Senate package. We believe the House is unlikely to pass whatever legislative product comes out of the Senate “as is,” though it is unclear how the bill text will be put together or whether it will be a committee- or leadership-driven process. The Republican Study Committee has already come out publicly against the *Endless Frontier Act*, signaling opposition from the largest caucus of House Republicans on the underlying vehicle for the legislation. A House package may include significant changes from the Senate product so any differences between the two will need to be reconciled in a conference committee and voted on again by each chamber before it can be sent to President Biden’s desk and passed into law.

## Major Provisions So Far

### Senate Commerce Committee (*Endless Frontier Act*)

- Summary: This bill has been the underlying vehicle for the China legislation and led by Senators Schumer (D-NY) and Young (R-IN). It expands the National Science Foundation through a new arm dedicated to advancing select technologies, provides \$100 billion in funding to universities and research institutions for R&D, and establishes regional technology hubs. This has been included in the substitute amendment.

### Senate Banking Committee (*Meeting the China Challenge Act*)

- Summary: The Brown-Toomey amendment was crafted by the lead Democrat and Republican on the committee and did not go through a markup. This amendment includes provisions relating to sanctions, export controls, an interagency task force to address Chinese market manipulation in the U.S., and ten new reports to Congress on various topics like the U.S. exposure to China's financial system and Chinese state-owned enterprises. This has been included in the substitute amendment.
- The amendment provides the President with new authority under IEEPA to impose property- and visa-blocking sanctions on individuals as well as other restrictions and export controls on entities that are involved in cyberattacks or the theft of U.S. trade secrets on behalf of China. These entity restrictions include a ban on U.S. financial institutions from making loans over \$10 million to the sanctioned entity and prohibiting U.S. persons from investing in debt or equity instruments of the entity, among others.
- The amendment only has limited provisions dealing with CFIUS and FIRRMA, though amendments could still be offered on the Senate floor that deal with these or other issues that are of greatest concern for private equity.

### Senate Foreign Relations Committee (*Strategic Competition Act*)

- Summary: This is a wide-ranging bill from Chair Menendez (D-NJ) and Ranking Member Risch (R-ID) that focuses on international and diplomatic efforts to compete with China, such as security assistance targeted to the Indo-Pacific and asserting the U.S.'s position on human rights related issues like Hong Kong and Xinjiang. This has been included in the substitute amendment.
- The *Strategic Competition Act* amends the *Uyghur Human Rights Policy Act of 2020* to include forced labor and other human rights violations in Xinjiang as justifications for a "foreign person," including Chinese government officials, being sanctioned.

### Senate Homeland Security and Government Affairs Committee

- Summary: Senate HSGAC's portion of the package deals with securing networks and supply chains from cyberattacks, protecting American R&D, investing in artificial intelligence, upskilling the federal workforce, and "Buy American" provisions. This has been included in the substitute amendment.

### Senate Finance Committee

- Summary: Chair Wyden (D-OR) and Ranking Member Crapo (R-ID) were expected to release a bipartisan amendment representing the Senate Finance Committee's work product for inclusion in the China package. At a late hour, Democrat leadership scuttled the scope of the amendment and thus its bipartisan support, so it was not included in the substitute

amendment. At present, we anticipate a Wyden-only proposal on some Finance Committee items, and possibly a scattershot amendment process on additional trade provisions.

- Most notably, we expect Senators Casey (D-PA) and Cornyn (R-TX) to offer an amendment that would establish a new multi-agency committee separate from CFIUS to review and potentially ban outbound investment transactions to certain countries based on supply chain concerns – more below.

### **Key Amendments to Watch**

#### Casey Amendment 1853

Senators Casey (D-PA) and Cornyn (R-TX) have been working on an amendment that would establish a new multi-agency committee separate from CFIUS to screen and potentially prohibit outbound investment transactions to certain countries that would threaten national critical capabilities. The proposal stems from concerns by Senators in both parties that U.S. companies and investors are financing companies and technologies in countries such as China that threaten U.S. national security, health and human rights interests. So far, it appears that key members of the Senate Finance Committee, which would likely have jurisdiction over the multi-agency committee, have not indicated support for the Casey-Cornyn proposal. It remains unclear if there would be sufficient support in the Senate for the amendment to pass.

#### Crapo Amendment 1562

After Senators Wyden (D-OR) and Crapo (R-ID) were unable to include a bipartisan agreement in the substitute amendment to the package, Senator Crapo filed two amendments – one on waivers to the TRIPS Agreement and another called the *Trade Act of 2021*, which includes wide-ranging provisions such as reauthorizing the Miscellaneous Tariff Bill and Generalized System of Preferences, preventing the importation of goods made with forced labor, and providing enhanced trade enforcement tools to USTR, among others.

#### Tuberville Amendment 1572

The amendment from Senator Tuberville (R-AL) would prohibit fiduciaries subject to ERISA from investing in securities of any company or business operation based in China and require divestment of such assets within one year.