

Bill Designed to Sharpen CFIUS to Better Undercut China's Momentum

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Democratic and Republican leaders of the Senate Foreign Relations Committee on April 8, 2021 proposed the [Strategic Competition Action Act of 2021 \(S.B. 687\)](#), advancing a more hardline effort to put a check on China's steady rise as global economic and militaristic powerhouse of the authoritarian variety. A separate measure is winding its way through the Senate to bolster the U.S. semiconductor industry, also an effort to improve America's competitive position vis-à-vis China.

Sponsored by Democratic Chairman Sen. Bob Menendez and ranking Republican Sen. Jim Risch, the 280-page bill proposes a series of measures that would address the U.S.-China competitive landscape, with a mix of objectives relating to human rights, democracy, intellectual property, privacy, misinformation, and global security.

The bill proposes to:

- Impose sanctions on China for its treatment of minority Muslims.
- Support democracy in Hong Kong.
- Support an enhanced U.S. partnership with Taiwan.
- Support military investment to protect U.S. interests in the Indo-Pacific.
- Enhance monitoring of China's weapons program.
- Ensure U.S. budgetary spending to better compete with China.
- Step up the fight against China's theft of intellectual property, especially that relating to military technology.

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- Bolster scrutiny of Chinese investment in the U.S. to better protect America's national security interests.
 - Enhance scrutiny of foreign influence and espionage directed at institutions of higher education where much innovation takes place.

The objectives listed in the last three bullet points would be accomplished, the bill's sponsors hope, by expanding the authority of the Committee on Foreign Investment in the United States (CFIUS).

The U.S. has used CFIUS to block transfers of technology and large databases of personal information, bringing to center stage what was once a bit player in world affairs.

For example, the Trump administration used it via a rare CFIUS-backed executive order to unwind Beijing-based ByteDance Ltd's \$1 billion acquisition of a company that would become TikTok, the popular short-form video-sharing app. ByteDance not only had to divest TikTok but surrender all personal information that had been collected by the application.

President Trump's executive order read: "TikTok automatically captures vast swaths of information from its users, including Internet and other network activity information such as location data and browsing and search histories. This data collection threatens to allow the Chinese Communist Party access to Americans' personal and proprietary information — potentially allowing China to track the locations of Federal employees and contractors, build dossiers of personal information for blackmail, and conduct corporate espionage." The order also said China's Communist Party used TikTok to "spread debunked conspiracy theories about the origins" of COVID-19.

S.B. 687 would add the Secretary of Education to CFIUS to put more eyes on China's involvement in U.S. higher education.

In addition to unwinding the ByteDance/TikTok deal, CFIUS has been used in the past few years to:

• Block -- via another presidential executive order -- computer chip giant Broadcom from acquiring competing chip giant Qualcomm. CFIUS determined the deal to be a national security risk. Both companies are U.S.-based firms with strong business ties and relationships with China, but Broadcom's connections were cited in the action. Formerly known as Avago, Broadcom was headquartered in Singapore with most of its employees and operations in the U.S. It's CEO, Tan Hock, a famously aggressive Malaysian Chinese business executive, appeared with President Trump in 2017 to announce plans to redomicile Broadcom from Singapore to the U.S. CFIUS explained that the decision to block the deal was all about which will be the dominant nation when it comes to 5G – the U.S. or China – and how important that is to U.S. security. Broadcom moved the company to California three years ago, in April 2018, shortly after its proposed \$117 billion deal to buy Qualcomm was called off.

- Block ad-tech company AppLovin's \$1.4 billion sale to a Chinese private equity firm.
- Block Chinese gaming company Beijing Kunlun Tech Co. Ltd., owners of the California-based

gay-dating app, Grindr, from executing an IPO. Beijing Kunlun Tech had to sell Grindr after being ordered by CFIUS to divest.

- Order the divestiture of China's iCarbonX's majority stake in the health care services company PatientsLikeMe.
- Shut down China-based Ant Financial's proposed \$1.2 billion acquisition of MoneyGram International.
- Block Chinese-backed private equity firm Canyon Bridge's planned \$1.3 billion acquisition of U.S.-based chipmaker Lattice.
- Pressure Chinese conglomerate HNA Group to drop its bid for a majority share of investment firm SkyBridge Capital.

Chinese Foreign Ministry spokesman Zhao Lijian "resolutely opposes" the bill and called for senators to do more to nurture the stable development of China-U.S. relations, Reuters reported.

Taiwan Foreign Ministry spokeswoman Joanne Ou, the news service added, expressed thanks for U.S. support of her island nation which mainland China continues to claim as its own.

The bill is undergoing markup. A hearing to discuss amendments and vote was set for today, April 14.

Bill calls for strategic plan.

The text in S.B. 687 relating to CFIUS calls for an interagency working group. Within six months the group is to present to CFIUS and the House Foreign Affairs Committee details on the following:

“(i) a strategy to promote United States leadership at international standards-setting bodies for equipment, systems, software, and virtually-defined networks relevant to 5th and future generation mobile telecommunications systems and infrastructure, taking into account the different processes followed by the various international standard-setting bodies;

“(ii) a strategy for diplomatic engagement with allies and partners to share security risk information and findings pertaining to equipment that supports or is used in 5th and future generations mobile telecommunications systems and infrastructure and cooperation on mitigating such risks;

“(iii) a discussion of China's presence and activities at international standards-setting bodies relevant to 5th and future generation mobile telecommunications systems and infrastructure, including information on the differences in the scope and scale of China's engagement at such bodies compared to engagement by the United States or its allies and partners and the security risks raised by Chinese proposals in such standards-setting bodies; and

“(iv) a strategy for engagement with private sector communications and information service

providers, equipment developers, academia, federally funded research and development centers, and other private-sector stakeholders to propose and develop secure standards for equipment, systems, software, and virtually-defined networks that support 5th and future generation mobile telecommunications systems and infrastructure.”

Boosting the U.S. Semiconductor Industry

Also scheduled for today, the Senate Commerce Committee will consider another bipartisan measure, [S.B. 3832, the "Endless Frontier Act,"](#) introduced by Sen. Chuck Schumer nearly a year ago to bolster the U.S. semiconductor industry. Schumer’s co-sponsor is Republican Senator Todd Young, with support of three senators from each party.

This bill would redesignate the National Science Foundation as the National Science and Technology Foundation and establish a Directorate for Technology within the Foundation.

The goals of the measure are to: “(1) strengthen U.S. leadership in critical technologies through fundamental research in key technology focus areas, such as artificial intelligence, high-performance computing, and advanced manufacturing; (2) enhance U.S. competitiveness in the focus areas by improving education in such areas and attracting more students to such areas; and (3) foster the impact of federally funded research and development through accelerated translation of advances in the focus areas into processes and products that help achieve national goals.”

The Department of Commerce would carry out a program to “designate and support eligible consortia as regional technology hubs that facilitate activities that (1) enable U.S. leadership in a key technology focus area, and (2) support regional economic development that diffuses innovation capacity around the United States.”

The Office of Science and Technology Policy, Commerce, the National Security Council, and other relevant federal agencies would “(1) review the national security strategy and programs and resources pertaining to U.S. national competitiveness in science, research, and innovation to support such strategy; and (2) develop a strategy for the federal government to improve such competitiveness to support the national security strategy.”

Reuters reported that the bill would come with \$110 billion in funding over five years. Schumer wants a similar level of funding for investment to boost U.S. semiconductor production, Reuters wrote, citing congressional aides.

Look for further comment on these important measures as they wind their way through Washington.

Edited by Tom Hagy for MoginRubin LLP.

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National Law Review, Volume XI, Number 168

Source URL: <https://natlawreview.com/article/bill-designed-to-sharpen-cfius-to-better-undercut-china-s-momentum>