

ALERT

House Select Committee on the CCP Issues Report and 150 Policy Recommendations Affecting Trade, Telecom, Government Contracts and Investment

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Last week, the House Select Committee on the Strategic Competition between the United States and the Chinese Communist Party (Select Committee) issued a comprehensive new bipartisan report, including almost 150 policy recommendations outlining a “strategy to fundamentally reset” the U.S. – China relationship. These recommendations, if pursued in legislation or by the Executive branch through policy changes, would impact tech innovators, cloud and telecom providers, federal contractors, and many other parts of the U.S. economy.

The 53-page report, titled “Reset, Prevent, Build: A Strategy to Win America’s Economic Competition with the Chinese Communist Party,” was issued by committee Chairman Mike Gallagher (R-WI) and Ranking Member Raja Krishnamoorthi (D-IL). The three pillars of the report are to 1) **reset** the terms of the U.S. economic relationship with China, 2) **prevent** the flow of U.S. capital and technology to China, and 3) **build** technological leadership and economic resilience through new investment. Each pillar includes “Key Findings” along with broad and specific policy recommendations. Wiley released a prior analysis of the report’s recommendations about the Committee on Foreign Investment in the United States (CFIUS). Here, we dig into other notable provisions affecting trade, telecommunications, and federal procurement.

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Practice Areas

Committee on Foreign Investment in the United States (CFIUS)

Government Contracts

International Trade

National Security

The mix of nearly 150 recommendations includes endorsements of pending legislation and new initiatives. It also makes recommendations that relate to ongoing work across the Executive branch. The Select Committee has no jurisdiction over congressional legislation, but its report could influence legislative or regulatory initiatives and proposals involving China in 2024. Given bipartisan interest in China issues, many anticipate that there will be election-year efforts in Washington to pursue and potentially enact additional actions with respect to China.

By subject area, notable report recommendations include:

Trade:

- Remove permanent normal trade relations (PNTR) with China through introduction of new higher tariff rates phased in over a short amount of time.
- Renew the China “safeguard” mechanism, Section 421, which was in place during China’s first 12 years of WTO membership, to provide relief from injurious surges of Chinese imports. Section 421 expired in 2013.
- Enact the Leveling the Playing Field 2.0 Act to update U.S. trade remedy laws.
- Impose import duties on foundational (legacy) semiconductors from China.

Tech and Telecom:

- Require the Commerce Department to establish a “cloud computing” end-use rule to limit U.S. technology above a certain computing threshold, and require cloud computing firms to adopt “know-your-customer” requirements.
- Require the Commerce Department to determine whether light detecting and ranging technologies (LiDAR) manufactured in foreign adversary countries are a risk to U.S. national security.
- Fund “rip and replace” programs for Huawei, ZTE, and other “high-risk foreign adversary-controlled telecom vendors.”
- Expand the FCC’s “Covered List” of telecom equipment and services.

- Pursue legislation like the NETWORKS Act (as introduced in the 116th Congress as H.R. 6235) to “place Huawei, ZTE, and other high-risk foreign adversary-controlled telecom vendors on the Specially Designated Nationals and Blocked Persons List.”
- Enact the FACT Act (H.R. 9236), which “would require the Federal Communications Commission (FCC) to publish a list of companies who hold FCC authorizations, licenses, or other grants of authority with over 10 percent or more ownership by foreign adversaries.”
- Require the Executive branch to establish general controls on critical and emerging technology to foreign adversaries, to include but not limited to artificial intelligence, quantum technologies, biotechnology, advanced materials, optics and sensing, advanced energy research, and space-based technologies.
- Require the Commerce Department to adopt “country-wide” controls for specific technologies going to foreign adversaries, regardless of end-use or end-user, and establish a “policy of denial” for export licenses for items with “National Security” (NS) controls.

Foreign Investment:

- Enact legislation to expand the definition of “critical technology” in the Foreign Investment Risk Review Modernization Act (FIRRMA).
- Expand the list of sensitive sites under CFIUS jurisdiction to include all military facilities, acknowledged intelligence sites, national laboratories, defense-funded university-affiliated research centers, and critical infrastructure sites; and
- Grant CFIUS jurisdiction over joint ventures involving foreign adversary entities as well as greenfield investments from the same involving critical technologies, critical infrastructure, or sensitive personal data.

Government Contracts:

- Prohibit government funds from being used to reimburse entities for the use or purchase of biotechnology machines, products, and services from BGI Group and its subsidiaries.
- Enact the American Security Drone Act or the Securing Our Airspace from Reconnaissance (SOAR) Act to restrict federal agencies from procuring drones manufactured in foreign adversary countries.
- Enact comprehensive reform to federal procurement to prevent federal agencies from acquiring directly from or contracting with companies that use technology produced in foreign adversary countries or by foreign adversary companies in sectors such as semiconductors, drones, and AI technology.
- Enable the Department of Defense and other agencies to fund early-stage, emerging technologies with national security applications, with requirements for production in the U.S. or in closely allied nations.
- Establish a “Buy America” pilot program requiring Medicare, Medicaid, the U.S. Department of Veterans Affairs, the U.S. Department of Defense, and other federally funded health systems to purchase their pharmaceuticals and basic medical devices and goods only from U.S. production facilities or from

allied or like-minded trading partners.

Looking Ahead

The Report states plainly the Committee's concerns about China's increased "market position in the United States in critical areas, including microelectronics, software platforms, and advanced networks (such as 5G)." It observes that "[t]he widespread use of PRC-developed technology serves the CCP's goal of dominating advanced technology sectors to, among other aims, create severe dependence by the United States on both PRC technology and also PRC components for that technology." This view animates the report and the other activities of the Committee.

While legislation would be needed to act on many of the recommendations, we expect many parts of government to press ahead on scrutiny of supply chains and commercial relationships with countries and companies of concern. Some of the proposals are already underway; the Commerce Department, for example, is considering cloud computing "know your customer" requirements. And the Committee has been active in identifying areas of concern for regulators, for example, sending letters to the FCC about two companies, to DoD about a drone manufacturer, and to the Department of Veterans Affairs about medical product supply chain concerns. The Committee also has been seeking information directly from companies, investment funds, and other organizations about which members have concerns. The Select Committee's letters can all be found here.

We have advised many clients and industries for years on the shifting regulatory landscape, including restrictions at the Bureau of Industry and Security, the FCC, and those that make it into each year's National Defense Authorization Act. This is a dynamic area with substantial activity.

Wiley has industry-leading expertise in the development, analysis, and enforcement of laws and policies affecting the U.S.-China relationship with regard to telecom, trade, government contracts, and foreign investment more broadly. We have helped shape rules at the Department of Commerce and the Federal Communications Commission. We also have assisted in responding to agency and congressional inquiries about these topics. If you have any questions about these issues, please contact one of the authors.