

House Select Committee on the CCP Releases Report Proposing Changes to CFIUS

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On December 12, 2023, the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party (the “Committee”), led by Chairman Mike Gallagher (WI), issued a wide-ranging report with numerous recommendations for addressing ongoing challenges in the U.S. economic relationship with the People’s Republic of China (PRC). Regarding foreign investment, the Committee deemed the regulatory approach of the Committee on Foreign Investment in the United States (CFIUS) insufficient to address the PRC’s Military-Civil Fusion and proposed several specific updates.

The report, entitled *Reset, Prevent, Build: A Strategy to Win America’s Economic Competition with the Chinese Communist Party*, reiterates legislative proposals included in a number of bills currently pending in Congress, which seek to broaden CFIUS’s powers and jurisdiction, including those related to U.S. agriculture and real estate sectors. The Committee specifically proposes making the Secretary of Agriculture a voting member of CFIUS for cases involving farmland or agriculture technology and empowering the Secretary to flag potentially problematic land purchases for CFIUS review. Momentum for these changes has grown in the wake of high-profile land purchases near U.S. military bases like the recent land acquisition by Chinese-owned Fufeng Group near Grand Forks Air Force Base in North Dakota. In addition to congressional efforts to potentially expand CFIUS’s authority to review agriculture and real estate transactions, many U.S. states are creating rules requiring reporting of agricultural purchases by foreign entities of concern.

The report provides additional specific recommendations designed to outfit CFIUS with the “legal authorities, mandates, resources, and focus necessary to address the PRC threat to U.S. technology,”

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Committee on Foreign Investment in the
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including:

- expanding the definition of “critical technologies” to include technologies that directly or indirectly enable technologies listed on the White House’s Critical and Emerging Technologies list;
- expanding 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
- granting 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.

These recommendations are aimed at addressing new and long-standing issues concerning CFIUS authorities and export controls, which were last amended with the passage of the Foreign Investment Risk Review Modernization Act and the Export Control Reform Act in 2018.

In addition to inbound investment concerns, the Committee also highlighted a need to “stem the flow of U.S. capital and technology fueling the PRC’s military modernization and human rights abuses.” To that end, among other recommendations, the report calls on Congress to “[b]uild upon the Biden Administration’s Executive Order to codify restrictions on U.S. investment in areas related to the PRC’s critical and emerging technologies, military capabilities, and human rights abuses.” The report further states that “[o]utbound rules should restrict investment on a sectoral basis, including many of the technology sectors identified as critical by the Office of Science and Technology Policy and many of those the [Chinese Communist Party] has openly declared its intent to dominate in the 14th Five-Year Plan.” We previously wrote about the Biden Administration’s August 2023 outbound investment Executive Order [here](#).

We will continue to track legislative and regulatory developments concerning CFIUS authorities and the emerging outbound investment program as they develop. Wiley’s National Security and International Trade practices have represented clients before CFIUS for decades, and we have worked with Congress and executive agencies on legal and policy issues affecting investors and companies across the private sector. We welcome you to reach out to any of our professionals for additional information or guidance.