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China Trade Policy

China Competition Bill: New Trade and Export Controls?

Executive Summary: A fight over trade provisions could tank legislation pending in Congress designed to bolster U.S. competitiveness vis-à-vis China.



Issue

Legislation to bolster U.S. competitiveness is a top priority of Senate Majority Chuck Schumer (D-NY) and is one of the few items that Congress has the chance to pass before the impending midterm elections. The passage of the pending China competition bill—

[“The America COMPETES Act”](#)— is threatened however by the gulf between the House and Senate versions when it comes to setting U.S. trade policy.



Impact

China legislation typically attracts bipartisan support in Congress and the bill's provisions are no different when it comes to support for increased funding for domestic semiconductor manufacturing, research & development, and most measures to improve supply chain resilience. However, the Senate trade title would repeal some Trump-era tariffs on Chinese products while the House version is more protectionist with respect to China and global business.

While neither of the House or Senate bills include an outright expansion of the U.S. export control regime, both seek to strengthen U.S. and international coordination on export controls and establish further verifications that technology is not sent to companies or countries connected with human rights abuses. The final bill, if the conference process does not jettison the trade title, will likely include the creation of a new *“Committee on National Critical Capabilities”* to review outbound investment that would shift so-determined *“national critical capabilities”* to a foreign country.



Next Steps

With lawmakers back in Washington, there should be fresh indicators as to the future of the bill in short order. [The trade title remains the most significant area to watch.](#) While it was not originally a central focus of the legislation, it is now likely to be determinative of the bill's future. Some lawmakers have indicated that it must be included to secure their vote, while others believe that the semiconductor and competitiveness components should be advanced at the expense of the rest of the bill if divisions over the trade title cannot be reconciled.

More Information, Below

Export Controls - Key Legislative Language

In terms of export controls, both bills include similar policy mechanisms. The most significant shared text is designed to strengthen *The Export Control Act* via coordination with Europe:

“The President should actively engage the European Union on the implementation of the Export Control Reform Act regulations and to better harmonize United States and European Union policies with respect to export controls...”

“The United States should explore the value of establishing a body akin to the Coordinating Committee for Multilateral Export Controls (CoCom) that would specifically coordinate United States and European Union export control policies with respect to limiting exports of sensitive technologies to the People’s Republic of China.”

CoCom was established immediately following World War II and functioned during the Cold War to put economic pressure on the Council for Mutual Economic Assistance, an economic organization led by the Soviet Union.

Establishing a body similar to CoCom would represent further efforts to encircle China through international cooperation and coalition building. As with most multilateral organizations, such an entity would likely require near unanimity and be slow-moving but could be effective in controlling trade flows of sensitive technologies.

In addition to coordination, there is language in both bills that encourages the use of coordinated export controls to further protect internationally recognized human rights. This language can be found in “*Subtitle B – Export Control Review and Other Matters*” in both bills.

Trade Policy – Key Provisions

The trade policy component of these bills is the most contentious.

A main point of disagreement is related to tariffs on Chinese-made goods and the U.S. exclusion process. The Senate version, crafted by Senate Finance Committee Chairman Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) would provide an additional 2,200 tariff exemptions and re-open the process for other companies to apply for more

exemptions. The House version of the legislation does not include these provisions and would actually strengthen the existing China tariff regime on China.

House lawmakers are seeking to close what some have dubbed the “*Amazon Loophole*” which allows overseas suppliers of e-commerce companies to ship directly to U.S. customers while avoiding tariffs, taxes, fees, or U.S. inspections. Without inspections, it becomes impossible for the United States to ensure that goods are not made with slave labor, or are otherwise not counterfeit or hazardous.

The House and Senate bills also contain different versions of the Generalized System of Preferences (GSP) tariff system, which lowers tariffs levels for developing countries to help build domestic industry. While the Senate version would not include significant labor or environmental conditions for preferential tariff treatment, the House version does include pre-conditions which are likely to be a pre-requisite of any future trade legislation requiring the support of House Democrats.

Yet another trade difference between the chambers is the treatment of Miscellaneous Tariff Bills (MTBs), which allow U.S. manufacturers to ask the International Trade Commission to exempt a product from U.S. tariffs if the specific input is not made in the United States. The House legislation excludes component products and finished products from consideration. The Senate version, however, allows many component and finished products to escape tariffs, while the House version excludes them specifically.

Finally, the Senate version contains a Section 301 process under *The Trade Act of 1974* which would require the United States Trade Representative (USTR) to publish an annual report on global digital governance policies. The USTR would be tasked with identifying foreign trading partners that “*engage in acts, policies, or practices that disrupt digital trade, including coerced censorship and other e-commerce or digital prices that have the effect of promoting censorship or unlawful data access that disadvantages U.S. persons.*” Opponents believe that this would provide the U.S. government with too much power in protecting U.S. “*Big Tech*” firms and defend monopolistic policies abroad, while jeopardizing workers’ rights. This is a priority of Wyden’s however.

The divergence between the House and Senate trade titles threatens to derail to conference committee. While it would be easy in theory to drop the trade title and pass the semiconductor and research components of the legislation, doing so could mean that lawmakers lose their best chance of passing meaningful trade legislation this Congress. This is an anathema to many of the lawmakers whose offices are participating in the conference.

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