

115TH CONGRESS
2D SESSION

S. 3361

To safeguard certain technology and intellectual property in the United States from export to or influence by the People’s Republic of China and to protect United States industry from unfair competition by the People’s Republic of China, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 21, 2018

Mr. RUBIO (for himself and Ms. BALDWIN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To safeguard certain technology and intellectual property in the United States from export to or influence by the People’s Republic of China and to protect United States industry from unfair competition by the People’s Republic of China, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fair Trade with China Enforcement Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Sense of Congress.
 Sec. 3. Statement of policy.

**TITLE I—SAFEGUARDS AGAINST FOREIGN INFLUENCE IN
 UNITED STATES NATIONAL AND ECONOMIC SECURITY BY THE
 PEOPLE’S REPUBLIC OF CHINA**

- Sec. 101. Establishment of list of certain products receiving support from Government of People’s Republic of China pursuant to Made in China 2025 policy.
 Sec. 102. Prohibition on export to People’s Republic of China of national security sensitive technology and intellectual property.
 Sec. 103. Imposition of shareholder cap on Chinese investors in United States corporations.
 Sec. 104. Prohibition on use of certain telecommunications services or equipment.

**TITLE II—FAIR TRADE ENFORCEMENT ACTIONS WITH RESPECT
 TO THE PEOPLE’S REPUBLIC OF CHINA**

- Sec. 201. Countervailing duties with respect to certain industries in the People’s Republic of China.
 Sec. 202. Repeal of reduced withholding rates for residents of China.
 Sec. 203. Taxation of obligations of the United States held by the Government of the People’s Republic of China.

1 SEC. 2. SENSE OF CONGRESS.

2 It is the Sense of Congress that—

3 (1) since joining the World Trade Organization
 4 in 2001, the People’s Republic of China has offered
 5 the United States a contradictory bargain, which
 6 promised openness in the global trade order, but
 7 through state mercantilism delivered a severely im-
 8 balanced trading relationship;

9 (2) it was erroneous for the United States Gov-
 10 ernment to have ignored the contradictions and risks
 11 of free trade with the People’s Republic of China on
 12 the assumption that the People’s Republic of China
 13 would liberalize economically and politically;

1 (3) benefiting enormously from a more open
2 global economy to drive its own industries, the Gov-
3 ernment of the People’s Republic of China and the
4 Communist Party of the People’s Republic of China
5 have only tightened their grip on power, brutally
6 suppressing dissent at home and pursuing policies
7 abroad that are a far cry from being a responsible
8 global stakeholder;

9 (4) malevolent economic behavior by persons in
10 the People’s Republic of China is made clear by the
11 theft of intellectual property from the United States,
12 as Chinese theft of United States intellectual prop-
13 erty alone costs the United States nearly
14 \$600,000,000,000 annually, according to the United
15 States Trade Representative;

16 (5) stealing United States intellectual property
17 advances the “Made in China 2025” initiative of the
18 Government of the People’s Republic of China to
19 eventually dominate global exports in 10 critical sec-
20 tors, namely artificial intelligence and next-genera-
21 tion information technology, robotics, new-energy ve-
22 hicles, biotechnology, energy and power generation,
23 aerospace, high-tech shipping, advanced railway, new
24 materials, and agricultural machinery, among oth-
25 ers;

1 (6) the targets of the Made in China 2025 ini-
2 tiative reveal the goal of the People’s Republic of
3 China for the near-total displacement of advanced
4 manufacturing in the United States; and

5 (7) the United States Government should act to
6 strengthen the position of the United States in its
7 policy toward the People’s Republic of China in
8 order to create a more balanced economic relation-
9 ship by safeguarding strategic assets from Chinese
10 influence, reducing Chinese involvement in the
11 United States economy, and encouraging United
12 States companies to produce domestically, instead of
13 in the People’s Republic of China.

14 **SEC. 3. STATEMENT OF POLICY.**

15 It is the policy of the United States—

16 (1) to impose restrictions on Chinese invest-
17 ment in the United States in strategic industries
18 targeted by the Made in China 2025 initiative set
19 forth by the Government of the People’s Republic of
20 China;

21 (2) to tax Chinese investment in the United
22 States due to its negative effect on the United
23 States trade deficit and wages of workers in the
24 United States;

1 (3) to increase the cost of transnational produc-
2 tion operations in the People’s Republic of China in
3 a manner consistent with the economic cost of the
4 risk of loss of unique access by the United States to
5 intellectual property, technology, and industrial base;
6 and

7 (4) to support democratization in and the
8 human rights of the people of Hong Kong, including
9 the findings and declarations set forth under section
10 2 of the United States-Hong Kong Policy Act of
11 1992 (22 U.S.C. 5701).

12 **TITLE I—SAFEGUARDS AGAINST**
13 **FOREIGN INFLUENCE IN**
14 **UNITED STATES NATIONAL**
15 **AND ECONOMIC SECURITY BY**
16 **THE PEOPLE’S REPUBLIC OF**
17 **CHINA**

18 **SEC. 101. ESTABLISHMENT OF LIST OF CERTAIN PRODUCTS**
19 **RECEIVING SUPPORT FROM GOVERNMENT**
20 **OF PEOPLE’S REPUBLIC OF CHINA PURSU-**
21 **ANT TO MADE IN CHINA 2025 POLICY.**

22 (a) IN GENERAL.—Chapter 8 of title I of the Trade
23 Act of 1974 (19 U.S.C. 2241 et seq.) is amended by add-
24 ing at the end the following:

1 **“SEC. 183. LIST OF CERTAIN PRODUCTS RECEIVING SUP-**
 2 **PORT FROM GOVERNMENT OF PEOPLE’S RE-**
 3 **PUBLIC OF CHINA.**

4 “(a) IN GENERAL.—Not later than 120 days after
 5 the date of the enactment of the Fair Trade with China
 6 Enforcement Act, and every year thereafter, the United
 7 States Trade Representative shall set forth a list of prod-
 8 ucts manufactured or produced in, or exported from, the
 9 People’s Republic of China that are determined by the
 10 Trade Representative to receive support from the Govern-
 11 ment of the People’s Republic of China pursuant to the
 12 Made in China 2025 industrial policy of that Government.

13 “(b) CRITERIA FOR LIST.—

14 “(1) IN GENERAL.—The Trade Representative
 15 shall include in the list required by subsection (a)
 16 the following products:

17 “(A) Any product specified in the following
 18 documents set forth by the Government of the
 19 People’s Republic of China:

20 “(i) Notice on Issuing Made in China
 21 2025.

22 “(ii) China Manufacturing 2025.

23 “(iii) Notice on Issuing the 13th Five-
 24 year National Strategic Emerging Indus-
 25 tries Development Plan.

1 “(iv) Guiding Opinion on Promoting
 2 International Industrial Capacity and
 3 Equipment Manufacturing Cooperation.

4 “(v) Any other document that ex-
 5 presses a national strategy or stated goal
 6 in connection with the Made in China 2025
 7 industrial policy set forth by the Govern-
 8 ment of the People’s Republic of China,
 9 the Communist Party of China, or another
 10 entity or individual capable of impacting
 11 the national strategy of the People’s Re-
 12 public of China.

13 “(B) Any product receiving support from
 14 the Government of the People’s Republic of
 15 China that has or will in the future displace net
 16 exports of like products by the United States,
 17 as determined by the Trade Representative.

18 “(2) INCLUDED PRODUCTS.—In addition to
 19 such products as the Trade Representative shall in-
 20 clude pursuant to paragraph (1) in the list required
 21 by subsection (a), the Trade Representative shall in-
 22 clude products in the following industries:

23 “(A) Civil aircraft.

24 “(B) Motor car and vehicle.

25 “(C) Advanced medical equipment.

1 “(D) Advanced construction equipment.

2 “(E) Agricultural machinery.

3 “(F) Railway equipment.

4 “(G) Diesel locomotive.

5 “(H) Moving freight.

6 “(I) Semiconductor.

7 “(J) Lithium battery manufacturing.

8 “(K) Artificial intelligence.

9 “(L) High-capacity computing.

10 “(M) Quantum computing.

11 “(N) Robotics.

12 “(O) Biotechnology.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
 14 for the Trade Act of 1974 is amended by inserting after
 15 the item relating to section 182 the following:

“Sec. 183. List of certain products receiving support from Government of People’s Republic of China.”.

16 **SEC. 102. PROHIBITION ON EXPORT TO PEOPLE’S REPUB-**
 17 **LIC OF CHINA OF NATIONAL SECURITY SEN-**
 18 **SITIVE TECHNOLOGY AND INTELLECTUAL**
 19 **PROPERTY.**

20 (a) IN GENERAL.—The Secretary of Commerce shall
 21 prohibit the export to the People’s Republic of China of
 22 any national security sensitive technology or intellectual
 23 property subject to the jurisdiction of the United States

1 or exported by any person subject to the jurisdiction of
2 the United States.

3 (b) DEFINITIONS.—In this section:

4 (1) INTELLECTUAL PROPERTY.—The term “in-
5 tellectual property” includes patents, copyrights,
6 trademarks, or trade secrets.

7 (2) NATIONAL SECURITY SENSITIVE TECH-
8 NOLOGY OR INTELLECTUAL PROPERTY.—The term
9 “national security sensitive technology or intellectual
10 property” includes the following:

11 (A) Technology or intellectual property
12 that would make a significant contribution to
13 the military potential of the People’s Republic
14 of China that would prove detrimental to the
15 national security of the United States.

16 (B) Technology or intellectual property
17 necessary to protect the economy of the United
18 States from the excessive drain of scarce mate-
19 rials and to reduce the serious inflationary im-
20 pact of demand from the People’s Republic of
21 China.

22 (C) Technology or intellectual property
23 that is a component of the production of prod-
24 ucts included in the most recent list required
25 under section 183 of the Trade Act of 1974, as

1 added by section 101(a), determined in con-
 2 sultation with the United States Trade Rep-
 3 resentative.

4 (3) TECHNOLOGY.—The term “technology” in-
 5 cludes goods or services relating to information sys-
 6 tems, Internet-based services, production-enhancing
 7 logistics, robotics, artificial intelligence, bio-
 8 technology, or computing.

9 **SEC. 103. IMPOSITION OF SHAREHOLDER CAP ON CHINESE**
 10 **INVESTORS IN UNITED STATES CORPORA-**
 11 **TIONS.**

12 Section 13(d) of the Securities Exchange Act of 1934
 13 (15 U.S.C. 78m(d)) is amended by adding at the end the
 14 following:

15 “(7)(A) In this paragraph, the term ‘covered issuer’
 16 means any issuer that produces components that may be
 17 used in the production of goods manufactured or produced
 18 in, or exported from, the People’s Republic of China and
 19 included in the most recent list required under section 183
 20 of the Trade Act of 1974, determined in consultation with
 21 the United States Trade Representative.

22 “(B) No covered issuer that is incorporated under the
 23 laws of a State, or whose principal place of business is
 24 within a State, may be majority-owned by a person whose

1 principal place of business is in the People’s Republic of
2 China.

3 “(C) The prohibition in subparagraph (B) shall apply
4 to any acquisition on or after the date of enactment of
5 this paragraph.”.

6 **SEC. 104. PROHIBITION ON USE OF CERTAIN TELE-**
7 **COMMUNICATIONS SERVICES OR EQUIP-**
8 **MENT.**

9 (a) FINDINGS.—Congress makes the following find-
10 ings:

11 (1) In its 2011 “Annual Report to Congress on
12 Military and Security Developments Involving the
13 People’s Republic of China”, the Department of De-
14 fense stated, “China’s defense industry has benefited
15 from integration with a rapidly expanding civilian
16 economy and science and technology sector, particu-
17 larly elements that have access to foreign technology.
18 Progress within individual defense sectors appears
19 linked to the relative integration of each, through
20 China’s civilian economy, into the global production
21 and R&D chain . . . Information technology compa-
22 nies in particular, including Huawei, Datang, and
23 Zhongxing, maintain close ties to the PLA.”.

24 (2) In a 2011 report titled “The National Secu-
25 rity Implications of Investments and Products from

1 the People’s Republic of China in the Telecommuni-
2 cations Sector”, the United States China Economic
3 and Security Review Commission stated that
4 “[n]ational security concerns have accompanied the
5 dramatic growth of China’s telecom sector. . . . Ad-
6 ditionally, large Chinese companies—particularly
7 those ‘national champions’ prominent in China’s
8 ‘going out’ strategy of overseas expansion—are di-
9 rectly subject to direction by the Chinese Communist
10 Party, to include support for PRC state policies and
11 goals.”.

12 (3) The Commission further stated in its report
13 that “[f]rom this point of view, the clear economic
14 benefits of foreign investment in the U.S. must be
15 weighed against the potential security concerns re-
16 lated to infrastructure components coming under the
17 control of foreign entities. This seems particularly
18 applicable in the telecommunications industry, as
19 Chinese companies continue systematically to ac-
20 quire significant holdings in prominent global and
21 U.S. telecommunications and information technology
22 companies.”.

23 (4) In its 2011 Annual Report to Congress, the
24 United States China Economic and Security Review
25 Commission stated that “[t]he extent of the state’s

1 control of the Chinese economy is difficult to quan-
2 tify . . . There is also a category of companies that,
3 though claiming to be private, are subject to state
4 influence. Such companies are often in new markets
5 with no established SOE leaders and enjoy favorable
6 government policies that support their development
7 while posing obstacles to foreign competition. Exam-
8 ples include Chinese telecoms giant Huawei and
9 such automotive companies as battery maker BYD
10 and vehicle manufacturers Geely and Chery.”.

11 (5) In the bipartisan “Investigative Report on
12 the United States National Security Issues Posed by
13 Chinese Telecommunication Companies Huawei and
14 ZTE” released in 2012 by the Permanent Select
15 Committee on Intelligence of the House of Rep-
16 resentatives, it was recommended that “U.S. govern-
17 ment systems, particularly sensitive systems, should
18 not include Huawei or ZTE equipment, including in
19 component parts. Similarly, government contrac-
20 tors—particularly those working on contracts for
21 sensitive U.S. programs—should exclude ZTE or
22 Huawei equipment in their systems.”.

23 (6) General Michael Hayden, who served as Di-
24 rector of the Central Intelligence Agency and Direc-
25 tor of the National Security Agency, stated in July

1 2013 that Huawei had “shared with the Chinese
2 state intimate and extensive knowledge of foreign
3 telecommunications systems it is involved with”.

4 (7) The Federal Bureau of Investigation, in a
5 February 2015 Counterintelligence Strategy Part-
6 nership Intelligence Note stated that, “[w]ith the ex-
7 panded use of Huawei Technologies Inc. equipment
8 and services in U.S. telecommunications service pro-
9 vider networks, the Chinese Government’s potential
10 access to U.S. business communications is dramati-
11 cally increasing. Chinese Government-supported tele-
12 communications equipment on U.S. networks may be
13 exploited through Chinese cyber activity, with Chi-
14 na’s intelligence services operating as an advanced
15 persistent threat to U.S. networks.”.

16 (8) The Federal Bureau of Investigation fur-
17 ther stated in its February 2015 counterintelligence
18 note that “China makes no secret that its cyber war-
19 fare strategy is predicated on controlling global com-
20 munications network infrastructure”.

21 (9) At a hearing before the Committee on
22 Armed Services of the House of Representatives on
23 September 30, 2015, Deputy Secretary of Defense
24 Robert Work, responding to a question about the
25 use of Huawei telecommunications equipment, stat-

1 ed, “In the Office of the Secretary of Defense, abso-
2 lutely not. And I know of no other—I don’t believe
3 we operate in the Pentagon, any [Huawei] systems
4 in the Pentagon.”.

5 (10) At that hearing, the Commander of the
6 United States Cyber Command, Admiral Mike Rog-
7 ers, responding to a question about why such
8 Huawei telecommunications equipment is not used,
9 stated, “As we look at supply chain and we look at
10 potential vulnerabilities within the system, that it is
11 a risk we felt was unacceptable.”.

12 (11) In March 2017, ZTE Corporation pled
13 guilty to conspiring to violate the International
14 Emergency Economic Powers Act by illegally ship-
15 ping United States-origin items to Iran, paying the
16 United States Government a penalty of
17 \$892,360,064 for activity between January 2010
18 and January 2016.

19 (12) The Office of Foreign Assets Control of
20 the Department of the Treasury issued a subpoena
21 to Huawei as part of a Federal investigation of al-
22 leged violations of trade restrictions on Cuba, Iran,
23 and Sudan.

24 (b) PROHIBITION ON AGENCY USE OR PROCURE-
25 MENT.—The head of an agency may not procure or obtain,

1 may not extend or renew a contract to procure or obtain,
 2 and may not enter into a contract (or extend or renew
 3 a contract) with an entity that uses, or contracts with any
 4 other entity that uses, any equipment, system, or service
 5 that uses covered telecommunications equipment or serv-
 6 ices as a substantial or essential component of any system,
 7 or as critical technology as part of any system.

8 (c) REPORT.—Not later than one year after the date
 9 of the enactment of this Act, and annually thereafter, the
 10 Secretary of Commerce, in consultation with the Secretary
 11 of Defense and the United States Trade Representative,
 12 shall submit to Congress a report on sales by the Govern-
 13 ment of the People’s Republic of China of covered tele-
 14 communications equipment or services through partial
 15 ownership or any other methods.

16 (d) DEFINITIONS.—In this section:

17 (1) AGENCY.—The term “agency” has the
 18 meaning given that term in section 551 of title 5,
 19 United States Code.

20 (2) COVERED TELECOMMUNICATIONS EQUIP-
 21 MENT OR SERVICES.—The term “covered tele-
 22 communications equipment or services” means any
 23 of the following:

24 (A) Telecommunications equipment pro-
 25 duced by Huawei Technologies Company, ZTE

Corporation, or any other Chinese telecom entity identified by the Director of National Intelligence, the Secretary of Defense, or the Director of the Federal Bureau of Investigation as a security concern (or any subsidiary or affiliate of any such entity).

(B) Telecommunications services provided by such entities or using such equipment.

(C) Telecommunications equipment or services produced or provided by an entity that the head of the relevant agency reasonably believes to be an entity owned or controlled by, or otherwise connected to, the Government of the People's Republic of China.

TITLE II—FAIR TRADE ENFORCEMENT ACTIONS WITH RESPECT TO THE PEOPLE'S REPUBLIC OF CHINA

SEC. 201. COUNTERVAILING DUTIES WITH RESPECT TO CERTAIN INDUSTRIES IN THE PEOPLE'S REPUBLIC OF CHINA.

(a) POLICY.—It is the policy of the United States—

(1) to reduce the import of finished goods from the People's Republic of China relating to the Made

1 in China 2025 plan set forth by the Government of
2 the People's Republic of China; and

3 (2) to encourage allies of the United States to
4 reduce the import of finished goods from the Peo-
5 ple's Republic of China relating to the Made in
6 China 2025 plan.

7 (b) INCLUSION OF MADE IN CHINA 2025 PRODUCTS
8 IN DEFINITION OF COUNTERVAILABLE SUBSIDY.—Para-
9 graph (5) of section 771 of the Tariff Act of 1930 (19
10 U.S.C. 1677) is amended by adding at the end the fol-
11 lowing:

12 “(G) TREATMENT OF CERTAIN CHINESE
13 MERCHANDISE.—Notwithstanding any other
14 provision of this title, if a person presents evi-
15 dence in a petition filed under section 702(b)
16 that merchandise covered by the petition is
17 manufactured or produced in, or exported from,
18 the People's Republic of China and included in
19 the most recent list required under section 183
20 of the Trade Act of 1974, determined in con-
21 sultation with the United States Trade Rep-
22 resentative, the administering authority shall
23 determine that a countervailable subsidy is
24 being provided with respect to that merchan-
25 dise.”.

1 (c) INCLUSION OF MADE IN CHINA 2025 PRODUCTS
 2 IN DEFINITION OF MATERIAL INJURY.—Paragraph
 3 (7)(F) of such section is amended by adding at the end
 4 the following:

5 “(iv) TREATMENT OF CERTAIN CHI-
 6 NESE MERCHANDISE.—Notwithstanding
 7 any other provision of this title, if a peti-
 8 tion filed under section 702(b) alleges that
 9 an industry in the United States is materi-
 10 ally injured or threatened with material in-
 11 jury or that the establishment of an indus-
 12 try in the United States is materially re-
 13 tardated by reason of imports of merchan-
 14 dise manufactured or produced in, or ex-
 15 ported from, the People’s Republic of
 16 China and included in the most recent list
 17 required under section 183 of the Trade
 18 Act of 1974, determined in consultation
 19 with the United States Trade Representa-
 20 tive, the Commission shall determine that
 21 material injury or such a threat exists.”.

22 **SEC. 202. REPEAL OF REDUCED WITHHOLDING RATES FOR**
 23 **RESIDENTS OF CHINA.**

24 (a) IN GENERAL.—Section 894 of the Internal Rev-
 25 enue Code of 1986 is amended—

1 (1) by striking “The provisions of” in sub-
 2 section (a) and inserting “Except as otherwise pro-
 3 vided in this section, the provisions of”, and

4 (2) by adding at the end the following new sub-
 5 section:

6 “(d) EXCEPTION FOR PEOPLE’S REPUBLIC OF
 7 CHINA.—

8 “(1) IN GENERAL.—The rates of tax imposed
 9 under sections 871 and 881, and the rates of with-
 10 holding tax imposed under chapter 3, with respect to
 11 any resident of the People’s Republic of China shall
 12 be determined without regard to any provision of the
 13 Agreement between the Government of the United
 14 States of America and the Government of the Peo-
 15 ple’s Republic of China for the Avoidance of Double
 16 Taxation and the Prevention of Tax Evasion with
 17 Respect to Taxes on Income, signed at Beijing on
 18 April 30, 1984.

19 “(2) REGULATIONS.—The Secretary shall pro-
 20 mulgate regulations to prevent the avoidance of the
 21 purposes of this subsection through the use of for-
 22 eign entities.”.

23 (b) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to income received after the date
 25 of the enactment of this Act.

1 **SEC. 203. TAXATION OF OBLIGATIONS OF THE UNITED**
2 **STATES HELD BY THE GOVERNMENT OF THE**
3 **PEOPLE’S REPUBLIC OF CHINA.**

4 (a) IN GENERAL.—Section 892 of the Internal Rev-
5 enue Code of 1986 is amended by redesignating subsection
6 (c) as subsection (d) and by inserting after subsection (b)
7 the following new subsection:

8 “(c) EXCEPTION.—This section shall not apply to the
9 Government of the People’s Republic of China.”.

10 (b) CENTRAL BANK.—Section 895 of the Internal
11 Revenue Code of 1986 is amended—

12 (1) by striking “Income” and inserting the fol-
13 lowing:

14 “(a) IN GENERAL.—Income”, and

15 (2) by adding at the end the following new sub-
16 section:

17 “(b) EXCEPTION.—This section shall not apply to the
18 any central bank of the People’s Republic of China.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to income received or derived after
21 the date of the enactment of this Act.

○