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

JANUARY 3, 2019

Mr. RUBIO (for himself and Ms. B ALDWIN) 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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Fair Trade with China Enforcement Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:

1

2

3

4

5

6

7
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 Gov-
ernment 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 secu-
rity 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 equip-
ment.

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 Peo-
ple’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.

It is the Sense of Congress that—

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

(2) it was erroneous for the United States Gov-
ernment to have ignored the contradictions and risks
of free trade with the People’s Republic of China on
the assumption that the People’s Republic of China
would liberalize economically and politically;
(3) benefiting enormously from a more open global economy to drive its own industries, the Government of the People’s Republic of China and the Communist Party of the People’s Republic of China have only tightened their grip on power, brutally suppressing dissent at home and pursuing policies abroad that are a far cry from being a responsible global stakeholder;

(4) malevolent economic behavior by persons in the People’s Republic of China is made clear by the theft of intellectual property from the United States, as Chinese theft of United States intellectual property alone costs the United States nearly $600,000,000,000 annually, according to the United States Trade Representative;

(5) stealing United States intellectual property advances the Made in China 2025 initiative of the Government of the People’s Republic of China to eventually dominate global exports in 10 critical sectors, namely artificial intelligence and next-generation information technology, robotics, new-energy vehicles, biotechnology, energy and power generation, aerospace, high-tech shipping, advanced railway, new materials, and agricultural machinery, among others;
(6) the targets of the Made in China 2025 ini-
tiative reveal the goal of the People’s Republic of
China for the near-total displacement of advanced
manufacturing in the United States; and

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

SEC. 3. STATEMENT OF POLICY.

It is the policy of the United States—

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

(2) to tax Chinese investment in the United
States due to its negative effect on the United
States trade deficit and wages of workers in the
United States;
(3) to increase the cost of transnational production operations in the People’s Republic of China in a manner consistent with the economic cost of the risk of loss of unique access by the United States to intellectual property, technology, and industrial base; and

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

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.

(a) In General.—Chapter 8 of title I of the Trade Act of 1974 (19 U.S.C. 2241 et seq.) is amended by adding at the end the following:
“SEC. 183. LIST OF CERTAIN PRODUCTS RECEIVING SUPPORT FROM GOVERNMENT OF PEOPLE’S REPUBLIC OF CHINA.

“(a) In General.—Not later than 120 days after the date of the enactment of the Fair Trade with China Enforcement Act, and every year thereafter, the United States Trade Representative shall set forth a list of products manufactured or produced in, or exported from, the People’s Republic of China that are determined by the Trade Representative to receive support from the Government of the People’s Republic of China pursuant to the Made in China 2025 industrial policy of that Government.

“(b) Criteria for List.—

“(1) In General.—The Trade Representative shall include in the list required by subsection (a) the following products:

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

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

“(ii) China Manufacturing 2025.

“(iii) Notice on Issuing the 13th Five-year National Strategic Emerging Industries Development Plan.

“(v) Any other document that expresses a national strategy or stated goal in connection with the Made in China 2025 industrial policy set forth by the Government of the People’s Republic of China, the Communist Party of China, or another entity or individual capable of impacting the national strategy of the People’s Republic of China.

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

“(2) INCLUDED PRODUCTS.—In addition to such products as the Trade Representative shall include pursuant to paragraph (1) in the list required by subsection (a), the Trade Representative shall include products in the following industries:

“(A) Civil aircraft.

“(B) Motor car and vehicle.

“(C) Advanced medical equipment.
“(D) Advanced construction equipment.
“(E) Agricultural machinery.
“(F) Railway equipment.
“(G) Diesel locomotive.
“(H) Moving freight.
“(I) Semiconductor.
“(J) Lithium battery manufacturing.
“(K) Artificial intelligence.
“(L) High-capacity computing.
“(M) Quantum computing.
“(N) Robotics.
“(O) Biotechnology.”.

(b) Clerical Amendment.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 182 the following:

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

SEC. 102. PROHIBITION ON EXPORT TO PEOPLE’S REPUBLIC OF CHINA OF NATIONAL SECURITY SENSITIVE TECHNOLOGY AND INTELLECTUAL PROPERTY.

(a) In General.—The Secretary of Commerce shall prohibit the export to the People’s Republic of China of any national security sensitive technology or intellectual property subject to the jurisdiction of the United States
or exported by any person subject to the jurisdiction of
the United States.

(b) Definitions.—In this section:

(1) Intellectual property.—The term “intellectual property” includes patents, copyrights,
trademarks, or trade secrets.

(2) National security sensitive technology or intellectual property.—The term “national security sensitive technology or intellectual property” includes the following:

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

(B) Technology or intellectual property necessary to protect the economy of the United
States from the excessive drain of scarce materials and to reduce the serious inflationary im-
pact of demand from the People’s Republic of China.

(C) Technology or intellectual property that is a component of the production of prod-
ucts included in the most recent list required under section 183 of the Trade Act of 1974, as
added by section 101(a), determined in consultation with the United States Trade Representative.

(3) TECHNOLOGY.—The term “technology” includes goods or services relating to information systems, Internet-based services, production-enhancing logistics, robotics, artificial intelligence, biotechnology, or computing.

SEC. 103. IMPOSITION OF SHAREHOLDER CAP ON CHINESE INVESTORS IN UNITED STATES CORPORATIONS.

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

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

“(B) No covered issuer that is incorporated under the laws of a State, or whose principal place of business is within a State, may be majority-owned by a person whose
principal place of business is in the People’s Republic of China.

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

SEC. 104. PROHIBITION ON USE OF CERTAIN TELECOMMUNICATIONS SERVICES OR EQUIPMENT.

(a) FINDINGS.—Congress makes the following findings:

(1) In its 2011 “Annual Report to Congress on Military and Security Developments Involving the People’s Republic of China”, the Department of Defense stated, “China’s defense industry has benefited from integration with a rapidly expanding civilian economy and science and technology sector, particularly elements that have access to foreign technology. Progress within individual defense sectors appears linked to the relative integration of each, through China’s civilian economy, into the global production and R&D chain . . . Information technology companies in particular, including Huawei, Datang, and Zhongxing, maintain close ties to the PLA.”.

(2) In a 2011 report titled “The National Security Implications of Investments and Products from
the People’s Republic of China in the Telecommunications Sector”, the United States China Economic and Security Review Commission stated that “[n]ational security concerns have accompanied the dramatic growth of China’s telecom sector. . . . Additionally, large Chinese companies—particularly those ‘national champions’ prominent in China’s ‘going out’ strategy of overseas expansion—are directly subject to direction by the Chinese Communist Party, to include support for PRC state policies and goals.”.

(3) The Commission further stated in its report that “[f]rom this point of view, the clear economic benefits of foreign investment in the U.S. must be weighed against the potential security concerns related to infrastructure components coming under the control of foreign entities. This seems particularly applicable in the telecommunications industry, as Chinese companies continue systematically to acquire significant holdings in prominent global and U.S. telecommunications and information technology companies.”.

(4) In its 2011 Annual Report to Congress, the United States China Economic and Security Review Commission stated that “[t]he extent of the state’s
control of the Chinese economy is difficult to quantify. . . . There is also a category of companies that, though claiming to be private, are subject to state influence. Such companies are often in new markets with no established SOE leaders and enjoy favorable government policies that support their development while posing obstacles to foreign competition. Examples include Chinese telecoms giant Huawei and such automotive companies as battery maker BYD and vehicle manufacturers Geely and Chery.”.

(5) In the bipartisan “Investigative Report on the United States National Security Issues Posed by Chinese Telecommunication Companies Huawei and ZTE” released in 2012 by the Permanent Select Committee on Intelligence of the House of Representatives, it was recommended that “U.S. government systems, particularly sensitive systems, should not include Huawei or ZTE equipment, including in component parts. Similarly, government contractors—particularly those working on contracts for sensitive U.S. programs—should exclude ZTE or Huawei equipment in their systems.”.

(6) General Michael Hayden, who served as Director of the Central Intelligence Agency and Director of the National Security Agency, stated in July
2013 that Huawei had “shared with the Chinese state intimate and extensive knowledge of foreign telecommunications systems it is involved with”.

(7) The Federal Bureau of Investigation, in a February 2015 Counterintelligence Strategy Partnership Intelligence Note stated that, “[w]ith the expanded use of Huawei Technologies Inc. equipment and services in U.S. telecommunications service provider networks, the Chinese Government’s potential access to U.S. business communications is dramatically increasing. Chinese Government-supported telecommunications equipment on U.S. networks may be exploited through Chinese cyber activity, with China’s intelligence services operating as an advanced persistent threat to U.S. networks.”.

(8) The Federal Bureau of Investigation further stated in its February 2015 counterintelligence note that “China makes no secret that its cyber warfare strategy is predicated on controlling global communications network infrastructure”.

(9) At a hearing before the Committee on Armed Services of the House of Representatives on September 30, 2015, Deputy Secretary of Defense Robert Work, responding to a question about the use of Huawei telecommunications equipment, stat-
ed, “In the Office of the Secretary of Defense, absolutely not. And I know of no other—I don’t believe we operate in the Pentagon, any [Huawei] systems in the Pentagon.”.

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


(12) The Office of Foreign Assets Control of the Department of the Treasury issued a subpoena to Huawei as part of a Federal investigation of alleged violations of trade restrictions on Cuba, Iran, and Sudan.

(b) **Prohibition on Agency Use or Procurement.**—The head of an agency may not procure or obtain,
may not extend or renew a contract to procure or obtain, and may not enter into a contract (or extend or renew a contract) with an entity that uses, or contracts with any other entity that uses, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce, in consultation with the Secretary of Defense and the United States Trade Representative, shall submit to Congress a report on sales by the Government of the People’s Republic of China of covered telecommunications equipment or services through partial ownership or any other methods.

(d) DEFINITIONS.—In this section:

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

(2) COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.—The term “covered telecommunications equipment or services” means any of the following:

(A) Telecommunications equipment produced 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
in China 2025 plan set forth by the Government of
the People's Republic of China; and

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

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

“(G) TREATMENT OF CERTAIN CHINESE
MERCHANDISE.—Notwithstanding any other
provision of this title, if a person presents evi-
dence in a petition filed under section 702(b)
that merchandise covered by the petition is
manufactured or produced in, or exported from,
the People's Republic of China and included in
the most recent list required under section 183
of the Trade Act of 1974, determined in con-
sultation with the United States Trade Rep-
resentative, the administering authority shall
determine that a countervailable subsidy is
being provided with respect to that merchan-
dise.”.
(c) INCLUSION OF MADE IN CHINA 2025 PRODUCTS IN DEFINITION OF MATERIAL INJURY.—Paragraph (7)(F) of such section is amended by adding at the end the following:

“(iv) TREATMENT OF CERTAIN CHINESE MERCHANDISE.—Notwithstanding any other provision of this title, if a petition filed under section 702(b) alleges that an industry in the United States is materially injured or threatened with material injury or that the establishment of an industry in the United States is materially retarded by reason of imports of merchandise manufactured or produced in, or exported from, the People’s Republic of China and included in the most recent list required under section 183 of the Trade Act of 1974, determined in consultation with the United States Trade Representative, the Commission shall determine that material injury or such a threat exists.”.

SEC. 202. REPEAL OF REDUCED WITHHOLDING RATES FOR RESIDENTS OF CHINA.

(a) IN GENERAL.—Section 894 of the Internal Revenue Code of 1986 is amended—
(1) by striking “The provisions of” in sub-
section (a) and inserting “Except as otherwise pro-
vided in this section, the provisions of”; and

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

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

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

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

(b) EFFECTIVE DATE.—The amendments made by
this section shall apply to income received after the date
of the enactment of this Act.
SEC. 203. TAXATION OF OBLIGATIONS OF THE UNITED STATES HELD BY THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA.

(a) In General.—Section 892 of the Internal Revenue Code of 1986 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

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

(b) Central Bank.—Section 895 of the Internal Revenue Code of 1986 is amended—

(1) by striking “Income” and inserting the following:

“(a) In General.—Income”; and

(2) by adding at the end the following new subsection:

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

(c) Effective Date.—The amendments made by this section shall apply to income received or derived after the date of the enactment of this Act.