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The United States Innovation and Competition Act (USICA): A Primer

Executive Summary

- The United States Innovation and Competition Act (USICA) is a $200 billion proposal aimed at countering China's influence domestically and abroad.
- USICA has gained bipartisan support and has been labeled as "must-pass" legislation, but the negotiation process has resulted in the inclusion of amendments and provisions that deviate from the bill's original goal.
- The bill proposes an expanded role for the federal government in "strategic sectors" – including semiconductors, drones, wireless broadband, and artificial intelligence – with increased funding, supervision, and regulation of various industries.
- It also further expands the use of trade provisions in order to restrict the flow of Chinese goods and services and to bolster President Biden's Buy American agenda.

Introduction

On June 8th, 2021, the Senate passed the United States Innovation and Competition Act (USICA). It will now go to the House where it is expected to pass and be signed into law. This legislation was first introduced last year by Senators Chuck Schumer (D-NY) and Todd Young (R-IN) as the Endless Frontier Act (EFA). EFA was dramatically expanded in the past weeks to include several additional provisions. EFA is now a division within the expanded package renamed as the USICA.

Proponents of the bill have asserted that its primary goal is to counter China's political and economic influence both domestically and abroad. To this end, it pours billions of taxpayer funds into U.S. technology to counter China's growing economic and political influence. The bill has support from both sides of the aisle and is likely one of the few bipartisan legislative packages that will come out of Congress this year. Despite this, the legislative process for this bill was anything but smooth. The amendments and provisions accepted during the negotiation process broadened the bill's original focus and scope, with provisions and funding programs directed at special interest groups. Some of these provisions are clearly unrelated, such as prohibiting shark fin sales, while others are less directly related to the central goals, such as promoting science, technology, engineering, and math (STEM), and reauthorizing the Generalized System of Preferences, which unilaterally eliminates tariffs and duties on imports from certain low-income countries.

Overall, USICA follows the Biden Administration's general approach regarding increased government spending, authorizing $200 billion in funding for fiscal year FY 2022-FY 2026.

The funds are to be spent on a range of domestic and international programs. Below is a review of the major provisions in the USICA.

An Expansion of the Federal Government's Role in Strategic Sectors

The USICA extends the role of the federal government in sectors deemed strategic, such as the semiconductor industry and mobile broadband. It does so through various mechanisms including incentive programs, increased research and development funding, and the creation of new government offices. The bill signals the Biden Administration's interest in using industrial policy as a mechanism to direct the development of certain tech industries, a strategy that may not have the desired results.

The Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act, which is part of the bill, allocates $52 billion in emergency supplemental appropriations for the National Defense Authorization Act for the upcoming fiscal year. These funds are directed toward incentive programs for the production of semiconductors in the United States. USICA also includes $1.5 billion for the Public Wireless Supply Chain Innovation Fund to create similar incentive programs for wireless broadband. Additionally, the Endless Frontier Act establishes a Directorate for Technology and Innovation within the National Science Foundation (NSF), in order to direct research, development, and commercialization support in "key technology focus areas," such as artificial intelligence or drones.

Countering Chinese Influence Around the Globe

A significant part of the USICA focuses on diminishing or countering the global influence of certain foreign nations, especially China. In order to do so, the USICA proposes multiple strategies. First, it directs the U.S. government to implement a strategy to increase public investment, lending, and trade abroad, focusing mainly on Latin America, the Caribbean, Taiwan, Africa and Southeast Asia. Second, it establishes intellectual property protections from foreign nations, exclusion from funding programs, and diminishing purchases of goods and services from the specified nations. Additionally, it highlights the importance of regaining leadership positions in international standard-setting boards in order to make sure international trade standards benefit the United States.

These measures aim to counter the influence China has gained thanks to its increased investment in regions such as Africa, Southeast Asia, and Latin America, which apparently has allowed it to foster better trade relations and favorable terms for its enterprises. This vision for countering China has gained bipartisan support, as members across the aisle believe it is necessary to take more aggressive approaches to outcompete China.

Nonetheless, the direction of public funds toward infrastructure abroad is particularly risky. Public investment into domestic infrastructure projects already presents challenges, which could be . There is an innate disconnect between U.S. policymakers and a foreign population. This disconnect leads to a lack of knowledge of the local context and customs and diffused accountability. Additionally, resources might end in the hands of corrupt government officials who will use them for their personal gain, instead of their intended purpose.

Expanded Federal Role in Higher Education

USICA contains several higher-education provisions to facilitate research and development in the “key-technology focus areas” defined by USICA including robotics, artificial intelligence, and advanced energy sources. These provisions expand the federal government’s role in incentivizing higher education institutions to do more on those fronts. It is important to note that a lot of these funds were originally intended for the National Technology Directorate described above. Throughout the lengthy amendment process, however, much of these funds were diverted toward these education programs. $5.22 billion has been authorized for FY 2022-FY 2026 for a new STEM scholarship fund. The scholarships could be used on anything from postdoctoral programs, graduate fellowships, undergraduate courses, internship programs and more, with an emphasis on rewarding underrepresented populations in STEM. USICA also creates a new academic technology transfer fund (technology transfer refers to the processes required to translate scientific discoveries into a final product or service). This fund is authorized for $4.06 billion from FY 2022-FY 2026. The director of the NSF in coordination with the National Institute for Science and Technology would make grants to facilitate technology transfer between the private sector and higher education institutions.

USICA and Trade

The Trade Act of 2021 is one of the largest amendments to the USICA and was added late in the legislative process. The bill language includes several new programs and offices to increase the federal government’s role in regulating trade. The bill language also includes several trade provisions that are not necessarily related to the original intent of USICA and are attached as riders.

Buy American

USICA would codify in law different provisions that were initially enacted under President Biden’s Buy American Executive Order from February 2021. These include the “Made in America” office, which is officially tasked with enforcing compliance of domestic preference laws such as the Buy American Act of 1933. There is also a new Buy American requirement that infrastructure projects are eligible for federal financial assistance only if all the “iron, steel, manufactured products and construction materials” used in those projects are produced in the United States. USICA also restricts the use of Buy American waivers, which allow federal agencies to be exempted from Buy American and procure foreign-made goods.

Supply Chain Resiliency

USICA establishes a supply chain resiliency program within the Department of Commerce. The program encourages cooperation between the department and the private sector to identity problems with supply chains and formulate solutions. Supply chain issues that arose from the global COVID-19 pandemic are a large reason for this provision. Hence, the supply chain program will initially prioritize semiconductor supply chain issues, but it will also cover other supply chain issues in the future.

American Security Drone Act of 2021

This provision bans federal procurement of unmanned aircraft systems (UAS) that are manufactured or assembled by firms that are controlled or influenced by China. The ban also extends to include other products needed by operators to fly drones. These bans go into effect two years from passage of USICA to allow federal agencies time to prepare accordingly. Exemptions will be considered on a case-by-case basis.

Reauthorization of Generalized System of Preferences and Miscellaneous Tariff Bill

USICA reauthorizes the Generalized System of Preferences (GSP) and the Miscellaneous Tariff Bill (MTB). GSP reduces or eliminates duties and tariffs for certain imports from low-income countries. U.S. importers lost relief from tariffs and had to resume paying duties and tariffs when GSP expired at the end of 2020. Under this bill, importers of GSP products are retroactively refunded for these amounts paid and no longer have to pay duties and tariffs on GSP imports until January 1, 2027, when GSP will expire again. MTB, which also expired in December 2020, provides specific exemptions to tariffs that have demonstrably hurt U.S. business and companies. MTB also provides tariff relief for products that cannot be sourced within the United States. Under this bill, U.S. importers of MTB products are retroactively refunded for tariffs and duties paid on MTB imports from January 1, 2021, and no longer must pay these tariffs until December 31, 2023, when MTB will again expire.

Section 301 Exemptions and Exclusions

All exemptions and exclusions to Section 301 China tariffs are reinstated through the end of 2022. These Section 301 tariffs were initially imposed by the Trump Administration as part of the U.S.-China trade war and hence, are referred to as the "China tariffs." The product exclusion process itself is also modified. When a petition to exempt certain imports from Section 301 tariffs is submitted, the United States Trade Representative (USTR) will have to more heavily consider the economic loss U.S. companies and firms face from those imports being subject to Section 301 tariffs. This means USTR will have to give more preference to U.S. companies when granting tariff exclusions. This will lead to an increase in Section 301 tariff exclusions USTR will reward, something that has large congressional support.

Conclusion

USICA represents a dramatic expansion in the federal government's role in facilitating technological growth. It will pour hundreds of billions into research and development in key technological areas such as artificial intelligence, advanced energy sources, and biotechnology. To many on both sides of the aisle, these expenditures are necessary to propel American growth in the 21st century and out-compete China. But in the name of bipartisanship, the bill has been amended numerous times to squeeze in many different provisions, many of which would not spur growth in U.S technology or help in countering China.