



## USCBC Views on the “Make It in America Act” / USICA and the America COMPETES Act

(Updated as of March 9, 2022)

- The US China Business Council (USCBC) supports provisions in the United States Innovation and Competition Act (USICA) / “Make It in America Act” (S 1260) and the America COMPETES Act (HR 4521) to strengthen investments in US innovation and competitiveness, including the long-overdue funding of the CHIPS Act to restore American leadership in semiconductors.
- USCBC agrees with the US Congress and Biden Administration’s goals of securing critical supply chains and ensuring that sensitive and national security-focused goods, services, and technologies do not fall into the hands of US adversaries.
- USCBC supports language requiring USTR to implement a broad-based and transparent Section 301 tariff exclusion process on US imports from China. USCBC supports section 73001 of S. 1260, which would reinstate tariff exclusions that expired in 2020 and require USTR to implement a new exclusion process for all products in scope. A more robust and comprehensive exclusion process would provide much needed relief for US companies that have borne the tremendous cost of US-China tariffs for several years. Such an approach would also ensure greater effectiveness of the Section 301 tool by directing tariffs toward goods that US importers can source elsewhere while reducing tariffs on products US importers must obtain from China.
- USCBC opposes the *National Critical Capabilities Defense Act* (NCCDA) language included in the America COMPETES Act for several reasons outlined below, including the negative impact the legislation could have on American jobs.

### **Why USCBC Opposes the NCCDA**

- **First**, the NCCDA does not clearly delineate a specific objective and includes numerous ambiguous components that will need to be clarified by the Executive Branch. Such a broad-based grant of Congressional authority will cause significant uncertainty about how this tool will be implemented and could result in unnecessary, excessive regulation of non-sensitive US commercial investments and potentially broader commercial transactions.
- For example, its definition of “national critical capability” could capture a wide constellation of US investments and standard commercial transactions abroad that have nothing to do with national security. The Rhodium Group recently found that up to 43 percent – over \$100 billion – of American foreign direct investment (FDI) to China between 2000 and 2019 would have merited review under the NCCDA. The bill’s call to review 11 additional industries provides even greater uncertainty over the scope of the proposed review.



- Additionally, the bill would allow the proposed Committee on National Critical Capabilities to have purview over transactions that shift or relocate national critical capabilities to “entities of concern.” The bill considers “entities of concern” to include entities “subject to the influence of a foreign person that has a substantial nexus with a country of concern,” but fails to define “influence” or “substantial nexus.” This process is far too vague and could have unintended consequences.
- In light of the unclear objectives of the NCCDA, it could create yet another layer of regulation that could duplicate existing US regulatory tools to ensure appropriate national security reviews. Before creating an expansive new regulatory regime, Congress should work with the Biden Administration to further implement the 2018 FIRRMA and ECRA laws, including provisions that expanded US export controls on the flow of “emerging and foundational technologies” to other countries.
- **Second**, the process set out under the NCCDA will create tremendous business uncertainty. For example, reviews of individual transactions could easily be politicized given that the leaders of 12 different Congressional committees could require such reviews.
- Additionally, the NCCDA puts in place an unsustainable administrative process for reviewing transactions. USTR in particular, with a mandate for negotiating trade agreements and roughly 200 employees, does not have the expertise or resources to lead such a review process. This puts into doubt the ability of the Executive Branch to implement the legislation and meet its timelines.
- While lawmakers have said the outbound investment review mechanism is intended only for specific circumstances and to simply review rather than halt covered transactions, the bill contains no guardrails to prevent regulatory overreach or politicized reviews.
- **Third**, and more broadly, the NCCDA could potentially have a significant impact on US global competitiveness and domestic job creation. Many US companies rely on the global marketplace to sustain their US operations and workforce. Despite the well-documented challenges of doing business in China, China is a critically important export and investment market for many US businesses. USCBC is concerned that the NCCDA would have a chilling effect on the US-based R&D and innovation ecosystem, which helps create and sustain high-paying US engineering and other jobs.
- If the US government were to unilaterally adopt an outbound review mechanism, it would put itself at a competitive disadvantage vis-à-vis private sector competitors in allied advanced economies and could cause diplomatic and regulatory tensions with US allies and other countries.
- If the US government acts it risks: (1) other countries creating their own review regimes, creating a patchwork of new and costly compliance obligations for companies; or (2) other countries not adopting such reviews, which could lead to companies shifting their US operations abroad and reducing US jobs and competitiveness. The NCCDA’s coverage of foreign companies’ US operations also could lead to tensions with US allies, impacting the Biden Administration’s coordination with them on common issues related to non-market economies.