

NetChoice Promoting Convenience, Choice, and Commerce on the Net

Carl Szabo, Vice President and General Counsel
Christopher Marchese, Policy Counsel
1401 K St NW, Suite 502
Washington, D.C. 20005
202-420-7485
www.netchoice.org



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RE: **Concerns with the Country-of-Origin approach for drones in the NDAA**

Dear Chairman Smith:

We write to express concern Congressman Mike Gallagher's (R-WI-8) proposed amendment #618 to H.R. 6395, the "William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021." Although we support the creation of uniform federal standards for drone use in the United States, as well as standards for federal procurement and use of drones, the Congressman's amendment is the wrong approach because it focuses solely on a drone's country of origin.

Note that this country-of-origin approach was considered and not advanced in the Senate NDAA.

We understand that Rep. Gallagher and other Members of Congress are concerned about potential security threats from devices manufactured in China. We also understand their concern about cyber insecurities when technology is used by the government. But focusing on the location of manufacturing will result in a false sense of security, leaving our country vulnerable to cyberattacks from products made in "safe" locations. Moreover, a country-of-origin approach results in a calcification of legislation, which in turn inflicts a dangerous inflexibility on government.

Instead of the country-of-origin approach as suggested by Rep. Gallagher, we suggest you consider a better approach that **addresses legislators' concerns by setting uniform standards that apply to all drone manufacturers equally and that target the actual underlying concerns**. Doing otherwise is a recipe for unintended consequences.

First, country of origin laws are a poor proxy for addressing concerns about drone integrity. Indeed, whether intentional or not, they tend to result in political problems, which make legislation even harder to enact. Consider, for example, reports of a political contest between President Trump and Vice President Biden over who is "tougher on China."¹ Regardless of that contest's merits, it exemplifies the dangers of politicizing the NDAA—namely, that each party may try to "out do" the other, or that one party may support or oppose a bill with a country-of-origin ban only because the other does the opposite.

To be sure, Congress is properly focused on ensuring that technology used by government actors is secure and serves the country's national security. But the means to that end matter. Instead of passing a blanket ban that ties the government's hands for no reason other than current distrust of China, Congress should set uniform national standards that apply to **all** drones from **all** countries, including those from the United States. If drones from China are truly a risk to national security, then they will surely end up

excluded under those standards. And if they pose no risk, as we believe they do not, then Congress will still have passed a law that guides the country's acquisition and use of drones—something that will benefit national security far more than a measure tied to political winds.

Indeed, what matters is a drone's security features, not its country of origin. That is because a foreign country's popularity among Americans—whether justified or not—does not render a product safe and secured or unsafe and unsecured. If it did, then the amendment would presumably ban drones from countries in the Middle East and Eastern Europe. In fact, it would even have to include technology from some of our allies, given Americans' low opinion of some.²

Second, government actors at all levels need flexibility to respond to both expected and unexpected problems. We know the government will be called upon to handle forest fires, earthquakes, hurricanes, floods, and other natural disasters. We also know all too well that unexpected crises have the potential to harm Americans en masse and to spread to all aspects of American lives—all without warning, too. Drones have proved to be an invaluable tool in assessing these life-threatening situations. In fact, frontline workers have been able to use drones, including those made in China, to survey damage, search for wounded or stranded Americans, and keep watch over a disaster's spread. And all this can be done from a safe distance, keeping our frontline workers out of harm's way. So whether it is a crisis we expect to happen at some point, or an unexpected crisis that catches us by surprise, the country benefits from having access to drones that meet the challenge.

Of course, Rep. Gallagher's amendment would not eliminate all drones, and China does not have a monopoly on drone manufacturing. But the amendment would kneecap the government's ability to procure drones best tailored for certain needs. And if concern over drone integrity means anything, it should mean that government actors buy the best, most secure product offered. By closing off an entire market, however, the amendment risks excluding drones that are superior to their competitors. Whether that is true as a qualitative matter will depend on each agency's needs. But what is undeniably true is that the government will be served best by having choices based on standards, not country of origin.

Third, there is no escaping that the amendment will set a harmful precedent. Just as politics may influence the amendment's singling out of drones made in China now, politics may also influence future NDAA's. Although we disagree with the amendment's premise that drones are always linked to national security, the premise serves only to amplify the dangerous ramifications of a country-of-origin ban. It would, for example, signal to lobbyists of every U.S. industry and company that foreign competitors are ripe for targeting so long as the politics line up decently enough. Even worse, it could encourage American actors to *create* the political conditions necessary for their proposed bans to win support in the halls of Congress.

National security must rise above politics because the stakes are so high. Common sense informs that if a German company makes a superior product that matches the country's need, the United States should buy that product. But if the German company's domestic rivals are successful in excluding Germany's products, then the government will suffer a disadvantage at best and an unforced, potentially deadly blunder at worst.

With threats rising every year, the government must stand ready to procure the best products. That cannot happen if the country's defense strategy fails to distinguish between a trustworthy product and an untrustworthy country of origin.

We therefore ask that you object Rep. Gallagher's amendment and prevent its consideration before the full House.

Sincerely,

Carl Szabo

Vice President and General Counsel

Christopher Marchese

Policy Counsel

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