

Statement of the Honorable Thomas P. Feddo
Before the United States Senate Committee on Banking, Housing and Urban Affairs
September 29, 2022

Chairman Brown, Ranking Member Toomey, and distinguished Members of the Committee, I am honored to appear before you today, and to join my fellow witnesses in this important discussion.

When I last appeared before the Committee, I was fortunate to receive its endorsement to be the Treasury Department's first-ever Assistant Secretary for Investment Security. In that role, I led and oversaw the operations of the Committee on Foreign Investment in the United States (CFIUS), including the timely and successful implementation of its historic overhaul after enactment of the overwhelmingly bipartisan Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA).

By virtue of that experience, and the benefit of roughly 27 years of government service—more than two decades in national security-related capacities—I hope to contribute to your consideration of so-called “outbound” investment screening and whether such a tool should be implemented.

At the outset, I will say that I believe we are engaged in one of history's most consequential great power competitions, and that technology plays a key role in that contest. Leaders of both the current and prior Administrations have warned of the existential challenge posed by the People's Republic of China (PRC) and its policy of “civil-military fusion”—exploiting corporate advancements and innovation in technology to close the battlefield gap. Secretary Michael Pompeo's State Department noted that civil-military fusion “aims to make any technology accessible to anyone under the PRC's jurisdiction available to support the regime's ambitions.” And Secretary of State Antony Blinken has described Beijing's intent as: “to spy, to hack, to steal technology and know-how to advance its military innovation and entrench its surveillance state.”

In the 1990s, I served as an officer on a *Los Angeles* class nuclear-powered fast-attack submarine. That boat was, as are today's generation of U.S. submarines, a technological marvel; a “black hole” in the deep, carrying the world's most sophisticated weapons and equipment. This is in great part a result of America's innovation ecosystem, both in and outside of the defense industrial base. Having first-hand experience in that submarine environment, the imperative for maintaining America's technology advantage is crystal clear to me—it promotes the capability to win decisively on the battlefield, whether under or on the sea, on land, or in the air, space, or cyber domains.

The PRC poses grave threats to the United States and its allies and to the global world order; including its strategy to exploit technology, raw materials, market power, and energy resources to achieve its ends. The last several years have also demonstrated the vulnerability of certain key supply chains—such as semiconductors, critical minerals, and clean energy technology—to these same goals.

Enactment in 2018 of both FIRRMA and the Export Control Reform Act (ECRA) was largely precipitated by this growing threat and the potential risk gaps manifested by foreign actors' activity vis-à-vis U.S. businesses involved with cutting edge technology. Now, as another step to

counter the PRC's thirst for advanced technology and to remedy certain supply chain vulnerabilities, both Congress and the Biden Administration are considering potentially sweeping authorities creating a new government agency with new powers to block international business transactions—that is, to oversee *American* firms' allocation of resources, property, and capital outside the United States.

A version of this new interagency panel was considered in the semiconductor bill earlier this year—a Committee on National Critical Capabilities (CNCC). The CNCC would have limited capital investments, sharing of intellectual property and know-how, financing, and even sales, that could benefit a “country of concern” in a sweeping list of sectors. Many key terms were broad and undefined, and left substantial latitude to the Executive branch to expand the “critical” sectors within its purview and to designate the cabinet secretary accountable for leading it. Virtually every U.S. business, private or public investment fund, and bank engaged in international business could have been impacted if a transaction implicated the “influence” of a country of concern, and could have been compelled to share confidential deal details and obtain the government's permission to proceed. Even foreign entities in third countries transacting with, or influenced by, such a country could have been impacted. Subsequent proposals were narrowed, but I believe more homework is still necessary.

Recent media reports say that the Biden Administration is close to creating an outbound screening tool by Executive Order. To be clear, I hold the strongest view that creating an investment screening mechanism by Executive Order would be a significant mistake. Rather, Congress, collaborating with and receiving key input from the Administration, is best suited to assess and respond to an issue of this complexity and potential scope and impact.

There should be no dispute that to ensure America's future security the PRC's theft and misappropriation of technology must be prevented. The question is whether a new committee and bureaucracy of potentially immense scope and authority is the answer. The debate has seemed to take on a life of its own, with an apparent presumption that an outbound screening committee is necessary. The threat from the PRC is real and present, not over-the-horizon, but decisionmakers would benefit greatly by resisting the temptation to rush into a “solution” without adequately assessing the extent to which it will both enhance national security and avoid creating unnecessary burdens on U.S. persons' business transactions.

With this context, I commend the Committee for taking the initiative with today's hearing. There should be more such hearings before any solution is enacted—to define the objectives, determine costs and benefits, and assess whether existing national security authorities could better meet the challenge.

When a bipartisan Congress and the Trump Administration worked together to formulate the most extensive changes to CFIUS in its nearly 50-year history, those efforts included roughly a half-dozen hearings with foreign policy and national security experts, the Intelligence Community, private sector stakeholders, and former and *current* senior Executive branch officials. Congress and the President were thus well informed as to the gaps they intended to fill, where the expanded jurisdiction would reach, and the attendant increases in capacity and cost. The resulting strong, stand-alone bill resoundingly passed. Afterwards, it took two intensive

years within an *existing* CFIUS bureaucracy, including at the Cabinet secretary level, to effectively implement the law. Here, an outbound screening mechanism would be created out of whole cloth with, among other things, little to no clarity or consensus yet on who has the capacity and institutional heft to effectively implement the tool and be held accountable.

As with FIRRMA, decisionmakers would be best served by building a comprehensive record—taking testimony from experts and key stakeholders, including senior Administration officials. That effort should explore whether existing or other types of authorities could be less bureaucratic and costly, and more precise and impactful, in achieving the ends—such as adjusting CFIUS’s existing jurisdiction, expanding current economic sanctions against Chinese military companies, or modifying export restrictions. These tools do not appear to have been fully considered, but they may in fact offer a better cost/benefit calculus.

Upon first defining the precise risk gap requiring action, and then considering the full spectrum of potential authorities available, a considered and careful assessment of a new outbound investment regime might as an initial matter examine:

- the financial and human resources required;
- the potential U.S. business compliance costs;
- which agency should be accountable for leading implementation and operations;
- precisely which technologies or sectors warrant investment screening, and why;
- the anticipated impacts on the American economy and global capital flows;
- the extraterritorial effects and likely consequent response from allies;
- the extent to which such a mechanism furthers the decoupling of the world’s two largest economies—*and* whether that is a desired policy outcome;
- the extent to which restrictions on U.S. person transactions would be simply replaced by other capital or intellectual property sources; and,
- the extent to which such a tool would have a “national security” standard, as distinguished from a “national interest” standard (that is, whether such screening would be intended for broad industrial policy/strategy).

From my experience in government and with the interagency process, and particularly in leading CFIUS, I expect that a new committee or screening mechanism would be time- and resource-intensive. It would require substantial energy and effort to build an effective, clear, and precise regulatory framework, and to hire the key human capital and expertise needed to ensure success. The argument that CFIUS itself could be “leveraged” for this mission also brings the risk of diminishing the capacity of CFIUS to effectively execute its current charge.

It is my privilege to appear before you today and to contribute to your scrutiny of a very important issue consequential both to national security and the U.S. economy. I would be happy to answer any questions that you may have today, and to be a future resource for the Committee.

In sum, to H.L. Mencken is attributed the wisdom that “for every complicated problem there is a solution—easy, simple, and wrong.” In the interests of national security, a strong, open economy, and accountable government, all Americans should hope and expect that policymakers get this right. The alternative could be an unrestrained bureaucracy, wasted time and resources, and no meaningful response to the PRC’s ominous goals.