

Senator Sherrod Brown
CFIUS Reform: Administration Perspectives
On the Essential Elements
January 25, 2017

Thank you, Chairman Crapo.

And thanks to our witnesses for joining us today to share the views of the Administration on this important topic.

At last week's hearing, we heard several differing views on the advisability of making changes to CFIUS. All of the witnesses, however, agreed the current system is not working.

As the people charged with making the system work, I look forward to hearing from today's witnesses on whether they agree with that assessment, and if so, why the current system is not working.

There is no way that we can improve on the current system if we do not understand why it is failing today.

Some of the questions go to jurisdiction. Senator Cortez Masto and others have raised the issue of real estate transactions that might give rise to national security threats that are difficult to reach under the current law. Other issues have been raised about access to sensitive information that might stem from an ownership interest short of control.

But even if we were all in agreement on how to redraw the proper jurisdiction for CFIUS, I think we would still be faced with substantial issues around the appropriate mechanisms for preventing the transfer of sensitive technology and intellectual property.

At last week's hearing, every witness agreed that our adversaries are using lawful and unlawful means to close the gaps where they exist between our technological capabilities and theirs. Every witness agreed that China is violating its trade commitments.

When China cheats, there must be consequences. Rules mean nothing if they are not enforced. That's why I urged the Administration to take action on unfair dumping by LG and Samsung. Because of the steps the Administration announced this week, Whirlpool will be adding 200 more jobs in Clyde, OH.

China's cheating also impacts our advanced technology companies. Not only do they have to compete in the marketplace against subsidized foreign competitors, but they must defend themselves from cyber-attacks, industrial espionage, and a whole range of techniques to steal critical technologies.

Last week's witnesses also agreed that the departments with us today are lagging in controlling the export of sensitive technology to our adversaries. As an example, they cited the lack of updates to the Militarily Critical Technologies List, which apparently is not being updated by DOD.

As I mentioned last week, I think our country faces a twofold problem. Our national security is threatened by the purchase and export of critical intellectual property and technologies. At the same time, our economic security is threatened by foreign investment in the U.S. that falls outside of the scope of CFIUS.

I have introduced legislation with Senator Grassley – called the Foreign Investment Review Act – that would require the Secretary of Commerce to review certain foreign investments. Just as we see in the national security area, some of these investments, especially coming from state-owned enterprises, are not in our long-term interests.

I hope we can tackle both problems in this process – revising CFIUS to respond to the developments of the last decade, while we also respond to the threats to our economic security.

Thank you, Mr. Chairman.