

TESTIMONY OF SENATOR ROBERT P. CASEY, JR. OF PENNSYLVANIA
BEFORE THE SENATE BANKING COMMITTEE
HEARING ON “EXAMINING OUTBOUND INVESTMENT”

September 29, 2022

Thank you, Chairman Brown, Ranking Member Toomey and Members of the Committee for inviting me to this important hearing today. I am pleased to have this chance to testify in support of an outbound investment screening mechanism. And I am grateful to Senator Cornyn for his partnership in this effort, as well as our colleagues in both the House and the Senate who are sponsors of the legislation, the National Critical Capabilities Defense Act (S. 1854), including Representatives Rosa DeLauro, Bill Pascrell, Brian Fitzpatrick and Victoria Spartz.

For decades, the United States has steadily ceded its manufacturing power to other countries, particularly foreign adversaries, like the Chinese Communist Party (CCP) and the Russian Federation. Outsourcing our manufacturing and supply chains has put our economic and national security at risk. Unfortunately, the pandemic exacerbated this problem, as we experienced acute shortages of things like PPE and computer chips, simply because we were reliant on other countries to manufacture them and a broken supply chain to get them to us.

In 2020, during the COVID-19 pandemic, I first introduced the National Critical Capabilities Defense Act to require targeted government screening of certain transactions by U.S. companies doing business in adversarial countries. This bill would help the U.S. better understand the risks of allowing foreign adversaries to gain access to critical capabilities and technology and to design and manufacture goods critical to our economic and national security interests. Over the past two years, we have garnered growing bipartisan and bicameral support

for this concept, and Biden Administration officials and key stakeholders have expressed support for an outbound investment screen, but we need more focus on this across the government and Congress.

Without such a focus – without an outbound investment screening mechanism – we cannot understand, much less safeguard, critical domestic industries and capabilities for American workers, manufacturers and innovators. We must avoid aiding and abetting our economic competitors and potential adversaries.

At the heart of this is manufacturing, which is core to our economic competitiveness. In the United States, manufacturing represents about 11 percent of GDP, but is responsible for 70 percent of R&D, according to analysis from the consulting firm McKinsey.¹ Manufacturing drives innovation. When you lose manufacturing, you lose innovation. Countries that don't make things don't endure.

Working men and women in Pennsylvania have seen the damage that decades of offshoring and the hollowing out of American manufacturing strength and knowledge does to communities and industries. Pennsylvania suffered record manufacturing job losses over the last generation. According to the Economic Policy Institute, China, governed by the CCP, cost the U.S. 3.7 million jobs between 2001 and 2018. 2.8 million jobs —three-fourths of the total jobs lost in this time period—were in manufacturing. 137,300 of those jobs were in Pennsylvania.² Jobs numbers alone provide little insight into the family and community trauma, as well as

¹ Foroorhar, Rana, *Why manufacturing matters to economic superpowers*, Financial Times (April 11, 2021) <https://www.ft.com/content/22dd4058-c283-45c3-8877-8c2507ec7d6b>.

² Robert Scott and Zane Mokhiber, *Growing China Trade Deficit Cost 3.7 Million American Jobs Between 2001 and 2018*, Economic Policy Institute (Jan. 30, 2020), available at <https://www.epi.org/publication/growing-china-trade-deficits-costs-us-jobs/>.

economic scarring, that have ravaged many small towns. In key sectors such as communications equipment, electronics and computer technology, we have ceded up to 40 percent to 60 percent of the domestic market share to Chinese imports, and globally the People's Republic of China (PRC) has captured extensive market shares in those sectors as well.³ We have learned from the intelligence community and law enforcement of the security risks that the loss of that production and those capabilities has fueled.

To add insult to injury, investments are being made in our rivals, such as the PRC and Russia. The level of U.S. investment in Chinese companies is staggering, which benefits the CCP. U.S. foreign direct investment has flooded into the PRC over the last three decades. Lately, U.S. firms have been targeting investments in high-tech and advanced service sectors. According to SEC data, in 2020, U.S. firms collectively invested in Chinese companies over \$200 billion in artificial intelligence, \$50 billion in biotech, and approximately \$80 billion in telecom, semiconductors and other technologies.⁴ In fact, many of these investments have been made in companies owned, controlled or influenced by the CCP. As of 2020, U.S. investments in PRC companies totaled by capital investment \$152 billion to Chinese state-owned enterprises and \$54 billion to Chinese military companies.⁵

But it's not just the investment dollars, it's the actual operations and capabilities that are being outsourced to the PRC. Research from the U.S.-China Economic & Security Review

³ Robert Scott and Zane Mokhiber, *Growing China Trade Deficit Cost 3.7 Million American Jobs Between 2001 and 2018*, Economic Policy Institute (Jan. 30, 2020), available at <https://www.epi.org/publication/growing-china-trade-deficits-costs-us-jobs/>.

⁴ Nikhaktar, Nazak, *Testimony Before Senate Select Committee on Intelligence, Open Hearing: Countering the People's Republic of China's Economic and Technological Plan for Dominance*, (May 11, 2022). <https://www.intelligence.senate.gov/sites/default/files/documents/os-nnikakhtar-051122.pdf>.

⁵ Ibid

Commission, a bipartisan entity created by Congress, showed that, based on official U.S. data, the rate of R&D investments by some of our firms in the chemical and pharmaceutical sector in the PRC outpaced the rate of their domestic investments during the period examined almost three-fold.⁶ We have seen our growing reliance on the PRC for many of our life-saving and life-supporting drugs. We cannot afford to continue that dependence.

At present, the Executive and Legislative branches of our government have little knowledge of where these dollars are going and what sort of projects they may be supporting once dollars are invested. They could very well be used against us or our allies in the future. We risk funding threats to our own national security and that of our allies. According to former U.S. National Security Adviser H.R. McMaster, venture capital firms are pouring billions into Chinese companies that are “developing dual-use and sensitive technologies that are going to be weaponized against us or already are aiding and abetting the Russians.” The National Critical Capabilities Defense Act would help us prevent such threats to our own security.

Outbound investment of this kind aids the CCP in its ongoing efforts to steal our technology for the benefit of its industries. Without a mechanism to understand the ways in which the export of U.S. investment and capabilities are resulting in a wholesale transfer of American R&D and expertise to our adversaries, the U.S. government is an active party to the decline of our own economic might and national security.

The CCP has made clear over the past decade and more its willingness to sever access to critical supply chains and use economic coercion to bully other nations. The CCP has acted on

⁶ Malden, Kaj and Listerud, Ann, *Trends in U.S. Multinational Enterprise Activity in China, 2000–2017*, U.S.-China Economic and Security Review Commission (July 1, 2020), https://www.uscc.gov/sites/default/files/2020-06/US_Multinational_Enterprise_Activity_in_China.pdf.

such threats. It has used market access as a weapon against one of our core security partners, Australia. In 2020, when Australia called for an independent inquiry into the origins of COVID-19, the PRC responded by slapping duties on Australian exports and revoking Australian producers export licenses. Last year, when Lithuania allowed the opening of a Taiwanese representative office in its capital of Vilnius, the PRC began a punishing campaign of economic coercion including market access and import restrictions. The PRC obstructed the export of rare earth materials to Japan as leverage to compel Japan to release the captain of a Chinese fishing boat who was detained after a boating accident in disputed water. There are countless other examples like these from around the world.

It's not hard to imagine a scenario where the PRC ceases the export of computer chips or critical rare metals to the U.S. or an ally, leaving us unable to respond due to a lack of domestic capacity or alternative means of procuring them. The U.S. must confront a Chinese regime determined to bully or steal its way to economic superiority.

Some critics have said that outbound investment screening should be left to the free market and private companies to sort out. The PRC and Russia will continue to ignore international law, as well as private, free market rules. Nazak Nikakhtar, in testimony before the Intelligence Committee earlier this year said as follows:

“These are not incidental consequences of open and free trade. These are the very perverse and adverse consequences of one country exploiting open borders to cripple other nations’ economies. Our economic losses have resulted from the PRC’s deliberate attempts to hollow out our industries in order to create dependency on their own distorted market.”⁷

^{7 7} Nikhaktar, Nazak, *Testimony Before Senate Select Committee on Intelligence, Open Hearing: Countering the People’s Republic of China’s Economic and Technological Plan for Dominance*, (May 11, 2022). <https://www.intelligence.senate.gov/sites/default/files/documents/os-nnikakhtar-051122.pdf>.

The PRC's broader military and governmental ambitions are intertwined with its trade and economic actions because the Chinese government's agenda blurs the lines between its economic and defense sectors by way of its "civil-military fusion" approach. The Chinese government's investment in, and theft of, technology and innovation supports the expansion of its security posture through development of surveillance technology, nuclear powered submarines and products across the commercial spectrum. This means the PRC does not view competition strictly through the lens of dollars and cents. When Chinese firms and state sponsored enterprises compete against America's, it is done so with broader objectives in mind, including those of their military.

It is up to U.S. policymakers, not international markets, to be vigilant regarding our national security, our manufacturing capacity and our workers.

We have existing authorities that already play an important role in preventing some transfer of technology and expertise but there are significant gaps that exist in our export control programs. The Export Control Reform Act (ECRA) expansion was a compromise reached during the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) debate. However, the ECRA expansion does not cover much of the goods and production that our bill focuses on. We need better oversight pertaining to supply chains, sourcing and investments that do not rise to the level of export control.

Today, we will hear testimony from Dr. Sarah Danzman, a Professor at Indiana University. In her recent paper on designing an outbound investment mechanism she acknowledges the gaps in export controls and has written as follows:

"Export controls can regulate specific transfers of technology, but are not well suited to capture the full range of operational activities that relate to development of indigenous

capacity and that may flow along with an investment. For example, running a successful semiconductor-fabrication plant that can produce quality chips at scale requires extensive management expertise and skilled leadership, in addition to the underlying technology and capital contribution. Export controls cannot constrain all of these factors, yet these are the exact types of contributions that would naturally flow into China's domestic sector by virtue of a US investment.”⁸

The focus of our NCCDA bill is foreign adversaries like the PRC and the Russian Federation. We need a specific outbound screening mechanism to prevent a foreign adversary from threatening access to critical capacities or supply chains. We do not need to screen every country, only adversaries and “countries of concern”.

Our legislation also recognizes the need for a multilateral approach with our partners and allies to ensure that we help them foster their development and implementation of similar, complementary mechanisms. In the long term, we need to expand coordination and diplomatic efforts to effectively confront the threats posed by our common foreign adversaries. The U.S. should align our own outbound investment review mechanism with those of allies and partners, such as South Korea and Taiwan, who have already taken this necessary step to protect their national security.

I want to thank the stakeholders and companies that over the past year have engaged with my office and our fellow cosponsors to offer constructive feedback and input to revise our legislation. We must put our Nation and its long-term national security and economic strength over short-term corporate profits. Our national security, our workers and our economic interests should never be sold out just for short-term gains. Americans across the political spectrum recognize the problem we are confronting and the need for a solution.

⁸ Danzman, Sarah and Kilcrease, Emily, *Sand in the silicon: Designing an outbound investment controls mechanism*, (September 14, 2022). <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/sand-in-the-silicon-designing-an-outbound-investment-controls-mechanism/>.

I want to commend the Biden Administration for its support for our revised legislation and their efforts to advance an outbound investment screening mechanism. Commerce Secretary Gina Raimondo, United States Trade Representative Katherine Tai and National Security Council Advisor Jake Sullivan, have all publicly expressed support for our legislation.

I still believe our revised legislation provides the U.S. with the strongest path forward to compete in a global economy. American workers and our national security cannot afford to wait. Legislative action on this front is long overdue to address the scope and magnitude of the substantial risks we face as a country. This week, I sent a letter with Senator Cornyn, Majority Leader Schumer, Speaker Pelosi and Representatives DeLauro, Fitzpatrick, Pascrell and Spartz to President Biden urging the Administration to move forward with executive action to safeguard our national security and supply chain resiliency by screening outbound investments to foreign adversaries. We stand ready to learn how we can support the Administration's proposals and shore up the resources the administration will need to stand up such a mechanism.

An outbound investment screen is an idea whose time has come. We must move beyond examination to action because our national security, American workers and industry, can no longer wait.

Thank you for your time and consideration.