

Ranking Member Pat Toomey (R-Pa.)  
Opening Statement  
Full Committee Hearing  
July 14, 2022 at 10:00 AM

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Thank you, Mr. Chairman. Under Secretary Estevez, welcome.

The Bureau of Industry and Security, or BIS, determines which U.S. goods are too sensitive to be shipped abroad. In the face of China's drive for dominance in key tech sectors, BIS's mission today is as important as ever.

By setting U.S. export control policy on items used for both civilian and military purposes, BIS effectively has the power to reshape the supply chains of entire industries. That means BIS must craft export controls in a prudent, thoughtful, and effective manner that advances U.S. national security interests without unduly harming America's economic interests.

The issue I would like to focus on today is a legislative concept that has received a growing amount of attention in recent months, falls squarely in the jurisdiction of this Committee, and would unquestionably impact BIS's mission and workflow, if enacted. I am referring to a concept known as "outbound CFIUS."

The idea is to establish a new agency within the Executive Branch, and give this agency vast, potentially unchecked authority to regulate, intervene in, and block all kinds of potential activities, including prohibiting Americans and U.S. firms from investing in, selling to, or buying from companies in certain countries, most notably China.

Outbound CFIUS could also provide the president with extremely broad authority to determine which industries to subject to regulation. It is not just semiconductor firms that would be affected. Any industry determined to be in the national security interest of the United States could be impacted.

President Biden's recent invocation of the Defense Production Act for baby formula is just the latest reminder of how the Executive Branch can abuse the term "national security." President Trump also abused the notion of "national security," having the Commerce Department laughably assert in a 232 investigation that the import of foreign cars was a threat to our national security.

In fact, it appears that Mr. Estevez agrees with this, because during his confirmation hearing before this Committee he said to me, “232 is an important tool . . . Section 232 needs to be looked at in a hard national security lens, Senator. It shouldn’t be used willy-nilly.” I share Mr. Estevez’s concern about national security authorities being abused by a president “willy-nilly.”

It is not an overstatement to suggest that hundreds of thousands of U.S. companies and tens, if not hundreds, of billions of dollars in commerce could be impacted by outbound CFIUS.

The rise of China presents the United States with the greatest security challenge we’ve faced since the end of the Cold War. I am clear eyed about the fact that the Chinese Communist Party has embarked on a concerted, whole-of-government campaign to surpass the technological leadership of the United States in areas that will underpin geopolitical military and economic power for decades to come. But how we address this challenge matters.

Doing outbound CFIUS, and getting it wrong, could impede the national security agencies—such as BIS or CFIUS—that are already doing important work on China. Getting it wrong could also severely harm the United States.

We cannot prevail in this contest with China by emulating China, like the China competition bills before the Senate envision. Instead, we must out innovate China and protect our intellectual property from theft and illicit transfer.

That means ensuring that the United States remains the single greatest global destination for capital formation, research and development projects, and the smartest minds in the world to come and work. Getting outbound CFIUS wrong puts all this into jeopardy by disincentivizing the flow of capital, ideas, and people to come to the United States.

There are many important questions about outbound CFIUS that remain unanswered. For example, what is the problem outbound CFIUS is attempting to solve? How do current laws and authorities, such as export controls, address or fall short of addressing this problem? How would

outbound CFIUS affect the United States as a destination for capital formation and technological innovation?

I am not the only one concerned about the reasoning and implications of standing up an outbound CFIUS mechanism. I have here a letter from three former officials from the last administration who directly oversaw CFIUS and export controls.

It raises concerns about the scope and justification for outbound CFIUS, and it calls for any such mechanism to be grounded in a clear statutory law brought about through regular order. If Mr. Estevez's predecessors are concerned about the way in which outbound CFIUS is playing out, I think he should be too.

In addition, eleven trade associations representing hundreds of thousands of companies and workers sent a letter to Congress expressing opposition to the inclusion of outbound CFIUS in the China competition bills under consideration. I ask that these two letters be entered into the record of this hearing.

Given these concerns, Congress must take the time to properly evaluate the outbound CFIUS concept rather than rushing to enact it.