M E M O R A N D U M

To: Members of the Committee on Financial Services

From: Financial Services Committee Majority Staff

Date: January 25, 2024

Subject: January 30, 2024, National Security, Illicit Finance, and International Financial Institutions Subcommittee Hearing Entitled "Better Investment Barriers: Strengthening CCP Sanctions and Exploring Alternatives to Bureaucratic Regimes"

On Tuesday, January 30, 2024, at 10:00 a.m. in Room 2128 of the Rayburn House Office Building, the National Security, Illicit Finance, and International Financial Institutions Subcommittee of the Financial Services Committee will hold a hearing titled "Better Investment Barriers: Strengthening CCP Sanctions and Exploring Alternatives to Bureaucratic Regimes." Testifying at the hearing will be:

- **The Honorable Thomas Feddo:** Founder/Principal, The Rubicon Advisors LLC
- **The Honorable Richard Ashooh:** Vice President of Global Trade and Government Affairs for Lam Research Corporation
- **Ms. Emily Kilcrease:** Senior Fellow and Director of the Energy, Economics, and Security Program, Center for a New American Security

Background

Concerns that the U.S. government should do more to prevent China from using U.S. capital and expertise to grow and improve their military capabilities and control key elements of the supply chain have driven congressional and executive actions over the last six years. These actions include a range of national security mechanisms, such as investment screening, export controls, sanctions, and trade. Both the Trump and Biden administrations aggressively used entity listings to block sales of technologically sophisticated items to China and pursued executive orders prohibiting U.S. investments in security and surveillance companies associated with the PRC.[1] For its part, Congress passed significant legislation such as the Foreign Investment Risk Review Modernization Act (FIRRMA) and the Export Control Reform Act (ECRA) and has considered a number of additional steps.

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[1] Is the US going to screen outbound investment? - Atlantic Council

Over the same period, China's economy has slowed considerably and financial flows between the U.S. and China have dropped, driven by decreased U.S. investment (de-coupling/de-risking). Nevertheless, the economic connection remains substantial and varied. As of May 2021, 248 companies headquartered in mainland China were listed on the NASDAQ, NYSE, or NYSE American with a market cap of approximately $2.1 trillion. Chinese companies raised $19 billion in primary and secondary offerings on U.S. exchanges in 2020.[2] Even as capital leaves China on net, foreign companies continue to make substantial investments in China.

China's Economy

China has been a driver of the global economy for three decades, as persistently high growth lifted its economy from low-income to upper-middle-income status. Its 2022 GDP of $18.3 trillion was 73 percent of U.S. GDP, as compared to only 7 percent in 1990.[3] China's per capita income grew proportionally, lifting hundreds of millions out of poverty.

In 2022, China relied on investment and exports to achieve a gross domestic product (GDP) growth rate of 3%, well below initial government and international projections.[4] The IMF estimates that China's growth rate for 2023 was 5.4%,[5] and many economists foresee further deterioration.

Biden Executive Order on Outbound

On August 9, 2023, President Biden issued Executive Order 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern." The Order declares a national emergency to address the threat to the United States posed by certain countries of concern that seek to develop and exploit sensitive or advanced technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities. At the same time the Order was issued, Treasury issued an Advance Notice of Proposed Rulemaking (ANPRM).

Mechanisms

The Office of Foreign Assets Control (OFAC)

OFAC administers and enforces economic and trade sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers, who are involved in activities related to threats to the United States' national security.[2] When a person or entity is sanctioned (or "designated"), any transactions they have with a U.S. person are generally prohibited unless otherwise authorized with an OFAC license. In addition, foreign persons who provide financial or other support to a sanctioned entity may themselves run the risk of being sanctioned. Because of their scope, sanctions are considered the most far-reaching coercive

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[2] *Ibid*
[3] China Stumbles but Is Unlikely to Fall (imf.org)
[4] China's Economy: Current Trends and Issues (crs.gov)
[5] China Stumbles but Is Unlikely to Fall (imf.org)

measure against a foreign person, unlike narrower export controls or ad hoc investment restrictions.

Committee on Foreign Investment in the United States (CFIUS)

Formed under a 1975 Executive Order to monitor U.S. policy on foreign investments, CFIUS is an interagency committee of executive branch agencies that deals with national security. It is chaired by the Department of the Treasury. In 1988, Congress expanded CFIUS's role by enacting the Exon-Florio amendment to the Defense Production Act of 1950, which authorized the President to suspend or prohibit foreign acquisitions of U.S. businesses if the foreign controlling interest might threaten national security. The President delegated this authority to CFIUS.

Export Controls

The Bureau of Industry and Security (BIS) of the Department of Commerce administers dual-use export controls and chairs an interagency process, which includes the Departments of Defense (DOD), State, and Energy. BIS administers these controls through the Export Administration Regulations (EAR), which includes the Commerce Control List (CCL) of dual-use technologies subject to controls. The EAR sets licensing policy for specific destinations, end use, and end user controls. On the CCL, national security (NS) controlled items are on the Wassenaar Arrangement's multilateral control list. The EAR presumes denial for license applications of NS items that would make a direct and significant contribution to China's military. Separate statutes and regulations control nuclear materials and technology and defense articles and services. U.S. law has prohibited arms sales to China since 1989. Congress has also mandated a policy of denial for exports of satellite and space equipment to China.[6]

When an item is exported, the technology and software associated with that item are also exported. An item is "deemed" to be exported when a foreign national receives information about controlled technology in the United States, whether through academic research or work in a company laboratory. If an item requires a license for export to a certain destination, an academic institution or firm would need a license to engage a person from that destination to allow that person to work with that technology. The focus on illicit technology transfer has heightened concerns about the efficacy of export licensing.[7]

ECRA required an interagency process to identify emerging and foundational technologies. ECRA stipulated those countries subject to general U.S. embargoes, or a U.S. arms embargo—including China —would require a license for export of such technology.[8]

Emerging and Foundational Technologies

- Additive manufacturing
- Advanced computing technology
- Advanced materials
- Advanced surveillance technology

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[6] U.S. Export Controls and China (crs.gov)
[7] Export Controls: Key Challenges (crs.gov)
[8] *Ibid*

- Artificial intelligence (AI) and machine learning
- Biotechnology
- Brain-computer interfaces
- Data analytics technology
- Hypersonics
- Logistics technologies
- Microprocessor technology
- Position, navigation and timing (PNT) technology
- Quantum information and sensing technology
- Robotics

Source: Bureau of Industry and Security.