Statement of the Honorable Thomas P. Feddo
Before the U.S. House of Representatives Committee on Financial Services
February 7, 2023

Chairman McHenry, Ranking Member Waters, and distinguished Members of the Committee, I am honored to appear before you today for the Financial Services Committee's first substantive full Committee hearing of the 118th Congress. It is a privilege to join my fellow witnesses—some, former colleagues in public service—in this very important discussion.

That your first hearing focuses on "Combatting the Economic Threat from China," makes clear the priorities of the Committee—and the significance of the current geopolitical climate's potential impact on our economic security, and by relation, our national security.

As you know, I previously served as 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 roughly 27 years of government service—much of it in various national security-related capacities—I hope to contribute to your consideration of the risks to U.S. interests posed by the People's Republic of China (PRC) and how we can mitigate these risks through the use of investment screening and economic sanctions while maintaining a strong, open, free-market investment environment.

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 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." 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, an engineering and technological marvel. Today our submarines, ships, aircraft, and other weapons systems remain cutting-edge; the most sophisticated and lethal in the world. This is in great part a result of America's free-market innovation ecosystem, both in and outside of the defense industrial base. From my submarine experience, the imperative for maintaining America's technology advantage is crystal clear—it advances the capability to win decisively on the battlefield, whatever the domain.

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—a Committee on National Critical Capabilities (CNCC)—was considered during the course of drafting last year's CHIPS and Science Act. One proposal for 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 the CNCC's 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 necessary.

Complicating matters, media reports indicate that the Biden Administration will move forward this spring with creating an outbound screening regime through Executive action, but little is known about its potential scope or focus.

To be clear, I hold the strongest view that creating an investment screening mechanism by Executive Order would be a major 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. Many of the points made throughout my written statement have similarly been voiced by Chairman McHenry in his October 3, 2022, letter to National Security Advisor Jake Sullivan.

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 absolutely necessary. The dangers posed by the PRC are real and present, not over-the-horizon, but decision makers would benefit greatly by refusing 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 and global capital flows.

I am encouraged that this Committee will begin, in part through some of today's hearing, to scrutinize the need for outbound screening. 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 thus understood well 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, decision makers would be best served by building a comprehensive record—taking testimony from experts and key stakeholders and, critically, 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.

Only after 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:

- which agency should be accountable for leading implementation and operations;
- which agencies should participate, and why;
- precisely which technologies or sectors warrant investment screening, and why;
- 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);
- how risk will be quantified and assessed;
- whether and how risk could actually be mitigated and enforced for an approved transaction;
- whether filings should be mandatory;
- the financial and human resources required to be effective;
- the potential U.S. business compliance costs;
- the anticipated impacts on the American economy and global capital flows;
- the extraterritorial effects, and likely response from allies;
- the extent to which such a mechanism furthers the decoupling of the world's two largest economies—*and* to what extent that is a desired policy outcome; and

- the extent to which restrictions on U.S. person transactions would be simply replaced by other capital or intellectual property sources.

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 extremely 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.

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

As I mentioned in similar testimony last September to the Senate Banking Committee, 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 an inadequate response to the PRC's ominous goals.

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