

Opening Remarks of

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U.S. Policy on Investment Security

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Mr. Chairman, Ranking Member Beatty, members of the Subcommittee.

Thank you for offering me the opportunity to appear before you today. My name is Brian Reissaus. I am a senior advisor in the antitrust, competition, and trade practice at the law firm Freshfields in Washington, DC.

I previously had the privilege of serving fifteen years in the government, including five with the Department of Defense and ten with the Department of the Treasury, spanning three administrations. My government experience with the Committee on Foreign Investment in the United States (CFIUS) and U.S. investment security policy includes leading the Executive Branch's provision of technical assistance to Congress for the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), serving as the senior career official for CFIUS and Treasury's Office of Investment Security from 2018 through 2023, and contributing to the development of Executive Order 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern," which is the basis for the Outbound Investment Security Program.

Before getting into the substance of my remarks, and to avoid any doubt, I want to say that the views I express here today are my own and not those of my employer or any clients of my employer, and I am not here representing the interests of any other party. I will not speak about any specific case that was or is before CFIUS.

I would like to offer some observations on U.S. investment security policy, including CFIUS and the Outbound Investment Security Program.

The United States Overwhelmingly Benefits from Foreign Investment

It is important to note that foreign investment overwhelmingly benefits the United States through creating jobs, funding innovation, and fostering economic growth.

But as importantly as the economic benefit that comes with foreign investment, which Jonathan Samford will be discussing further, foreign investment also bolsters our national security. I witnessed this benefit firsthand throughout my government service. At the Department of Defense, I oversaw foreign-owned, cleared defense contractors that supply cutting-edge technologies to our warfighters, providing them with a decisive edge on the battlefield. During my tenure with CFIUS, I routinely reviewed transactions that involved friendly foreign investors providing capital that was essential to funding U.S. innovation in emerging technologies.

This has all been possible because of the longstanding U.S. open investment policy—a policy that has been held through both Democratic and Republican administrations. This policy has been reaffirmed by Congress under both Democratic and Republican majorities.

However, Congress recognized that some foreign investment can pose national security risks to the United States and, therefore, gave the President the authority to prohibit transactions on national security grounds in 1988. Congress then codified CFIUS's processes and gave it mitigation authority in 2008.

The Role of CFIUS

CFIUS serves as a critical safeguard against foreign investment that poses a genuine threat to our national security. CFIUS does this through its singular focus on reviewing transactions for cognizable national security risks that could reasonably result from the transaction under review. A transaction will pose an actionable national security risk under the law if CFIUS identifies credible evidence of:

- A **threat**: a foreign person that has both the capability and intent to impair U.S. national security;
- A **vulnerability**: an aspect of a U.S. business or real estate that presents susceptibility to impairment of national security; and
- A **consequence**: a definable harm to U.S. national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.

Certain core principles of the CFIUS process are essential to maintaining an open investment environment in the United States while still allowing CFIUS to fully resolve national security risks.

- **Timelines**: Congress established statutory timelines to ensure that CFIUS completes its national security reviews and investigations within a reasonable amount of time. The vast majority of foreign investment does not pose any national security risk, and predictable, limited timelines are essential to encouraging voluntary filings and maintaining a welcoming environment.
- **Evidence-Based**: By law the actions of the President and CFIUS must be based on credible evidence that a transaction poses a national security risk. The evidence may be classified or unclassified, and it may be specific to the investor or tied to the government of the investor's country, but the determination must be evidence-based.
- **Tool of Last Resort**: CFIUS only takes action to address a national security risk when there are no other adequate or appropriate authorities that can address the risk.
- **Proportionality**: CFIUS's actions are tailored to the identified national security risk arising from the transaction. CFIUS's duty is to ensure that any such risk is fully resolved. CFIUS is neither a tool to regulate business to address issues unrelated to the proposed acquisition, nor a tool to extract economic concessions from the investor.
- **Confidentiality**: Congress importantly shielded information filed by transaction parties from public disclosure. This not only provides U.S. businesses and foreign investors confidence that sensitive information about them will be protected, encouraging voluntary filings and full transparency, but also ensures that CFIUS can conduct an apolitical national security analysis.
- **Accountability**: Congress plays an important oversight role in ensuring that the CFIUS process remains efficient, that CFIUS's decisions are grounded in fact, and that CFIUS identifies and addresses national security risks posed by the transactions it clears in a manner that is consistent with its statutory framework.

Throughout CFIUS's history, its risk framework and core principles have allowed CFIUS to quickly adapt to new and emerging national security risks—often well before any other part of the U.S. government—while providing transaction parties confidence that their filings would be handled fairly and efficiently.

Evolving Foreign Investment Landscape

The foreign investment landscape has shifted considerably since Congress passed FIRRMA in 2018. At that time, Chinese investment was at its peak, and CFIUS was grappling with an increasing number of transactions that raised national security risks, yet were outside of CFIUS's jurisdiction. This led Congress to pass FIRRMA, which surgically expanded CFIUS's jurisdiction to capture those transactions most likely to pose national security risks, without unduly restricting, burdening, or overwhelming CFIUS with the obligation to review, the vast majority of transactions that pose no national security risks.

Today the reality of the investment landscape is very different. Chinese investment has been on the decline since 2018. According to the American Enterprise Institute, “the PRC's spending here has been negligible since 2018. China's investment around the world was stable at a historically low level in 2024 and barely visible in the US[.]”¹

According to the 2023 CFIUS Annual Report, when adjusting for refiled transactions, China was not in the top three for the countries of origin for investors.²

Despite the precipitous drop in Chinese investment, data from CFIUS's annual reports indicate that the number of transactions withdrawn and refiled still increased to historic highs from 2021 to 2023.³ These numbers are concerning because they exceed the number of transactions withdrawn and refiled when Chinese investment was at its peak from 2016 to 2018.⁴

One can infer from this data that from 2021 to 2023, investors from countries that are partners and allies with the United States were increasingly impacted by delays—given that China represented a decreasing portion of transactions during this period. A similar trend is present in the number of mitigation agreements required by CFIUS, despite a decrease in overall transactions filed with CFIUS.⁵

While it is almost certain that some of these transactions posed genuine national security concerns, there is little evidence to support that there was a substantive shift in national security risks posed by foreign investment that drove these changes. In fact, investment trends would suggest that both the number of refiled and mitigated transactions should have decreased.

¹ American Enterprise Institute, “China Tracker Home,” *AEI.org*, Accessed July 11, 2025, <https://www.aei.org/china-tracker-home/>.

² U.S. Department of the Treasury, “2023 CFIUS Annual Report,” July 2024, <https://home.treasury.gov/system/files/206/2023CFIUSAnnualReport.pdf>, p. 25.

³ U.S. Department of the Treasury, “CFIUS,” *Covered Transactions Withdraws Presidential Decisions 2008-2023*, Accessed July 11, 2025, <https://home.treasury.gov/system/files/206/Covered-Transactions-Withdrawals-Presidential-Decisions-2008-2023.pdf>.

⁴ Ibid.

⁵ Ibid.

U.S. Investment Security Policy

As Congress did when it crafted and passed FIRRMA, any changes to U.S. investment security policy should go through a similarly rigorous process that: (1) is based on facts and on evidence of a defined national security risk; and (2) assesses the impact such changes will have on investment that does not pose a risk to U.S. national security. That process for FIRRMA involved hundreds of meetings with affected stakeholders to carefully draft each provision.

In particular, the Outbound Investment Security Program could benefit from such a process. As currently structured, the regulations pose ambiguities that complicate compliance. Better alignment between the national security risks that the Outbound Investment Security Program is intended to solve and the definitions defining the scope of “covered transactions” would provide much needed clarity to the private sector.

To the extent there are transactions that pose concerns beyond CFIUS’s jurisdiction, it will be important to first consider whether they are isolated or systemic and then assess whether an authority other than CFIUS would be more effective and efficient in addressing the risk. Continuing to expand CFIUS’s authority will blunt its effectiveness as a national security tool, including by reducing CFIUS’s ability to thoroughly review each transaction. Additionally, given the negligible volume of Chinese investment into the United States today, any expansion of CFIUS’s jurisdiction is far more likely to disproportionately impact benign foreign investment.

Thank you for your interest in these issues. I look forward to your questions.