

**Statement of
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Before the Subcommittee on Digital Commerce and Consumer Protection**

**Committee on Energy and Commerce
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Chairman Latta, Ranking Member Schakowsky, and Members of the Committee:

I appreciate the opportunity to testify before the Subcommittee today regarding the Committee on Foreign Investment in the United States or CFIUS. I am pleased to share the perspective of the Department of Commerce in this area, both as a member agency of CFIUS and as an export control agency.

Since becoming Assistant Secretary of Commerce for Export Administration last year, I have reviewed almost 100 CFIUS cases and participated in policy deliberations on many sensitive and complex transactions. While in the private sector, I worked for a defense company owned by a foreign company, an acquisition that was reviewed by CFIUS. Based on my experience, it is clear that CFIUS plays an important role in protecting our national security.

The International Trade Administration (ITA) and my organization, the Bureau of Industry and Security (BIS), play important roles in Commerce's review of CFIUS matters, reviewing every transaction and bringing different expertise to CFIUS's deliberations. ITA has extensive expertise on U.S. and global market conditions and provides insights into how the foreign investments reviewed by CFIUS fit into the overall market. BIS, on the other hand, has a national security mission, the main element of which is the administration of the U.S. export control system codified in the Export Administration Regulations (EAR), which are often a key factor in CFIUS reviews.

Administering Export Controls

In our role administering the EAR, BIS's responsibilities encompass the entirety of the export control process – we write and implement the regulations, issue export licenses, conduct compliance activities (including overseas end-use checks), and enforce the regulations, including by preventing violations and punishing those who violate.

The EAR has traditionally been the regulatory authority for the control of “dual-use” items, which are items that have a civil end-use but can also be used for a military or proliferation-related use. However, in recent years some less sensitive military items previously controlled under the International Traffic in Arms Regulations (ITAR) have been transferred to the EAR. The dual-use items subject to control and these less sensitive military items are listed on the Commerce Control List (CCL) within the EAR. Additionally, commercial items that are not determined to merit control on the CCL as dual-use items are still subject to the EAR and are controlled to sanctioned destinations and parties as well as to prevent sensitive end uses such as

those relating to developing weapons of mass destruction. We refer to such items as EAR99 items.

It is important to note that the export control system administered by BIS is an instrument of national security that, like CFIUS, involves multiple agencies. We work closely with the Departments of Defense, Energy, and State and these agencies review and clear any changes to the EAR itself as well as license applications submitted to BIS. The different equities, viewpoints and technical expertise that our four agencies bring to the table ensure that the export control system is robust and that national security remains at the forefront.

The EAR's authority covers a wide array of transactions and technology transfers. The goods, software and technology listed for control on the CCL are defined by specific technical parameters. The interagency decisions on where to set these parameters are national security determinations based on when particular items become sufficiently applicable to a military end-use to warrant control. The EAR governs what are considered traditional exports of goods, software or technology to foreign countries, but the EAR also covers the transfers of controlled technology within the United States to foreign nationals under what we call "deemed exports." It is also important to note that the EAR differentiates between countries that range from our closest allies to embargoed countries. This differentiation allows the export control system to treat exports and technology transfers under different licensing review policies depending on the level of concern with the recipient country. The EAR also includes lists of end-uses and end-users of concern that trigger extraordinary licensing requirements if an export is in support of, or destined for, such an end-use or end-user.

In addition to being an interagency national security process, our export control system benefits from close cooperation with our international partners through the four major multilateral export control regimes. Through these regimes – the Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group – the United States and our partners agree on which items and technologies merit control and how those controls should be applied. It has long been our position that export controls are significantly more effective when they are implemented multilaterally. This helps ensure that these sensitive technologies are controlled by all countries that are capable of producing them to make it more difficult for them to be acquired by parties of concern.

The export control system and CFIUS are complementary tools that we utilize to protect U.S. national security, with CFIUS addressing risks stemming from foreign ownership of companies important to our national security, and export controls dealing with transfer of specific goods and technologies out of the United States or to foreign nationals, regardless of mode of transfer. Some risks, such as the potential transfer of sensitive technology from a United States firm by a new foreign owner, could fall under the purview of both mechanisms. Each mechanism has its strengths, and it is important that each be applied in ways that complement, and not duplicate, the other.

One issue that has received a lot of attention in recent months is the concept of "emerging" technologies that may not yet be well understood but could potentially be sensitive and present national security concerns. Our export control system has been addressing technological

innovation for decades in light of the rapid pace of innovation and the increased overlap between civil and military technologies. Moreover, BIS has existing tools to identify and deal with emerging technologies through its specialized expertise and the EAR. One way that BIS seeks to keep as updated as possible on emerging technologies is through our technical advisory committees (TACs), which are our primary vehicle for interacting with industry in technical areas impacted by our export controls. These TACs cover various technology sectors including transportation, information technology, and sensors.

Not surprisingly, the concept of emerging critical technologies is one that presents challenges to CFIUS as well. The Department of Commerce regularly brings to the CFIUS process the knowledge gained of such technologies through its administration of the Export Administration Regulations. The Department of Commerce shares the Committee's concerns over China's industrial policies and activities. It is important that the export control process continue its role in securing U.S. technology leadership. For this reason, we are currently undertaking a review to better utilize our authorities to combat threats arising from the transfer of this kind of technology.

Similarly, it is also crucial that CFIUS remain adaptive to current and evolving security challenges. As the Subcommittee is aware, legislation has been introduced in the House and Senate which, if enacted, would take several important steps in this direction. The Department supports the legislation, known as the Foreign Investment Risk Review Modernization Act (FIRRMA). There are a few provisions that I would like to highlight that are of particular interest to our Department:

- The Department welcomes the affirmations in FIRRMA of the U.S. policy supporting direct investment in the United States.
- We are supportive of the requirement for mandatory filings for certain transactions involving foreign government-controlled entities. However, we are concerned that the 25 percent threshold in FIRRMA is too high and that transactions could easily be structured to evade it. We encourage the Congress to consider a lower threshold.
- We appreciate that FIRRMA requires an assessment of the resources necessary for CFIUS to carry out its critical work, and would both establish a CFIUS Fund and permit filing fees to help achieve that end. We also appreciate that the bill states that the provisions which would expand CFIUS authorities will not take effect until CFIUS has put in place the regulations and has the resources it needs to implement its expanded role.
- Additionally, we support the provisions of FIRRMA that would facilitate greater cooperation and information sharing with our allies and partners. This would permit increased coordination with like-minded countries, particularly on acquisitions that cross borders, as we attempt to address national security concerns.

We in BIS are committed to continuing to identify and control sensitive emerging technologies and to ensuring that the export control and CFIUS processes relevant to managing security challenges presented by emerging technologies are systematic, proactive, and institutionalized.

In sum, CFIUS and export controls are both vital and robust authorities the United States relies upon to protect our national security. As we strengthen both to meet current challenges, it is important that they remain complementary and not overlap unnecessarily, as that has the potential to overburden the CFIUS process and partially duplicate the more comprehensive coverage of technology transfer under the export control system. Commerce looks forward to working with the Congress on ways to protect sensitive U.S. technologies and assets that provide key advantages to our industrial base and national security.

Thank you.