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United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

May 25, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

Dear Secretary Yellen:

I am writing in regard to the Administration's proposed Executive Order on outbound investment, the imminent release of which has been rumored since last year. According to briefings provided by the Administration, the Department of the Treasury (Treasury) may transform CFIUS into a committee on foreign investment in the United States and China, prohibiting deals in certain Chinese technology sectors and mandating investor notifications in others. As we prepare for your testimony before the Committee, I would request your feedback on the following matters.

Last year, China recorded a current account surplus of $417.5 billion, the highest level since 2008. The last time an Administration tried to restrict financing against a large current account surplus country, in 2014, it failed. Do Treasury and the Administration really believe that investment restrictions will be effective this time – particularly against a surplus country that holds $3 trillion in reserves?

To be clear, this kind of policy was attempted as part of the federal government's financing restrictions against Russia. Those restrictions not only failed to deter Moscow from its war in Ukraine, but also left targeted entities so unaffected that Treasury had to re-sanction them last year. Given Treasury's longstanding principle that coercive measures must achieve clear objectives, it is unclear why the Administration now wants to repeat the same policies in China but expects different results. It is also unclear why the Administration believes that prohibiting know-how solely linked to investments would be more effective than comprehensively using export controls or sanctions.

The Administration further claims that U.S. investments in early-stage Chinese companies may require the declaration of a national emergency. However, U.S. venture capital deals in China have fallen by 87 percent since 2018.[1] At their height, these investments were concentrated in later-stage companies. Moreover, U.S. venture capital firms typically acquire control, substantive decision-making rights, board seats, or material nonpublic technical information when they invest. As your colleagues in the Office of Investment Security know, these represent potential national security risks to the target country – in this case, China. It is inexplicable that the Administration hopes to rescue China from

[1] https://rhg.com/wp-content/uploads/2021/05/RHG_TWS-2021_Full-Report_Final.pdf

these risks before Beijing can. At a time when the Chinese Communist Party is already cracking down on Western firms and business intelligence services, the Administration should reject an E.O. that advances Beijing's goals.[2]

Given the White House's interest in declaring a national emergency, please provide answers to the following:

- Which discrete Chinese technologies have been developed as a result of U.S. investments that would be prohibited under the proposed E.O.? Please include the technologies' specifications. While the list is presumably extensive given the Administration's urge to invoke IEEPA, please limit your examples to ten.

- Of the venture capital funding rounds in the most recent year where data is available, how many of them supported the specific Chinese technologies that would be subject to prohibitions under the E.O.? What was the value of these U.S. investments?

- Which know-how or other essential information has been transferred by U.S. investors in support of covered Chinese technologies? Please limit your examples to ten and include whether the information was unavailable to non-U.S. investors.

- How far would the proposed E.O. delay China's development of covered technologies relative to the following alternatives: 1) no issuance of an E.O., 2) the use of export controls only, and 3) the imposition of blocking sanctions? For a particular stage of technological development, please estimate the delay to within five years.

- If a national emergency is justified, does Treasury endorse secondary sanctions against third-country funds that invest in covered Chinese technologies? If not, how would an E.O. resolve the national emergency?

- Since being subjected to investment restrictions under Treasury's CMIC List, Semiconductor Manufacturing International Corporation (SMIC) increased R&D expenses by 15 percent and saw gross profit rise by 65 percent. Why does the White House claim that additional investment measures will stymie this industry in China?

The Biden Administration's interest in capital controls requires rigorous scrutiny by Treasury and thorough oversight by Congress. I look forward to your response.

Sincerely,

Patrick T. McHenry

PATRICK MCHENRY
CHAIRMAN

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[2] https://foreignpolicy.com/2023/05/02/china-anti-espionage-law-foreign-investment-business-data/