

Dear Policy+ Subscribers,

On October 29, the Center for Strategic and International Studies (CSIS) held an event featuring US government officials in Washington, DC entitled, “Managing the Risk of Tech Transfer to China” (for a complete video recording of the event please see [here](#)). Keywords of the event include the **Committee on Foreign Investment in the United States (CFIUS)**, **Foreign Investment Risk Review Modernization Act (FIRRMA)**, **emerging technologies**, and **US-China tech relationship**.

Why should you pay attention to this event?

These panelists either write, manage or implement policies related to emerging and critical technologies. Their attitudes and views have the potential to directly impact US tech companies’ operations in China.

Here are the panelists:

- Michael Brown, Director of the Defense Innovation Unit, US Department of Defense (DoD)
- Eileen M. Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security (BIS), US Department of Commerce
- David Hanke, Partner, Arent Fox LLP (former hill staffer who helped to write FIRRMA)
- Thomas Feddo, Assistant Secretary for Investment Security, US Department of Treasury
- James A. Lewis, SVP and Director, CSIS Technology Policy Program (Moderator)



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Over the past year and a half, the US has taken a holistic approach to address issues from the US-China tech relationship and safeguard its national security. This trend is likely to continue, as demonstrated by the notes below. On the other hand, there is ongoing debate centered around what kind of technologies should be reviewed by the US government and whether the government should control items that were not previously controlled.

#### CFIUS 2.0: Threat X Vulnerability = Consequence

- Feddo from US Treasury highlighted the critical role of Foreign Direct Investment (FDI) in the US economy and national security and stressed that the US is **open for business**. That said, he doesn't think all FDI is **benign**.
- He emphasized the purpose of CFIUS is to carry out reviews on certain transactions on a case-by-case basis and to ensure national security is protected. Companies should not assume that CFIUS targets certain countries or industries.
- Currently, the critical technology pilot program **applies** to 27 identified industries (including aviation, defense, semiconductors, telecommunications and biotechnology). Once the regulations are fully implemented in February 2020, CFIUS will be granted more jurisdiction to review non-passive and non-controlling investments involving industries beyond the 27 identified industries in the pilot. To ensure CFIUS is in full compliance, an additional office under CFIUS will be built for the enforcement of the mitigation agreements.
- Companies should be on the lookout for new investment screening mechanisms. Eventually, CFIUS will require allies and other countries to establish a robust process to assess foreign investments for national security risks and facilitate coordination with the US on national security matters. Treasury is also **working** with several dozen countries on a **bilateral and multilateral** basis to share best practices of investment screening tools that allows economies to stay open for business.

#### Export Controls: maximize economic prosperity or minimize technologies reviewed?



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- Albanese from the US Commerce Department pointed out that Commerce has created teams for each of the categories on the [commerce control list](#) (CCL), and the leads are required to discuss with labs, the intelligence community, and venture capitalists, to advise in the identification of emerging technologies that are essential to US national security. Their first meeting is expected to be held before the end of this year.
- Export licenses for technology transfers have been **decreasing**. Now most export license requirements are for commodities because Commerce is taking technology transfer concerns seriously. Commerce considers the entire transaction and what it means for the future. What technologies are already in China, and what will the impact be to the US defense industrial base if the license is denied?
- Brown, from DOD, countered that the goal should be to minimize the technologies covered, and for there to be a continual review process because technology is always changing. Additionally, he believes that because of **China's civil-military fusion policy**, every commercial innovation in China can be transferred to the PLA and Chinese government.

#### Entity list: addressing IP issues?

- According to Hanke, who helped to write FIRRMA, **China** represents the foremost national security challenge to the US of our lifetime. Washington policymakers have not yet wrapped their heads around the scope and scale of this problem.
- Companies should be aware that the Congress is still frustrated by the continued lack of control on emerging technologies from Commerce even though the passage of FIRRMA and the Export Control Reform Act (ECRA) was supposed to make CFIUS more relevant and efficient. Therefore, it is possible that Congress might pass new legislation or amend existing ones to **tighten export controls** on emerging technologies.



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- Hanke criticized the Trump administration's approach, which has been to prosecute through the Department of Justice, saying that neither these investigations nor USTR tariffs will solve the problem.
- A supporter of economic sanctions and entity lists, Hanke believes there should be a targeted approach to dealing with intellectual property theft that raises the costs, deters actors from stealing in the first place, and reduces the ability to monetize what is stolen. Meanwhile, he argued that a clear legal framework should also be established with confidentiality, the ability for federal agencies to review evidence, and with baked-in adverse action.

### Technology transfer and why it's costly

- Brown of DoD suggested that the near-term direct cost of technology transfer is \$600 billion annually and a threat to US-based high paying domestic jobs. It threatens a loss of market share to global competitors in foundational technologies over time.
- He believes that the longer-term consequences for the US are declining leadership in science and technology, less competitive US businesses, enormous loss in "**first mover advantage**" and economic output, and the inability to set standards and practices. National security will also be compromised through a loss of US military technical advantage and with fewer levers to pull on global technological norms and state behavior.
- As such, he is critical of some of the US tech companies who tend to focus on near-term interests without recognizing the long-term cost on US national security. He also argued that while the US government is putting a lot of effort on defensive policies like CFIUS and export controls, it is **not doing enough on proactive policies** like investing in R&D and retaining STEM graduate students.



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That's all for today! If you have questions or comments, please send them our way. Even though it's not a bright outlook for the bilateral tech relationship, we are here with you every step of the way.

Best,

AmCham China Government Affairs and Policy Team



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