

Biden Administration to Take Action on U.S. Outbound Investment Screening

April 4, 2023

Investment screening has become an increasingly important topic for the United States and its allies, as concerns grow about the accumulation of sensitive information and technologies by strategic adversaries like China and Russia. The Biden administration is currently contemplating taking action in the near future, likely in the form of an executive order, to establish an outbound investment screening regime focusing on U.S. investments in certain sectors inside or in partnership with countries of concern. The goal of the program is to limit the transfer of technology to such countries through U.S. investments that could be used to bolster foreign military and civilian surveillance capabilities. While the United States already has a robust mechanism in place to screen inward foreign investments for national security reasons (through the Committee on Foreign Investment in the US, or CFIUS), an outbound screening regime is a novel approach, that some refer to as “CFIUS in reverse.”

In March, the U.S. Departments of Commerce and Treasury issued reports pursuant to the Consolidated Appropriations Act enacted last year, describing their efforts to establish a program to “address the national security threats emanating from outbound investments from the United States in certain sectors critical for U.S. national security” and “identifying the resources that would be required to establish and implement” such a program.[\[1\]](#)

While details of the scope of the proposed screening regime are limited, the Commerce and Treasury Department reports indicate that the focus would be on “investments that could result in the advancement of military and dual-use technologies by countries of concern” and “certain entities involved in a sub-set of certain key advanced technologies that are critical to U.S. national security.” Earlier [reporting](#) suggested that the focus would be limited to semiconductors, artificial intelligence, and quantum technology. The program would be implemented and administered by the Commerce and Treasury Departments, covering investments not already addressed by export controls, sanctions, or other related authorities, and actions taken under the program “may include prohibiting certain investments and/or collecting information about other investments to inform potential future action.”

The outbound investment screening regime has been the subject of some controversy, with some arguing that it can deter foreign investment in the United States, while proponents argue that it is necessary to protect national security and ensure that foreign investments do not pose a threat to the U.S. economy or its citizens.

This is not the first time the United States has pursued this kind of action. In 1968, President Johnson issued [Executive Order 11378, “Governing Certain Capital Transfers Abroad,”](#) which established an outbound investment review process to be administered by the Commerce Department, in response to the growing deficit and turmoil in the money markets. In 1986, President Reagan terminated the

program and the program was determined not to be successful.

The United States is not alone in considering implementation of outbound investment screening to counter national security threats posed by China. On March 30, 2023, European Commission President Ursula von der Leyen [addressed](#) the Mercator Institute for China Studies and the European Policy Centre in Brussels. While discussing EU relations with China, President von der Leyen stated that the EU is “currently reflecting on if and how – Europe should develop a targeted instrument on outbound investment” that “would relate to a small number of sensitive technologies where investments can lead to the development of military capabilities that pose risks to national security.”

The executive order is expected as early as April of 2023 and is currently undergoing interagency review.

[1] See U.S. Department of Congress, International Trade Administration, Outbound Investment Initiative Report to Congress, <https://subscriber.politicopro.com/f/?id=00000186-b8fb-d9f3-abef-bfff67e0000>; U.S. Department of Treasury, Proposed Program to Address National Security Threats Emanating from United States Outbound Investments, <https://subscriber.politicopro.com/f/?id=00000186-b8fa-d147-a7f7-fefac9010000>.