



The Daily Dish

Screening Outbound Investment

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The free flow of capital across international borders is an important economic benchmark. Capital inflows permit domestic investment to exceed domestic saving, and thus finance the pursuit of high-return projects that would otherwise be delayed or abandoned. Capital outflows permit investors to earn higher than domestic returns when they are available elsewhere, to the benefit of U.S. firms and savers.

But as Kris Kristofferson [noted](#), “Freedom is just another word for nothin’ left to lose.” If inbound investment is strategically deployed by our rivals to diminish U.S. national security, enforcing the free flow of capital could be a pyrrhic victory. In certain circumstances there will be a tradeoff between greater economic benefits and diminished national security. But it is certainly not always the case, so the key question is in *exactly* what circumstances.

Since the administration of Gerald Ford, the United States has screened inbound investments using an interagency group called the Committee on Foreign Investment in the United States (CFIUS). In the 1980s, however, Japan was feared comparably to modern China and fear of Japanese investment (notably an attempt to purchase Fairchild Semiconductor) led Congress to pass the 1988 Exon-Florio Amendment that gave CFIUS the right to reject proposed deals. CFIUS’s powers have been updated regularly since and it remains the omnibus screening mechanism for national security risks from inbound investment.

Largely due to the rise of China as a strategic foe, there is now a deep, bipartisan interest in making sure that U.S. outbound investment does not serve to strengthen our foes. At one extreme, one could imagine a CFIUS-like panel empowered review for veto or approval of every dollar of outbound investment. That gives me, at least, a bad case of the heebie-jeebies (not to be confused with the heebee jeebees, a Canadian a cappella quartet). But something that intrusive and economically damaging is not in the mix.

AAF’s Tori Smith’s [latest](#) takes a look at the lay of the legislative land. The main legislative vehicle has been the [National Critical Capabilities Defense Act](#) (NCCDA) by Senators Bob Casey (D-PA) and John Cornyn (R-TX). This legislation would establish an interagency committee to review outbound investment. Smith notes: “The bill would give the committee broad authority to review investment meant for a ‘country of concern,’ and specifically notes the examples of ‘foreign adversary’ and ‘non-market economy.’” Starting with a full-blown CFIUS-like construct raises concerns of overreach and unintended consequences and the legislation looks unlikely to advance.

Perhaps as a consequence, a [recent letter](#) to President Biden by eight senators and representatives “urge [the administration] to move forward with executive action—which can then be bolstered by statutory provisions.” The signatories went on to note, “This is how oversight of inbound foreign investment was initially established—Executive Order.”

Another alternative proposed by Senator Pat Toomey (R-PA) would extend to capital transactions the existing export controls placed on goods, technologies, technical data, and services. Specifically, Smith notes that Toomey “suggested during the Senate Banking Committee hearing that ‘a notification regime for outbound

American investments in China should, at a maximum, only be applicable to direct U.S. investments in Chinese entities that are manufacturing, producing, developing, or testing technology, for which a U.S. exporter would otherwise be required to seek a license under current law to export.””

The Toomey proposal is a targeted and incremental approach. It may turn out to be only a first step, but it’s likely to be a worthwhile first step.