

**Statement of
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Before the
Committee on Banking, Housing and Urban Affairs
U.S. Senate
January 25, 2018**

Chairman Crapo, Ranking Member Brown, and Members of the Committee:

I appreciate the opportunity to testify before the Committee today in support of the Foreign Investment Risk Review Modernization Act (FIRRMA) (S. 2098). I would also like to highlight the critical roles the Department of Commerce plays in supporting U.S. national security – both as a member of the Committee on Foreign Investment in the United States (CFIUS) and as an export control agency.

Committee on Foreign Investment in the United States

Let me start by thanking Senator Cornyn, Senator Feinstein, Senator Burr, and the other co-sponsors for their strong leadership and dedication on this very important issue. We appreciate the work Senator Cornyn and Congressman Pittenger have done on FIRRMA. The Commerce Department supports the modernization of the CFIUS process to ensure that it has the authorities and capacity required to address risks to our national security from foreign investment. The Department also shares Congress's concern about China's industrial policies and activities. We believe FIRRMA takes many positive steps in addressing those concerns.

I have now had experience with the CFIUS review process in the public and private sectors. 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, whose acquisition by the foreign parent was reviewed by CFIUS. Based on my experience, it is clear that CFIUS plays an important role in protecting our national security. Together with the International Trade Administration (ITA), 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, as the administrator of the Export Administration Regulations (EAR), has extensive experience in export controls, which are often implicated in CFIUS reviews.

I would like to highlight a few specific provisions in the legislation:

- As you are aware, the Administration welcomes foreign investment and the Department of Commerce houses SelectUSA, which helps promote foreign investment in the United States. The Department welcomes the affirmations in FIRRMA of that policy. As we consider how to modernize CFIUS, we should be careful that the U.S. Government not send a signal that we have changed our policy of encouraging foreign direct investment. However, we are also very attuned to the need to protect U.S. national security and feel that CFIUS has an important role to play in that regard.

- 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 committee 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.

The Department of Commerce looks forward to working with the Committee as it continues its CFIUS modernization efforts.

Administering Export Controls

As this Committee well knows, BIS addresses the challenges that arise where business and national security intersect. Our mission is to advance U.S. national security, foreign policy, and

economic interests by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership.

In our role administering the Export Administration Regulations (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 set by using specific technical parameters. The interagency decisions on where to set these parameters are national security determinations that define 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. If implemented appropriately, FIRRMA will strike this important balance.

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.

The export control system is flexible and able to address concerns about emerging technologies, and the agencies involved in that process have experience with these issues. CFIUS deals with individual transactions that come before the committee for review. BIS, with the interagency, can prohibit the export of specific controlled technologies from anywhere in the United States and block their access by almost any foreign national.

Finally, the Bureau of Industry and Security contributes to the national security of the United States through its aggressive enforcement of the EAR. Our Special Agents are located in 20 cities across the United States with a sole focus on identifying violations of the EAR and bringing to justice domestic and foreign violators. In addition we have export control officers stationed abroad who conduct end-use checks. Our enforcement efforts have included everything from the successful prosecution of individuals illegally shipping components for Improvised Explosive Devices (IED) into Iraq and illegal sales of U.S. technology to Iran, to stopping the illegal shipment of shotguns, jet engines, night vision equipment, and integrated circuits to prohibited end users or for prohibited end uses.

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. We are currently undertaking a review to better utilize our authorities to combat threats arising from this kind of technology.

Summary

In sum, CFIUS and export controls are both vital and robust authorities the United States relies upon to protect our national security. 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 the technical aspects of FIRRMA to ensure it achieves the intended effect. Commerce is committed to working in both forums to protect sensitive U.S. technologies and assets that provide key advantages to our industrial base and national security.

The Department of Commerce looks forward to working with the Committee and bill sponsors on advancing and improving FIRRMA.

Thank you.