

Keynote Remarks by Assistant Secretary Feddo at the American Conference Institute's Sixth National Conference on CFIUS

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INTRODUCTION

Good morning. Thank you for your introduction and for inviting me to the event.

I appreciate the importance, especially now, of coming together in creative ways, such as this conference, to exchange views, hear different perspectives, and understand priorities and realities in government and industry.

While much of CFIUS's work is with the interagency, meaningful engagement with parties, counsel, and other stakeholders is critical to informing our efforts. A great deal is transpiring at CFIUS, and I'll talk more about that in a minute. At the outset, let me say that it's my view, informed by my experience with the Committee, that the success of our process is as much a function of running an efficient and effective system within the government as it is of maintaining a good relationship with external stakeholders. I think many of you'd agree.

As the Assistant Secretary for Investment Security, my job singularly focuses on CFIUS. While my Treasury predecessors managed a portfolio of international finance matters, the Foreign Investment Risk Review Modernization Act of 2018, or FIRRMA, smartly created an Assistant Secretary position to lead CFIUS. It's a privilege to serve in this role, and more than anything I'm very proud of the team of talented women and men who make up CFIUS, both at Treasury and across the U.S. Government. You'll hear from a number of them during this conference, and there are many more hard at work to protect our national security while allowing benign foreign investment to flow into the country.

That's the hallmark of our process, and it's something we're unequivocal about—the mission of the Committee is to support foreign investment consistent with the protection of national security. This is set forth in legislation and embodied by what we do on a daily basis. Ensuring the flow of foreign investment into the United States is vital to our economic resilience, especially during times such as this.

Shortly, I'll share my thoughts and perspective on where CFIUS has been, where it is today, and where it's headed. Before that, I'd like to give you some context and background because, like everyone else, my perspective is informed by my own personal experience.

Before my legal career, I was an officer in the U.S. Navy's submarine service, serving on the fast-attack submarine USS Salt Lake City—what's called a Los Angeles-class submarine. When you live and work in a steel tube operating hundreds of feet below the ocean's surface, you develop a keen sense of your surroundings, and how every single component of that remarkable machine is critical to your survival and your mission. Space is a commodity, and everything on the boat has a specific and important purpose. And much of it is cutting-edge technology, including advanced computers, sonar systems, weaponry, or the noise-quieting materials that turn U.S. submarines into black holes in the depths of the sea.

As an example of ingenious technology, we carried a kind of torpedo called the “Mark 48 ADCAP.” These torpedoes are wire-guided, meaning that when launched they remained connected to the boat by an ultra-thin, ultra-tough wire that enables the ship's crew and computers to continually talk to the torpedo's brain as it searches for, and homes in on, its target. Typically, when a submarine fires a torpedo, the boat promptly high-tails it out of Dodge to avoid counter-fire. This means that the wire gets extended for miles, while the torpedo, at high speed, is changing direction, depth, or even spiraling as it searches the target. If that wire doesn't unspool correctly, or if it breaks, the results could be a loss of tactical advantage, and potentially deadly for American sailors.

I know you didn't tune in for Navy stories, but this illustrates just one example of the reality of military preparedness and the importance of each piece of the puzzle, so to speak. The Los Angeles-class fast-attacks of my day—almost 30 years ago—have since been succeeded by the Virginia-class. The Virginias are built by Newport News Shipbuilding and General Dynamics Electric Boat; their nuclear reactors are built by General Electric; and, the torpedoes they carry are built by Honeywell, Hughes, and Westinghouse. With subcontractors, direct and indirect suppliers, engineering service providers, maintenance support, and the like, dozens and even

up to hundreds of different companies play a vital role in the submarine sailors' execution of their important national security mission.

Now consider all of the other classes of submarines, warships, aircraft, weapons platforms, and command and control systems, and one begins to realize the vastness of our defense industrial base and the importance of protecting it.

What's more, in today's world the line between military and commercial technology isn't always clear. Increasingly, it's not just foreign investment in the defense industrial base that we must consider, but also whether there might be national security implications of foreign investment in ostensibly commercial enterprises. This could include companies with new technologies that may have future military applications or which represent the cutting edge of America's tech leadership.

It's a lot to think about when you start peeling back the layers. Thankfully, FIRRMA addressed this new reality. And as you know, it modernized the CFIUS process and gave the Committee new tools and authority including with respect to addressing national security risks arising from certain investments involving critical technology, critical infrastructure, the sensitive personal data of U.S. citizens, and certain real-estate transactions.

Before I get there, it's important to consider where the Committee has come from, because that informs what we're doing today and what we'll be doing in the future.

WHERE WE CAME FROM

A Brief History of Foreign Investment and CFIUS

While CFIUS is getting more attention recently—even on the HBO series *Silicon Valley*, which we never would have imagined—its origin dates back many decades.

Since its founding, the United States has been a leading destination for investors. As you've heard my predecessor Heath Tarbert say, Treasury Secretary Alexander Hamilton argued that foreign capital is precious to economic growth. We can easily see the immense benefits that foreign investment provides to American workers and families. At the same time, we know that foreign investment isn't always benign. Before America's entry into World War I, concerned by German acquisitions in our chemical sector, Congress passed legislation empowering the President to block investments during national emergencies.

During the Depression and in World War II, cross-border capital flows fell dramatically. And in the boom years of the 1950s and 1960s, investment in the United States was modest compared to outflows. During that time, foreign investment posed a lower risk. We were economically isolated from our main adversaries—the Soviet Union and its communist satellites.

But when the post-war trend changed in the 1970s, CFIUS was conceived. The oil shock that made OPEC countries wealthy led to fears that petrodollars might be used to buy strategic U.S. assets.

In 1975, President Ford issued an Executive order creating CFIUS to monitor foreign investments. Then in 1988, a growing number of Japanese deals—including an attempt to acquire a U.S. specialty steel maker and the acquisition of a manufacturer of specialized ball bearings for the military—motivated Congress to pass the Exon-Florio amendment, which amended the Defense Production Act to codify CFIUS. For the first time, the President could block a foreign acquisition independent of a national emergency.

During CFIUS's 40-plus years, the United States has remained the preeminent destination for foreign investment—investment that is essential to the growth and vitality of America's economy, and which represents a significant part of the U.S. economic landscape. According to the Department of Commerce, there was over \$4.3 trillion of FDI in the United States in 2018. And as of 2017, majority foreign-owned firms in the United States exported goods worth \$383 billion and employed 7.4 million Americans.

While the importance of foreign investment has not abated, the character of foreign investment and national security risks have evolved.

You don't need me to explain how tech advancements have altered our lives in the last 10 years. This virtual conference is a real-time example. And if you consider your own daily life and interactions, you undoubtedly experience:

- The rapid development of smartphones and proliferation of apps that track your spending, movements, and even your heartbeat;
- Connected devices in your homes;
- The autonomous features in your vehicle;
- Personal genomic testing; and
- Cloud-based data storage and software-as-a-service.

These developments reflect tremendous innovation, spearheaded by many companies that are on the cutting edge of technological development and leadership. But what does this mean for

our national security?

Recent CFIUS Review Data

CFIUS transaction data offers some clues. The Committee's most recent annual report, covering 2018, shows that the steady increase in the number of notices submitted to CFIUS continued. We saw 229 notices of covered transactions in 2018. This high level of activity carried into 2019. For comparison, the Committee saw 138 notices in 2007, and had a low of 65 notices during the height of the financial crisis in 2009.

One well-covered story over the last several years was a marked uptick in foreign investment from China. The 2018 annual report data bears that out, consistent with macro-economic trends. You may have seen data from other sources showing that Chinese investment has decreased significantly since a peak around 2016. While this may be the case, CFIUS continues to see a significant number of notices and declarations with Chinese acquirers. We saw this shift just in the past decade. In 2007, the UK, Canada and Australia represented the top three filers. From 2012 to 2018, China was the most prevalent.

The increasing role of Chinese investment is not the only change over the past decade. In addition to the origin of the investment, the recipients of the investment in terms of industries and sectors has also shifted. Investment from many of our partners and allies remains strong, but the picture is more complex than ever.

In fact, the foreign investment landscape has shifted more during the past few years than at any point in CFIUS' 40-year history. There is an ever-evolving relationship between national security and commercial activity. Military capabilities are rapidly building on top of commercial innovations. And the data-driven economy has created novel vulnerabilities.

What's more—the complexity of the cases coming before us is unprecedented. This added complexity arises from several factors: strategic investments by foreign governments; industrial policy being carried out by ostensibly private foreign companies, often with the support of subsidies or other incentives; complex and novel transaction structures, such as those used in private equity and venture capital; and, globalized supply chains.

WHERE WE ARE TODAY

Covid-19

Now, we can't discuss where CFIUS is today without addressing the current and extraordinary circumstances.

Like everyone else, we are adapting to the pandemic's impact, utilizing some different skills, and thinking creatively about how to stay connected, even if we can't engage in person. As I said before, we have a team of exceptional individuals who have been able to seamlessly transition to a remote environment and maintain our efficiency and effectiveness. The entire Committee is making extraordinary efforts to meet our statutory deadlines and mission. On most days, it feels like the team is right beside me except for the fact that I can't walk down the hall and see them.

With the actions taken by the Trump Administration and Congress in enacting FIRRMA, CFIUS has the tools and resources it needs, including during the pandemic, to weed out investments that put national security at risk. This includes requiring declarations for certain transactions involving foreign governments or critical technologies; and the development of tools to review transactions in bankruptcy proceedings.

Some commentators, including perhaps some in this audience, have speculated that the pandemic may change the way CFIUS analyzes certain transactions. Americans are understandably concerned about the ability of the United States to produce or procure life-saving healthcare equipment and medicines. Fortunately, we have extensive experience in reviewing transactions involving life sciences companies for their potential impact on national security. In 2018 alone, CFIUS received six notices involving companies in the Pharmaceutical and Medicine Manufacturing sector and 11 notices involving the broader healthcare sector.

CFIUS can, and does, bring in agencies that are not permanent members of the Committee but have specific expertise, such as Health and Human Services, to review particular transactions. The Committee also regularly engages subject-matter experts from across the government as needed. CFIUS has the tools and resources it needs for its mission and will use them effectively to support a safe and rapid recovery.

Our economic resilience depends on continued foreign investment. The stakes are high right now. We're firing on all cylinders to fulfill our mission—supporting foreign investment consistent with the protection of national security. Since FIRRMA's enactment, CFIUS has cleared transactions totaling nearly \$400 billion in value. This has greatly benefitted U.S. businesses in many industries, including those making contributions to the fields of biotechnology and life sciences.

Overview of FIRRMA and the New Regulations

FIRRMA is a generational update and the first expansion of CFIUS's jurisdiction in three decades. FIRRMA strengthened and modernized CFIUS, and the statutory deadline for the implementing regulations was fortuitous. In mid-February—just weeks before stay-at-home policies were implemented—the new regulations came into effect, expanding the types of transactions that CFIUS can review and requiring filings in certain instances.

In expanding CFIUS's jurisdiction, FIRRMA recognizes that the nature of investments that pose the greatest potential risk to national security has changed. FIRRMA broadens the Committee's jurisdiction to cover certain non-controlling but non-passive foreign investments, recognizing that non-controlling transactions in these sectors could also raise national security concerns.

And likewise, the regulations implementing FIRRMA strengthen our national security and modernize the investment review process. They take into account public comments from a wide range of interested parties. We greatly appreciate all of the comments we received and hope that you continue to engage with us on future rulemakings.

Update on CFIUS Activity and Resource Expansion

As a consequence of the expanded jurisdiction and mission, we've also increased staff and enhanced other resources—such as IT infrastructure. With respect to personnel, FIRRMA recognizes the U.S. Government's priority for investment review by providing CFIUS member agencies with special hiring authority. We've hired many very talented people with a diverse range of specialized skills, backgrounds, and expertise through this streamlined process.

I'll tell you that, unequivocally, our people are CFIUS's greatest asset. We have more staff dedicated to investment security than ever before. This includes case officers, managers, and attorneys. We're also investing heavily in technology, including a new case management system and online portal launched in late May, aimed at making the Committee's internal communications, administrative processes, and interactions with parties and counsel more efficient than ever before.

With respect to funding, on May 1, 2020, the Treasury Department began collecting filing fees for voluntary notices. This unprecedented milestone for the Committee will help ensure that it remains adequately funded to achieve its important national security mandate. To date, we've collected over \$1 million in fees.

As I mentioned, the Committee's high level of activity continues today. A similar number of notices were filed in 2019 as in 2018. However, beginning in November 2018 with the Critical Technology Pilot Program, we've also now seen more than 180 short-form declarations. From the traditional notices, to the new declarations, to the ongoing work in non-notified transactions, enforcement, and international engagement, the Committee's workload today is unprecedented.

But even with this high level of activity, the Committee has made great strides in operational efficiency. For example, we've decreased the typical pre-filing period, including providing feedback on draft notices and getting final notices on the clock. The Committee is also clearing significantly more cases in review, where warranted, and greatly reducing the instances where it's necessary to withdraw and refile a notice to complete a mitigation agreement. There's no doubt that the additional 15 days provided by FIRREA to the review period has improved the Committee's efficiency.

Upcoming Rulemaking

The Treasury Department issued a proposed rule on May 21, 2020, that adjusts the criteria for mandatory declarations related to critical technologies. The proposed rule would require a transaction to be filed with the Committee if the foreign acquirer would need export control authorization to transfer the U.S. business's products or technology to its home country. The public comment period for the proposed rule ended June 22nd, and we're considering the detailed comments received and working diligently to finalize the rule soon.

It's vitally important for us to continue hearing from industry and members of the bar about what is, or isn't, working with the regulations. We plan to periodically review and revise, as appropriate, the regulations—and we value this input, along with that of our interagency partners.

Enforcement and International Relations Efforts

Now I want to touch upon some of the other aspects of the Committee's work, led by the Treasury Department. In addition to the notices and declarations, the Office of Investment Security has dedicated staff to our Monitoring and Enforcement Office and our Policy and International Relations Office.

Treasury, with help from our interagency partners, is actively monitoring investment activity and contacting parties when we identify a non-notified transaction that may raise national security considerations. This work is important—particularly now—and we remain vigilant. We're impressed by the thoughtful and detailed information we receive from the public on these matters. We had been receiving tips and referrals about potential non-notified transactions or other matters requiring the attention of Monitoring and Enforcement, and recently created a dedicated email account to receive leads and tips, found on the CFIUS Web page.

We're ensuring that the mitigation agreements we have are effective—closing out those that have outlived their usefulness or applicability at the rate of roughly ten each year. We also ensure that CFIUS mitigation agreements are monitorable, and we continue to engage with mitigated entities remotely, including using virtual site visits these days. We continue to utilize third-party monitors, leveraging private sector skills and experience as another layer of oversight for those agreements where such arrangements are appropriate.

It's also important that CFIUS mitigation agreements and orders are enforceable. We recently issued an unprecedented civil monetary penalty of \$1,000,000 for repeated breaches of a 2016 CFIUS mitigation agreement, including failure to establish requisite security policies and failure to provide adequate reports to CFIUS. We subsequently assessed another civil monetary penalty of \$750,000 for violations of a 2018 CFIUS interim order, including failure to restrict and adequately monitor access to protected data.

On the international relations front, Treasury is working closely with our allies and partners to ensure cooperation on investment screening. Security and economic recovery don't stop at the border, and FIRRMA explicitly recognizes that our national security is linked to the security of our allies and partners. Therefore, it's essential to U.S. national security that our allies and partners develop and maintain effective national security-focused investment screening processes.

We're leading numerous engagements with our international partners on investment security. Our international relations team and senior leadership at Treasury have recently engaged with a number of partners and allies, including, to name just a few, the G7 Finance Ministers, Australia, Canada, and the United Kingdom. Our international engagements have grown in number, and our international contact list has swelled as we meet the rising tide of growing global interest in establishing and reforming investment review regimes. We've interacted over 260 times with nearly 50 counterpart countries or multilateral entities since FIRRMA was enacted.

Over roughly the last year, a number of our allies and partners have enacted reforms or announced plans to enact reforms of their investment screening mechanisms—and we've been in touch with several of them along the way.

WHERE WE ARE GOING

What CFIUS Will Be Doing

So, what does this all mean and where is CFIUS headed? First, we'll continue adding resources and enhancing our internal and external processes. My major objectives moving forward include: to continue engaging with industry and stakeholders; to maintain the Committee's high standards of professionalism; to identify areas to improve operational efficiency; and, to nimbly adapt to new environments and challenges.

In the short term, Treasury intends to issue formal enforcement guidelines that will help industry understand our priorities and considerations in that area. We plan to vigorously enforce mandatory filings and conduct mitigation oversight, and to actively engage with our allies, developing methods and processes to benchmark and collaborate.

We'll also continuously evaluate the regulations and CFIUS processes and practices, going forward.

How the Foreign Investment Landscape Will Evolve

With a wider lens, considering the new decade, the United States and its partners face accelerating technological change and highly complex national security challenges.

I've spoken to the historical evolution of foreign investment review in the United States and the new tools and resources at our disposal. Despite all the change we've already encountered and adapted to, we still find ourselves at a historic inflection point.

While America's military remains the most powerful in the world and we lead in scientific and technological innovation, the advantages that have been instrumental in maintaining our position and protecting our interests—and those of our allies—could be at risk.

Over the next five to ten years, rapidly developing technologies in fields like machine learning, quantum computing, autonomous vehicles, robotics, and biotech are likely to dramatically affect not only our way of life, but also our national security. Some experts believe that these

technologies will transform contemporary military concepts and capabilities and trigger major changes in the character and conduct of war.

Emerging and accelerating technologies will transform our world, and the United States must maintain its technological leadership to ensure that its citizens can, with security, maintain their way of life.

However, unlike the past, when many advanced military technologies were developed primarily by the U.S. Government and a handful of contractors, the vast majority of technology development today is happening in the private sector for commercial applications.

Recently, American astronauts launched into orbit from U.S. soil for the first time since NASA's 2011 retirement of the Space Shuttle. Both the capsule in which they travelled and the rocket that propelled them are designed and built by a private company. Our country's ambitions in space will likely depend upon a commercial space industrial base, and the U.S. Government will be just one of many customers.

While private and commercial development of technologies is essential, it also provides a means for our strategic competitors to potentially gain access to these technologies.

The fact is, this access risks eroding the technological superiority with which the United States and our allies have grown accustomed. Others want to displace us; for example, in 2017 Beijing released a plan to become the global leader in AI development by 2030. The way the United States and our allies and partners develop, fund, operationalize, and protect these largely commercial innovations will impact our future military advantage and security.

As I mentioned at the beginning of my remarks, we welcome foreign investment. We also recognize that foreign investment in these leading-edge innovations can be crucial to their development and success. At the same time, we must remain vigilant to the plans of our adversaries, and the unintended consequences for our national security from seemingly benign transactions.

CFIUS is adapting to respond to the challenge by staying nimble and current with respect to what is happening around us. Staying attuned to developments in industry is an important part of what we are doing and will be doing going forward.

CONCLUSION

I hope you've found this helpful. I am amazed daily by the innovation and creativity in American industry. Much has been accomplished at CFIUS since August of 2018, but much work remains. I

hope that you will continue to engage with us, and that this program will help you better understand what we do and why we do it. Enjoy the conference and thank you.