

AUGUST 10, 2023

Background Press Call by Senior Administration Officials Previewing Executive Order on Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern

2:09 P.M. EDT

MODERATOR: Thanks, everyone, for joining this call to discuss the executive order to narrowly regulate certain U.S. investments into the PRC in three technologies critical national security.

For your information, this call on background, attributable to “senior administration officials,” and is embargoed until 4:00 p.m. Eastern today, Wednesday, August 9th.

For your awareness, not for your reporting, on the call today we have [senior administration official], [senior administration official], [senior administration official]. We also have other representatives from Treasury, Commerce, and State on the line for Q&A.

Our speakers will have a few brief words at the top, and then we’ll turn it over to Q&A.

With that, [senior administration official], I’ll turn it over to you to kick us off.

SENIOR ADMINISTRATION OFFICIAL: Thanks, [moderator], and good afternoon, everyone. Thanks for joining.

The Biden administration is committed to keeping America safe and defending America’s national security. That includes appropriately protecting technologies that are critical to the next generation of military innovation.

As many of you know, we’ve been working on an approach to address certain outbound investments in sensitive technologies in critical sectors that could undermine America’s national security.

For example, the PRC has a stated goal to acquire and produce key sensitive technologies that directly support the PRC's military modernization and related activities, such as weapons development, and has exploited U.S. investments to develop domestic military and intelligence capabilities.

Today, President Biden is expected to sign an executive order that authorizes the Secretary of the Treasury to regulate certain U.S. investments into PRC entities engaged in activities involving national security sensitive technologies in three sectors: semiconductors and microelectronics, quantum information technologies, and certain artificial intelligence systems.

This program will complement our existing export control and inbound investment screening tools with a "small yard, high fence" approach to address the national security threat posed by countries of concern advancing such sensitive technologies.

At the same time, it's important to recognize this is a national security action, not an economic one. We recognize that cross-border investment flows have long contributed to U.S. economic vitality. This executive order protects our national security interests in a narrowly targeted manner while maintaining our longstanding commitment to open investment.

Along with the executive order, the Treasury Department will simultaneously release an Advanced Notice of Proposed Rulemaking, with proposed definitions to elaborate the scope of the program, which will be subject to public notice and comment.

The program will prohibit certain investments in entities that engage in specific activities related to these technology areas that pose the most acute national security risks, and will require notification for other sensitive investments.

President Biden is signing this executive order after a thoughtful, deliberate assessment, which included extensive consultations with allies and partners, with Congress, with industry and other stakeholders.

The White House, Treasury, and Commerce used that feedback and expertise to help design our carefully tailored approach. And we'll continue to listen to that feedback in the notice-and-comment period ahead.

We also commend Senators Casey and Cornyn, and Representatives DeLauro, Fitzpatrick, and

Pascrell, in particular, for their continued leadership on this issue through the National Critical Capabilities Defense Act.

The overwhelmingly bipartisan vote on the Senators Casey and Cornyn Outbound Investment Transparency Act, as an amendment to the Senate NDAA, shows the shared will of Congress and the administration to meaningfully regulate outbound investments.

In the coming weeks and months, we look forward to working to align our approaches in developing an outbound regime that best advances our national security.

Additionally, key allies and partners have recognized the shared importance of this issue, and some are seeking to align our approaches together to maximize the effectiveness of our efforts collectively.

For example, this past May, G7 leaders in Hiroshima underscored our common interest in appropriately protecting sensitive technologies with national security implications and made clear that outbound investment controls can be an important complement to export controls and inbound investment screening.

And some allies – like the European Commission, United Kingdom, and Germany – have announced that they will explore developing their own similar programs.

As I just outlined, we've already had dozens of engagements with hundreds of stakeholders, industry members, and allies and partners around the world. We are expecting much more engagement as part of the notice-and-comment period to solicit additional public feedback to make any needed adjustments before the rule goes into final effect.

Again, I want to be clear: This is a national security action, not an economic one. We recognize the important role that cross-border investment flows play in U.S. economic vitality. And this executive order is aimed at narrowly protecting our national security interests while maintaining that longstanding commitment to open investment.

And our approach remains the same. As we have repeatedly said, we are pursuing a policy of de-risking with respect to the PRC through taking targeted national security actions, not decoupling our economies, and this policy reflects that approach.

We've worked to be as transparent as possible through this process, and you've heard a lot of this before. Many of you have reported on it, so there really shouldn't be any surprises at this

stage.

I'll now turn it over to my colleague, [senior administration official], to provide more details on the program.

SENIOR ADMINISTRATION OFFICIAL: Thank you, [senior administration official]. And thanks to all of you for joining us.

Today, the Treasury Department will release an advanced notice of proposed rulemaking that will provide additional information related to the President's executive order.

The ANPRM also sets out a number of questions that are asking stakeholders to address in order to help us shape the implementation of these rules. This is the first step in the process. And I want to emphasize that: that the program will come into force at the end of the rulemaking process once we've had a chance to incorporate feedback from stakeholders.

As many of you know, the Treasury Department has a great deal of experience with complex implementation challenges. We're currently working to modernize our sanctions regime, stand up a beneficial ownership system, modernize the IRS, implement the tax revisions through the CHIPS and Science Act, as well as many of the climate provisions of the Inflation Reduction Act.

We're taking important lessons from the — these projects to influence the way we implement this executive order. The most important implementation lesson we've learned over the last two years is seek input from stakeholders early and often.

This is why before promulgating rules to implement the executive order, we're putting out a set of formal questions to stakeholders: the advanced notice of proposed rulemaking. We want to make sure we're considering the full range of inputs as we develop the details of the implementation of this regulation.

The ANPRM provides a further information, of course, on our current thinking on the key elements of the program, including definitions, technical details on technologies and products, scope, structure, and enforcement.

Another important lesson we have learned is that our policies are the most effective when we act together with our allies and partners. Throughout the process, we will continue to coordinate closely with our allies and partners to advance our shared goals and our collective

security.

We think the joint G7 economic resilience and security statement in May was an important step in demonstrating our unity of purpose with some of our a- — close allies, and we're encouraged by the statements made by United Kingdom and also the EU on the importance of addressing outbound investment. So, now we look forward to talking with them about the details of President's EO and also soliciting their input as part of the ANPRM process.

In order to implement the President's direction, the Secretary plans to promulgate rules that accomplish two primary goals: First, requirements of the U.S. persons to notify the Treasury of certain transactions. And second, a prohibition on U.S. persons undertaking certain other transactions.

In both cases, we intend to apply the requirements to investments in any entity of a country of concern that is engaged in activities in a narrow subset of three advanced technology areas that have a national security nexus. We're focused on the types of investments that can confirm tangible benefits along with capital, such as private equity and venture capital investments, joint ventures, and greenfield investments, among others.

These are the types of investments provide countries of concerns with edge in sensitive technologies. We are not seeking to cover passive investments, nor other transactions that are less likely to benefit an entity seeking to advance in these advanced technology areas.

For example, we're contemplating an exemption for investments into publicly traded securities.

We expect U.S. persons to be responsible for adhering to the prohibition and the notification requirements wherever they are located. The Secretary will have the authority to investigate, as appropriate, violation to the EO and accompany regulations and pursue available penalties for such violations.

Moving forward, our next step will be to develop draft regulations that will be informed by the comments we receive from the advanced notice of proposed rulemaking. We're eager for feedback from interested stakeholders to ensure the proper definition, scope, and structures of our rules are put in place.

The final important lesson that we have learned from the process of implementing a number of key priorities for the President over the last two and a half years is about the importance of

working in concert with our partners throughout the federal government.

No bigger partner has been the Department of Commerce, with whom we're working on a number of these implementation projects. And we've worked very closely with them and a number of other agencies in shaping the advanced notice of proposed rulemaking.

That's why I'm happy to hand the floor over to my colleague and friend, [senior administration official].

SENIOR ADMINISTRATION OFFICIAL: Good afternoon, everyone. I couldn't be more pleased to be on this call with — with my friends and partners, [senior administration official] and [senior administration official].

As was mentioned, the outbound investment program will fill a critical gap in the United States' national security toolkit.

What we're talking about is a narrow and thoughtful approach as we seek to prevent the PRC from obtaining and using the most advanced technologies through military modernization and undermining U.S. national security.

This program, as both of my colleagues mentioned, is narrowly targeted to ensure that U.S. capital does not support indigenous foreign development of emerging and critical technologies with national security risks.

The outbound investment mission is aligned with the mission of our export controls. Just as a reminder, Commerce employs controls on exports of sensitive goods, software, and technology to ensure that our products are not used by bad actors and for end uses of national security concern. But our export controls don't cover investments abroad that can help foreign adversaries or countries of concern to fuel indigenous development of national security technologies.

By adding outbound investment screening to our suite of national security tools, we are enhancing U.S. capabilities to safeguard our national security.

Specifically, the program would potentially prohibit investment in entities that engage in certain activities related to the development of advanced semiconductors, quantum information technologies, or AI systems that are specific- — specifically designed for military or intelligence end-uses. And it would potentially require notification for investments in

entities engaged in the development of less-advanced semiconductors or AI systems designed for certain dual-use capabilities that pose national security risks.

The program will curb certain investments of capital along with — this is important — the intangible benefits that go along with those investments. For instance, enhanced standing in prominence, managerial assistance, investment in tele networks, access to potential suppliers and customers, and enhanced access to additional financing.

I do want to pause and underscore what was mentioned earlier. This is an — this is absolutely a bipartisan approach. Senators Casey and Cornyn's Outbound Investment bill, for example, was successfully added to the Senate NDAA bill with the support of 91 senators. That says more than just something — it says a lot.

We will ensure that the outbound investment program is implemented in a way that's consistent with other technology measures; that it's strategic, targeted, transparent, and effective with a view to solve the specific national security problem at issue.

With that in mind, Commerce has played and will continue to play a critical role in scoping and defining these technologies covered by the program and leverage our sectoral and supply chain expertise to make sense of the information on transactions we — we receive through the program.

Our work to date has been informed by robust and sustained engagement with industry. We have received input on a wide range of topics, including the scope of the program, international engagement, and liability and enforcement.

In fact — and this is important — in recent months, the Department of Commerce, joined by our Treasury colleagues, conduct consultations with over 175 industry stakeholders leading up to the President's determination to issue this executive order.

As [senior administration official] mentioned, we look forward to continued engagement during the rulemaking period, and we strongly encourage industry and other stakeholders to participate in the process to help us fine-tune the details of the program. The technologies covered in this program are complex, and we need industry to help — to get this right for our national security.

Thank you. And I'll turn it back over to [senior administration official].

SENIOR ADMINISTRATION OFFICIAL: Thank you. Moderator, if you could please remind our listeners here how to queue up for questions.

Q Hi, thanks for taking questions. I guess two things: can — on the — on the penalties for violating these rules or requirements, I guess, can you talk a little bit about what those could look like? It sounds like there has been some discussion of the possibility of criminal penalties applying to people who violate these rules or firms that violate these rules. Could you explain, you know in what circumstances there may be a criminal element to this?

And then, just more broadly, I'm curious with this rulemaking how significantly this could evolve during the rulemaking process. I mean, could this — could you add additional technologies to — to the outbound investment order? Could there be additional types of investment, whether that's portfolio investment or — or passive investment? I mean, how — how significantly — significantly do you anticipate this changing in the rulemaking process?

SENIOR ADMINISTRATION OFFICIAL: Okay. Two good questions, Andy. I think you — it would be jumping the gun significantly to think about criminal penalties here because the Secretary will have all the powers and authorities under IEEPA, which include unwinding these investments going forward.

And we'll spell this out in more detail, but the goal here really is to make sure that we provide industry with clarity so that they recognize what is permissible, which is a great deal of investment, and what isn't permissible, which is going to be a narrow scope of investment.

And in addition to the guidance we'll provide ultimately, part of what we're going to do here at Treasury is make sure that we have available experts who will be able to give guidance to industry as they're thinking through this.

So, our view is that we'll — we'll, of course, need to speak to this in more detail as we go through the rulemaking, but she'll have all of the authorities that we have under a national IEEPA program, including the ability to unwind investments that are made going forward, which is — we think will be unlikely, in light of the fact that members of industry are going to have a great deal of incentives in terms of taking these seriously and making sure that they limit their investments to things that are permissible.

I think the thing that gives us the hope of making sure we're capturing things that may be close to the line is going to be the fact that for two of these ar- — for these areas, we're also going to have the general obligations for industry to provide us with information about a broader set of

investments that are being made.

In terms of changes during the rulemaking, I have no expectation that we're going to add additional areas during the rulemaking. The goal here is to — the goal here — and you'll see this when you take a look at the Advanced Notice of Proposed Rulemaking — is to provide as much clarity as is possible to stakeholders in order to both allow them to start thinking about they think through their businesses in light of the President's executive order, but also to collect information on a set of questions that are very specific that will help us be in a position to design the rulemaking. The rulemaking in and of itself will be consistent with the EO, which is fundamentally the document that's going to guide our activity here.

And you've seen us do these types of rulemakings in the past, following the executive orders. And our goal is largely to be in a place where we take the information we garner from stakeholders to answer the open questions, but to further provide — in order to provide clarity, not look at expanding the aperture of what we're covering.

Q Hi, everyone. And thanks for doing this call. I got, I guess, two for you here. One is just: Can you give us any more information on the distinction between investments in each sector that will be prohibited and which will just require notification? And if you cannot, can you give us some little idea about how you will make that determination?

And then I'm wondering about your engagement with allies and adversaries on this rule recently. Did Secretary Yellen preview this when she went to China?

Do you have any expectation of what the Chinese response will be?

And do you think that our allies are getting ready to follow suit here? I know they've been considering it, but have they given you — given you any indication that they might move in the near future here? So, thanks — thanks for that.

SENIOR ADMINISTRATION OFFICIAL: Well, I said two questions. That was at least five. Let me —

Q Okay. Got it. Got it.

SENIOR ADMINISTRATION OFFICIAL: Let me try and get through a few of them, but I'm guessing that [senior administration official] will want to come in on some of our engagement with allies and partners as well.

I think you're going to see a bunch of the details in terms of how we define these areas, in both the executive order, but in more detail on the advanced notice of proposed rulemaking. So, as you look at those documents, it will give you that information.

Our goal is to — is our goal — and one of the things I want to thank the experts that have worked closely with us on — is to make sure that we provide clarity with regard to what we mean by artificial intelligence. What do we mean by advanced semiconductors? What do we mean by quantum computing? There's a great deal of detail both in the executive order and also in the advanced notice of proposed rulemaking on these definitions.

So I would direct you to look at that. And then if you — after you've looked at that, you have follow-up questions, I'm sure that my colleagues would be happy to address those.

In terms of our work with allies and partners, the Secretary and all members of the Cabinet have spoken to allies, partners, and others about what we're doing with regard to the President's executive order, extensively. She's also done it publicly, as each one of you have reported on, and she shared that information also with her Chinese counterparts, in terms of what we're — what our aim is here, in order to make very clear to them that our goal is to make sure that we protect our national security, that — and it's consistent with the speech that she's given.

So we have had conversations very directly with our counterparts, both amongst the G7 but also the Chinese, and also a number of other allies and partners who have cared deeply about what we've done here.

And part of the reason we've done the advanced notice of proposed rulemaking, as I said in my remarks, was that we've had very good conversations with the G7 and with a number of our allies. But fundamentally, your first question is a question that each one of them also wants to ask, which is: We want to understand the details. And by putting out the advance notice of proposed rulemaking, now we can have conversations about the details as to how we act going forward together in a way that will best protect our shared national security.

So, our expectation is that over time we'll see them also work through their processes. I think that earlier this summer or late in the spring, our counterparts in the EU made an announcement that they were looking at outbound investment screening, and they were going to consult with their member states as they think about their design.

Our goal is to have the conversations directly with the EU officials who are doing this work, but also with their member states so that we best understand, from their perspective, how to structure something that — how they're thinking about structuring something in order to make sure that — as we've done in a number of other circumstances over the course of the Biden administration — we find ways that we can work in unison.

But a number of these conversations have been driven by [senior administration official] over at the NSC. And I'll turn it over him to talk a little bit more about partner engagement.

SENIOR ADMINISTRATION OFFICIAL: Yeah, thanks, [senior administration official]. And I would really just echo, you know, your messages there, including in your — in your topper. You know, the administration believes that we act more effectively, we act more durably when we act alongside our allies and partners. And we have been very intensively engaged with our allies and partners over a great many months talking about exactly this effort.

I think at the G7 Summit in Hiroshima in May you saw G7 leaders come together and say: We recognize we have a shared national security interest in ensuring that our most advanced military-relevant, national security-relevant technologies don't feed the military modernization, the intelligence modernization of our — of our rivals.

There was also a recognition that we need to build together a toolkit to achieve that policy objective, that we have export controls to achieve that end, we have inbound investment screening mechanisms to achieve that end. But outbound investment efforts in a targeted, thoughtful way are an important complement to those tools that can fill an important gap, in terms of achieving that objective. That's what leaders spoke to in May.

I think since that time, as you heard [senior administration official] say, the EU has spoken more comprehensively about an economic security strategy, including steps on outbound investments that they will consider. You've seen the UK speak about taking additional steps down the path to develop this tool.

Again, to [senior administration official's] point, I will say: You know, I and the team here at the White House — and I know it's true at Treasury and Commerce as well — have been very intensively engaged with technical teams across our key allies and partners in recent days. I'll continue those consultations in the days ahead to be sure they understand all the particulars of — of what we are putting forward here.

Ultimately, this is a very intensive, very focused process of diplomatic engagement. But we're

all sort of rowing in the direction of achieving a common end, which is ensuring that we have a toolkit in place that in a narrow, targeted way ensures that the most sensitive technologies relevant to our national security are protected.

Q Hey, guys. Thanks, everybody, for doing this.

I had a question. There — there was a comment made earlier, and we've been reporting on this, about the difference between private and public here. And I think somebody said — for example, on venture capital: private equity, greenfield investments versus passive investments in public companies.

Could somebody just help me understand the distinction here and why? Like, the goal is to prevent U.S. individuals and institutions from — to fund the development of, for example, AI, quantum computing in China. Why would it matter if the company is privately held or publicly traded? And, I guess, as an addendum to that, why wouldn't the kind of mature Chinese tech start-ups just flip some stocks (inaudible) it's publicly traded?

SENIOR ADMINISTRATION OFFICIAL: Good question. Let me try and do a bit of this.

I think part of what we are trying to get at here is the intangible benefits that come alongside some of the types of investments that are done here in the United States.

For example, venture capital or private equity. They don't just put money into the firm; they also put intangibles. Like, they'll introduce people — they will, for example, introduce people to experts. They will connect the various companies that are in their portfolio to each other. And that's what we're getting at.

Ultimately, China doesn't need our money. They're a net capital exporter. So, the thing we're trying to prevent is not money going into China overall, because they have plenty of money. The thing they don't have is the know-how. And the know-how in our — I believe — know-how we have seen is often very connected to specific types of investments. And that isn't necessarily seen when it comes to passive investments in the Chinese stock market, where people are putting in money but they're not necessarily providing any know-how.

And it's often — so, I think — but we're, of course, going to make sure that we don't create opportunities for people to get around this regime by restructuring their firm. So, it's something we're going to pay attention to. And the way the EO is structured and the way the ANPRM is structured, this allows us to get at various forms of facilitation to ensure that we're

able to go after those two things when they're connected to each other: financial incentives tied to some type of intangible benefit that will come from one of these U- — a U.S. person or entity.

Q Hey, guys. Thanks for doing this. I have a bigger-picture question. Obviously, you guys have been working on this for a long time. It's been, you know, a big national security priority for the President, but also, you know, for the National Security Advisor. Can you talk about why you decided to sort of roll this out the way you are doing today where the President is on the road? He's not going to speak publicly to it. Are you sort of downplaying this achievement that this EO represents af- — after so many, you know, months of consultations with various stakeholders?

And then, given the rulemaking process is going to take time and, you know, probably won't take effect for a while into next year when we're pretty close to a presidential election, how confident are you that this is going to get codified into law, given that there is — seems to be a little bit of daylight between what the Hill is comfortable doing — which, you know, their amendment did not have any prohibitions — and what you're seeking to do? And maybe some of the national security community would like to even build on —

SENIOR ADMINISTRATION OFFICIAL: Let me give that to [senior administration official]. But I think what I would say is that just the fact that we've been talking about doing this and that we're doing this has had an impact in terms of what's happening with regard to private equity and venture capital. And my — and I — and [senior administration official] can speak to this as well.

But these firms have heard us in terms of our concerns in these three areas. And you're already starting to see movement both amongst the GPs, but also the limited partners as well.

So, I think that you're already starting to have an impact. And our goal is to provide additional clarity and to provide clear rules of the road over time.

But I think that the truth is that by signaling it was a national security priority early and by continuously talking about the areas of concern — both by Secretary Raimondo, Secretary Yellen, the President, and the National Security Advisor — it's already put us in a position where a number of market participants have already started to act even in advance of this.

And our goal is to provide more clarity to make sure that we're capturing all the behavior. I'll let [senior administration official] speak to the Hill dynamics and also to the broader strategy.

SENIOR ADMINISTRATION OFFICIAL: Yeah, and — and just to say that I think, you know, the answer your first question, Jenny, is — is in — in [senior administration official's] answer to your second.

This is a policy priority, a policy objective, that we've spoken to early, often, and in all — in all settings for a great many months now, whether that's been consultations with industry and stakeholders, whether that's been consultations with the Hill, whether — importantly, as I talked about before — that's been very publicly to intensive diplomacy, including at the highest levels at the G7 Summit in May.

This is something that has been an important objective that we've shared with allies, that we've shared with the Hill, and that we're taking concerted — if narrow and — and targeted, a concerted a- — as well as narrow and targeted action to pursue, just as we said, we've — just as we've been saying we're going to now for many months.

SENIOR ADMINISTRATION OFFICIAL: And — and this is [senior administration official]. Let me just add that, you know, Jenny, this is also in keeping with the existing efforts that we've been engaged in since day one of this administration. It's what we do here through our export controls using the tools at our disposal. It's certainly what we do in partnership with Treasury and others, utilizing the CFIUS process. And Treasury has its set of tools separate and apart from this.

It's a whole-of-government approach to getting at the ongoing challenges that we're facing from adversaries and countries of concern. And, frankly, this is in keeping with what we've discussed specifically with our Chinese counterparts.

Just a few weeks ago, I spoke with the ambassador about something that others in this administration have said, and that's that we are focused on a “small yard with high fences” and that we are being very clear about defining what is in the yard.

And so, that's what this is all about is providing very concrete and clear guidance as to what we are doing with this effort, what is in scope, what is of concern for national security purposes, and being very targeted so that — so that it can be implemented easily and effectively by stakeholders across industry.

MODERATOR: Great. Thank you. And that's all the time we have. Thank you to our speakers, and thanks everyone for joining.

As a reminder, this call is on background, attributable to “senior administration officials.” And it’s embargoed until 4:00 p.m. Eastern today.

We’ll follow up with embargoed materials as well, and let us know if you have any follow up-questions.

Thanks again, everyone.

2:43 P.M. EDT