



Bolstering American Economic Statecraft: A Conversation with Senators Cornyn and Casey on Outbound Investments

*Featuring Sen. Bob Casey (D-PA), Sen. John Cornyn (R-TX),
Nova Daly, and Elaine K. Dezenski
Moderated by Juan Zarate*

DEZENSKI: Welcome and thank you for joining us for today's event hosted by the Foundation for Defense of Democracies. It's Wednesday, September 27, and today's panel will discuss the Outbound Investment Transparency Act of 2023 and its implications on the U.S. economy and national security. My name is Elaine Dezenski. I'm the Senior Director and Head of FDD's Center on Economic and Financial Power.

We're pleased to have you here, some in person, some tuning in live for this conversation. Congress has long been at the forefront of efforts to bolster America's tools of economic statecraft. To discuss how the U.S. can proactively engage in the global economy while safeguarding national interests, we're thrilled to be joined today by Senator Bob Casey of Pennsylvania and Senator John Cornyn of Texas. Juan Zarate, the CEFP [FDD's Center on Economic and Financial Power], chairman and cofounder, will moderate the conversation with the senators, and that will be followed by a discussion with Nova Daly, senior public policy advisor at Wiley Rein, myself, and Juan.

Senator Casey has served the people of Pennsylvania and the U.S. Senate since 2007. He serves on four committees, including the Finance Committee and the Select Committee on Intelligence. He is also the chairman of the Special Committee on Aging, where his agenda is focused on policies that support seniors and individuals with disabilities. Prior to serving in the Senate, he practiced as a lawyer in Scranton, Pennsylvania. He's been a strong advocate for policies that will raise wages for the middle class and improve early learning opportunities for health care for children.

Our second guest, Senator Cornyn, was first elected to the U.S. Senate in 2002 and is currently serving his fourth term for the State of Texas. He sits on the Senate Finance, Intelligence and Judiciary committees and crafts legislation on behalf of more than 30 million Texans. From 2013 to 2019, Senator Cornyn served as a Republican Whip, the second highest ranking position in the Senate Republican Conference. A San Antonio native, Senator Cornyn has served the people of Texas for nearly four decades as a district judge, a member of the Texas Supreme Court, and Texas Attorney General.

Finally, I'm delighted to introduce my friend and colleague Juan Zarate, who serves as the chairman and co-founder of the Center on Economic and Financial Power and is also the global co-managing partner at K2 Integrity. He is also Senior National Security Analyst for NBC News and MSNBC. And from 2005 to 2009, Juan served as a Deputy Assistant to the President and Deputy National Security Advisor for Combating Terrorism.

Before we dive into the featured discussion, a few words about FDD and CEFP. For more than 20 years, FDD has operated as an independent, nonpartisan research institute. We are exclusively focused on national security and foreign policy. As a point of pride in principle, we do not accept foreign funding. The Center on Economic and Financial Power was launched in 2014, formalizing our work, in countering terror finance, and deepening the institution's work on economic security, tools for economic warfare, and positive economic power projection. For more on our work, please visit us at fdd.org and follow us on Twitter [@FDD](https://twitter.com/FDD).

That's enough from me. Let's dive into the conversation. Juan, over to you.

ZARATE: Elaine, thank you for the very kind introduction. I want to thank you and the FDD team for organizing this event. And I want to thank both senators for taking time. We know how busy you are. It's an extreme honor and privilege for me to be able to be up here and to have this conversation with you. The topic of investment security and broader national economic security is obviously timely, relevant to China, and certainly of interest to the investment community and those of us who follow policy in Washington and abroad.

And so, this discussion, I think, is an opportunity to hear from both of you in terms of your views on where we are and certainly where the legislation sits that you both are sponsoring. First question, I think, maybe Senator Cornyn, if you could start, is to give us a sense of how you see the national economic security landscape and how investment security and outbound investment restrictions fit into that broader regime and framework?

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CORNYN: Well, I think about the way that George Kennan recommended that we deal with Communist Russia. We knew we weren't going to change them, we would contain them. It's amazing looking back at our relationship with the PRC [People's Republic of China] and the CCP [Chinese Communist Party]. The idea was, if they became admitted to the World Trade Organization, with foreign investment encouraged by Deng Xiaoping and others, while they were still a communist country, they saw that as a necessity to create wealth and jobs there in China.

And all the American companies and investors in China, I think the recent figure I saw was the market value of that is roughly \$2.3 trillion. Interestingly enough, just in the last few years, American companies and investors have invested \$40 billion into artificial intelligence in China. It's no secret we're in a competition with China. It's no secret that they are using their wealth to rearm and threaten aggressive action, not only in the South China Sea, but possibly even attacking Taiwan.

So, I think Bob and I tried to figure out, you know, first thing we need to do is get some visibility into what the situation is. I don't care how many Americans want to invest in Burger King's or Starbucks in China, you know, more power to you. But if you're talking about quantum computing, you're talking about artificial intelligence, you're talking about some of the advanced semiconductors. We have a concern, I have a concern, we share a concern about that, and what that does to help aid and abet our principal economic and even national security competitor.

ZARATE: Yeah, and just a quick comment. This fits into a broader set of tools, whether you're talking about sanctions or export controls, or the Committee on Foreign Investment in the US. This is a new domain of restriction in terms of outbound investment. Senator, can you speak to the Outbound Investment Transparency Act and what you and Senator Cornyn have in mind for what that looks like? And then I want to talk to you both about how that relates to the executive order that President Biden issued in August.

CASEY: Thank you. And thanks to FDD for this opportunity. First of all, I want to thank Senator Cornyn for his work with me and with others to be able to pass the Outbound Investment Transparency Act through the Senate back in July by a vote of 91 to six. That doesn't happen very often. Even on a vote to if we had votes to adjourn for lunch, it's hard to get 91 votes. But especially on something as significant as the legislation points to. Number one is this is a notification regime in the sense that if you're engaged in activity that would be under the covered activity that's defined in the bill.

For example, if you're transferring any kind of technology to China that fits within those sectors about which John spoke, you've got to notify the federal government, the presidential authority being delegated to the Treasury Department. But that notification allows us to put eyes on this activity that we haven't had before. And when you consider what we just lived through, the horror and the challenge of the pandemic, all of that trauma that the country suffered through was made a lot worse when China had a stranglehold on supply chains that dealt with something as fundamental as PPP – or PPE, I'm sorry – Personal Protective Equipment. You know, masks, and gloves, and gowns.

My God, if we can't have control of our own supply chains when it relates to something that simple, just imagine the adverse impact on our security if U.S. firms, on a continual basis, without any eyes on this activity, is transferring innovation and know-how and technology and the like that could, over time, in very short order, undermine our national security, but also, I think, injure and undermine our economic security. So, I think John's right.

I mean, I'm using my words, not his, but I think we have to be very clear eyed about the challenge posed by this regime. It's a regime that, for whatever reason, has decided to be an economic adversary of ours. You just be clear eyed about it and state that plainly. But it's gone beyond economics. It's – every month that goes by that we don't have eyes on it becomes an even greater threat to our national security. So, I think the good news is we have a measure that got overwhelming support in the Senate. Now we have to work to get it through the conference process.

ZARATE: I think from an outside observer's point of view, the fact that Congress is so unified that the Senate, both of you in your leadership, are so focused on the economic and financial domain as a domain of competition, if not conflict, is actually very important. Senator Cornyn, can you speak to the legislation vis-à-vis the executive order? Because the

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executive order put out was more limited in the sense that it dealt just with three categories of technology: semiconductors, artificial intelligence, and quantum computing. Your legislation is broader than that. Can you speak to how you see the executive order and the legislation and how they play off of each other?

CORNYN: Well, we worked very closely with Secretary Raimondo, Secretary of Commerce, for several years on, like, the CHIPS [Creating Helpful Incentives to Produce Semiconductors] Act, where we try to bring – re-shore – some of the manufacturing, not just things like PPE. It's obviously the advanced semiconductors that are going to everything we use these days, and we're going to become increasingly dependent on. But the White House has issued an executive order, but it's different from our legislation. Our bill is strictly a transparency measure.

I think there's a reason we were able to get 91 votes in the Senate, because all we're asking for is the information, and then we can take further steps if required, and if not, then that won't be necessary. The administration has some prohibitions, as you know, it's more aggressive. And I suspect at some point there'll be some challenges to that. Maybe legal challenges in terms of the authority, but I view these as complementary and not competing. And so, the – Secretary Raimondo – and the administration was eager to have the legislation pass as well. But that's how I see it.

ZARATE: Wanted to ask you both in part because one of the challenges we have here is that we're engaged now in domains of competition, conflict that are, in the U.S. context, very much dominated by the private sector. Whether you're talking about the technology sector, talking about the investment community capital. Are you worried about oversteps by the U.S. government to affect the open investment environment? Lots of questions as to whether or not the government should be involved in some of these policies? How do you think about this, because we are seeing the government, whether you're talking about sanctions, the Committee on Foreign Investment, the U.S. or outbound investment, touch the private sector and touch capital much more directly than before, Senator?

CASEY: But I think, as John mentioned, getting this legislation through the Senate with 91 votes meant that we had to balance a lot of interests. And there's no question that when you are designing, even a notification like – I, I want to go further than notification, that's my view – but when you're designing a notification process that will be undertaken, you do have to consider those interests in what – what the private – how it will affect the private sector. But I would hope that something as simple as transparency wouldn't be, wouldn't be an impediment to, to providing information where a U.S. firm is engaged in activities that involves our national security, the idea that we shouldn't know about that, or have eyes on it or be able to, as you know, in the legislation, the Treasury Department has to, has to file a report that specifically talks about the impact on national security.

So, I just think it makes sense. And I think most firms would understand that this isn't just a, an economic transaction, it's about it's not only the work of a particular company – it's – it involves our security. So, I think it just it provides us a body of information we really don't have right now. And we're kind of flying blind when it comes to investments and actions and activities that could affect national security.

Just a follow up on the first question you asked to John, I pulled out the bill here just to make the differentiation. As John mentioned the executive order does cover a couple of sectors, we just cover more. In addition to we list them A, B, C, D, all the way to F, but advanced semiconductors is covered, so, there's common commonality there, artificial intelligence, quantum information science and technology, that's third, but what the EO [Executive Order] doesn't cover is our fourth, fifth, and sixth. Hypersonics is our fourth, our fifth satellite base communications. And then number six is networked, laser, scanning systems with dual use applications.

So, it's a broader enumeration of those of important sectors, I think, to our security.

ZARATE: And Senator Cornyn, this goes back to your comment and concern around China and the civil-military fusion. Those categories, in many ways represent that nexus between technological innovation and national security and the threats potentially that China poses to the US.

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CORNYN: Yeah. Senator Casey and I both serve on the Senate Select Committee on Intelligence. And Senator Warner, who's the chairman of that committee, whose former telecom guy, he likes to call it 'the technology committee'. And, as it turns out, we spend quite a bit of time trying to get smarter and better informed about technology and, and as a result, the competition that we're having, we're seeing huge investment by the People's Republic of China and the Chinese Communist Party in this because of their aggressive ambitions to dominate the world. They want – they feel like they're being contained and disrespected, and they want to sort of restore the glory of the historical glory and dominance of that culture in that economy.

But as we all know, threatening the safe passage of international navigation through the South China Sea, building artificial islands, threatening Taiwan, all of this is pretty dangerous stuff and we just, we can out innovate them, but they can, they're pretty good at stealing our stuff. Pretty shamelessly worked through cyber theft, other intellectual property theft, and it's amazing how many of our weapon systems look alike, and yeah that's not an accident.

So yeah, this is a full-bore competition, and we can't afford, can't afford to come in second place.

ZARATE: Senator Casey, you're talking about all the stakeholders, you have to deal with. You obviously, you both have to deal with the private sector and how they feel about this. And, you know, questions as to whether or not capital is being weaponized. You know, when I worked at the Treasury Department, there was always a complaint that we are weaponizing, the dollar in the use of sanctions post 9/11. Right?

So how do you see that dialogue with the private sector unfolding? And how does that play into this broader debate about whether or not we're pushing too hard to decouple from China? Or if we're de-risking from China? How do you see that in the dialogue with the private sector?

CASEY: Well, look, I think that we've had some of that dialogue is, was commenced as we started on the pathway to get this bill passed. And even before that, we had the original version of the of the legislation. And that – that's – a task that John and I share, and both of our staffs do as well, but I do think that there is a recognition, or maybe the better word is differentiation, in the private sector between a whole range of transactions or activities, versus what we're trying to put eyes on here. And I think that's why we had such overwhelming support.

ZARATE: How do you both see the legislation evolving? What's next is it is going to pass in the NDAA [National Defense Authorization Act]. Does this regime continue to evolve and expand? Is this just the first step of many that you have in mind? How do you see this playing out? Because we're – I think it's important for folks to understand we're in new territory here in terms of an investment security outbound regime, that in some ways marries with the inbound regime that we've had with CFIUS [Committee on Foreign Investment in the United States]. And this is a little bit of the also the big brother of the cousin to export controls and sanctions on debt and equity.

So, this fits very interestingly, into a broader framework. But how do you see this playing out both in the context of the existing legislation and then the regime moving forward?

CORNYN: Well, we know who's on the conference committee for the National Defense Authorization Act in this House. I don't believe we yet know who's on that conference committee in the Senate. But I've been talking to, I suspect Bob has to, some of our House colleagues about this. I know, Chairman Michael McCaul of the Foreign Relations Committee in the House, and Mike Gallagher, head of the Select Committee on China is very interested in this, Chairman McHenry has some views on this as well. So, we're going to have to work that out between the two bodies.

But I'm optimistic we'll get that as part of the part of the NDAA. But I think, I know, Bob's sincere, I'm sincere when we say, there may not be as another step, in terms of, because there are other tools or export controls or sanctions, things like that. Really, right now, we just like to know what's going on. We just want the information, but you know, President Xi seems to be doing a pretty good job himself chasing foreign investment out of China with some of the restrictive things

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that he's doing the surveillance, he's the paranoia they have. And also, but as you point out, the fusion between the military and the private sector means there is no such thing as really a truly private sector in China, they all are obligated under Chinese law to share information with the military with national security apparatus.

And so, I think we'll take up once we pass this, we sort of see what the information is that we are able to collect. And then that'll inform any policy decisions we might make in the future.

ZARATE: By the way, we're proud of Congressman Gallagher, is personal friend of mine, from when he was in high school days, but he was also an FDD Senior Fellow [sic, FDD National Security Network Alumni]. So, we're, we're very proud of Michael Gallagher's work.

Senator, any thoughts on where the legislation goes?

CASEY: Well, it's, it's always hazardous to predict what will happen in a conference committee and the interplay between the House and the Senate. But I will say this, unlike so much of policy work here, whether it's domestic policy or international policy, or even national security, the usual partisan divisions are, are really much very much obliterated. I mean, there's a strong consensus, I think, in the House in both parties, that this is a problem we got to deal with, among several others that relate to China.

So, I think that's that foundation is going to be very helpful to get as John said, to get, get this done. And both of us have engaged personally with members of the House and both parties to try to bring that to fruition. But I don't ever want to predict what will happen in the House. But I'm sure hoping we can get to the kind of consensus that we arrived at here.

CORNYN: I thought Bob was going to quote Yogi Berra, "it's hard to make predictions, especially about the future." But I do, I do think that there's a sense of urgency, because we have a sense that we're playing catch up. Again, we sort of got lulled into this complacency when it came to China and the Chinese Communist Party, because, you know, naive Americans, we thought we could actually change them. And now we found out no, we couldn't. And while we've been sort of asleep at the wheel, they've been rebuilding their economy, rebuilding their military, and now being a national security threat to our friends and allies in the regions, not to mention to the United States.

So, I think that's driving a lot of the non-partisan approach to these issues. And it's nice to have some areas where we aren't constantly fighting our political adversaries, but we're actually able to work together in the national interest.

CASEY: Yeah. Well, it's not as if China's is camouflaging what they're doing. I mean, they've got a set of very specific objectives for 2025. So, this isn't their 50-year plan. They've got a plan for just the next couple of years. We ought to, when you know, when someone tells you directly what they're going to do, you're to take them seriously and put in place, a series of measures that will meet that challenge.

ZARATE: Just a couple more questions, this is a great discussion by the way, thank you.

As you think about the international landscape, you've seen allies, including the Five Eyes sort of join us in looking at the role of Huawei and 5G, looking at CFIUS like structures and scrutiny on inbound investment. We've heard a bit from the UK about wanting to do some outbound investment restrictions. How do you see the international landscape unfolding, in particular with China and the BRICS-Plus sort of evolving as well? How does the international landscape affect the way you think about these issues? Senator?

CORNYN: Well, my own opinion is nothing happens without American leadership. And we saw that on Huawei, for example. And then, we've been working through the State Department and other components of the federal government to educate our friends and allies, because the, the weakest link is really a problem. We can do all sorts of things to protect ourselves, but of our friends and allies, particularly you mentioned, the Five Eyes, with whom we share sensitive, classified material, in our joint defense, then that can be exploited.

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And so, I am gratified to see a number of our friends and allies in Europe and elsewhere develop some of these same measures. But I can't help but think that once we pass this legislation, we'll see some legislation similar to it passed in, in other countries around the world that are worried about the same, same thing.

ZARATE: Senator?

CASEY: And just, the other thing I'd add is that the bill contemplates that we should have that engagement with allies and partners, that were focused on countries of concern the leader, of course, and that list is China, you'd add Russia and a few others to that. But there's a much larger universe of allies and partners that the legislation specifically empowers the Secretary of State to have those kinds of engagements. So, we can be on, in essence on the same team.

ZARATE: We have just a couple of minutes left, I want to give you both the opportunity to sort of, say anything you would like or to share any, any thoughts or insights. But maybe just a final conceptual question, are we are we having to think about capital differently, whether it's American capital, allied capital, in part because of the challenge from China, the civil-military fusion, how they think about investment? What American capital means and what comes with American capital? Are we in a moment with your legislation in this issue, that we've just have to think about capital differently in a geoeconomic, geostrategic perspective? Senator?

CASEY: I think the answer is 'yes'. Simple yes. And especially because of the world within which we live where capital can move so quickly. And with China, it's especially challenging when you have that, that fusion between the state and their corporate sector or their companies. That fusion is, is a powerful combination, if it isn't met with the kind of approach, we're trying to take care of.

So, I think the short answer is yes, it's a moment to recognize the challenge of, of how capital flows.

CORNYN: I think COVID-19 causes us to reconsider globalization, which to my simple way of thinking is, whoever can make it cheapest, that's where it will be made. And that's a free-market system and approach which I support. But that's not those values are not shared by organizations like the CCP or the PRC. And so, you got to protect our national security.

So that means we have to do some things that maybe are a little, little bit of a stretch. I'm thinking again about the CHIPS Act. Ordinarily, we don't provide generous subsidies to companies to build here in America as opposed to overseas, but here we recognized what a vulnerability it was if that access were cut off.

And so here we tried to be strategic, we tried to target key industries and leave the rest of the – rest of the economy alone and I like – I like the way that you mention it. I don't consider this decoupling, I do think de-risking is a – is a more apt description.

ZARATE: And I do want to commend you both on using this concept of transparency, because I think it is one of the deep weaknesses of the Chinese State and they're making it harder and harder to trust what it is that's happening in their economy and in their system, so really kudos to you both.

I think we want to be incredibly respectful of your time. We're at the hour, so I want to thank you both. We're going to be following the legislation closely, all of us who watch your work. We want to thank you for your leadership and want to ask everybody to thank the Senators for their leadership and for being here with us today.

(APPLAUSE)

CASEY: Well thank you, appreciate it, thank you.

CORNYN: Thank you.

ZARATE: As the Senators depart, we're going to be joined by Elaine Dezenski and Nova Daly to continue the conversation. So Elaine and Nova? I want to thank you all for sticking with us, both here and virtually. That was a great

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discussion I think with the Senator, despite my moderation. But I'm really honored to be up here to continue the conversation with two great experts.

For those of you who don't know, obviously Elaine Dezenski, who opened the program today, is the head of the Center on Economic and Financial Power Senior Director at FDD, a long-time professional, two decades plus in the field of global financial integrity, commercial integrity. One of the great experts on anti-corruption senior positions at the World Economic Forum Interpol, Acting Assistant Secretary for Policy at the Department of Homeland Security, and long-time board member at CEFP. And so she is one of the great experts and FDD's incredibly fortunate to have Elaine leading the center.

So Elaine, welcome to the panel.

DEZENSKI: Thank you.

ZARATE: And Nova Daly, one of my great friends and colleagues, I love Nova. I love Elaine too, by the way, but Nova is a Senior Advisor at Wiley Rein – let me get the title right for you at Wiley Rein. Maybe you can tell me?

DALY: Well I – yes, just a guy that works at a law firm that's not a lawyer, that does policy.

ZARATE: No, no, no, I – but I'm going to get into Nova, because Nova is one of the great experts on investment security. He was a Deputy Assistant Secretary for Investment Security at the Department of Treasury, ran the Committee on Foreign Investment in the US for a number of years. This was in the time when most of you probably didn't hear of or know of CFIUS but he was one of the deep experts in government. Has been a long-time board member as well at CEFP and is frequently looked to for council and support on investment security issues. Nova has a very long resume, has worked at the White House, Commerce Department, Treasury, and elsewhere and is one of the great experts in town. So thank you, Nova.

DALY: Thank you Juan, great to be here.

ZARATE: All right, so let's continue this conversation, because I think they – the Senators set the table very neatly. We'll talk for about 15 minutes and then we'll open it up to Q&A and I do recommend hard questions to the panelists.

Nova, let's start with you. You have focused much of your professional life on CFIUS and inbound investment security and the regime and how that expanded under FIRMA [Foreign Investment Risk Review Modernization Act] and all the complications there. You're also looked at the sanctions regime as that's evolved to look at debt and equity in the Venezuela context, Russia, which implicates restrictions on capital.

How do you see this new push, both from Congress and the White House, to develop an outbound investment regime? Is it a natural corollary to what's been evolving? Is it more complicated than it seems? It seems pretty simple and when we talk about it but it's incredibly challenging in application. How do you think about it as a deep expert in this space?

DALY: Thanks Juan. Yes. It's – look when I was at Treasury running CFIUS, my other role was the open investment guy where I'd encouraged people to invest in the United States. So it's really antithetical from a philosophical standpoint to see this outbound investment regime sort of taking form, taking flow and becoming sort of a given in terms of a process.

But the point is if you've been an observer of China and what they've been doing over the course of many, many years in terms of theft of intellectual property, issues where they'd encourage U.S. businesses to go there, steal the capital, steal the ideas and concepts, and then develop a product that shut out or destroyed sort of a U.S. company's access to their market or global capabilities.

And then if you just look at the number that Senator Cornyn cited of \$2.3 trillion dollars being in China, you realize in the context of what China is doing, in the context of what they've decided to do in terms of facing and addressing the United

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States, militarily, economically, and otherwise, that there is no other option but to start dealing with the economic aspect of their power.

And that starts here, in looking at what we do – what the private sector does – in terms of the monetary flows that go in to that country and into their entities because having worked in government and seeing the intelligence on the flows, and the technology, and theft, and then being in the private sector and seeing companies flow their money in that direction, and then have the consequence of it, of that technology being either taken and then losing complete market share. I think this is just an evolutionary aspect that must happen essentially.

ZARATE: Nova, before we go to Elaine, do we go far enough in the executive order and the legislation? Is it – is it aggressive enough? Is it fast enough? Senator Cornyn, talked about sort of playing catch up here. Are we – are we way behind here? What do you think?

DALY: No. I think we're sort of on the right pace. And I think you know, my initial thought was you do more of a notification process as the senators have contemplated here. Obviously the executive order does prohibitions, straight out prohibitions but we have prohibitions whether they be sanctioned entities or export controls, where you effectively stop the flow of money knowhow, and other aspects of that.

So I think it's good that we get our minds around it. But I mean look there are a lot of companies out there that are planning for the contingency of an invasion of Taiwan, and what the United States does about it, in terms of our policy in China and what it's going to mean for their companies.

So it's already in the formulaic aspects of what U.S. companies are doing, in terms of if China does take that hot action, the US responds aggressively, what that's going to mean for their businesses.

So getting our minds around it now especially on the notification side and then obviously the additional prohibitions which are sort of a set part of what we're doing is the right step as – that we need to address in case things do get hot

ZARATE: Yes. Just a footnote on that. I do think the de-risking point is an important one because I think it's more than just a shift of lexicon or emphasis. It's really happening in the marketplace. We're seeing it with clients. You both are seeing it with your private sector dialogues. The de-risking equation is happening. It doesn't mean everyone is leaving but everyone is thinking about it very, very seriously.

Elaine, can you maybe take a step back and put this in context for everybody? Because you at the Center and we for a long time have been looking at all of the tools and authorities of economic statecraft. And in many ways those tools have been evolving in various ways, sanctions, export controls. This is the latest evolution.

Can you kind of put this all in context given the challenge of China, and the development of these other tools and authorities?

DEZENSKI: Sure. Great question. You know, as I was thinking about where this tool around outbound investment fits in the broader framework. We can think about it in a slightly different way. I mean it's a different tool than sanctions or export controls which are – I mean in the context of export controls, we're talking about limiting tech. So the idea is we want products to go abroad but we want to protect sensitive technology from going into the wrong hands.

With sanctions it's really a punitive set of measures where we're going after a corrupt official or we're freezing assets or maybe we're going after a regime but it's almost after the fact that we're making that sanction.

In the case of outbound what we're really talking about is something that is more of a denial of service or a denial of capacity. So we're saying OK, we're going to get ahead of this by limiting that investment flow in ways that could be detrimental.

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So I think in some ways it's the logical evolution but it's also a move from more blunt-force instruments to something that could be much more prescriptive and maybe in that sense more effective. I mean it's closer to a CFIUS process than it is you know, a sanctions process or a sanctions regime.

So the real question I think going forward is 'how far does this go?' It's a fairly limited scope at the moment and that's probably the right way to do it. And I think that the Cornyn-Casey Bill is interesting because the focus is on the information gathering. It's on the intelligence. And that's the first step because unless we know where the flows are going, and where the potential for the risk is, it will be very difficult to figure out how to use the tool in the right way with the right effect.

ZARATE: Elaine, I want to ask you a version of the question asked the senators about sort of the international landscape because so much of what's happened in the CFIUS context has been the Five Eyes and other interested countries worried about China sort of beginning to institute regimes to look at investment security and/or transparency depending on the regime.

DEZENSKI: Yes.

ZARATE: How do you see this unfolding internationally? Do you think the United States should be thinking about alliances around outbound investment security?

DEZENSKI: Yes. Absolutely. And in some ways I think we should take the experience from the CHIPS Act and take that lesson to heart which is anytime we're talking about measures that impact a broader global economic landscape, our allies and partners are going to be affected by that. So rather than have the conversation after, it's better to you know, to front load that that dialogue and that conversation.

I think in terms of outbound investment you know, we're seeing the start of that, which is good, and the legislation contemplates that kind of engagement.

But I could certainly envision that that alliance whether it's the Five Eyes or something tight like that, a tight group of countries that are already sharing intelligence and information, being the logical place to start the broader engagement. So the UK is already moving forward. They're thinking about this.

The EU has come out with some language around exploring an Outbound Investment Mechanism. Germany has come out in support of exploring this. So these are good signs moving in the right direction. But we do have to get ahead of it because the real teeth around outbound is that common framework, otherwise there are too many loopholes, there are too many ways to move around.

ZARATE: And that's a great segue to the question I wanted to ask. You know, what are the complications here? Because again it sounds simple enough but you've got different kinds of investments. You've got joint ventures, you've got all sorts of vehicles and things that are difficult to unwind and even understand.

So from your perspective, and you're dealing with the private sector all the time, what are the real complications in the application of these restrictions?

DALY: Yes. The – well there's sort of dual complications. I mean one, is it's effect – capability to be effective – in what we want to do which is stem that flow of money going to an entity that's producing a military item that can be used against us or our defense of Taiwan should we choose to defend Taiwan upon an invasion. So it's real. It can it be effective.

But one of the great things I learned sort of in the private sector is the issue of business risk. If a company doesn't know the effect of a policy or the effect of an investment or what that means in terms of being regulated or punitive action being taken upon them, they're going to take a less risky approach.

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So I think its effectiveness in just the notification process let alone the EU – EO – on prohibitions is to create initially a playing field of question marks for companies that are going to take a safer approach in terms of what they do, and how they invest in the intermediate – well in the near and intermediate term.

However, in the long term the higher lawyers out there in Washington...

ZARATE: Hire Nova..

DALY: ... they – I – I'm not going to represent that side but they hire lawyers who beat down the doors of the administrators to get the regs completely right. And then all of a sudden avenues of investment become clear and well trodden and available.

So eventually you have a longer term where their effectiveness dwindles to a good degree. That's why it's important to have the allies on board because you have a competitive issue where the U.S. private equity or whatnot who can't go in, the E.U. entities go in.

So its effectiveness has a near term stronger effect; longer term once it's trodden. And then always the cheaters out there that are going to find other ways to – I mean money is fungible like water. It finds its way to where it wants to go. So they're going to find a way to go into a third entity or even a fourth-tier entity to get to a third tier, second tier, to get to where they want that money to go. It would just take time to get there in terms of that policy. But anyway.

ZARATE: Yes. Please, Elaine.

DEZENSKI: To add a quick point on that. I mean one of the most interesting things is to watch what's happening in the market right now in – even over the last 12 months with capital going into China falling, foreign direct investment falling significantly.

One of the great byproducts of putting forward this sort of legislation even in an early stage is that the markets will simply respond because that's what markets do and that's what companies do. They respond to risk. And when the geopolitical risk threshold becomes high enough that it might not make sense to make that investment or maybe an alternative looks a little bit better, that that shift will happen whether the U.S. government takes the action or not.

So that's interesting and I think we're seeing that already. And it is a – it's a – de-risking but in some cases I would say it's even a decoupling. It's very limited but we're starting to see that.

ZARATE: And Elaine, you've done some great writing and analysis on exactly that phenomenon in some of your recent work. So thank you for that.

We're going to turn to Q&A but I just – I can't resist. And this is worth another two hours. But Nova, maybe in just a second, and Elaine, in just a second answer, how do you speak to this challenge of not pushing allies or capital outside of U.S. markets, the U.S. system.

How do you not affect the magnificent glass house as [Treasury] Secretary Paulson put it, and the open investment environment, Nova, that you mentioned?

How do you not accelerate de-dollarization, Elaine, which you're watching very carefully and some of the work of the Center.

Can you speak to that very quickly just to begin that conversation?

DALY: Yes. You don't. And it was interesting to hear Senator Cornyn talk about you know, his natural tendency to be – view capitalism and the flow of money as something we do.

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But given the path that China has chosen, in many respects, we have no alternative. And especially looking at the vulnerabilities we had during COVID, the vulnerabilities we have currently in our military. I mean if you just look at some of our vehicles out there and the screens that they utilize, I mean they're all produced in another place, that could be cut off immediately.

So we only have one wave of weaponry and then the access to that part is gone. So we really – the paradigm has changed. China has chosen that change.

We wanted a different path but they've chosen and then I think there's no way to get around the fact that the years of open investment are not closed but they're going to be constrained just like CFIUS is hopefully and you know, it was a narrow process in the larger context of open investment. Outbound investment restrictions hopefully will be narrow as necessary in the context of what we want to do.

ZARATE: Elaine?

DEZENSKI: Yes. Great question. On the – maybe take a shot at the de-dollarization in a very brief way but that is part of the narrative or even the propaganda that I think is coming from a lot of authoritarian interests. This idea that you know, as we use more tools of economic warfare we may be limiting the ultimate power of the U.S. dollar as a reserve currency and therefore you know, endangering our role in the global financial system.

Number one, we're a long ways away from that. The stability of the dollar I think is fairly clear and it's – it's stable but it's also attractive for pretty much everybody, including China, including Brazil, including India, including many other countries. And I'm thinking of the BRICs Alliance in particular because there was a discussion recently about – or a narrative around the potential of introducing something like a BRICs currency which really doesn't make any sense at all.

So I think we have to be careful about this because the biggest challenge for U.S. dollar reserve primacy right now is the narrative that it's – it's that it's being weakened. So we need to be really careful about it.

Secondly, the idea that these tools in their entirety are going to accelerate that process of de-dollarization, we will probably see some of that. But the question is what's the alternative? And it's not the yuan because it's not a free-floating currency. It's not the rupee. It's not the rial. It's still the dollar.

So I think we also need to look at ways that we can be careful about how we use these tools and protect that, that primacy but also recognize that it's still strong.

ZARATE: Thank you.

Now questions for the audience. If you could stand. We've got a microphone. Identify yourself and then ask a question please.

HARRIS: Hi, Good afternoon. Ike Harris. I was a OSD [Office of the Secretary of Defense] Policy Lead AO [Action Officer], for the Outbound EOs, we were crafting it. Actually one of the biggest roadblocks to the EO I would say was the private sector constituency. So lots of concern from those that had business in China about what you know, the government was going to do to inhibit that.

From OSD's perspective, from the DOD perspective, all the things that we prohibited and notified including the things in Cornyn and Casey Bill, have a very easily articulable national security rationale, one that we thought was more important than any business interest. But my question to you both is how you see – you know this is the first year. Hopefully the Casey-Cornyn bill gets passed as part of the NDAA. But certainly there's going to be some back and forth with industry as the ANPRM [Advanced Notice of Proposed Rulemaking] process goes through with the EO.

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So curious to your thoughts on how industry, pessimistically speaking, will try to kill this and whether you think it'll survive. Thanks.

DALY: OK. Thank you, great question. Look, I think $E=MC^2$. I mean government governs, private sector addresses what government governs. And government has to lead smartly, articulately and clearly for business to be able to respond.

But the point is, you know, just as the senators mentioned up here, 91 to 6 passage of outbound. A full bipartisan support of addressing the China issue. The private sector has to come to terms that the governance and leadership has seen this clearly in the evidence of intelligence, discussions, and otherwise.

And the government has to lead. And whether – and how the private sector – the private sector will adapt. There's enough leeway given that where the EO is. I mean bank loans are not part of – are not covered. So I mean there's enough aperture university research project that are – is not covered, which is – I find interesting.

But I mean so there's enough aperture for investments still to flow both in the notification process in the Cornyn-Casey bill but also in the EO. And businesses are just going to have to adapt because governance has and government has seen what's there and knows it needs to be addressed. So it's just one of those give and takes and there's – there needs to be obviously understanding and taking into consideration what the private sector needs and sees as gaps and competitive issues that will happen abroad and third parties.

But you know, like Senator Cornyn said, America has to lead and on this matter this is one that's imperative and timely.

ZARATE: Elaine, do you want to address?

DEZENSKI: Yes, not much to add other than fully agree with Nova's comments. I think the rub around all of this is that, you know, it takes us into this space of industrial policy and that's a challenge because we don't have an industrial policy like China has. We don't have that sort of framework where there's hardly a separation between government and the private sector.

So we do have to retain that distinction. That's part of our system and part of the strength of it. On the other hand we're facing a series of threats that are pretty critical to the democratic rules based order and the economic system that we're vested in.

And the private sector is a huge part of that. So there is a common alignment around the protection of that system. And I think that's where the conversation needs to start. And then we figure out how – how do we align. How do we align interest and capital flows in ways that are beneficial to the private sector but also meet these evolving economic security, and national security objectives, which we have to do.

ZARATE: Any other questions?

Let me ask you a question, both. Given that this is a dynamic environment, so it's not as if China looks at this and – and will look at it statically, what are the opportunities for China or any other sort of challengers to the United States to use this or jujitsu this against us to complicate the investment environment, to complicate technology companies and joint ventures?

Are – do we have to think not just outbound investment but – but think about this from a more dynamic competitive, not confrontational perspective? What do you think about that?

DALY: I – you want to go or I don't know.

Yes, look, China is there. I mean China is – I mean the Russia competition, the Russia issues pale in comparison with what China represents in terms of the United States, just given the size of China and their capacity and the number of

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people and where they've directed intelligence and capabilities. So China has already considered plans for addressing this and already – look, they – they went out, they restrict gallium and – and I forget the other element in this –

DEZENSKI: Germanium.

DALY: Germanium and the – and critical to semiconductor production. So China's gamed out a scenario of retribution in terms of U.S. action and what they're willing to do to counter it. And it's going to likely probably get ugly and the only way to counter balance their counter balance is to work with allies where they don't have that leverage to make sure that whatever they try to do on the – in retribution is countered by our ability to source in other places or address what they decide to do, whether that's to start restricting Apple iPhones or what not.

So yes, they – they will jujitsu this. We have a huge enough dependence that they have capabilities to make it very, very difficult for us. So.

ZARATE: Elaine?

DEZENSKI: Yes, I agree. It's pretty convoluted. When we start to dig into what the structural influence of China is on the US and to some extent the US in China, we have dependencies going both ways and we're starting to, you know, dig into that in terms of some of our own research around supply chain risk and how to both understand China's influence through – through these economic frameworks and then ultimately the playbook for how to address it but I think this going to go back and forth for a long time until we get to hopefully some – some sort of happy medium.

But behind all of this I think we have to also remember that we're talking about some ideological differences – and I don't mean democracy versus authoritarianism, although that's part of it. It's more about the principles and the rules associate with these global structures, whether we're talking about the market economy, whether we're talking about the multi-lateral system and the alliances around that.

I think we're going to see a lot shifting and this conversation is – is part of that. And so we're going to have to take a much broader view on the connectivity across capital flows, alliances, multilateral engagement, the infrastructure agenda.

I mean all of it is really coming into this common space and we're going to have to be very careful about how all of these levers, you know, are utilized. So ya.

ZARATE: Any other questions? I've got one other question. I'm going to take the moderator's prerogative.

ZARATE: Oh, Stewart, please.

VERDERY: Hey, Stewart Verdery, oh woah, Stewart Verdery from Monument.

ZARATE: Good to see you again, Stewart.

VERDERY: Definitely. Senator Cornyn mentioned that his efforts weren't focused on kind of worry about Starbucks, like he raised them. What is the concern that this effort will jeopardize the ability of companies not involved in sensitive technology to do investments in China, whether it's retail or commercial goods or things we're not worried about from a military or technological stand point, but are still valuable in what they want to sell?

ZARATE: Elaine?

DEZENSKI: Yes, it's a good question. Actually I'm glad you mentioned retail because it's something that doesn't necessarily hit the national security discussion but our – I'll say our dependence on China for fast fashion for well-priced

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retail goods is significant and it would have a huge impact on us if we were looking at some challenges to those supply chain dependencies.

So I think we actually have to think more broadly in terms of where the potential impact is. It doesn't mean that we necessarily need an outbound strategy around garments, for example. But it's not without challenges in terms of the impact on the economy and what consumers expect. So, that's something we need to think about.

ZARATE: Nova?

DALY: Look, you know, I think China knows what it's doing in terms of the economic and military competition, and they're grownups about it. They don't want to cave in – they have their own internal pressures – and they don't want to cave in their own economy.

So, I think they're going to be measured about how they address this thing. Targeted, painful in certain places, but I think they're going to be measured. So, we're not in a full blown economic, we're just doing warfare, we're in a dance. And I think they're going to cadence that appropriately, and honestly, it's been pretty remarkable, all the actions that we have taken in terms of sanctions, export controls, trying to get Huawei out of the United States and abroad, the NDAA Section 889 that dealt with a lot of their industries.

It's amazing that they haven't taken more of an aggressive standpoint, in terms of retribution. And that, frankly, I think is probably because they know that they need to keep growing their economy and have to take a cadence approach to what they do, so.

ZARATE: So, just my quick comment. I think it's been interesting to watch in the Russia context how much the private sector – to Elaine's earlier point – has adopted a sense of risk, not just around sanctions, but general reputational risk. Being exposed to particular kinds of economies and sort of the exit of certain companies that weren't even required to by law or by sanction, simply based on their own risk decision.

So, I think that China's sort of we're right at the beginning stages of that, where companies are, whether they're Starbucks or McDonald's or someone else having to figure out the risk environment on their own, regardless of what the restrictions demand.

DEZENSKI: And actually, China is making that easier in some sense, by implementing limitations on due diligence that can be conducted, anti-espionage laws. I mean, it's getting challenging to get access to data if you want to do a merger or a typical business transaction is becoming much more difficult in China based on some of their new laws and legislation. So, that's not an insignificant issue.

ZARATE: Well, that's it for us. Nova, Elaine, thank you very much. I want to thank all of you for joining. This has been a great discussion. I've certainly learned a lot. I want to thank everyone here in person and online, and I'd like to welcome you to visit fdd.org, the work of the Center on Economic and Financial Power. And we will certainly be watching the outbound investment regime as it unfolds and welcome you to join us in future events. So, with that, thank you very much. And we have a reception to follow, so welcome.

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