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FACT SHEET: President Biden Issues Executive Order Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern; Treasury Department Issues Advance Notice of Proposed Rulemaking to Enhance Transparency and Clarity and Solicit Comments on Scope of New Program

On August 9, 2023, President Biden issued an Executive Order (E.O.) to address the national security threat to the United States posed by countries of concern that seek to develop and exploit sensitive or advanced technologies and products critical for military, intelligence, surveillance, or cyber-enabled capabilities.

The Biden-Harris Administration is committed to keeping America safe and defending America's national security by protecting technologies that are critical to the next generation of military innovation. Cross-border investment flows have long contributed to U.S. economic vitality. The E.O. is a narrowly targeted action to protect national security while maintaining our longstanding commitment to open investment.

The E.O. provides for the establishment of a new and targeted national security program to be implemented and administered by the U.S. Department of the Treasury (Treasury), in consultation with other agencies, including the U.S. Department of Commerce. The program would, pursuant to implementing regulations: (1) require U.S. persons to notify Treasury of certain transactions, and (2) prohibit U.S. persons from undertaking certain other transactions, in either case involving certain entities engaged in activities related to narrow sub-sets of three advanced technology areas identified in the E.O.

In an Annex to the E.O., the President identified the People's Republic of China (PRC)¹ as a country of concern. As part of a comprehensive, long-term strategy to advance the development of sensitive technologies and products, the PRC is exploiting, or has the ability to exploit, U.S. investments to further its ability to produce a narrow set of sensitive technologies critical to military modernization. Such U.S. investments are often accompanied by certain intangible benefits that help companies succeed, such as managerial assistance, investment and talent networks, and market access.

The United States already prohibits or restricts the export to the PRC of many of the technologies and products under consideration for the new program. This new program would prevent U.S. investments from helping accelerate the indigenization of these technologies in the PRC, which undermines the effectiveness of our existing export controls and inbound investment screening programs which also seek to protect U.S. national security.

Also on August 9, 2023, alongside the E.O., Treasury issued an Advance Notice of Proposed Rulemaking (ANPRM) to provide transparency and clarity about the intended scope of the program and solicit input from the public on the implementation of the E.O. and the scope of the program before it goes into effect.

In developing the E.O. and ANPRM, the Biden-Harris Administration engaged with U.S. allies and partners regarding its important national security goals, and will continue coordinating closely with them to advance these goals. The E.O. and ANPRM reflect discussions with the G7 and other ally and partner engagements. The Biden-Harris Administration also engaged with industry stakeholders regarding the initiative and its goals, and we look forward to continuing to receive and consider public input through the rulemaking process.

Executive Order

President Biden issued the E.O. under the authority vested in the President, including to regulate international commerce under the International Emergency Economic Powers Act. In the E.O., the President directs the Secretary of the Treasury (the Secretary) to issue regulations that:

- **Prohibit** U.S. persons from undertaking particular transactions involving certain entities located in or subject to the jurisdiction of a country of concern, and certain other entities

¹ The Annex to the E.O. identifies the PRC, along with the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau, as a country of concern.

owned by persons of a country of concern, engaged in activities related to defined subsets of technologies and products; and

- **Require notification** by U.S. persons to Treasury regarding particular transactions involving certain entities located in or subject to the jurisdiction of a country of concern, and certain other entities owned by persons of a country of concern, engaged in activities related to other defined technologies and products.

The E.O. identifies three categories of national security technologies and products for the new program. These were selected due to their critical role in accelerating the development of advanced military, intelligence, surveillance, and cyber-enabled capabilities:

- Semiconductors and microelectronics;
- Quantum information technologies; and
- Certain artificial intelligence systems.

The E.O. instructs the Secretary to further define sensitive technologies and products in these categories for purposes of the prohibition and the notification requirement, and to consult, as appropriate, with other relevant executive departments and agencies in this process.

The E.O. also provides the Secretary with the authority to investigate, as appropriate, violations of the E.O. and accompanying regulations, and pursue available penalties for such violations.

Advance Notice of Proposed Rulemaking

Concurrent with the issuance of the E.O. and in furtherance of the authorities delegated to it in the E.O., Treasury is issuing the ANPRM to provide transparency and clarity about the intended scope of the program, and as a vehicle for obtaining early stakeholder participation in the rulemaking process. The ANPRM does not itself implement the E.O. and is not draft regulatory text. Rather, it is a means for Treasury to share with the public some of its initial considerations and views with respect to definitions and other elements of the program that are central to its implementation. The ANPRM will be followed by draft regulations at a later stage in the process.

The ANPRM reflects the framework that Treasury anticipates proposing for implementation of the program, namely:

- ***Requirements on U.S. persons:*** The program anticipates that U.S. persons, wherever they are located, will be responsible for adhering to the prohibition and the notification requirement. A U.S. person includes any U.S. citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of any such entity, and any person in the United States. Under the E.O., the Secretary may also place certain obligations on U.S. persons with

respect to foreign entities that they control and in certain situations where U.S. persons knowingly direct transactions by non-U.S. persons.

- ***Specific categories of covered transactions:*** The program is anticipated to focus on U.S. persons undertaking certain types of transactions that could convey intangible benefits, specifically: acquisition of equity interests (*e.g.*, via mergers and acquisitions, private equity, venture capital, and other arrangements); greenfield investments; joint ventures; and certain debt financing transactions that are convertible to equity.
- ***Involving covered foreign persons:*** The restrictions are anticipated to apply to investments in entities that are engaged in activities related to defined sub-sets of technologies and products, and that are organized under the laws of a country of concern, have a principal place of business in a country of concern, or are majority-owned by country of concern individuals or entities. Presently the E.O. lists the PRC as a country of concern.
- ***Deliberate approach to excepted transactions:*** Treasury is considering creating an exception for certain types of passive and other investments that may pose a lower likelihood of conveying intangible benefits or in an effort to minimize unintended consequences. For example, Treasury is considering excepting from the program's coverage certain U.S. investments into publicly-traded securities, index funds, mutual funds, exchange-traded funds, certain investments made as a limited partner, committed but uncalled capital investments, and intracompany transfers of funds from a U.S. parent company to its subsidiary. The scope and nature of each of these potential exceptions is under consideration as detailed in the ANPRM.

The ANPRM provides initial details on the sub-sets of technologies and products within the three categories identified in the E.O.:

- ***Semiconductors and microelectronics:*** Treasury is considering prohibiting U.S. investments in PRC entities engaged in the development of electronic design automation software or semiconductor manufacturing equipment; the design, fabrication, or packaging of advanced integrated circuits; and the installation or sale of supercomputers. Treasury is also considering requiring notification for U.S. investments in PRC entities engaged in the design, fabrication, and packaging of less advanced integrated circuits.
- ***Quantum information technologies:*** Treasury is considering prohibiting U.S. investments in PRC entities engaged in the production of quantum computers and certain components; the development of certain quantum sensors; and the development of quantum networking and quantum communication systems. Treasury is not currently considering a separate notification requirement for quantum information technologies.
- ***Certain artificial intelligence systems:*** Treasury is considering requiring notification for U.S. investments in PRC entities engaged in activities related to software that incorporates an artificial intelligence (AI) system and is designed for certain end-uses that may have military or intelligence applications and pose a national security risk. Treasury

is also requesting comments on how to shape a prohibition on U.S. investments in PRC entities engaged in a narrow set of activities related to software that incorporates an AI system and is designed for particular end uses with national security implications, *e.g.*, military surveillance end uses. Treasury particularly welcomes feedback on the definitions in this category and their potential implications on scope, and seeks to ensure these measures are appropriately tailored in the final regulations.

The ANPRM also seeks public comment on a range of related definitions and elements of the program. The public will have 45 days after the ANPRM's publication in the Federal Register in which to provide comments that will inform Treasury's development of draft regulatory text.

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