



Insight

Senate Defense Bill Amendments Would Increase Scrutiny of Capital Flows

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Executive Summary

- The Senate overwhelmingly approved two amendments to its version of the Fiscal Year 2024 National Defense Authorization Act (NDAA) that would increase scrutiny of outbound and inbound capital investment.
- One amendment would require U.S. companies to report certain investments in high-tech sectors in “countries of concern” to the federal government, while another amendment would allow the Committee on Foreign Investment in the United States (CFIUS) to fully block acquisitions of U.S. agricultural land by entities from China, Russia, Iran, and North Korea.
- While CFIUS has long screened inbound investment for national security concerns, these amendments mark a significant expansion of government intervention in capital flows; these issues are likely to be strongly debated as a conference committee attempts to reconcile the Senate and House versions of the NDAA in the coming months.

Introduction

On July 27, the Senate passed the Fiscal Year (FY) 2024 National Defense Authorization Act (NDAA) by a vote of 86–11. Just days before, senators overwhelmingly approved the addition of two amendments to the NDAA that would increase scrutiny of outbound and inbound capital investment. The Outbound Investment Security Act would require U.S. companies to report certain investments in high-tech sectors in “countries of concern” to the federal government, while the Promoting Agriculture Safeguards and Security Act would allow the Committee on Foreign Investment in the United States (CFIUS) to fully block acquisitions of U.S. agricultural land by entities from China, Russia, Iran, and North Korea.

These amendments represent a significant expansion of government intervention in capital flows, especially in the case of the Outbound Investment Security Act. Now that the NDAA has passed the Senate, it will need to be reconciled with the House’s version in a conference committee. Such provisions are not in the House version of the NDAA, so these are likely to be hotly debated as a conference committee attempts to reconcile the two bills in the coming months.

The Debate Over Outbound Investment Screening

The [National Critical Capabilities Defense Act](#) (NCCDA), sponsored by Senators John Cornyn (R-TX) and Bob Casey (D-PA), contains the most comprehensive proposal for the screening of outbound investment. This legislation would establish an interagency committee to review outbound investment – that is, U.S. capital meant for investment in other countries. The bill would give CFIUS very broad authority to review investment meant for a “country of concern” and specifically gives the example of a “foreign adversary” or “non-market economy.” Senator Casey called this legislation essential because “Outbound investment of this kind aids the

[Chinese Communist Party] in its ongoing efforts to steal our technology for the benefit of its industries. Without a mechanism to understand the ways in which the export of U.S. investment and capabilities are resulting in a wholesale transfer of American R&D and expertise to our adversaries, the U.S. government is an active party to the decline of our own economic might and national security.”

Members have robustly debated the merits of screening outbound investment flows, particularly those investments in Chinese firms. As Congress considers the merits of the NCCDA, the Biden Administration is also reportedly finalizing an [executive order](#) to develop a pilot program for screening outbound investment; however, the details of the order are presumably undecided, as it has been “imminent” for months.

In recent weeks, the NCCDA sponsors attempted to get the legislation added as an amendment to the FY 2024 NDAA in the Senate. Those efforts were met with [pushback](#) from some senators who question the scope of the NCCDA. Given this opposition, the sponsors presented several updated versions of the legislation. The latest version, and the one that passed as an amendment to the NDAA by a vote of 91–6, is the [Outbound Investment Transparency Act](#). It would require U.S. companies to report to the secretary of the Treasury investments into the sectors of advanced semiconductors and microelectronics, artificial intelligence, quantum information science and technology, hypersonics, satellite-based communications, and networked laser scanning systems with dual-use application in “countries of concern.”

Reviewing Foreign Ownership of U.S. Agricultural Land

Another area of robust debate is the extent to which foreign entities, especially Chinese entities, own and are able to purchase U.S. agricultural land. Some have [claimed](#) that there has been “an alarming increase in foreign purchases of farm land and food companies, particularly by China.” While concerns over the acquisition of this land by foreign entities are certainly worth investigating, earlier this year the American Action Forum published [research](#) looking into the acres and value of land owned by foreign entities. It found that roughly 3 percent of U.S. agricultural land (in acres) is foreign owned, with less than 1 percent of that slice owned by Chinese nationals. An overwhelming amount of this acreage is owned by the Chinese company Shuanghui International, which [acquired](#) the U.S. company Smithfield in 2013.

Nevertheless, concern remains over the ability of CFIUS to review acquisitions of concern. The [Promoting Agriculture Safeguards and Security Act](#), an amendment to the NDAA offered by Senators Jon Tester (D-MT) and Mike Rounds (R-SD), would allow CFIUS to fully block acquisitions of U.S. agricultural land by foreign adversaries, specifically entities from China, Russia, Iran, and North Korea. The president can waive the CFIUS action in cases of national security. This amendment passed by a vote of 91–7. This bill would presumably allow CFIUS to block acquisitions by adversaries of U.S. agricultural land near military bases. Indeed, the bill would likely have blocked a commercial acquisition like Smithfield if it had been in effect a decade ago.

Congress Should Exercise Caution on Regulating Capital Flows

The Senate passed the FY 2024 NDAA on Thursday July 27 by a vote of 86–11. Both amendments consider where the line should be drawn between the free exchange of capital and national security. The Outbound Investment Transparency Act is certainly less restrictive than the NCCDA, although it is ostensibly intended as a first step by the legislation’s proponents. This amendment is an expansion of the federal government’s involvement in how Americans invest capital abroad. The inclusion of this amendment in the Senate’s version of the NDAA, however, does not guarantee that it will become law. The House version of the NDAA does not contain a similar provision, and therefore the issue will need to be reconciled during the impending conference committee. Moreover, moving beyond the notification system in the NDAA in the future should be considered very cautiously.

Congress should also exercise caution when considering a CFIUS expansion to cover additional transactions. CFIUS already possesses some ability to screen foreign acquisitions of agricultural land. For example, the Chinese company acquiring Smithfield in 2013 voluntarily [submitted](#) the transaction to CFIUS for review, which ultimately cleared the purchase. Moreover, it is probable that Iranian and North Korean entities, and likely Russian entities, are already prohibited or severely restricted from purchasing U.S. agricultural land due to unilateral U.S. sanctions and United Nations multilateral sanctions. This amendment will also fall into the category of items to be reconciled in the conference committee.