



August 4, 2024

Meena R. Sharma
Director
Office of Investment Security Policy and International Relations
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: Notice of Proposed Rulemaking on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern
[\[Docket No. TREAS-DO-2024-0012\]](#)

Dear Director Sharma:

The Alliance for Automotive Innovation (“Auto Innovators”) submits the following comments to the U.S. Department of the Treasury (“Department”) in response to its notice of proposed rulemaking (“NPRM”) on provisions pertaining to U.S. investments in certain national security technologies and products in countries of concern. The automotive industry appreciates the Administration’s ongoing commitment to supporting open global investment flows that promote competitiveness and incentivize innovation while protecting U.S. national security interests and welcomes the opportunity to comments on the Administration’s proposed program.

Auto Innovators represents the manufacturers that produce most of the cars and light trucks sold in the U.S., original equipment suppliers, battery makers, technology companies, and other value-chain partners within the automotive ecosystem. Representing approximately 5 percent of the country’s GDP, responsible for supporting nearly 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation’s largest manufacturing sector.

As noted in Auto Innovators’ September 28, 2023, comments on the Department’s advance notice of proposed rulemaking (“ANPRM”), the automotive industry is at the leading edge of an unprecedented transformation in personal mobility. The technologies that are facilitating this global transformation to a cleaner, safer, and smarter future – including automation, electrification, advanced safety features, innovative connected services and applications for drivers and passengers, and new mobility models – are increasingly enabled by advanced technologies, such as semiconductors, microelectronics, and artificial intelligence. To this end, the automotive industry has a clear stake in policies that either facilitate or hinder investment in such technologies.

In addition, modern automotive supply and value chains comprise multiple tiers of suppliers, distributors, and service providers spread around the world. These complex and sophisticated supply and value chains enable automotive companies to meet the needs of a

diverse global customer base effectively. Policies that inadvertently disrupt these global supply and value chains are likely to hamper the ability of U.S.-based automotive companies to serve the global market, as well as increase costs for automotive companies and consumers. Furthermore, these sorts of policies may open the door to automotive companies in other parts of the world that are not similarly restricted or constrained from taking advantage of these supply chains to supplant U.S.-based automotive companies in these global markets.

Auto Innovators supports efforts to limit U.S. outbound investments for the development of sensitive technologies and products critical for military, intelligence, surveillance, and cyber-enabled capabilities that pose a threat to U.S. national security. We understand that the Department does not intend to impede all U.S. investments in countries of concern or impose sector-wide restrictions and appreciate the Department's efforts to incorporate certain comments received in response to its ANPRM. However, we remained concerned that some aspects of the NPRM may result in an outbound investment regulatory framework that is overly broad or ambiguous, creating the risk that the program may inadvertently capture investments that do not pose a clear threat to national security and creating uncertainty that reduces the global competitiveness of U.S. investors and companies without a corresponding benefit to national security.

The Department proposes to either prohibit transactions with covered foreign persons related to semiconductors and microelectronics or to require notification of such transactions, depending on the type and functionality. At a time when demand for semiconductors has and will continue to increase across all sectors, the automotive industry represents one of the fastest and most substantial growth sectors for the semiconductor industry. As we noted in our comments to the ANPRM, semiconductors are necessary for a wide and growing variety of automotive electronic components that perform vehicle control, safety, emissions, driver information, and other critical functions. In addition, many of the innovations underway in the automotive space – including electrification, automation, and connectivity – heavily depend on semiconductors and microelectronics. These transformative automotive technologies are driving increased demand in the number and variety of semiconductors and microelectronics necessary for automotive production. Given the recent production losses stemming from capacity challenges in the semiconductor supply chain, the automotive industry is particularly sensitive to any policies that may further restrict the ability to obtain and maintain a steady supply of semiconductors and microelectronics at a global level.

The Department also proposes to prohibit transactions involving certain AI systems and require that U.S. persons provide notification of transactions with covered foreign persons related to certain other artificial intelligence systems. More specifically, the NPRM currently proposes a notification requirement on “AI systems” developed and intended by a covered foreign person to be used for the control of robotic systems, with no definition of a “robotic system.” The automotive industry develops and utilizes AI systems to control robotics used in a wide variety of manufacturing activities with commercial rather than military end-uses. The automotive industry also leverages artificial intelligence for driver support features, advanced safety technologies, and automated driving systems integrated into consumer vehicles. These and other technological advances have the potential to protect vulnerable road users, reduce traffic

accidents, improve roadway safety, increase access to mobility for older adults and those with disabilities, and provide environmental benefits.

We appreciate that the Department states that the “policy objective [of the AI system related aspects of the program] is to cover U.S. investment into entities that develop *AI systems* that have applications that pose, or have the potential to pose, significant national security risks without broadly capturing investments into entities that develop *AI systems* intended only for consumer applications or other civilian end uses that do not have potential national security consequences (emphasis original).” An overly broad approach to restricting or requiring notification of investments in artificial intelligence systems, however, with related and potentially significant due diligence and compliance costs, could negatively impact the ability of U.S.-based companies to deliver these beneficial commercial applications, which do not pose a risk to national security, in the U.S. and other markets that are important to the success of companies in the U.S. It also could hinder the ability of subsidiaries or affiliates of U.S.-based entities located in China to work with Chinese partners to deliver these technologies and products for the Chinese commercial market and the surrounding region, which risks harming the competitiveness and profitability of companies in the U.S. without a corresponding benefit to national security.

In line with the comments above and to avoid placing the U.S. automotive industry at a disadvantage due to backfilling by third countries, Auto Innovators respectfully submits these comments.

1. Covered National Security Technologies: AI Systems

Auto Innovators first notes and appreciates the Department’s removal of “facial recognition” as a standalone category from the program’s proposed notification requirements covering AI systems. Auto Innovators has continuing concerns, however, that the NPRM’s proposed notification requirements with respect to AI systems and the proposed definition of “AI systems” are overly broad. In this regard, we make the following proposals:

- **Exclude Robotic Systems from the Notification Requirement:** Under the NPRM, notification requirements would apply to covered transactions involving a covered foreign person that develops an AI system that is intended by that person to be used for the “control of robotic systems.” Auto Innovators respectfully requests that the Department remove “control of robotic systems” from this category of notifiable transactions and rely on §850.217(d)(1), which requires notifications of AI systems, which would include systems for the control of robotics systems, that are “designed to be used for ... military end use.” The inclusion of robotic systems more generally and without a definition would scope in an unknown number of transactions involving AI systems that would not raise national security concerns. Specifically, the generic term “robotic systems” risks covering robotic systems used in purely civil (or humanitarian) applications. Auto Innovators respectfully submits that such systems do not pose the acute national security threat that the Department is targeting and could result in significant due diligence and compliance costs, thereby disadvantaging U.S. investors and automobile companies versus competitors in third countries.

- Exclude Civil Automotive Applications from the Definition of “Robotics Systems”: Auto Innovators also respectfully requests that the Department include an exception for civil automotive applications from the scope of the prohibition and notification requirements. Auto Innovators notes that the Export Administration Regulations (“EAR”) specifically exclude from certain national security (“NS”) level controls specific items designed for the automotive industry.¹
- More Narrowly Focus the Definition of “AI System”: The NPRM proposes to define an “AI system” to include “[a]ny data system, software, hardware, application, tool, or utility that operates in whole or in part using a system described in [§ 850.202(a)].” Auto Innovators is concerned that this proposed definition could capture not only entities that directly engage in the development of artificial intelligence, but also entities that merely incorporate AI functionality into tools or hardware that they further develop. Accordingly, Auto Innovators proposes that the Department remove prong (b) from the definition of “AI system” at § 850.202.

2. Covered and Excepted Transactions

Auto Innovators also encourages the Department to provide additional clarity on the following aspects of the definitions of “covered transactions” and “excepted transactions.” The first two proposals would remove any ambiguity that U.S. companies could continue to conduct commercial business activities that are not of the type we understand to be targeted by the NPRM. The third proposal would ensure that U.S. companies could conduct standard intra-company transfers with their Chinese subsidiaries without undue compliance costs that could harm U.S. competitiveness.

- Define “Joint Venture”: The NPRM defines “covered transactions” to include the “[e]ntrance into a joint venture... that is formed with a person of a country of concern and that the subject U.S. person knows at the time of entrance into the joint venture will engage in or the U.S. persons intends to engage in a covered activity.” “Joint venture” is not defined. Auto Innovators respectfully requests that the Department define the term “joint venture” to clarify that purely contractual relationships are not covered. For example, “joint venture” could be defined to mean “a legal entity, jointly owned by two or more independent persons, established to engage in a single-purpose project or an ongoing business in which the owners contribute certain resources and share the profits and losses associated with the legal entity.”
- Clarify Activities Outside the Scope of “Covered Transactions”: We appreciate the Department’s commentary in the NPRM that the definition of “covered transaction” has been crafted to refer to a narrow set of specific transaction types and that the NPRM accordingly does not explicitly exclude a list of activities that the Department does not

¹ See, e.g., 15 CFR Appendix Supplement 1 to Part 774 ECCNs 1A002, 3A001.a.2, 3A001.h, 4A001.a.1, 6A002.f, and 6A008.

view as falling within this definition. Auto Innovators respectfully requests that the Department clarify in the regulations or in binding guidance on its website that transactions such as “intellectual property licensing arrangements” and the “sale of goods and services” are not “covered transactions” to remove any ambiguity and ensure that U.S. companies continue to derive revenue from foreign parties, including those that utilize U.S. patented technology.

- Permit Intracompany Transfers: Auto Innovators appreciates the inclusion of an exception for intracompany transfers. However, the NPRM raises potential ambiguities. First, the Preamble states that the “definition of covered transaction in the proposed rule would not *usually* apply to *most* routine intracompany activities” (emphasis added). The regulatory language in § 850.501(c) provides an exception for a “transaction between a U.S. person and its controlled foreign entity that supports ongoing operations or other activities that are not covered activities,” without an explanation of how “support” for covered activities would be determined. Compounding the ambiguity is the exception to this exception for transactions under § 850.210(a)(4)(ii), *i.e.*, brownfield investments. U.S. businesses are thus faced with an impossible task: they must somehow determine at what juncture the support of “ongoing operations” for existing covered activities already being undertaken by a controlled foreign entity would cause the transactions to become covered and therefore prohibited or notifiable. As currently drafted, a U.S. company seeking to ensure compliance with the proposed rule may have to adopt the position that it cannot provide any ongoing support to its controlled foreign subsidiary, where such subsidiary is a covered foreign person that is engaged in a covered activity (which it may have commenced before the date of the Outbound Order), on the basis that the Department could view such ongoing support as a covered transaction where there is any advancement (technical or otherwise) in the company’s efforts or successes with respect to that covered activity. Such an interpretation could have an adverse impact on the operations of U.S. businesses and their subsidiaries, where all support for ongoing operations of subsidiaries engaging in “covered activities” may need to be evaluated for purposes of ensuring ongoing compliance with the regulations and may be prohibited, with detrimental effects for the U.S. parent company.

To minimize unnecessary business disruption, and to reduce the burden on U.S. companies of ongoing compliance requirements that would extend well beyond the intended scope and reach of the regulations, we propose that the rule should provide for the following: (1) all intracompany transactions between a U.S. person and a wholly-owned subsidiary (*i.e.*, 100%), irrespective of the nature of such transaction, should be excepted from the regulations; and (2) intracompany transactions between a U.S. person and any other controlled foreign entity should be excepted from the regulations where such transaction is in support of ongoing operations that do not result in the controlled foreign entity engaging in a type of covered activity in which it was not previously engaged.

Auto Innovators welcomes the opportunity to provide the U.S. automotive industry's perspective on the Department's proposed program. We look forward to working with the Department, the Department of Commerce, and other partners across government to fully address the impact that these proposed investment restrictions may have on the competitiveness of the U.S. automotive industry, including its supply and value chains. The automotive industry appreciates that the Department continues to take steps to protect national security while maintaining an open investment environment and promoting innovation and competitiveness for industries in the U.S.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hilary Cain', with a long horizontal stroke extending to the right.

Hilary Cain
Senior Vice President, Policy

