Capital Controls: The Evolution of Outbound Investment Security Strategy

Description

The United States sits in the middle of an interconnected global financial system, and American investors form a significant segment within the bedrock of global economy. The countryâ??s share of outbound investment is quite staggering, with U.S. multinational enterprises holding a cumulative investment position of more than $6.8 trillion as of the end of 2024. This financial position provides the U.S. with an outsized influence on the global economy â?? an influence that can be leveraged to pursue strategic goals and address perceived threats. For more than a century, the U.S. has restricted private foreign investment and used outbound controls as a key tool of economic statecraft with varied success to limit the capabilities and strategic options of adversaries.

Historical attempts to restrict outbound investment have blocked adversaries from accessing U.S. capital, but also limited loans to wartime allies, exacerbated global financial instability, and forged closer partnerships among rivals. As the U.S. progresses through a new era of global competition and conflict, the effective use of economic levers such as outbound controls will be critical in maintaining the current global order.

OISP and the COINS Act

The latest strategy introduced to control investment outflows is the establishment of the Outbound Investment Security Program (OISP). OISP took effect in January 2025 following the signing of Executive Order 14105 (Outbound Order), and is being further codified into law in the Comprehensive Outbound Investment National Security Act of 2025 (COINS Act), part of the 2026 National Defense Authorization Act.

E.O. 14105 and the COINS Act were issued in response to the national security threat posed by the technologic advancement of key adversaries and seeks to restrict U.S. outbound investment in certain sensitive technologies in designated â??Countries of Concern.â?• Initially, the Outbound Order only listed China and its administrative territories of Hong Kong and Macao as â??Countries of Concern.â?• This list has since expanded to include Cuba, Iran, North Korea, Russia and Venezuela.

OISP is intended, in part, to function as an inverse tool to the Committee on Foreign Investment in the United States (CFIUS). Where CFIUS is designed to protect domestic markets from adversarial

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investment by vetting incoming capital, OISP attempts to restrict outbound domestic capital by requiring U.S. persons to submit a notification if they, or an entity they control, engages in a â??covered national security transaction.â?• Currently this is a broad definition that covers an array of financial transactions, including equity and asset acquisitions, debt arrangements, joint ventures, and investments in limited partnerships. Additionally, the COINS Act lists five categories of sensitive technologies where investments would be subject to notification and potential prohibition: Semiconductors and microelectronics; quantum information technologies; artificial intelligence, high-performance computing and supercomputing; and hypersonic systems.

The current OISP framework attempts to strike a delicate balance between fostering the development of technologies that will be critical to the global economy and ensuring that these technologies are protected from potential dual-use through military or intelligence-gathering applications by states currently or potentially hostile to the interests of the U.S. and its allies. These contrasting priorities are being addressed in part by investment-focused programs, such as the Department of Warâ??s Office of Strategic Capital (OSC) and NATOâ??s Defense Innovation Accelerator for the North Atlantic (DIANA) and Innovation Fund. These programs support investment in strategic technologies with dual-use applications, while also ensuring that these advancements remain the trade-secrets of defense institutions within the U.S. and the North Atlantic alliance.

Outbound restrictions may be less commonly employed than targeted sanctions or oversight over domestic investment. Nevertheless, restrictions on outbound flows of capital have a long history in U.S.â??s geoeconomic toolkit and demonstrate a sign of the times for foreign policy concerns.

Initial Attempts to Restrict Outbound Capital

While economic sanctions have been used to project power since at least the Peloponnesian War (See: Megarian Decree), the U.S. can trace its history in restricting outbound investment to the First World War. Six months after the U.S. declared war on Germany, Congress passed the Trading with the Enemy Act of 1917 (TWEA). In terms of restricting outbound capital flows, the TWEA â??gave the President the power to regulate or prohibit transactions in foreign exchange and currency, and transfers of credit or property with any foreign country or the resident of any foreign country during war.â?•

Following the end of WWI, multiple allied nations carried significant war-time debts from financial support provided by the U.S. during the war. As economic recession began to engulf the U.S. and Europe in the 1930s, these allies began defaulting on their debts. In response to these defaults, Congress passed the Johnson Debt Default Act in April 1934 (Johnson Act), barring borrowing nations

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for negotiating any further loans until debts were repaid in full. This law was explicit in restricting private outbound capital, prohibiting the â??extension of private long-term credits to any foreign entities in default of debt owing only to the United States Government.â?• In retrospect, many now view this action as reducing global liquidity and further exacerbating global depression. At the outset of World War II, the Johnson Act prevented both the U.S. government and private banks from providing loans to allied European nations, primarily England and France, and the law was only circumvented through the passage of the Lend-Lease Act in 1941.

While the Johnson Act was initially intended to enforce war-time debts, use of the legislation was extended past World War II as a geoeconomic tactic to prohibit the issuance of private credit to the Soviet Union and other communist states. Following WWII, the Johnson Act was amended to exclude from its scope any nations that joined the Bretton Woods system, as a member of the World Bank or International Monetary Fund (IMF). By 1960, the law continued to effectively ban outbound capital flows to the USSR, Czechoslovakia, Hungary, Romania and Poland, as all these nations were non-members of the World Bank and IMF, and still owed war-debts from WWI. Notably, the Johnson Act did not prohibit the U.S. government from issuing debt to nations in default of war-debts and only pertained to private capital, even if those states also defaulted on loans from U.S. private lenders.

Following the Second World War, the policy of containment became a driving foreign policy priority, and the U.S. began exercising various economic levers to stem the global spread of communism. In addition to enforcing the Johnson Act to hinder flows of outbound private capital to communist state, the Truman administration passed geoeconomic-focused legislation, including the Export Control Act of 1949.

Outbound Controls during the Cold War Era

In ways mirroring OISP and the COINS Act, the Export Controls Act of 1949, described as the â??the first comprehensive system of export controls ever adopted by the Congress in peace time,â?• was an attempt to prevent advanced technology for reaching the newly emerging communist adversaries. The Export Controls Act of 1949 gave the President the authority to regulate and prohibit â??the financing, transporting, and other servicing of exports,â?• including â??technical data,â?• that may affect national security. Policy makers â??perceived it to be in Americaâ??s national security interests to deny the benefits of international economic exchange to the Soviet Union, Eastern Europe, and Chinaâ?• and encountered limited opposition domestically, including â??acquiescence from the business community.â?• However, the effectiveness of the outbound capital controls and the overall efforts of the embargo relied on cooperation from allies. This cooperation was initially effective, as â??Western allies reluctantly participated in the broader embargo effort, to retain their access to much-needed U.S.

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economic assistance.â?• Once allies recovered from the effects of the war by the Mid-1950s, the U.S.â??s ability to use aid to compel cooperation with trade restrictions diminished.

The Export Control Act expired in 1969 and was replaced by the Export Administration Act. A consensus view had developed that the Export Control Act â??failed to achieve its purpose,â?• and communist states such as the USSR and the Peopleâ??s Republic of China â??forged ahead with programs of economic and military development [â?¦] while merely divert[ing] Soviet and Chinese purchases from the U.S. to other countries following a less restrictive policy.â?•

Contemporary Uses in Response to International Economic Emergencies

As the Cold War thawed, new threats to global security emerged, posed by both rogue states and non-state actors. It was understood that these new risks would require an economic approach, given the post-war evolution of the global financial system. Building on historical legislation, including the TWEA and the Export Control Act, the International Economic Emergency Powers Act (IEEPA) was passed to provide the President with the authority â??to exercise an array of economic powers to deal with any unusual and extraordinary threatâ?• posed to the national security, foreign policy, or economy of the U.S.

Since its enactment in 1977, the IEEPA has been one of the primarily geoeconomic resources used to pursue national security and foreign policy objectives. At least 18 executive orders have been issued under provisions of the IEEPA that prohibited investments in certain jurisdictions, as well as transactions involving state-owned entities and non-state actors.

One of the most recent uses of the IEEPA to craft global economic policy is the establishment of OISP in 2023. What differentiates E.O. 14105 from previous executive orders under the IEEPA is its scope and mandate. Most previous national emergencies declared under the IEEPA restricted outbound capital to specific nation, group, or industry within a state. For example, restrictions in outbound capital were placed on investments in Lebanon in 2007 following Syrian assassination of Rafic Hariri and on North Korea in 2008 after the country conducted successful nuclear tests. Rather, OISP and the subsequent COINS Act place wide restrictions on investments in a broad range of advanced technologies across several jurisdictions, with both of list of technologies and jurisdictions subject to restrictions likely to expand as regulatory guidance is issued and national security needs shift.

Implications of Outbound Investment Security

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Domestically, investors in the U.S. need to have complete visibility into the investments they are making globally, especially those funding advanced technology development abroad. As these new laws and regulations become formalized, investors will need to conduct sufficient due diligence into those they partner with globally, as well as potential end users of technologies developed by ventures they fund. The Outbound program will have wide implications for strategic investment planning and risk management, and understanding all potential nexuses to sensitive advanced technologies and countries of concern will be critical in avoiding potential disruptions in investment strategy.

The effectiveness of the Outbound Order is being assessed in real time through regional conflicts such as the 2026 Iran war. Since 2023, Chinese exports of dual-use technology, including batteries and semiconductors, to Iran have spiked in response U.S. and allied military pressure on Iran. History will judge OISP success on its ability to hinder adversaries, while also fostering the development of critical technologies both domestically and in coordination with key allies.

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