ALLIANCE FOR AUTOMOTIVE INNOVATION

September 28, 2023

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

RE: Advance Notice of Proposed Rulemaking on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern [Docket ID: TREAS-DO-2023-0009]

Dear Acting 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 advance notice of proposed rulemaking ("ANPRM") 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.

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 10 million jobs, and driving $1 trillion in annual economic activity, the automotive industry is the nation's largest manufacturing sector.

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.

Moreover, the U.S. has been a clear leader in automotive innovation for decades. Given this leadership, advanced automotive technologies developed by automotive companies in the U.S. are frequently integrated into components and vehicles that are exported to, and sold in, markets around the world. The benefits that a robust automotive industry gives to the U.S. economy makes it critical that automotive companies in the U.S. remain at the forefront of the development of emerging automotive technologies. This includes retaining the ability of U.S.-based automotive companies to invest in, or partner with, innovative companies that are on the leading edge in developing these technologies for the global market. Policies that affect the ability of U.S.-based entities to invest in entities around the world to meet the needs of consumers, including consumers in foreign markets, may negatively impact the competitiveness of the automotive industry in the U.S.

At the same time, modern automotive supply and value chains are comprised of 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 the national security of the U.S. We understand that the Department does not intend to impede all U.S. investments in countries of concern or impose sector-wide restrictions. We also support that the proposed program will not apply retroactively, and that the Department foresees a post-closing notification requirement for non-prohibited transactions that are subject to the proposed program. However, we are concerned about the potential for an outbound investment regulatory framework that is overly broad or unclear because of the risk that such a framework may inadvertently capture investments that do not pose a clear threat to national security or create uncertainty that reduces the global competitiveness of companies in the U.S.

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. At present, 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 artificial intelligence and require that U.S. persons provide notification of transactions with covered foreign persons related to artificial intelligence systems designed for specific end uses. Two of the identified use cases include software that incorporates an artificial intelligence system and is designed to be exclusively or primarily used for the control of robotic systems and for facial recognition. The automotive industry 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. An overly broad approach to defining and restricting or requiring notification, with the related diligence and compliance costs, for investments in artificial intelligence systems 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 could also hinder the ability of subsidiaries or affiliates of U.S.-based entities located in China to work with Chinese partners to deliver these advanced technologies and products for the Chinese market and the surrounding region, which risks harming the competitiveness and profitability of companies in the U.S.

We appreciate that the Department states that the "policy objective [of the program] is to cover U.S. investment into entities that develop AI systems that have applications that pose significant national security risks without broadly capturing entities that develop AI systems intended only for consumer applications or other civilian end uses that do not have national security consequences." In line with this policy objective, and to avoid placing the automotive industry in the U.S. at a competitive disadvantage due to backfilling by third countries, Auto Innovators respectfully requests that the Department consider the following key points:

1. The Department should consider excluding civil automotive applications from the scope of the proposed program. There is precedent for this type of approach in other U.S. government regulations intended to protect national security and further foreign policy objectives. For example, the Export Administration Regulations ("EAR") specifically excludes from certain national security ("NS") level controls specific items designed for the automotive industry.[1]

2. If the Department does not implement an exception for civil automotive applications, then the proposed prohibition and notification requirements should only apply to such technologies and products if they are used exclusively for military, intelligence, government surveillance, or cyber-enabled capabilities. Efforts to clearly differentiate government uses from civil commercial use that does not contravene national security goals will help ensure that the Department's program does not unnecessarily restrict investments in technologies and products for consumer use, including in areas such as emerging automotive technologies where the U.S. should remain at the forefront of research, development, and commercialization efforts.

3. The Department should consider differentiating between facial recognition- and facial detection-related technologies, which are not mass surveillance technologies. Given that the latter is not used to identify a specific individual, they should be excluded from any investment restrictions under the Department's proposed program.

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

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[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.

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,

Hilary Cain
Vice President, Technology, Innovation, & Mobility Policy