

'Smart Sale Act' protects US Technology from Non-Allied Powers

✘ Congress has wised up to the idea that the United States risks long term political and economic risks if it allows for foreign interests, private or government as they may be, to acquire or access critical US technology. This is especially the case for entities from countries that profess a different world view than the United States, such as Iran for example, or countries that can sometimes pose economic threats due to their failure to honor fair industrial and trade practices such as China. Therefore, Congress will have to consider the importance of protecting national interests such that US government and industry will have guaranteed access to any and all strategic technologies and materials needed to thrive in the global economy and maintaining a leadership in military technology.

The thrust to change the way the United States has managed the delicate balance between the need to encourage the free market of goods and ideas with the need to ensure leadership in the long term has come in the form of a new legislation proposed by Congresswoman Marsha Blackburn (R – Tennessee), known as the 'Smart Sale Act' (SSA). 'Smart Sale' is an acronym which stands for the "Stop Mergers, Acquisitions and Risky Takeovers Supplied by American Labor and Entrepreneurship" Act. The legal mechanism underpinning the SSA focuses on the Department of Energy, which will be required to evaluate the impact from any attempt by a non-allied foreign nation (which technically includes the People's Republic of China) "or its citizens to attempt to acquire federally-funded energy research." This seemingly innocuous legislation proposal would ensure the protection of many critical technologies, given that energy production covers a vast number of technological, mineral and

regulatory concerns.

The case of A123 Systems Inc or 'A123' for short might be considered the very spark that has inspired the need for the Smart Sale Act. A123 develops lithium-ion batteries; more than that, it owns state of the art technology (nanophosphate technology, a key to reducing battery size, weight and recharging time while increasing power – essential for the expansion of commercially viable electric vehicles or even satellites, space exploration vehicles, drones and beyond) which it developed in conjunction with the Massachusetts Institute of Technology (MIT). A123 has recently become the target of an acquisition by the Chinese automotive company Wanxiang Group. Current laws do not require any Congressional evaluation of such a sale, even though there are evident security and economic implications. The SSA would require such a transaction to be closely scrutinized by US lawmakers prior to it being concluded.

The SSA would also establish measures for the repayment of grants or federal loans that might have been used to produce the desired technology. This suggests that a foreign buyer of critical technology such as produced at A123 would be required to compensate US taxpayers. The concern is that without legislation such as the SSA, US taxpayer funded technology would end up in foreign hands that could appropriate the technology itself while spreading it to other non-allied nations and even to outright enemy ones such as North Korea or Iran. Indeed, the House Permanent Select Committee on Intelligence published a classified and unclassified report on the activities of Chinese telecoms Huawei and ZT, recommending the Committee on Foreign Investment in the US (CFIUS) that "given the threat to U.S. national security interests.

Legislative proposals seeking to expand CFIUS to include purchasing agreements should receive thorough consideration by relevant Congressional committees." This was warranted by the fact that Huawei tried to sell US telecommunications

technology to Iran. In addition the legislation, by acting on the US Department of Energy would also encourage continued investment and promotion of domestic American technologies also encouraging the sourcing of domestic – or allied nation, given geological constraints – mineral resources and materials. Evidently, the SSA would address supply constraints in rare earths (critical in advancing batteries, missile guidance systems, radars, wind turbines, solar panels and more), promoting more sourcing from domestic or allied areas and easing some current mining restrictions. The proposed SSA does not preclude international cooperation or a short-sighted insularism; indeed, it would encourage trade and technology sharing with allied nations.

The Smart Sale Act, while proposed by a Republican Congresswoman, is bipartisan in scope and content. Its aims are to protect the interests of American taxpayers, promote American technology and jobs and ensure the availability of critical materials and technologies needed to protect the United States in an increasingly uncertain world.