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NATIONAL SECURITY NEWSLETTER

NOVEMBER 2022

- TuSimple probed by FBI, SEC over ties to Chinese startup | TuSimple Fires CEO Xiaodi Hou Amid Federal Probes
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November 2022 Newsletter

National Security Investment Reviews

Issue 1: TuSimple probed by FBI, SEC over ties to Chinese startup | TuSimple Fires CEO Xiaodi Hou Amid Federal Probes

Source: https://www.wsj.com/articles/tusimple-probed-by-fbi-sec-over-its-ties-to-a-chinese-startup-11667159325 | https://www.wsj.com/articles/tusimple-fires-its-ceo-xiaodi-hou-11667228409

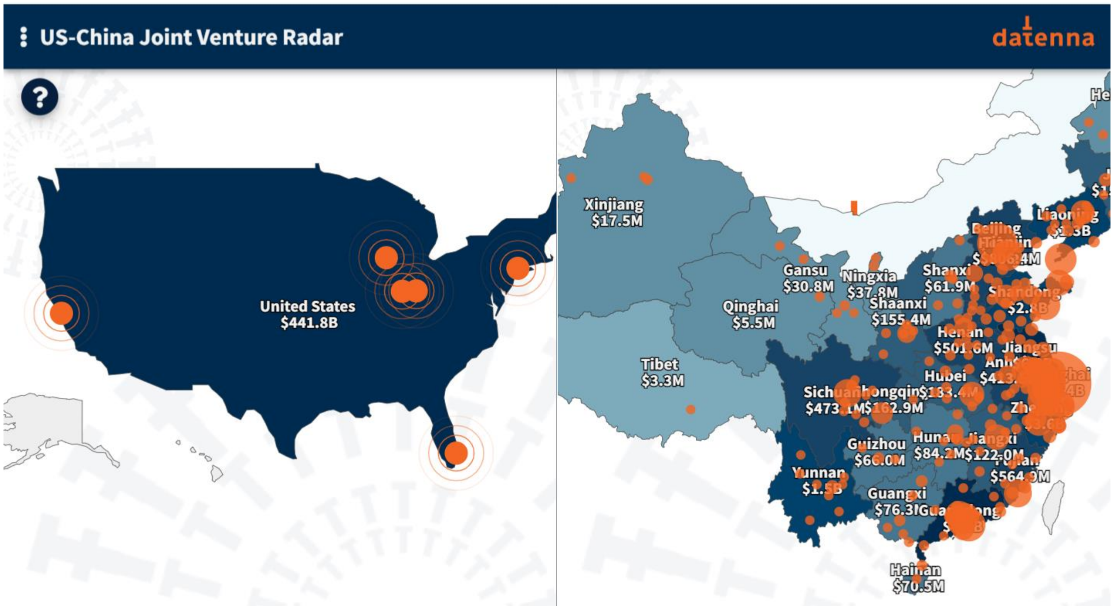
Considerations:
TuSimple Holdings Inc., a U.S.-based self-driving trucking company, faces federal investigations into whether it improperly financed and transferred technology to a Chinese startup, according to people with knowledge of the matter. Investigators at the FBI and SEC are looking at whether TuSimple and its executives—principally Chief Executive Xiaodi Hou—breached fiduciary duties and securities laws by failing to properly disclose the relationship, the people familiar with the matter said. They are also probing whether TuSimple shared with Hydron intellectual property developed in the U.S. and whether that action defrauded TuSimple investors by sending valuable technology to an overseas adversary, the people said. Hydron was started in 2021 by Mo Chen, TuSimple's co-founder. He incorporated Hydron in China, Hong Kong and Delaware, according to public filings, with a plan to build hydrogen-powered trucks in North America modeled on a design by a subsidiary of a Chinese state-controlled auto manufacturer. People familiar with the matter said Hydron's operations are mostly in China, where Mr. Chen spends most of his time. The startup was backed by Chinese investors.

CFIUS, a Treasury Department-led interagency committee that also investigated TuSimple last year, is examining whether TuSimple made material misstatements to the U.S. government about technology transfer, the people said. Questions from the committee, which is charged with reviewing foreign investment in U.S. companies for national security risks, include whether Mr. Hou and other executives at TuSimple deliberately hid from the government its dealings with Hydron, the people said. CFIUS intervened earlier this year to compel TuSimple to silo much of its U.S. data and tech from its own Chinese subsidiary, according to a regulatory filing and former employees. Most China-based TuSimple employees had access to source code and other proprietary technology created by U.S. employees, said former employees.

TuSimple Holdings Inc., said Monday October 31, 2022 it had fired its chief executive and co-founder, Xiaodi Hou. The San Diego-based company said in a news release and securities filing that its board of directors on Sunday had ousted Mr. Hou, who was also the board chairman and chief technology officer. Mr. Hou was fired in connection with a continuing investigation by members of the board, the release said. That review "led the Board to conclude that a change of Chief Executive Officer was necessary," the company said in the release. The securities filing said that the board's investigation found that TuSimple this year shared confidential information with Hydron Inc., a trucking startup with operations mostly in China and funded by Chinese investors. The filing also said that TuSimple's decision to share the confidential information with Hydron hadn't been disclosed to the board before TuSimple entered into a business deal with Hydron. TuSimple said it didn't know whether Hydron shared or publicly disclosed the confidential information.

Issue 2: US-China Joint Venture Radar | datenna

Source: https://www.datenna.com/us-china-joint-venture-radar



Considerations:
The US-China Joint Venture Radar is a research initiative that provides transparency on US investments in China. It aims at highlighting trends in US outbound investments in China. The interactive map covers over 9000 American Joint Ventures in China and American Wholly-Foreign-Owned Entities (WFOE) analyzing stake proportion, decision making power, and business sector in which these companies are active.

In-depth research reveals that most outbound foreign investments by the US in China are done in key sectors that are considered of great importance in China. These sectors are part of major national plans such as Made in China 2025, which aims to reduce China's reliance on foreign technology imports and to invest heavily in its own innovations, and the Military Civil-Fusion strategy, aiming to develop the most technologically advanced military in the world with as few barriers as possible between civilian research and military-industrial sectors.

These investments by the United States can contribute to China's strategic national policies and development. However, it might also lead to adverse consequences. According to further results, in the majority of the joint ventures, the US party is considered a minority shareholder due to its ownership stake of less than 50% of the shares. This lack of control for the US in the joint venture can lead to the transfer of potentially sensitive US-owned technologies, the outsourcing of critical manufacturing, as well as a decrease in visibility in the supply chains, since these are often shared between the two countries in the product development process.

As joint ventures do not fall under existing inbound investment screening mechanisms nor export control mechanisms, such risks often go unnoticed. No appropriate regulation or screening procedures are in place, meaning, key US assets are jeopardised. This makes accurate data on US Joint Ventures and WFOEs in China, as provided by this Radar, critical.

Issue 3: CFIUS Enforcement & Penalty Guidance

Source: https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-enforcement-and-penalty-guidelines

Considerations:
CFIUS's mandate of identifying and mitigating certain national security risks while maintaining the U.S. openness to foreign investment often requires the Committee to enter into agreements or impose conditions on transaction parties to mitigate risks to national security that arise from a transaction. These Guidelines provide the public with information about how the Committee assesses violations of the laws and regulations that govern transaction parties, including potential breaches of CFIUS mitigation agreements.

Types of Conduct That May Constitute a Violation

These Guidelines address three categories of acts or omissions that may constitute a Violation:

- **Failure to File.** Failure to timely submit a mandatory declaration or notice, as applicable.
- **Non-Compliance with CFIUS Mitigation.** Conduct that is prohibited by or otherwise fails to comply with CFIUS mitigation agreements, conditions, or orders ("CFIUS Mitigation").
- **Material Misstatement, Omission, or False Certification.** Material misstatements in or omissions from information filed with CFIUS, and false or materially incomplete certifications filed in connection with assessments, reviews, investigations, or CFIUS Mitigation, including information provided during informal consultations or in response to requests for information.

Aggravating and Mitigating Factors

When determining any appropriate penalty in response to a Violation – including determining the appropriate amount for the penalty – CFIUS engages in a fact-based analysis in which it weighs aggravating and mitigating factors. The weight CFIUS gives to any factor will necessarily vary depending on the particular facts and circumstances surrounding the conduct giving rise to the Violation. Factors that are relevant in the context of one Violation will not necessarily be relevant in the context of another. Some factors that CFIUS may consider aggravating or mitigating in determining an appropriate response to a Violation include this non-exhaustive list (presented in alphabetical order):

- **Accountability and Future Compliance**
- **Harm**
- **Negligence, Awareness, and Intent**
- **Persistence and Timing**
- **Response and Remediation**
- **Sophistication and Record of Compliance**

Issue 4: The Importance of Coordinated National Interest Policies - Export Controls ("Keep Away"), Industrial Policy ("Run Faster"), and International Trade.

Source: John Lash, PhD – Darkhorse Global Whitepaper ***[Attached Separately]***

Considerations:

Context: Technology has become a recognized form of national power and national interest, having significant influence within military, economic, and diplomatic arenas. Within these spheres of influence the strategic approaches of nations relative to economic and technological competition, collaboration, and conflict have become more polarized – and at the forefront of this battlefield are semiconductors, which are of strategic importance for national security and economic competitiveness.

Issue: How can the U.S. unilaterally, or with a multilateral coalition of allies, develop an integrated approach towards "keep away" and "run faster" that will address legitimate national security concerns while also furthering industrial policy that enhances and sustains American economic competitiveness and technological leadership. Further, can these models of government intervention be accomplished without undermining fair, open, and competitive marketplaces that have long been the cornerstone of the American economy. Lastly, what are the short and long-term effects of enhanced (or limited) government intervention, a coordinated industrial policy (or lack thereof), and the risks of "security nationalism" on free markets (i.e., utilizing national security to justify broad proposals for new U.S. protectionism and industrial policy).

Equally as important, is the problem solved for accurately articulated based on the realities of the industry or does it represent a set of aspirational objectives based on a desire for technological and economic superiority (and if so, are there more effective models to meet this goal)? Fundamentally – in the current era of geopolitical conflict, are there any areas for the common good where collaboration (constructive engagement) is better than conflict, such as energy, sustainability, environment,