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The Committee on Foreign Investment in the United States

Overview

What is CFIUS? The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that serves the President in overseeing the national security implications of foreign investment in the economy. It reviews foreign investment transactions to determine if: (1) they threaten to impair the national security; (2) the foreign investor is controlled by a foreign government; or (3) the transaction could affect homeland security or would result in control of any critical infrastructure that could impair the national security. The President has the authority to block proposed or pending foreign investment transactions that threaten to impair the national security.

What is the Source of CFIUS Authority? CFIUS initially was created and operated through a series of Executive Orders. In 1988, Congress passed the "Exon-Florio" amendment to the Defense Production Act (50 USC App sect. 2170), which codified the CFIUS review process due in large part to concerns over acquisitions of U.S. defense-related firms by Japanese investors. In 2007, amid growing concerns over the proposed foreign purchase of commercial operations of six U.S. ports, Congress passed the Foreign Investment and National Security Act of 2007 (H.R. 556 / P.L. 110-49) to create CFIUS in statute. This statute was amended again in 2018 with the *Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)* (Title XVII, P.L. 115-232), The United States is both the largest recipient of foreign investment and the largest foreign investor in the world.

What is the Membership of CFIUS? The Committee consists of nine members, including the Secretary of the Treasury, who serves as chair, the Secretaries of State, Defense, Homeland Security, Commerce, and Energy; the Attorney General; the United States Trade Representative; and the Director of the Office of Science and Technology Policy. The Secretary of Labor and the Director of National Intelligence serve as ex officio members of the Committee.

Executive Order 13456 (January 2008) added five White House representatives, including the Director of the Office of Management and Budget and the Assistant to the President for National Security Affairs. The President can also appoint other Executive officers to serve on the Committee on a case-by-case basis.

The CFIUS Review Process

CFIUS's review process is a voluntary system, except in certain cases, of notification by foreign investors. Firms largely comply with the provision, because foreign acquisitions that do not notify the Committee remain subject indefinitely to divestment or other actions by the President. (1) In the first step of the formal review process, notification to CFIUS can follow a two-track approach, either an expedited declaration (15 days for review) or a written notification (30 days for review; involves foreign persons in which a foreign government has, a substantial interest) of a transaction in a U.S. firm involved in specified industries. Declarations and written notices are distinguished according to three criteria: the length of the submission, the time for CFIUS' consideration of the submission, and the Committee's options for disposition of the submission

> Key CFIUS Requirements. The President can exercise his authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he finds that: (1) credible evidence exists that the foreign investor might take action that threatens to impair the national security (based on nature of threat; vulnerabilities; and consequences); and (2) no other laws provide adequate and appropriate authority for the President to protect the national security.

(2) National Security Review: In the second step, the Committee is required to conduct a 45-day national security review if: a) the investment threatens to impair the national security of the United States, including homeland security, critical infrastructure, and critical technologies; and b) the transaction would result in foreign control of a U.S. entity.

The Secretary of the Treasury can exempt a transaction from review if he determines that the transaction will not impair the national security. During the 45-day review, the Director of National Intelligence is required to investigate the national security implications of any proposed foreign investment transaction.

In a national security review, CFIUS is required to consider 12 specific factors, including: (1) domestic production needed for current and projected national defense requirements; (2) the control of domestic industries and commercial activity by foreign citizens; (3) potential sales of military goods, equipment, or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; (4) U.S. technological leadership in areas affecting U.S. national security; (5) critical infrastructure, major energy assets and critical technologies; and (6) such other factors as the President or the Committee determine to be appropriate.

(3) National Security Investigation. In the third step, if any member of CFIUS determines that a foreign investment transaction threatens to impair the national security, the transaction undergoes a more comprehensive 45-day national security investigation. During this investigation, CFIUS and the transactors can develop and adopt

mitigation procedures that are designed to address national security concerns.

Presidential Determination. If CFIUS concludes that a proposed foreign investment transaction threatens to impair U.S. national security and adequate mitigation procedures are not reached, it can recommend that the President suspend or prohibit the proposed transaction. The President has 15 days to take such action for such time as he considers appropriate to suspend or prohibit any foreign investment transaction that threatens to impair U.S. national security. Such determinations by the President are not subject to judicial review.

Recent Activity

Investment transactions that attracted public and Congressional attention include the Chinese firm Sany Group acquired in 2012 a wind farm project in Oregon by Ralls Corp. without reporting the transaction to CFIUS. Subsequently, CFIUS retroactively reviewed the transaction and directed Ralls to desist due to objections by the U.S. Navy over the placement of wind turbines near or within restricted Naval Weapons Systems Training Facility airspace. President Obama approved CFIUS's determination and blocked the investment.

In 2016, Dutch electronics firm Phillips terminated a $2.9 billion sale of controlling interest in its Lumileds unit, with over 600 patents and operations in the United States, to a consortium of Chinese investors due to its inability to mitigate concerns raised by CFIUS. In December 2016, Phillips announced that it had agreed to sell its Lumileds unit for $2 billion to affiliates of Apollo Global Management, an asset management firm.

In December 2016, President Obama blocked a second foreign investment transaction. The Presidential action blocked the Chinese firm, Fujian Grand Chip Investment Fund, from acquiring Aixtron, a German-based semiconductor firm with assets in the United States.

In September 2017, President Trump blocked the $1.3 billion proposed acquisition of Lattice Semiconductor by the Chinese investment company, Canyon Bridge Capital Partners; in March 2018, President Trump blocked the acquisition of Qualcomm by Singapore-based Broadcom. In 2019, President ordered the divesture of Grindr LLC by the Chinese firm Beijing Kunlun Co. LTD. over concerns about foreign access to personally identifiable information of U.S. citizens.

FIRRMA made a number of changes to CFIUS' role by: (1) expanding CFIUS's reviews of certain real estate transactions in close proximity to a military installation or U.S. government facility or property of national security sensitivities; (2) including reviews of joint ventures; (3) reviewing any non-controlling investment in U.S. businesses involved in critical technology (including emerging and foundational technologies), critical infrastructure, or collecting sensitive data on U.S. citizens; (4) shifting the filing requirement for foreign firms from voluntary to mandatory in certain cases; and (5) discriminating among foreign investors by countries of "special concern" that are acquiring critical technologies or critical infrastructure that would affect United States leadership in areas related to national security.

CFIUS is required to brief certain congressional leaders upon request and to report annually to Congress on any reviews or investigations it conducted during the year (see Table 1). The data indicate that of the 782 foreign investment transactions between 2008 and 2014, 38 transactions were halted during the review process, 267 transactions were investigated for national security concerns, and one transaction was blocked by the President.

Table 1. Foreign Investment Transactions Reviewed by CFIUS, 2008-2015

Year	No. of Notices	Notices With-drawn During Review	No. of Investi-gations	Presi-dential Decisions
2008	155	18	23	0
2009	65	5	25	0
2010	93	6	35	0
2011	111	1	40	0
2012	114	2	45	1
2013	97	3	48	0
2014	147	3	51	0
2015	143	3	66	0
Total	925	41	333	1

Source: *Annual Report to Congress*, Committee on Foreign Investment in the United States, September 2017.

Issues for Congress

The CFIUS process for reviewing certain foreign investment transactions has raised a number of questions for Congress, including:

- How well is CFIUS balancing the traditionally open U.S. investment climate with the requirement to protect U.S. national security?
- Should food security play a role in a CFIUS deliberation to protect U.S. critical infrastructure?
- How should CFIUS balance the requirement to protect critical technology from foreign acquisition with the need to support an open, market-driven economy?

More Information

For more information, see CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*, by James K. Jackson. Also, see CRS Report RS21857, *Foreign Direct Investment in the United States: An Economic Analysis*, by James K. Jackson.

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