

July 29, 2014

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 (P.L. 110-49) to create CFIUS in statute. In adopting this measure, Congress did not intend to alter the generally open foreign investment climate of the United States or to have it inhibit foreign direct investments in industries that could not be considered to be of national security interest. 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.

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; and 2) no other laws provide adequate and appropriate authority for the President to protect the national security.

The CFIUS Review Process

CFIUS’s review process is a voluntary system of notification by 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. Upon receiving written notification of a proposed acquisition, merger, or takeover of a U.S. firm by a foreign investor, the CFIUS process can proceed potentially through three steps.

1) National Security Review: The Committee is required to conduct a 30-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 30-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.

2) National Security Investigation. 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 parties to an investment transaction can develop and adopt mitigation procedures that are designed to address national security concerns.

3) Presidential Determination. If CFIUS concludes that a proposed foreign investment transaction threatens to impair the U.S. national security and adequate mitigation procedures were not reached, it can recommend that the President suspend or prohibit the proposed merger, acquisition, or takeover. The President has 15 days to make a determination and exercise his authority to take such action for such time as he considers appropriate to suspend or prohibit any foreign investment transaction that threatens to impair the national security of the United States. Such determinations by the President are not subject to judicial review.

Recent Activity

A number of investment transactions have attracted public and Congressional attention. In 2012, the Chinese firm Sany Group acquired 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. After a full investigation, President Obama approved CFIUS's determination and blocked the investment. Ralls filed a suit challenging the President's authority to block the investment; the District Court ruled against Ralls. Ralls appealed the case was heard May 8, 2014, and decided on July 15, 2014. The Appeals Court ruled that Ralls' Due Process rights had been violated because it had not been given access to the unclassified evidence on which the President relied and an opportunity to rebut the evidence before the President reached his determination.

The proposed acquisition in 2013 of Smithfield Food Inc., for \$4.7 billion by China's Shuanghui International Holdings Ltd. sparked congressional and public interest about the issue of food security as a component of the critical infrastructure/key resources rubric. After conducting a national security review and investigation, CFIUS concluded that it had no national security concerns that would prompt it to recommend that the President should block the transaction. Smithfield's stockholders overwhelmingly approved the transaction on September 25, 2013.

Another recent activity reflects efforts by the Russian space agency Roscosmos in 2013 to build six Global Positioning System (GPS) monitor stations in the United States. This case has sparked interest in amending CFIUS's mandate that currently does not provide for it to review greenfield investments. Greenfield investments are new start-up

ventures that are built from the ground up and are not based on an acquisition, merger, or takeover of an existing firm.

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 538 foreign investment transactions between 2008 and 2012, 32 transactions were halted during the review process, 168 transactions were investigated for national security concerns, and one transaction was blocked by the President—the wind farm transaction by Ralls Corp.

Table 1. Foreign Investment Transactions Reviewed by CFIUS, 2008-2012

Year	No. of Notices	Notices With-drawn During Review	No. of Investigations	Presidential 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
Total	538	32	168	1

Source: *Annual Report to Congress, Committee on Foreign Investment in the United States, December 2013.*

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 greenfield investment be subject to the CFIUS process?
- Should food security play a role in a CFIUS deliberation to protect U.S. critical infrastructure?

More Information

For more information see CRS Report RL33388, *The Committee on Foreign Investment in the United States*. Also, see: CRS Report 21857, *Foreign Direct in the United States: An Economic Analysis*, and CRS Report 21118, *U.S. Direct Investment Abroad: Trends and Current Issues*.

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