

# International Trade Currents

## CFIUS Reports Significant Increase in National Security Reviews of Foreign Acquisitions of U.S. Businesses

*By Ted Posner and Timothy Welch*

On Friday, February 19, the Committee on Foreign Investment in the United States (CFIUS) released the public version of its statutorily mandated annual report to Congress. The report covers CFIUS reviews of foreign acquisitions of U.S. businesses with potential effects on national security during calendar year 2014. For parties considering whether to notify a deal to CFIUS, reviewing the annual report may provide useful insight into issues on which CFIUS is likely to focus.

The key takeaways from the report are:

- CFIUS reviewed more foreign acquisitions of U.S. businesses in 2014 than in any year since 2008, and Chinese acquirers continued to lead the pack. CFIUS reviewed 147 covered transactions—*i.e.*, transactions that could result in the control of a U.S. business by a foreign person—up from 97 in 2013. The greatest number of covered transactions involved foreign acquirers from China (24), followed by the United Kingdom (21), Canada (15), and Japan (10).
- Covered transactions involving U.S. manufacturing businesses soared to 69 in 2014 (47%, higher than in any of the 5 preceding years), while there were only 38 covered transactions in the finance, information, and services sector.
- No covered transactions were suspended or prohibited by CFIUS or the President during 2014.
- Of 147 covered transactions reviewed, 51 (34.6%) resulted in a second-stage investigation by CFIUS, a considerably smaller percentage than in 2013, when almost half of all covered transactions went to second-stage investigation.
- Twelve notices (8.2%) were withdrawn during review or investigation, and nine (or 6.7% of the notices that were not withdrawn) resulted in the imposition of measures designed to mitigate potential threats to national security.

Pursuant to the Defense Production Act of 1950, as amended, the President of the United States has the authority to suspend or prohibit any transaction that could result in the control of a U.S. business by a foreign person if, in the President's judgment, there is credible evidence to believe that the foreign

person exercising control over the U.S. business might take action that threatens to impair U.S. national security. Actual and prospective acquisitions of U.S. businesses by foreign companies are reviewed by CFIUS, an interagency executive branch committee chaired by the Secretary of the Treasury, to identify potential impacts on national security. Although parties to a transaction that may result in control of a U.S. business by foreign person are not required to notify the transaction to CFIUS, doing so may be advisable in appropriate circumstances, because successful conclusion of CFIUS review results in a “safe harbor” against the unwinding of the transaction on national security grounds and the losses that may result from a forced divestment.

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