

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

April 24, 2018

To: Subcommittee on Digital Commerce and Consumer Protection Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Perspectives on Reform of the CFIUS Review Process”

On **Thursday, April 26, at 10:00 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Digital Commerce and Consumer Protection will hold a legislative hearing on H.R. 4311, the Foreign Investment Risk Review Modernization Act, titled “Perspectives on Reform of the CFIUS Review Process.”

I. BACKGROUND

Foreign direct investment refers to ownership by a foreign investor of some portion of a business located in the United States. The United States is both the largest foreign investor and the largest beneficiary of foreign investment.¹ During 2016, foreign investors spent \$365.7 billion acquiring U.S. companies. An additional \$7.7 billion was spent on greenfield investments, which are investments to either establish a new business or to expand an existing business.² While the cumulative effect of foreign direct investment on host-country growth is unclear, some research suggests that greenfield investment significantly adds to growth, while the mergers and acquisitions that make up a large majority of such investment do not.³

¹ United Nations Conference on Trade and Development, *World Investment Report* (2017).

² U.S. Department of Commerce, Economics and Statistics Administration, *Foreign Direct Investment in the United States* (Oct. 3, 2017).

³ Philipp Harms and Pierre-Guillaume Méon, *Good and Useless FDI: The Growth Effects of Greenfield Investment and Mergers and Acquisitions*, Review of International Economics (July 13, 2017).

Generally, the United States has been open to foreign investment unless it creates risks to national security. The President can block an investment if he determines there is “credible evidence” that it “threatens to impair national security.”⁴ The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee chaired by the Secretary of the Treasury, which is responsible for assessing the national security consequences of transactions that could result in control of a U.S. business by a foreign person.⁵ In addition to analyzing possible investments, CFIUS can negotiate changes with affected parties and make recommendations to the President.⁶

II. H.R. 4311, the Foreign Investment Risk Review Modernization Act (FIRRMA)

FIRRMA was introduced by Rep. Pittenger (R-NC) in November 2017 with a companion measure, S. 2098, introduced by Senator Cornyn (R-TX). FIRRMA would make a number of changes to the CFIUS process that would require the committee to analyze more factors and review more transactions. Among its provisions, FIRRMA would require CFIUS to apply greater scrutiny of transactions from countries of “special concern” and enhance its review of critical technologies.

In addition, CFIUS would have to consider the exposure of personal or genetic information of U.S. citizens by a foreign government or person, the cumulative market share of infrastructure and energy assets held by foreign entities, and potential gains to the capability to engage in malicious cyber activities. CFIUS also would be required to access certain real estate transactions, joint ventures, passive investments, and non-controlling minority investments. Others provisions include new fees for the foreign investor, more Congressional oversight, new requirements for written notification, and time limits on reviews.

III. WITNESSES

Panel One

The Honorable Richard E. Ashooh

Assistant Secretary for Export Administration
Department of Commerce

The Honorable Heath P. Tarbert

Assistant Secretary for International Markets and Investment Policy
Department of the Treasury

⁴ Foreign Investment and National Security Act, Pub. L. 110-49.

⁵ U.S. Department of the Treasury, *Resource Center: the Committee on Foreign Investment in the United States* (www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx) (accessed Apr. 18, 2018).

⁶ *Id.*

Panel Two

Celeste Drake

Trade and Globalization Policy Specialist
AFL-CIO

The Honorable Kevin Wolf

Former Assistant Secretary
Export Administration, Bureau of Industry and Security
U.S. Department of Commerce
Partner
Akin Gump

The Honorable Clay Lowery

Former Assistant Secretary for International Affairs
U.S. Treasury
Managing Director
Rock Creek Global Advisors

Dr. Derek Scissors

Resident Scholar
American Enterprise Institute