The Daily Dish

CFIUS Reform

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Eakinomics: CFIUS Reform

The Trump Administration has undertaken an aggressive rollback of the federal regulatory burden; reformed the tax code to foster innovation, investment, and higher productivity in the United States; and — if you take their word at face value — pursued a policy of strategic tariff increases in pursuit of trade deals that will overall lower tariff and non-tariff barriers to trade. Taken as a whole, this policy agenda is intended to make the United States a much more globally competitive location to hire and produce.

That calculus should include companies whose headquarters are in other countries, leading to a greater inflow of foreign investment into the United States. This would be beneficial for workers and the economy as a whole. With this in mind, it is important to make sure that there are not barriers to beneficial investments in the United States. A typical approach for entering the U.S. market is first to acquire a domestic entity and then expand operations. One potential pitfall is the government's process of reviewing foreign purchases of U.S. entities for national security risks.

This review is the responsibility of the Committee on Foreign Investment in the United States, known as CFIUS . Created in 1975 by Executive Order 11858 from President Gerald Ford, CFIUS was tasked with "support[ing] unequivocally such [international] investment, consistent with the protection of national security." It is an interagency committee chaired by the Secretary of the Treasury that has the power to review mergers, acquisitions, and other foreign investments in the United States. If it determines that an investment poses a threat to national security, CFIUS can block the transaction.

Concern had arisen, however, that CFIUS was missing potential security threats — especially involving purchases by Chinese firms — and Congress became interested in reform. The obvious concern was an overreaching reform that would undo some of the beneficial improvements in the economic environment. The proof is in the pudding and the Foreign Investment Risk Review Modernization Act (FIRRMA) is expected to be signed into law by the president next week as part of the NDAA. As outlined by Jacqueline Varas and Thomas Wade, it made significant reforms to the CFIUS process. First, the scope of CFIUS has expanded from review of transactions between U.S. and foreign firms that result in foreign ownership of a U.S. company to now foreign investments in critical technology and critical infrastructure that do not result in foreign ownership. In addition, CFIUS will also have authority to review other types of transactions with national security implications, such as the foreign lease of U.S. real estate in close proximity to sensitive military or government facilities.

In the process, a variety of initiatives that were ultimately judged to be too intrusive fell by the wayside, suggesting that Congress was sensitive to the need for balance.