# 14

# Investment Screening in the Shadow of Weaponized Interdependence

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On October 4, 2019, U.S. Senator Marco Rubio sent a letter to U.S. Treasury Secretary Steven Mnuchin requesting that the Committee on Foreign Investment in the United States (CFIUS) investigate the Chinese-owned short-video social media application TikTok and its 2017 acquisition of the U.S. businesses of a video-sharing platform called Musical.ly for national security risks.[1] Senator Rubio argued that TikTok's growing presence in Western markets provided the Chinese government with a platform through which to censor information unflattering to the Chinese Communist Party (CCP) and to shape media narratives to its benefit. The letter came just five days after Daryl Morey, the general manager of the Houston Rockets, tweeted his support of pro-democracy protestors in Hong Kong. After the National Basketball Association's (NBA's) uncoordinated response of first chastising Morey before supporting his right to free expression, Chinese state media retaliated by cutting off broadcasts of NBA games. Cutting the NBA's access to the China market put at risk substantial revenue streams—an estimated $500 million annually; in September 2019, the NBA's China business was valued at $5 billion.[2]

This example is perhaps the perfect microcosm of growing concerns among U.S. foreign policymakers that thickening networks of multinational production, ownership, and consumption have generated novel national security risks, by endowing adversaries—such as the People's Republic of China (PRC)—with the ability to control production and distribution networks to deter governments, corporations, and individuals from taking policy positions against their interests. The COVID-19 pandemic has heightened these fears by exposing previously ignored fragilities in global health supply chains and increasing concerns that PRC-connected businesses may take advantage of the economic fallout to buy distressed firms in sensitive sectors. In March 2020, NATO's deputy secretary-general Mircea Geoană warned NATO governments to prevent distressed critical assets from falling under the control of non-allies, saying "Free markets need to continue to operate, but you have to make sure [of] the crown jewels, the . . . industries and infrastructures that are indispensable for making sure we stay safe irrespective of the circumstances."[3] Many advanced economies have responded by introducing new or strengthening existing investment screening mechanisms to guard against foreign takeovers with adverse national security implications.[4]

The question for this chapter is whether investment screening broadly, and the United States' recently strengthened CFIUS in particular, can be usefully explained through the lens of weaponized interdependence (WI). Investment screening could be an offensive tool of WI if governments use their screening authorities to proactively shape global material and informational networks. Screening could also be a defensive tool to prevent rivals from obtaining the structural power necessary to weaponize networks. While a substantial number of countries now have investment screening mechanisms, I center the analysis in this chapter on CFIUS. Due to the size of the U.S. economy and the resources available to the U.S. government to conduct investment review, CFIUS represents a "most likely" case of weaponization of investment regulation. If any country has the capacity to use investment screening as a tool of or against WI, it would be the United States.

Below, I develop three points. First, investment screening for national security is most usefully conceptualized as an exercise of

market power rather than of WI. Second, investment screening could more closely approximate an exercise of WI if governments chose to embrace more expansive interpretations of national security, impose more aggressive and extraterritorial mitigation conditions, and coordinate investment screening more closely with allies. Third, governments are unlikely to take the policy steps necessary to make screening a tool of WI, because doing so would create substantial financing constraints for domestic firms, reducing domestic capacity for technological innovation. It would also require a dismantling of open markets and cross-border economic networks simultaneously with a significant increase in international cooperation among partners and allies to effectively control technological and infrastructural choke points.

While my primary argument is that CFIUS, and investment screening broadly, as currently practiced is more usefully conceptualized through market power than WI terms, it is important to recognize some ambiguities here. By definition, national security-centered investment screening assesses the security implications of foreign investment, and functions to mitigate risks as they arise and block transactions that present unresolvable risks. Accordingly, the threat of WI operates as a background condition. CFIUS may deem a transaction risky because it provides a "threat actor"—meaning an entity tied to an adversarial government—with control over a critical technology or infrastructure network, conferring the adversary with choking power. CFIUS could also identify a national security risk if a transaction provided a rival with panopticon power through entry into a virtual network that it could use for surveillance. The underlying point is not that CFIUS is disinterested in or entirely incapable of responding to such national security threats. Instead, CFIUS provides the U.S. government with circumscribed abilities to respond to such risks; these authorities are directed specifically at individual firms and transactions rather than at broader networks or governments; and these limits on CFIUS are purposeful. Imbuing CFIUS with the authorities necessary to render it a tool of and against WI would undermine key U.S. foreign and economic policy interests in maintaining a mostly open global economy. As yet, the U.S. government is not willing to make such a costly trade. If it were, it is an

open question whether the tools it would gain would be worth the price paid.

## CFIUS: An Overview

Created by an executive order in 1975, CFIUS is an interagency body tasked with reviewing the national security implications of foreign acquisitions of U.S.-based companies, negotiating agreements with transaction parties to mitigate any risks arising from the transaction, and advising the U.S. president when it believes a transaction presents a nonmitigatable national security risk to the country and should be prohibited. CFIUS is not a sector or country screen; it can review any controlling investment into any U.S. business in any sector, by a foreign investor from any country. The Department of Treasury chairs the committee, and eight other agencies participate as voting members: Energy, Justice, Homeland Security, State, Defense, Commerce, the U.S. Trade Representative, and the Office of Science and Technology Policy. The breadth of CFIUS's membership is important to the functioning of the committee because this "whole-of-government" approach ensures that transactions before the committee are seen and discussed from a variety of different policy perspectives.

Until changes brought by the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA), CFIUS review only covered controlling acquisitions, and filings were voluntary rather than compulsory.[5] FIRRMA broadens CFIUS coverage to also include noncontrolling, nonpassive investments in so-called TID businesses — those involved in critical technology, critical infrastructure, and sensitive personal data—while providing dispensation for investors from "excepted states," a list that currently includes the United Kingdom, Australia, and Canada. FIRRMA also mandates filings for investments in certain technologies and when a foreign government exerts substantial control over an acquiring party. Still, the choice to appear before the committee remains largely voluntary, and many covered transactions are never reviewed by CFIUS. For example, in 2018, commercial parties filed 229 notices while the total number of cross-border acquisitions of U.S.-based businesses that year was 1,233.[6]

Still, companies choose to file—particularly transactions that are

very large or especially sensitive—because clearing CFIUS review confers safe harbor to transacting parties, meaning the U.S. government cannot review transactions it previously cleared. Without obtaining CFIUS clearance, firms leave themselves legally vulnerable to requests by the committee to submit post-closing transactions for review, which could result in the president demanding that the transaction be unwound. Four of the seven CFIUS presidential prohibitions since 1975 have been divestiture requirements.[7] Unwinding transactions post-closing can be especially costly to parties that may face challenges finding a CFIUS-approved buyer on a short timeline and therefore need to sell at a steep discount.

Although CFIUS review is mostly a voluntary process, the committee is widely considered to be quite powerful, and its strength emanates from its ability to block covered transactions. Only the president has the authority to legally prohibit a transaction on national security grounds, an authority used a mere seven times over CFIUS's 45-year history. In practice, CFIUS blocks transactions more frequently than the presidential prohibition record suggests. Most parties abandon a transaction when CFIUS informs them it has identified an unmitigable risk.[8] Parties do this to avoid negative publicity; while the CFIUS process is subject to strict rules prohibiting government officials from discussing transactions before the committee, presidential prohibitions are made public. Despite the fact that CFIUS reviews sometimes result in parties abandoning their transaction, CFIUS has demonstrated a strong preference toward clearing cases when possible. From 2005 to 2018, CFIUS reviewed 1,876 transactions, of which it cleared 1,452 cases or 77 percent of transactions before the committee.

## CFIUS as Market Power

Many commentators point to CFIUS as an example of a policy tool to defend against attempts by adversaries—particularly the PRC—to obtain control of structurally important nodes in infrastructure, information networks, and supply chains.[9] With such control, competitors could have the capability to leverage their network position and exercise power by cajoling private firms beholden to their supply chain

to act in certain ways or by threatening the U.S. government into a policy concession. The rhetoric surrounding FIRRMA has fueled such interpretations.[10] Even prior to FIRRMA, CFIUS case load grew by 358 percent from 2005 to 2018, as table 14-1 illustrates. Presidential prohibitions have also become more frequent. Before 2012, the president blocked one transaction; since then, the president has used his legal authority under CFIUS to prohibit six transactions—all involving acquirers with some connection to China.

Yet, a more careful consideration of typologies of power suggest that CFIUS is better conceptualized as a tool of market power than of WI.[11] The nature of CFIUS review is case specific and tied to the acquiring commercial party rather than to a government. Moreover, the actual exercise of power in a CFIUS review manifests in its ability to deny a highly circumscribed form of market access to foreign firms. This authority is tied exclusively to foreign acquisitions or investments in preexisting commercial enterprises. CFIUS can only exercise this power when it can link a clearly articulated and supportable national security concern to a specific transaction. Importantly, national security is a distinct concept from foreign policy, and CFIUS is not empowered to block a transaction in support of broader foreign policy goals.[12] This scoping of regulatory authority provides the U.S. government with a domestic institutional structure that limits coercive power over market actors to their actions within U.S. borders and only authorizes the exercise of that power through a narrow interpretation of national security.[13]

The United States is able to effectively wield investment regulatory authority because its internal market is large enough to confer a great deal of market power.[14] Countries lacking large internal markets cannot easily use screening authorities to compel foreign acquirers to change their operations or corporate governance structures to satisfy regulators' national security concerns, because firms are less likely to agree to pay the costs associated with such measures if the benefits of domestic operations are low.[15] The United States' power projection in this issue domain is quite different from financial payments networks or internet governance, in which its power emanates quite clearly from its central position in a hierarchical network. One might argue that the ability to prevent foreign entities from acquiring U.S.-

**TABLE 14-1**

CFIUS Case Statistics, 2005–2018

| Year | Total M&A Deals | Notices | Notices as % Total Deals | Withdrawn During Review | Investigations | Withdrawn During Investigation | Transactions Abandoned | Transactions Mitigated | Presidential Decisions | Total Transactions Affected by CFIUS Review | As % of Total M&A Deals |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 2005 | 944 | 64 | 7% | 1 | 1 | 1 | | | 0 | 0 | 0% |
| 2006 | 1,099 | 111 | 10% | 14 | 7 | 5 | | 15 | 2 | 17 | 2% |
| 2007 | 1,355 | 138 | 10% | 10 | 6 | 5 | 2 | 14 | 0 | 16 | 1% |
| 2008 | 1,149 | 155 | 13% | 18 | 23 | 5 | 3 | 2 | 0 | 5 | 0% |
| 2009 | 737 | 65 | 9% | 5 | 25 | 2 | 3 | 5 | 0 | 8 | 1% |
| 2010 | 887 | 93 | 10% | 6 | 35 | 6 | 5 | 9 | 0 | 14 | 2% |
| 2011 | 976 | 111 | 11% | 1 | 40 | 5 | 0 | 8 | 0 | 8 | 1% |
| 2012 | 833 | 114 | 14% | 2 | 45 | 20 | 9 | 8 | 1 | 18 | 2% |
| 2013 | 765 | 97 | 13% | 3 | 48 | 5 | 7 | 11 | 0 | 18 | 2% |
| 2014 | 1,054 | 147 | 14% | 3 | 51 | 9 | 12 | 9 | 0 | 21 | 2% |
| 2015 | 1,136 | 143 | 13% | 3 | 66 | 10 | 5 | 11 | 0 | 16 | 1% |
| 2016 | 1,225 | 172 | 14% | 6 | 79 | 21 | 12 | 18 | 1 | 31 | 3% |
| 2017 | 1,383 | 237 | 17% | 7 | 172 | 67 | 30 | 29 | 1 | 60 | 4% |
| 2018 | 1,233 | 229 | 19% | 2 | 158 | 64 | 26 | 29 | 1 | 56 | 5% |

*Notes:* Total (number of) M&A Deals from annex tables to UNCTAD's 2019 *World Investment Report*. All other data from Treasury's public CFIUS reports to Congress, 2008–2020. CFIUS rejected one filing each in 2014 and 2015. These rejections are added to the total abandoned transactions for their respective years. Total Transactions Affected by CFIUS Review is the sum of transactions abandoned, mitigated, and prohibited through presidential decisions.

based businesses provides the U.S. government with structural power through choke-point effects, but this interpretation is only correct in that CFIUS has the power to choke foreign firms out of acquisitions markets for U.S. businesses. It does not have the authority to prevent acquisitions of businesses operating in other jurisdictions, and it has no power to review greenfield investments in the United States. If a Chinese company with PRC ties wanted to construct a new semiconductor manufacturing plant in the United States, CFIUS would not have the authority to prevent the investment.[16]

CFIUS has evolved as a narrowly scoped domestic authority because its primary policy objective is to preserve as open an investment climate as possible while maintaining minimally necessary guardrails against investments that generate national security vulnerabilities. This mandate follows from the ideological and material commitments of most U.S. policymakers and the domestic interest groups that push for limited investment regulation.[17] The preamble to FIRRMA begins by outlining the substantial economic benefits that inward foreign direct investment (FDI) affords U.S. businesses and workers; states that the vast majority of FDI to the United States comes from its allies; and invokes a 1954 speech by President Dwight Eisenhower that explicitly ties American military power to an open investment environment.[18] Throughout CFIUS's legislative history, security hawks have clamored for more expansive authority over acquisitions with negative economic implications, greenfield investment, outbound investment, and even total bans on investments from certain countries. Yet, advocates for fundamentally open investment environments have consistently won the argument that these more expansive authorities—which could transform the committee into a tool of WI—would undermine open markets. This is a trade-off that the U.S. government has yet to be willing to make, despite a current rhetorical environment that would suggest otherwise.

CFIUS case statistics provide a concrete illustration of why WI is a problematic lens through which to interpret U.S. investment screening. If the United States used investment screening as a tool of or against WI, then CFIUS might be used frequently and assertively to shape production and ownership networks to the government's preferences. Yet, table 14-1 illustrates that CFIUS affects only a small

percentage—3 percent, on average—of cross-border mergers and acquisitions (M&As) of U.S.-based companies. And, although reviews as a percentage of M&A activity has increased since 2012, they have hardly skyrocketed.[19] When considering the number of transactions materially affected by CFIUS reviews—abandonments, mitigations, and presidential decisions—they have never amounted to more than 5 percent of M&A.

CFIUS case statistics also reveal a preference for allowing transactions to proceed while entering into risk-mitigation agreements with parties when possible, rather than prohibiting any transaction that presents a security risk. Statute does not require the committee to mitigate transactions when feasible; it only provisions that the committee may do so.[20] From 2006 to 2018, parties abandoned 114 transactions while CFIUS cleared 168 transactions with mitigation. This represents about 9 percent of filings, a rate that has remained relatively steady over time. CFIUS's use of mitigation, despite the lack of a statutory requirement to do so, suggests that the committee prefers to clear transactions when it can, rather than acting as a more aggressive obstacle to foreign acquisitions of U.S.-based businesses.[21] This preference is the opposite of what we would expect if CFIUS functioned as a tool of WI. If this were the case, the goal would be more to shape the network than to find ways to eliminate national security risks to approve a foreign acquisition.

### CFIUS and Defensive WI

While CFIUS is better characterized as an expression of market power than a tool of WI, it operates within a context of increasingly complex global supply chains and networked infrastructure. This means investment screening operates in the shadow of WI because some of the risks to national security that regulators must confront develop from WI dynamics. The national security risks CFIUS seeks to minimize may arise when foreign entities gain control over U.S. businesses that could confer choking or surveillance power to a rival. Accordingly, CFIUS as well as the investment screening mechanisms of other countries could operate as defensive tools to prevent adversaries from gaining the structural position needed to effectively weaponize own-

ership networks. CFIUS can prevent foreign threat actors from accessing or controlling critical infrastructure within the United States when a national security risk is identified. In these circumstances, investment screening can serve as a defensive tool against WI. Yet, this power is attenuated because CFIUS can only act if it identifies a specific national security risk from the transaction; a policy objective of preventing foreign ownership of critical infrastructure to guard against national security concerns that may arise in the future would not be grounds for prohibiting a transaction.

One could imagine an investment review tool grounded more clearly in the logic of WI. First, such a mechanism would leverage the size and centrality of the U.S. economy—and particularly, the U.S. technology sector—to reshape the ownership and licensed use of sensitive technology to the U.S. government's own liking. Because so many critical technologies are inherently dual-use in ways that cannot easily be disentangled or even immediately recognized, a more aggressive review mechanism would need to block or mitigate transactions involving technologies that may not have clear or current military uses.[22] This would require expanding the scope of review beyond national security to include a net economic and technological benefit assessment. Doing so would empower CFIUS to preemptively counter adversaries' advancements in both commercial and military spaces.

Second, the mechanism would expand mitigation and prohibition measures extraterritorially. CFIUS scoping currently limits the reach of the committee to business activities that occur within the U.S. and its territories. For example, suppose a foreign acquirer of a U.S. business that collects its customers' biometric data used untrusted wireless vendors such as Huawei or ZTE in its overseas operations. CFIUS might identify a risk of biometric data transfer to a malicious third actor if any data traversed wireless connections that use those vendors. But the committee would not be able to require the acquirer to remove all untrusted wireless vendors from its global operations.[23] Because CFIUS review and mitigation is scoped to the national security risk arising from the transaction, the committee would only be able to require, as a condition of the transaction, that the acquirer refrain from using untrusted vendors in wireless communication or

virtual storage of biometric data collected from the U.S.-based operations. Thus, CFIUS can demand acquirers to structure U.S.-internal informational and material networks to the U.S. government's liking, but the committee currently cannot require acquirers to restructure their global business operations in a similar fashion.

A weaponized CFIUS would allow the committee to impose mitigation terms extraterritorially into the offshore business practices and vendor relationships of corporate entities that have any business in the U.S. market. This would leverage the centrality of the U.S. market to the strategic plans of most transnational businesses by prohibiting untrusted vendors in any part of their global operations, effectively starving entities deemed untrustworthy of a large customer base. Relatedly, a weaponized CFIUS would empower the committee to prohibit transactions when acquirers have investments from businesses in adversarial states in any of their global subsidiaries or affiliates—even associated business units with separate governance structures that have no U.S. business presence. Such a rule could force business groups to choose between operating in the U.S. market or accepting investment from firms connected to adversarial states, in any part of their activities.

Finally, a weaponized CFIUS would require substantial coordination among like-minded partners and allies. This would be necessary if the U.S. economy were to remain open to benign foreign investors while also using CFIUS as a more purposeful tool of defensive WI. In the absence of such coordination, a firm headquartered in an allied country could acquire a U.S.-based firm, import its emerging technology or know-how to the parent's headquarters, and then sell the parent to a firm with problematic ties to a rival such as the PRC. The recent FIRRMA legislation perhaps opened a door to such coordination through its "excepted state" list, which incentivizes states to develop robust national security-oriented investment screening mechanisms to gain easier access to U.S. investment markets. However, the possibility of a critical mass of countries developing investment review authorities and then agreeing with the United States' risk assessments over filings is hard to find realistic.

### Limitations of Weaponized Investment Screening

Just because we can imagine the contours of a CFIUS tooled to defend against WI does not mean that the U.S. government could or should empower its investment screening committee in such a way. Domestic politics make it highly unlikely that CFIUS would ever be so empowered. U.S. corporations would certainly lobby vigorously against legislation that would expand the committee's power so significantly, as it would make it increasingly challenging for their businesses to engage in global trade and financial networks.[24] A committee with such power would likely ultimately reduce U.S national security by hamstringing the very industries that propel U.S. dominance in technological development, and by shutting U.S. firms out of global supply chains.[25]

Moreover, CFIUS's central policy objective—openness with limited controls justified on national security grounds—depends on continued trust that the United States will not use the leverage it accrues through cooperative efforts to secure sensitive economic activities against its allies. Without completely shutting off from international trade and production networks, the United States cannot safeguard its sensitive technology alone. One growing concern is that perceptions that the United States has abused its centrality in global economic networks to weaponize interdependence in other domains could cause partners and allies to rethink the benefits and costs of an open system. To effectively advocate for strengthened CFIUS-like review mechanisms across partner economies—mechanisms that take technology transfer risks seriously while still scoping review to relatively narrow conceptions of national security—the U.S. government will need to consider how its aggressive use of WI tactics in other areas could undermine CFIUS's efforts.

By statute and practice, CFIUS reflects a purposeful balancing of the risks and benefits of an open investment climate to national security and economic prosperity. FIRRMA's increasing focus on protecting TID businesses reflects an uncomfortable reality that national security and economic competitiveness are becoming increasingly challenging to delineate. The legislative history of CFIUS-related

measures illustrates this balancing act; globally oriented lawmakers and bureaucrats have consistently won the argument that CFIUS authorities must be narrowly constrained to national security issues and not venture into the realm of economic benefit tests. Moving forward, the consequential policy developments in CFIUS will be how the committee negotiates its role as novel national security threats obfuscate the line between national security and economic policy.[26]

## Conclusion

In this chapter, I have forwarded three arguments. First, investment screening mechanisms like CFIUS are better explained as expressions of market power than of WI because power is expressed bilaterally at private actors rather than at states through networks. Second, investment screening tools could be modified to become more explicit tools of, or safeguards against, WI. Third, the changes necessary to transform investment screening into manifestations of WI are unlikely to survive domestic political processes and also would likely undermine state power in other ways. In particular, it would be extremely challenging to weaponize CFIUS while simultaneously deepening international cooperation to secure sensitive economic activities.

The specific case of CFIUS highlights how careful consideration of the sources of power and influence in a complex global economic network leads to greater precision in discussions of what does and does not constitute WI. In a world defined by complex networks, it is tempting to view all risks and all exercise of power through the prism of WI. Yet, doing so can stretch the concept beyond usefulness. Overuse of WI concepts may also lead scholars to discount the many ways in which governments are constrained by domestic and transnational forces. Particularly when it comes to global financial markets, any analysis of state power must consider how business interests complicate governments' ability to leverage economic power for influence. Markets are not just complex but also complicated, meaning that states' have limited ability to orchestrate private behavior toward public policy goals, at least in market-oriented democracies.[27] Moreover, attempts to weaponize networks have real and

enduring trade-offs that further confound and confuse foreign policy practices around enabling open economic exchange or insulating economic activity from adversaries. This policy dilemma presents a rich and exciting research agenda on how governments and society can, and do, navigate the boundaries of national security and economic engagement in the shadow of WI.

## Notes

1. Marco Rubio, "Rubio Requests U.S. Review of TikTok After Reports of Chinese Censorship," press release, October 9, 2019, www.rubio.senate.gov/public/index.cfm/2019/10/rubio-requests-cfius-review-of-tiktok-following-reports-of-chinese-censorship.

2. Jeff Zillgitt and Mark Medina, "As Impasse over Pro-Hong Kong Tweet Simmers, What's at Stake for the NBA in China?" *USA Today*, October 9, 2019, www.usatoday.com/story/sports/nba/2019/10/09/nba-china-hong-kong-whats-at-stake/3912447002/.

3. Teri Schultz, "NATO Warns Allies to Block China Buying Spree," *Deutsche Welle*, April 17, 2020, www.dw.com/en/nato-warns-allies-to-block-china-buying-spree/a-53167064.

4. United Nations Conference on Trade and Development, "Investment Policy Responses to the COVID-19 Pandemic," *Investment Policy Monitor*, May 4, 2020, www.unctad.org/en/PublicationsLibrary/diaepcbinf2020d3_en.pdf.

5. James Jackson, "The Committee on Foreign Investment in the United States," *Congressional Research Service Reports*, February 26, 2020, https://crsreports.congress.gov/product/pdf/RL/RL33388/93.

6. See table 14-1 this chapter for data sources.

7. Jackson, "The Committee on Foreign Investment in the United States," p. 21. See also White House website for most recent prohibition at www.whitehouse.gov/presidential-actions/order-regarding-acquisition-stayntouch-inc-beijing-shiji-information-technology-co-ltd/.

8. For instance, U.S.-based Esko Bionics Holdings, Inc., released a press statement on May 20, 2020, indicating its intention to terminate a joint venture (JV) with Zhejiang Youchuang Venture Capital Investment Co., Ltd., after CFIUS reportedly informed them that it had determined the national security concerns endangered by the JV could not be mitigated; see "Ekso Bionics Announces CFIUS Determination Regarding China Joint Venture," press release, May 20, 2020, www.ir.eksobionics.com/press-releases/detail/685/ekso-bionics-announces-cfius-determination-regarding-china.

9. See, for example, Henry Farrell and Abraham L. Newman, "Chained to Globalization: Why It's Too Late to Decouple," *Foreign Affairs* 99 (January/February 2020), pp. 77–78.

10. Anthea Roberts, Henrique Choer Moraes, and Victor Ferguson, "Toward a Geoeconomic Order in International Trade and Investment," *Journal of International Economic Law* 22 (December 2019), pp. 655–76.

11. See Henry Farrell and Abraham L. Newman, "Weaponized Interdependence and Networked Coercion: A Research Agenda," the final chapter of this volume.

12. National security is not defined in statute, but Section 721(f) of the Defense Production Act provides a list of factors for the committee to consider when evaluating transactions for national security risks. Implications for broader foreign policy objectives are not included on this list.

13. Henry Farrell and Abraham L. Newman, "Weaponized Interdependence: How Global Economic Networks Shape State Coercion," *International Security* 44 (Summer 2019), pp. 42–79.

14. Beth Simmons, "The International Politics of Harmonization: The Case of Capital Market Regulation," *International Organization* 55 (Autumn 2001), pp. 589–620; Daniel W. Drezner, *All Politics Is Global: Explaining International Regulatory Regimes* (Princeton University Press, 2007).

15. For more on the determinants of FDI screening cross-sectionally, see Anastasia Ufimtseva, "The Rise of Foreign Direct Investment Regulation in Investment-Recipient Countries," *Global Policy* 11 (April 2020), pp. 222–32.

16. Depending on the exact foreign entity and the specific technology involved, the United States could have other authorities, such as export controls, to prevent technology transfer.

17. Matthew J. Baltz, "Institutionalizing Neoliberalism: CFIUS and the Governance of Inward Foreign Direct Investment in the United States Since 1975," *Review of International Political Economy* 24 (2917), pp. 859–80.

18. Dwight D. Eisenhower, "Recommendations Concerning U.S. Foreign Economic Policy," *Department of State Bulletin* 30 (1954), p. 602.

19. CFIUS activity did increase rather substantially in 2017 and 2018. For a number of reasons, filings and investigations are likely inflated. This is because investigations and withdrawals tend to compound each other. If the committee needs more time to investigate a transaction—perhaps to negotiate mitigation terms or because staffing issues make it challenging for the committee to complete action on cases in a timely manner—parties will often voluntarily agree to withdraw and refile the transaction to provide the committee more time.

20. Section 721 of the Defense Production Act of 1950, as amended, 50 U.S.C. § 4565, Sec. 7(a).

21. It likely also reflects a sensitivity to due process, especially after Chinese-owned wind energy developer Ralls Corporation sued the U.S. government over its decision to prohibit Ralls's investment in an Oregon wind farm. While CFIUS review decisions are immune to legal rulings, the case did proceed on the basis of a due process claim, and the committee has emphasized its

commitment to conducting reviews and investigations carefully to avoid the appearance of lack of due process or arbitrariness of decisions.

22. Christian Brose, "The New Revolution in Military Affairs: War's Sci-Fi Future," *Foreign Affairs* 98 (May/June 2019), pp. 122–34.

23. Indeed, if CFIUS authority did extend extraterritorially in this way, a bipartisan group of U.S. lawmakers would likely view the proposed NETWORKS Act, which would block U.S. firms from engaging in significant financial transactions with Huawei, to be redundant. See the draft legislation at the website of Representative Mike Gallagher, https://gallagher.house.gov/sites/gallagher.house.gov/files/Networks%20Act%203.10.20.pdf.

24. Sarah Bauerle Danzman, *Merging Interest: When Domestic Firms Shape FDI Policy* (Cambridge University Press, 2019).

25. Robert D. Williams, "In the Balance: The Future of America's National Security and Innovation Ecosystem," *Lawfare* (blog), November 30, 2018, www.lawfareblog.com/balance-future-americas-national-security-and-innovation-ecosystem.

26. J. Benton Heath, "National Security and Economic Globalization: Toward Collision or Reconciliation?" *Fordham International Law Journal* 42 (2019), pp. 1431–49.

27. Thomas Oatley, "Toward a Political Economy of Complex Interdependence," *European Journal of International Relations* 25 (2019), pp. 957–78.