
Committee on Foreign Investment in the United States (CFIUS) Concerns Cause Parties to Abandon Transaction

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On June 24, 2010, Emcore Corporation, a producer of fiber optic and solar power components, announced that, as a result of "certain regulatory concerns" expressed by the Committee on Foreign Investment in the United States ("CFIUS"), it was withdrawing its CFIUS filing for its proposed sale of sixty percent of its fiber optics business to Tangshan Caofeidian Investment Corporation ("TCIC"), a Chinese company.¹ The Committee allows companies to withdraw filings in cases where the Committee has concerns that the transaction, if closed, could harm national security.

Emcore, which is based in New Mexico, is a provider of compound semiconductor-based components and subsystems for the fiber optics and solar power markets.² TCIC is a Chinese-based investment company. On February 3, 2010, the two companies agreed to a joint venture under which Emcore would sell a sixty-percent interest in its fiber optics business, including its telecom, enterprise, cable television, fiber-to-the-premises, and video transport business lines, to TCIC for \$27.75 million.³ The proposed sale would have expressly excluded Emcore's satellite communications and specialty photonics fiber optics businesses. Emcore and TCIC voluntarily withdrew their joint CFIUS filing after the Committee

expressed concerns over the venture. Instead, Emcore will continue to "seek other means of cooperation" with TCIC or other partners.

The withdrawal of the Emcore filing follows seven months after the Committee forced another Chinese company, the Northwest Nonferrous International Investment Company, to drop its proposed acquisition of fifty-one percent of Firstgold, a Nevada-based mining company. In that case, the Committee's concerns related to the close proximity of Firstgold's property to sensitive military installations, including Fallon Naval Air Station and other "classified security and military assets that cannot be identified," and control of mineral resources.⁴

In another CFIUS-related event, on July 2, 2010, fifty members of the House of Representatives wrote to Treasury Secretary Geithner and requested that the Committee "thoroughly investigate" the plans announced in May 2010 by a Chinese company, Anshan Iron & Steel Group, to invest in steel plants owned by a Mississippi entity, the Steel Development Company.⁵ The members claimed that Anshan, China's fourth largest steelmaker, "could have access to new steel production technologies and information regarding American national security infrastructure projects." Anshan plans to invest in as many as five of Steel Development's U.S. production mills.⁶ The terms of the agreement have not been made public.

Although the Committee's review is generally based on the specific facts of a proposed transaction, transactions involving certain industries and countries can present significant regulatory concerns and complicate the prospects of transactions gaining governmental approval. As evidenced by the relatively small value of the Emcore transaction, the Committee's concerns are not limited to large-scale transactions. Please contact Benjamin Powell if you would like to discuss these developments further. For

information on WilmerHale's CFIUS practice, please click [here](#).

¹ *Emcore and Tangshan Caofeidian Investment Corporation Pursue Alternative Means of Cooperation to Address Regulatory Concerns*, www.marketwire.com/press-release/EMCORE-Tangshan-Caofeidian-Investment-Corporation-TCIC-Pursue-Alternative-Means-Cooperation-NASDAQ-emkr-1282838.htm (last visited June 30, 2010).

² Stephanie Kirchgaessner, *White House Scuppers Emcore Deal over National Security Fear*, FINANCIAL TIMES, June 30, 2010, at 4, available at www.ft.com/cms/s/0/8348c03a-83d4-11df-ba07-00144feabdc0.html.

³ Emcore Corp., Quarterly Report (Form 10Q), at 10 (May 10, 2010).

⁴ Eric Lipton, *Questions on Security Mar Foreign Investments*, N.Y. TIMES, Dec. 18, 2009, at B1, available at www.nytimes.com/2009/12/18/business/18invest.html?_r=1&scp=1&sq=questions%20on%20security%20mar%20foreign%20investments&st=cse.

⁵ Letter from Congressional Steel Caucus to Timothy Geithner, Secretary of the Treasury (July 2, 2010), available at visclosky.house.gov/SC_Geithner_CFIUS_7.2.10.pdf. See also Dow Jones Newswires, *U.S. Lawmakers Seek Anshan Steel Probe*, WALL ST. J., July 5, 2010, available at online.wsj.com/article/SB10001424052748704535004575348873017865944.html.

⁶ James T. Areddy, *Chinese Steel Company to Enter U.S.*, WALL ST. J., May 18, 2010, available at online.wsj.com/article/SB20001424052748704314904575250080104765948.html.

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