About the Tighter Rules on Foreign Ownership of Companies

In October, the U.S. government issued new rules regarding the review of transactions to foreign ownership of U.S. companies, responding to bipartisan calls for a U.S. response to foreign mercantilist trade policy for many years (for example, see [here](#)). The new rules may have a costly regulatory impact on U.S. optics and photonics companies, particularly those seeking capital or transfers of ownership.

The new regulations arise from the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA, see [here](#)), which Congress passed by a widely bipartisan vote and President Trump signed in August. The act authorizes the Committee on Foreign Investment in the United States (CFIUS) to conduct pilot programs to expand and implement new provisions in the legislation. On 10 October 2018, the U.S. Treasury Department issued temporary regulations that would expand the scope of transactions subject to review by CFIUS (see [here](#)). Included in the expansion were NAICS codes related to optics and photonics, as well as systems that include optics and photonics components and the fact that the scrutiny was expanded to all countries globally and not a select few. For example, it included Optical Instrument and Lens Manufacturing (333314) and Semiconductor and Related Device Manufacturing (333242), see [here](#).

More restrictive rules would have the effect of reviewing, slowing, or rejecting funding by foreign investors and/or sales of ownership to foreign owners, by expanding the number of companies subject to review and raising the threshold needed to pass approval. At the OIDA Laser Congress Executive Forum, Linda Smith (CERES Technology Advisors) said that CFIUS review adds substantial paperwork, delays, and risk to transactions. More broadly, the tighter scrutiny can slow the movement of capital, or even divert it from U.S. companies to opportunities elsewhere. This can affect company valuations and exit opportunities for investors, in a cascading chain of effects.

Advocates for a response to mercantilism from China and elsewhere say that tighter scrutiny is necessary in the face of mercantilist policies and a gradual loss of the U.S. manufacturing base and intellectual property to other countries. Protection of a U.S. photonics manufacturing ecosystem was also the justification for the NNMI funding that was awarded to the AIM Photonics Institute in 2015. Speaking about tariffs and foreign ownership at the OIDA Executive Forum, David Townes (Needham & Co.) said that "first you have to shake things up," as opposed to changing policy incrementally.

In summary, FIRRMA greatly alters the landscape for inbound foreign investment transactions. OIDA cautions that any company involved in international mergers and acquisitions, private equity, fund formation, or U.S. real estate transactions should become familiar with FIRRMA and the new procedures surrounding CFIUS that this new interim rule creates.
Dr. Greg Quarles represents OSA/OIDA and the optics and photonics community on the U.S. Commerce Department Sensors and Instrumentation Technical Advisory Committee (SITAC), and OIDA is monitoring this development. For questions, please contact Greg Quarles at gquarles@osa.org.

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