THE U.S.-CHINA TUG OF WAR OVER FOREIGN DIRECT INVESTMENT AND NATIONAL SECURITY

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The U.S.-China relationship has become more strained than it has been in several decades, following a long period of cooperation and collaboration. The U.S. has been taking steps to confront forced technology transfer to China, to protect U.S. intellectual property rights from infringement and theft in China, to create an even playing field for U.S. businesses conducting business in China and to limit Chinese acquisitions and investments in what it considers sensitive U.S. assets. From the Chinese perspective, China is trying to climb the value chain, to become a global economic power and leader, to gradually lift market entry barriers for foreign companies and to protect its own national security. Front and center to China's vision of the future is China 2025, an initiative at the forefront of President Xi's policy towards creating a technologically advanced and sophisticated China by 2025.

The tensions created by these disparate objectives have played out through legislation and trade agreements, often the result of confrontational battles between the two countries. This article will explore the legal measures and implications of this confrontation from a national security and market access perspective, which often is reflected in the context of foreign direct investment into each other's country. These measures include the following:

- The 2018 enactment of the Foreign Investment Risk Review Modernization Act ("FIRRMA") and the final regulations issued this past January;
- The Export Control Reform Act of 2018, which was enacted at the same time as FIRRMA;
- Executive orders relating to the access of Huawei and ZTE to the U.S. and global markets;
- China's various measures over the past several years easing access by foreign-invested enterprises into China;
- China's enactment of its new Foreign Investment Law;
- The Belt-Road Initiative implemented under President Xi's regime; and
- The most recent U.S.-China Phase I Trade Agreement.

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I. United States Initiatives

A. FIRRMA Amendments

On August 13, 2018, President Trump signed the John S. McCain National Defense Authorization Act[2], which included the FIRRMA amendments to the national security law of the U.S. embodied in Section 721 of the Defense Production Act of 1950, commonly called CFIUS.[3] CFIUS is the national security regime of the United States administered by the Committee on Foreign Investment in the U.S. (the source of the CFIUS acronym, which term is also used to refer to the Committee itself) within the U.S. Department of Treasury. The CFIUS Committee consists of representatives from numerous agencies, including, in addition to Treasury, the Department of Justice, the Department of Homeland Security, the Department of Commerce, the Department of Defense, the Department of State, the Department of Energy, the Office of the U.S. Trade Representative, and the Office of Science & Technology Policy. Prior to the enactment of FIRRMA, which stands for the Foreign Investment Risk Review Modernization Act of 2018, CFIUS provided a process whereby a foreign entity or government could apply to the Committee to determine whether its acquisition of a controlling interest in a U.S. business (a defined term in the Act) would pose a threat to the national security of the United States. This has always been a voluntary filing, but a foreign investor who did not file risked a later determination by the Committee, acting unilaterally, that the transaction threatened national security, in which case the U.S. Government could order the unwinding of the transaction, divestiture of the U.S. assets acquired in the transaction, or some other mitigation measures. For those foreign investors that made filings, the Committee would make a determination either (1) not to take any action, thereby clearing the foreign acquirer to move forward with its transaction, or (2) to recommend to the President of the United States to block the transaction or (3) to find some middle ground through what is called mitigation agreements that imposed mitigation measures to remove or minimize the threat to national security, thereby allowing the acquisition to go forward.

In the last several years, President Trump, based on CFIUS authority, blocked a number of proposed transactions and ordered divestitures of closed acquisitions in which Chinese entities were the direct or indirect controlling acquirers or proposed acquirers. These transactions included[4]:

- Ant Financial Group's proposed acquisition of MoneyGram (money forwarding business), which is discussed later in this article;

- BlueFocus Communications Group Co. proposed merger with Cogint, Inc. (digital marketing services business), also discussed below;

[2] Pub. L. 115-232, 132 Stat. 1636 (8/13/18)

[3] Section 721 of the Defense Production Act of 1950, as amended, 50 U.S.C. 4565.

[4] This list is not intended to be all-inclusive. Nor does it address those transactions in which the parties agreed to undertake mitigation actions in response to the Committee's objections, thereby allowing the transaction to go forward. CFIUS filings are confidential, with only the actions of the President in blocking transactions or ordering divestiture made public.

- HNA Group's proposed acquisition of SkyBridge Capital (financial services firm);

- Beijing Kunlun Tech Co. Ltd.'s acquisition of Grindr LLC (dating app), which was ordered divested after the enactment of FIRRMA; and

- iCarbonX's acquisition of PatientsLikeMe (online health app), in which a majority stake was ordered divested after the enactment of FIRRMA.

In March of 2018 President Trump also blocked the proposed US $117 billion acquisition of Qualcomm, the world's largest maker of chips for smartphones, by Broadcom, a Singapore-based company. Qualcomm is heavily invested in developing the 5G technology of the future. While it is unclear whether there is Chinese ownership in Broadcom, the CFIUS' Committee's recommendation reportedly identified its concern that the acquisition would at some point benefit the Chinese telecommunications giant Huawei in its battle to develop 5G supremacy. What was even more unusual was the fact that Broadcom was in the midst of a hostile takeover of Qualcomm and that no definitive agreement had yet been reached. Typically the Committee does not act on applications prior to the execution of a definitive agreement.

The requirements imposed by FIRRMA are not country-specific. With certain exceptions, China is not singled out. In fact, it applies to all foreign investors and acquirers except certain allies identified by the U.S. Department of Treasury that meet certain criteria. Initially, only Canada, Australia and the U.K. are excepted from the bulk of these requirements. However, it is clear through the legislative history and through certain other monitoring provisions in FIRRMA that China, and secondarily Russia, was the target of this law. Their transactions will receive heightened scrutiny.

1. Emerging and Foundational Technologies

FIRRMA made significant changes to the CFIUS law. While country-agnostic on its face, the primary thrust of the amendments was aimed at China's predatory practices, the transfer of technology, and a lack of reciprocity. Certain components of FIRRMA are relevant in the context of this article. First, it expanded the scope of the factors constituting a threat to national security to include "emerging and foundational technologies"[5]. This term was left undefined in FIRRMA, mandating that the U.S. Department of Commerce define this term as also used in the Export Control Reform Act of 2018, discussed later in this article. The gist of this expansion was to encompass both advanced technology that could have military implications and industries that would threaten the U.S.'s economic national security. For the first time, the Act was being directed towards economic national security, not just military national security. As a temporary measure while waiting for the Department of Commerce's regulations, the Committee identified the industries by their NAICS codes as prescribed in the final regulations within which a foreign investment or acquisition must file with the Committee (with some exceptions) for consideration whether the U.S. business threatens national security.[6] In effect the Committee was treating these U.S. businesses as emerging and foundational technologies. A list of those NAICS codes is

[5] 50 U.S.C. §4565(a)(6)(A)(vi).

[6] 31 C.F.R. §800.401(C).

appended to this article as Appendix A. While most businesses within these NAICS codes will pass muster and receive clearance from the Committee, one can see that these industries may extend beyond military applications such as biotechnology, petrochemical manufacturing and nanotechnology. The CFIUS process is confidential and not subject to public inspection, making it difficult to track the Committee decisions in this area. While CFIUS practitioners anticipate that the Committee will judiciously and sparingly intrude into the purely economic security arena, the inclusion of these and other industries in the NAICS codes opens the door to economic considerations.

2. Sensitive Personal Data

Prior to FIRRMA, the two primary standards for threatening national security were critical infrastructure and critical technology. FIRRMA added a third category, sensitive personal data[7]. The Committee had already adopted this standard pre-FIRRMA in the publicized attempt by Ant Financial, an affiliate of Alibaba, to acquire MoneyGram for US $1.2 billion in 2018. When it became evident that the Committee would not clear the transaction due to the financial information on U.S. consumers in the possession of MoneyGram, Ant Financial withdrew its CFIUS application. The timing of the consideration of the FIRRMA legislation and the Ant Financial transaction coincided and most likely promoted the addition of sensitive personal data as a national security criterion in the law. Similarly, the 2017 merger of BlueFocus Communications Group Co., which is Chinese-controlled, and Cogint, Inc., a digital marketing company, in which BlueFocus would have a controlling interest, was scuttled in 2018 because of the inability to pass CFIUS muster, presumably because of Cogint's holding sensitive personal data. Since the passage of FIRRMA, CFIUS ordered in 2019 the divestiture of a majority stake in PatientsLikeMe, an online health app, by iCarbonX, a Chinese-controlled company, and the divestiture of Grindr LLC, an online data app by Beijing Kunlun Tech Co. Ltd.

The "sensitive personal data" test targets any U.S. business that directly or indirectly maintains or collects[8]:

- Identifiable genetic information data of U.S. citizens such as genetic sequencing data;
- Identifiable data that targets or tailors products or services to certain sensitive U.S. personnel; and
- Certain prescribed identifiable data on greater than one million individuals during the past 12 months, or with a demonstrated business objective to maintain or collect this prescribed data on greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services. Prescribed data includes data on (1) an individual's financial hardship, (2) health, long-term care, professional liability, mortgage or life insurance of individuals, (3) physical, mental or psychological health condition of an individual, (4) certain non-public electronic communications, (5) geolocation data collected using positioning systems, cell phone towers and Wi-Fi access points, (6)

[7] 50 U.S.C. §4565(a)(4)(B)(iii)(III).

[8] 31 C.F.R. §800.241.

biometric enrollment data, (7) data stored and processed for generating a state or federal government identification card, (8) data concerning U.S. Government personnel security clearance status, and (9) set of data in an application for a U.S. Government personnel security clearance or an application for employment in a position of public trust.

If the data of any company meeting any of these criteria contain identifiable information that is not aggregated and cannot be anonymized, that transaction would be subject to the jurisdiction of the Committee. This expansion of CFIUS falls into the category of electronic national security and is aimed to prevent a foreign country such as China from using data on individuals to conduct espionage, disrupt healthcare flows or otherwise interfere with the privacy and security of individuals.

3. Covered Investments

As previously stated, the Act prior to FIRRMA covered only control transactions. Another major expansion in FIRRMA was the inclusion of certain minority investments in U.S. businesses within the scope of the Act, which are now called under the regulations "covered investments"[9]. There is no *de minimis* exception to the size of the minority investment or the proposed ownership percentage in the U.S. business. A covered investment is now within the jurisdiction of CFIUS and may necessitate a filing with the Committee. There are two prongs to the test whether a minority investment is a covered investment. The first determination is whether the U.S. business receiving the investment is engaged in certain respects in certain types of critical infrastructure, called "covered investment critical infrastructure" under the final regulations[10], or in the critical technologies discussed above that are identified in the Appendix to this article, or in maintaining sensitive personal data. These U.S. businesses are called T.I.D. U.S. businesses. The second prong is that the foreign investor, under the terms of its investment, would either[11]:

- have access to material, non-public technical information of the T.I.D. U.S. business, or

- would have a board or committee seat or observer rights in the T.I.D. U.S. business, or

[9] 31 C.F.R. §800.211.

[10] One of the factors the Committee considers in its national security threat analysis in control transactions is whether the transaction involves critical infrastructure, a term which has been defined in the regulations (as slightly modified in the FIRRMA regulations) as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security." 31 C.F.R. §800.214. For covered investments (minority investments), the new regulations under FIRRMA narrows that test by providing that the "critical infrastructure" prong in a minority investment is limited to certain systems and assets, whether physical or virtual, that are set forth in Appendix A to the new regulations AND to U.S. businesses that perform the functions also listed in Appendix A with respect to those systems and assets. This gives specific guidance to foreign investors in minority investments in U.S. businesses. 31 C.F.R. §800.212 and §800.248.

[11] Id.

- would have substantial decision-making authority, other than the exercise of shareholder voting rights, in the T.I.D. U.S. business.

This prong, which can be called the non-passive investment test, clearly is aimed at protecting against technology transfers, with China an obvious target. As discussed above, while some of the T.I.D. U.S. businesses may have military technology, some of these business involve economic and electronic national security.

Congress was concerned about finding the right balance between foreign, and particularly Chinese and Russian investment, in U.S. T.I.D. businesses and allowing the free flow of capital to come into the United States. Significant sums of Chinese money have been invested in Silicon Valley and to companies that have spurred U.S. innovation and innovative leadership. Congress also recognized that sophisticated fund investors, whether Chinese or otherwise, would seek to protect their investments through board seats, committee involvement and having a voice in investment and portfolio decisions. Yet the restrictions on minority investments outlined above impinges on an investor's ability to protect its investment. Therefore, FIRRMA creates a narrow carve-out from the prohibition on board or committee seats or observer status. It provides that a foreign investment in a U.S. fund or U.S.-managed fund with a U.S. general partner can allow for a committee seat of the fund, but not of the portfolio T.I.D. U.S. business, provided that (1) the investor would not have the ability to control the fund and its investment decisions and certain substantial decision-making decisions of the fund and the U.S. business, and (2) the investor does not have access to material nonpublic technical information.[12] That type of investment would not constitute a covered investment.

Therefore, a minority non-passive investment in a T.I.D. U.S. business comes within the jurisdiction of CFIUS. Those investors must consider whether to file with the Committee for clearance prior to making the investment.

4. <u>Mandatory Filings</u>

FIRRMA introduced another concept relevant to this topic to curtail Chinese influence in U.S. T.I.D. businesses. For the most part, a filing with the Committee is voluntary. If an acquirer or investor does not file and is later determined that the investment threatens national security, the Committee has powers to unwind the transaction, impose mitigation measures and/or impose penalties and fines. In most cases it is totally within the acquirer's or investor's discretion as to whether to file with the Committee or not and to take that risk. However, FIRRMA now has imposed mandatory filing requirements in two instances.[13] The first relates to the industries identified in Appendix A to the new CFIUS regulations. Mandatory filing must be made for investments in U.S. businesses in those industries. Once the U.S. Department of Commerce issues its export licensing regulations on emerging and foundational technologies, the Committee will replace the nexus to Appendix A industries with a mandatory filing requirement based on Commerce's new export control licensing requirements for emerging and foundational

[12] 31 C.F.R. §800.307.

[13] 31 C.F.R. §800.401.

technologies.[14] FIRRMA also requires a mandatory filing where a foreign government has a substantial interest in a foreign acquirer that is acquiring a substantial interest in a U.S. T.I.D. business. The foreign government must have at least a 49% interest in the foreign acquirer, and the foreign acquirer must have at least a 25% voting interest in the U.S. business. State-owned enterprises are considered a "foreign government" for this purpose. This clearly puts substantial investments by Chinese SOEs under the microscope of Washington.

5. Covered Real Estate

FIRRMA also added a category of transaction unrelated to an acquisition of or investment in a U.S. business. Certain real estate transactions are now covered.

In 2006 a state-owned Dubai company had attempted to enter into a management arrangement to manage terminal operations at six U.S. ports, but was blocked from doing so by President Bush. In 2012 Ralls Corporation, which was Chinese-owned, purchased four windfarms in north-central Oregon, adjacent to sensitive military facilities. On the Committee's recommendation, President Obama ordered divestiture of the windfarms.

FIRRMA codified the Committee's jurisdiction over these type of transactions, which expanded jurisdiction over the purchase or lease of, or granting of concessions to, real estate that either[15]:

- Is located within or will function as part of maritime ports or airports, or

- Is either in "close proximity" to sensitive government military or other facilities, could reasonably allow eavesdropping or the collection of intelligence from such facility, or could expose national security activities at such facility.

Real estate coming within either of these scopes is called "covered real estate" under the Committee's recently issued regulations.

The new regulations have identified the particular military sites and other U.S. government installations and have defined the distance requirements for those sites. Depending on the location, sensitivity and size of the military operations at a site, the distance is either one mile or one hundred miles from its outer boundary of the site, a prescribed county or geographic area or any area within the related territorial sea of the United States.

The regulations also give guidance as to what constitutes the purchase or lease of, or granting of concessions to, real estate by defining the scope of property rights which trigger jurisdiction.

FIRRMA's expansion covering real estate can be characterized more as a codification of existing Committee practices than an expansion of coverage. But the mere fact of codification emphasizes the point. On the flip side, the regulations provide definitive guidance for helping foreign investors and their targets with the ability to assess the CFIUS viability of the transaction in advance.

[14] 85 Fed. Reg. No. 12 at 3121.

[15] 50 U.S.C. §4565(a)(4)(B)(ii).

B. Export Control Reform Act of 2018

As part of the John S. McCain National Defense Authorization Act of 2018, Congress also enacted the Export Control Reform Act of 2018. Among other things, this law mandates that the U.S. Department of Commerce impose export license requirements and prohibitions on "emerging and foundational technologies". Commerce is tasked with defining what constitutes an emerging and foundational technology. As already discussed, this term is used in FIRRMA. FIRRMA specifically defers to the Department of Commerce's definition and incorporates that definition by reference into FIRRMA. Therefore, not the Committee on Foreign Investment in the United States, but rather the Department of Commerce, will determine, in consultation with certain other prescribed agencies, what constitutes an emerging and foundational technology. The final regulations under FIRRMA provide that, once Commerce issues its final regulations to define this term, the NAICS codes for emerging and foundational technologies, as identified in the Appendix to this article, will be replaced by export licensing requirements for industries and products constituting emerging and foundational technologies.[16]

This component of the Export Control Reform Act of 2018 does more than simply provide a definition of emerging and foundational technologies for the purposes of FIRRMA. It has three important implications. First, it will restrict the export of key technology in the national security context to foreign countries. Keep in mind that export licensing requirements can vary according to the country to which the technology is being sold or transferred. In other words, the export licensing code for an exporter of a particular product to Germany may be less restrictive than the code for an export to China.

The second implication is that it addresses greenfield investments. FIRRMA restricts only foreign investment into the United States. It does not prohibit a foreign company from creating a company and developing technology in the United States or from collaborating with a U.S. company to develop technology. To prevent this foreign company from then exporting that technology back to its home country, it now will be controlled by Commerce's export licensing requirements. Therefore, a foreign entity cannot escape the limitations of obtaining technology by investing in or acquiring U.S. businesses through greenfield investments and then transferring that technology to China.

The third implication is what is called in the industry as "deemed exports." A deemed export is defined as the release of technology that is restricted by law for export to a country (i.e., either requires an export license or is prohibited from export) to a foreign national of that country within the United States. In other words, if a foreigner in the United States has access to U.S. technology that requires a license to export to that country, the mere showing of that technology in the United States to that foreigner requires an export license. Extrapolating this to the Export Control Reform Act of 2018, representatives of foreign companies will not be allowed to have access to emerging and foundational technologies in the United States without an export license issued by the U.S. Government. This also affects collaborations between Chinese and U.S. partners.

[16] *Id.*

C. Executive Order 13873

The Trump Administration has also targeted the communications technology industry from a national security perspective. On May 15, 2019, President Trump issued Executive Order 13873, "Securing Information and Communications Technology and Services Supply Chain."[17] This Executive Order prohibits the "acquisition, importation, transfer, installation, dealing in or use of any information and communications technology or service" within the jurisdiction of the United States involving the design, development, manufacture or supply of this technology by persons or entities controlled by a foreign adversary. The transaction must:

- pose an undue risk of sabotage or subversion in the United States,
- pose an undue risk of catastrophic effects on the security or resiliency of U.S. critical infrastructure or the U.S. digital economy, or
- otherwise pose an unacceptable risk to U.S. national security or the security and safety of U.S. persons.

While the Executive Order is not country-specific, it clearly was targeted at China and in particular at Huawei and ZTE, two Chinese telecommunications giants.

Huawei in particular has been a concern of the Trump Administration. The United States believes that Huawei is controlled through its founder by the Communist Party and the PRC military. Huawei is a leading competitor in the development of the digital 5G network and has been producing the equipment to form the basis of the future 5G network globally. The Trump Administration also claims that Huawei has imbedded cybersecurity bugs in its equipment software. Huawei purchases a significant amount of components from U.S. manufacturers, and has attempted to sell its products globally, including in Europe. Not only does the United States see any Huawei domination of the 5G market as a threat to national security, Huawei has allegedly, both directly and indirectly through its affiliates, violated U.S. law by selling to Iran. Because of its shipments to Iran of products with U.S. content, the United States is seeking criminal prosecution of Huawei and has requested the extradition of its Chief Financial Officer, Madam Meng Wanzhou, from Canada.

In furtherance of the Executive Order, the U.S. Department of Commerce on May 21, 2019 added Huawei and 68 of its non-U.S. affiliates to the Entity List maintained by the Department[18], which effectively blocks the exports and re-exports of products to Huawei and these affiliates. The Department of Commerce had previously included ZTE on the Entity List, but President Trump lifted that block in 2019 at the request of the Chinese Government.

China has vigorously fought the U.S. efforts to quash Huawei's potential role as a supplier of 5G technology globally. While Australia and Canada for the most part have followed the urging of the Trump Administration and have blocked purchases of Huawei's products, Europe has been

[17] 84 Fed. Reg. No. 96 at 22689 (5/17/19).

[18] 84 Fed. Reg. No. 98 at 22961 (5/21/19).

more ambivalent. Europe is in the process of balancing its allegiance to the United States with its need for Chinese trade and technology. Britain most recently (January 2020) announced that it would allow purchases of non-essential components from Huawei, but not those that posed risk of cybersecurity or which otherwise could threaten its national security. This battle will continue for the foreseeable future.

II. China's Initiatives

China does not have a robust direct national security process. It protects its national security through less direct means. Three primary avenues are:

- restrictions on market access by foreign enterprises,
- review of acquisition transactions through its anti-monopoly laws and regulations, and
- protectionist administrative actions on the provincial and municipal level in the areas of procurement, foreign business formation, construction approvals and bidding procedures.

However, China under its last 2 five-year plans has stated its objective of methodically and gradually opening up its markets to foreign enterprises. It recognizes these are steps it must take in the long run to truly integrate into the global economy and to engender the trust of the West.

A. Market Access

To understand China's progress in opening up its markets, one must review the history of its regulations of foreign direct investment by foreign entities, what it calls FIEs (foreign-invested enterprises). In other articles submitted for this Annual Meeting, this author reviewed in detail China's market-opening initiatives. With China's long and demoralizing history of foreign domination, the Chinese Government wanted to prevent domination of its industries by foreign companies. On the other hand, it also recognized its need to eventually conform to international standards and enhance its ability to participate in the global economy. It laid out its road map in the 2012 Industrial Five-Year Plan. U.S. companies historically were allowed to have foreign ownership with Chinese entities only as permitted in what was then called the Foreign Investment Industries Guidance Catalogue (the "FDI Catalogue"). The FDI Catalogue listed those industries in which foreign investment was prohibited, those in which it was restricted and those industries in which foreign investment was encouraged. The restricted category contained limitations in the form of investment requirements for FIEs such as minority ownership, joint venture with a Chinese entity, capital requirements, or the like. If an industry was not listed in the FDI Catalogue, then by implication it was permitted. In addition, foreign companies were required to go through an approval process through the Ministry of Commerce or one or more of its local or provincial offices. Finally, a FIE had to take the form of either a wholly foreign-owned enterprise ("WFOE"), an equity joint venture or a contractual joint venture. There were separate laws that governed each of these three types of entities, commonly called the "Three Basic Laws".[19] These laws applied only to foreign companies and not to domestic companies. The Three Basic Laws imposed an

[19] The Law on Wholly Foreign-Owned Enterprises, the Law on Sino-Foreign Equity Joint Ventures, and the Law on Sino-Foreign Cooperative Joint Ventures.

overlaying structure for FIEs, strict capital and structural requirements, certain restrictions on money transfers, and an approval process through the Ministry of Commerce and its local affiliates. The whole process of forming a FIE in China could take months and was expensive.

As discussed in my previous articles, China implemented a number of market opening measures over the last number of years, including the following:

- It periodically reduced the number of industries on the prohibited and restricted lists in the FDI Catalogue and loosened restrictions on those in the restricted category;

- It adopted procedures to ease up the administrative burden of obtaining approval for the establishment of an FIE by the Ministry of Commerce;

- It lessened the capital requirements and capital verification process for FIEs;

- It created free trade zones in certain cities to promote certain industries and the introduction of services within those free trade zones by allowing more permissive foreign activities in those zones that were otherwise not permitted nationally;

- In 2017 it replaced the FDI Catalogue by recodifying the same prohibited and restricted industry concepts in two newly termed "Negative Lists", one which applied nationally and another which applied to the free trade zones, which were more permissive;

- As it did with the FDI Catalogue, it continued to ease the restrictions and prohibitions in the Negative Lists.

With that backdrop, China has entered a new stage. In March of 2019 it enacted the Foreign Investment Law, which took effect on January 1, 2020.[20] This law significantly reforms China's laws regarding foreign market access and opens up access to a level not previously allowed, in several ways. First, it repeals the three laws governing wholly-foreign owned enterprises, equity joint ventures and contractual joint ventures (the Three Basic Laws mentioned above). The Foreign Investment Law now allows FIEs to be formed in the same fashion as any domestic entity, without having to go through the Ministry of Commerce approval process and without the level of regulation previously contained in the three repealed Basic Laws. FIEs can be formed as a little liability company under the PRC Company Law or as a partnership under the PRC Partnership Law and need to apply for the same licenses as a domestic entity that is formed under the respective law. Instead of an approval process through the Ministry of Commerce and its local affiliates, the FIE must report its investment information and other information into a foreign investment information reporting system. This should expedite the process for foreign investors to form FIEs in China.

The one major exception to this new process is investment in an industry on the Negative List. The concept of a Negative List both nationally and on a pilot-free trade zone basis is left intact.

[20] Foreign Investment Law of the People's Republic of China (March 15, 2019) by Order of the President of the People's Republic of China No. 26 ("FIL").

Investments in an industry on the Negative List must go through the same approval process as was formerly in place.

The Foreign Investment Law provides for additional protections for FIEs. First, FIEs are to be given the same equal treatment in the procurement process as a domestic entity.[21] Second, technology transfers cannot be required as a condition of establishing an FIE, nor can administrative departments require or compel technology transfers.[22] Furthermore, administrative department personnel must keep trade secrets of the foreign investor confidential, and cannot set any condition for market access and withdrawal or impose any additional obligations for an FIE regarding technology.[23] The Foreign Investment Law also loosens up the limitations on the free foreign exchange transferability of funds so that foreign investors can more easily repatriate profits, compensation, royalties and the like into their own foreign currency such as U.S. dollars.[24] Nationalization of FIEs is prohibited except under special circumstances to promote the public interest, with fair compensation.[25] Intellectual property rights of FIEs and foreign investors are to be protected and strictly enforced by the government.[26] Finally, FIEs may conduct public offering of shares, corporate bonds and other securities in China.[27]

One interesting provision in the Foreign Investment Law authorizes the PRC to take reciprocating action in response to any discriminatory prohibitive or restrictive measures of any country against the PRC regarding foreign investment. This can be interpreted as a direct authorization to create a national security law directed at the United States in response to the FIRRMA amendments to CFIUS. China does not have a robust national security law or process, but this provision may be a precursor to the PRC's implementing such a regime.

It should be noted that China enacted a national security law in 2011 that was similar in general concept to CFIUS. That law has not been utilized in any significant manner. Rather, the PRC has relied upon its Negative List, its restrictions on foreign market access and its anti-monopoly law to control its national security concerns. However, with the enactment of the Foreign Investment Law, this may change.

B. Belt-Road Initiative

In October of 2013 President Xi Jinping announced the launching of the Belt-and-Road, or One Belt-One Road, Initiative ("BRI"). The BRI is a massive global infrastructure project that would catapult China into the role of financier and constructor of major infrastructure projects throughout

[21] FIL Art. 16.

[22] FIL Arts. 22 & 23.

[23] FIL Art. 24.

[24] FIL Art. 21.

[25] FIL Art. 25.

[26] FIL Art. 22.

[27] FIL Art. 17.

Asia and elsewhere and establish China as a primary economic and trading power to many of those countries. President Xi made the BRI a key component of its 13th Five-Year Plan adopted in March of 2016 and added the BRI to the Chinese Communist Party's Constitution. The Chinese Government has projected to expend between US $1.0 trillion to US $1.5 trillion on these projects, making it potentially the largest infrastructure undertaking of all time.

There are two key stated components of the BRI. The first is the 21st Century Maritime Silk Road, which is modeled after the naval excursions of the famous Admiral Zheng He, who made numerous voyages with an armada of 300 ships and 30,000 troops in the early 15th century throughout the Indian Ocean region and its surrounding neighbors, imposing law-and-order and economic ties for China. The 21st Maritime Silk Road interconnects China with South Asia, northern Africa and Europe through maritime routes, with the goal of establishing sea trade routes between China and the region. It contemplates the construction of ports, interconnecting train and road routes and logistics facilities. China has already constructed port projects in Sri Lanka and Pakistan and is in the process of constructing a massive train project in Malaysia.

The second BRI component is the Silk Road Economic Belt, which envisions an overland route connecting Central Asia and Europe to China through the construction of roads, trains and bridges. This route is modeled after the historical Silk Road over which Marco Polo traveled. China has already constructed a train and truck hub in Khorgos, Kazakhstan.

The largest project so far is the US $68 billion China-Pakistan Economic Corridor, through which China has constructed a major port in Gwadar, Pakistan.

China has implemented the BRI is a malleable concept, as its tentacles have extended into Latin America, the Pacific and other parts of the world. According to one source, over 70 countries have entered into MOUs or cooperation agreements with China under the BRI umbrella. China has already invested over US $80 billion in BRI projects. BRI is becoming more a springboard for global economic expansion than a concrete fixed geographical plan.

The Chinese Government has a number of stated goals that BRI will hopefully accomplish for their country:

- The BRI represents the rejuvenation of China. Once one of the greatest global powers of all time, the BRI attempts to bring back China's international glory as a nation.

- The BRI will enhance border security by creating economic interdependence with its neighbors.

- As the major superpower in Asia, China wants to exert its influence within its geographical sphere, particularly to counter U.S. influence in Asia.

- A stated goal of BRI is to positively influence the global economy through enhanced infrastructure, trade and financial assistance. Along those lines, it has created the Asia

Infrastructure Bank, in competition with the West's Asian Development Bank, to provide financing for Asian projects.

- A benefit to China of BRI will be more ready access to the natural resources found in its BRI partner countries.

- The Chinese Government expects that the economic benefits of the BRI will aid in advancing Chinese technology in support of its China 2025 goals.

The United States understandably, together with other Western nations, are concerned about this initiative. If the BRI is even somewhat successful, China's influence in the BRI countries, as well as in other parts of the world, will grow immeasurably and would not only challenge, but could potentially replace, U.S. global influence in those countries in a variety of respects. U.S. and other Western officials have expressed concern over what they view as oppressive lending standards. For example, Sri Lanka was unable to repay its debt for construction of its port in Hambantota and had to turn over the port to Chinese ownership in what is commonly called China's "debt trap diplomacy" by its critics. There are also military implications, as China is able to establish army and navy bases within its BRI projects and in BRI countries as a condition of financial aid, such as it has done in Gwadar, Pakistan. There are concerns over China's controlling Asian trade routes, with the ability to exclude countries from those trade routes on political grounds. Finally, the United States potentially could lose much of its leverage economically and strategically that it now enjoys in parts of Asia and the Pacific.

In response, the U.S. Congress enacted The Better Utilization of Investments Leading to Development Act of 2018 (BUILD Act), which was signed into law on October 5, 2018[28], as a counterweight to the BRI and the Asia Infrastructure Bank The BUILD Act creates the U.S. International Development Finance Corporation (IDFC). This agency consolidates and expands the existing United States governmental international development functions carried out by the Overseas Private Investment Corporation (OPIC) and the U.S. Agency for International Development (USAID) and increases its exposure cap to US $60 billion, a large increase over its lending limits under OPIC. How effective a counterweight the IDFC will be is still to be tested.

III. U.S.-China Trade Agreement

The Trump Administration unilaterally imposed tariffs on Chinese goods under the authority of Section 301 of the Trade Act of 1974, based on a Section 301 investigation by the U.S. Trade Representative into unfair Chinese trade practices. The President imposed 25% tariffs on 818 product lines worth US $34 billion in July 2018, 25% tariffs on 279 product lines worth US $16 billion in August 2018, and tariffs ranging from 10% to 25% on 6,031 product lines worth US $200 billion in September 2018. China retaliated by imposing its own 25% tariffs on U.S. exports in equivalent amounts, except China's tariffs in September 2018 were imposed on only US $60 billion of U.S. product lines. President Trump also threatened in December of 2018 to impose tariffs on all Chinese products. These tariffs became the impetus for the recent trade negotiations between the United States and China.

[28] P.L. 115-254

The tensions between the United States and China and the maneuvering of the two countries "culminated" in the Phase I U.S.-China Trade Agreement entered into in January 2020.[29] The Phase I U.S.-China Trade Agreement, which I will refer to as the "Trade Agreement", has been presented by both countries as a first step, referred to as Phase I, with subsequent trade agreements to be negotiated, assuming further agreement can be reached. This trade agreement has several components. This author will discuss those components that impact national security and market access, but will not focus on the more publicized component of the agreement that China purchase additional goods and services from the United States. In this author's view, those components of the Trade Agreement that relate to this article take some baby steps towards evening the playing field and improving market access, mostly in the intellectual property area. Most of the other benefits are already encompassed within the Foreign Investment Law, which as mentioned above, was enacted in March of 2019, or have already been part of China's modernization playbook.

A. Intellectual Property

China commits in the Trade Agreement to strengthen its enforcement of the intellectual property rights of FIEs.[30] China has been making steady progress in this area for the last 20 years, on paper at least, but the Trade Agreement mandates a more aggressive approach by the Chinese Government, particularly in the pharmaceutical area. It requires China to broaden the scope of trade secrets that are protected under its laws to include electronic intrusions, non-disclosure of trade secrets and unauthorized disclosures. It shifts the burden of proof in a civil proceeding enforcing trade secrets on the infringer if the infringed presents a prime face case. It requires China to allow for provisional judicial measures, such as preliminary injunctions. It enhances criminal enforcement mechanisms and penalties. It prohibits unauthorized disclosure by an unnecessary intrusive information request from government officials. Many of these requirements are already in the recently enacted Foreign Investment Law.

With regard to pharmaceutical-related intellectual property, China is required to introduce processes that conform to Western standards through requirements for registration of pharmaceutical-related patents. It also requires China to implement notice and procedural safeguards to minimize knock-offs. China is required to enhance its enforcement procedures against counterfeit medicines and biologics and to share with the United States registration information of pharmaceutical raw material sites that have been inspected by Chinese regulatory authorities and comply with China's good manufacturing processes. While this last item does not give the United States the ability to independently verify, it does give U.S. importers comfort in knowing that their drug suppliers have been inspected by Chinese regulatory agencies and provides a basic (although not necessarily reliable) level of oversight over drug and API production in China for export to the United States.

China also agrees to introduce procedures to limit piracy and counterfeiting on e-commerce platforms. It must introduce procedures to take down online infringements and to provide judicial or administrative remedies for right holders. The Trade Agreement also provides that e-commerce

[29] The Economic and Trade Agreement Between the Government of the United States of America and the Government of the Peoples Republic of China (1/15/20) (the "Trade Agreement").

[30] Chapter 1 of the Trade Agreement.

platforms will risk revocation of operating licenses for repeated failures to curb the sale of counterfeit or pirated goods. There are not strong enforcement mechanisms for this imposition.

One major provision requires China to destroy counterfeit and pirated goods being held by customs authorities, without compensation. It prohibits the practice of simply removing the counterfeit trademarks and then releasing the goods into commerce. China cannot allow the exportation of counterfeit or pirated goods. Enforcement mechanisms are imposed. China is also required to increase the number and training of customs inspection enforcement personnel. Whether these protections will actually be implemented is to be seen.

China is required to take enforcement action against copyright and trademark infringement and physical markets, such as the Beijing Silk Street Market.[31] In the past, these markets have been shut down, only to be allowed to open in another location. This is another reform that may or may not be implemented. The Trade Agreement also requires China to enforce trademark rights, particularly against bad faith trademark registrations.

China must take measures to strengthen its enforcement of intellectual property rights and to impose penalties. However, specific implementation procedures are not prescribed. Instead, China is allowed to implement its own systems and practices, without any verification process by international organizations. This will have significant impact on the effectiveness of the above requirements.

B. Technology Transfer

Another major "concession" by China in the Trade Agreement is the commitment to stop the practice of required technology transfers as part of forming a FIE or having access to the Chinese market.[32] The Trade Agreement couches the obligations as mutual, but since the United States already subscribes to the tenets set forth in this chapter of the Trade Agreement, the obligations are principally directed at China. Some of the commitments include:

- Persons must be free to operate in the other's jurisdiction without pressure to transfer technology.
- Technology transfers and licensing must be voluntary and based on market terms.
- Neither country can support nor direct foreign direct investment activities aimed at acquiring foreign technology with respect to targeted industry sectors.

[31] Beijing's Silk Market, originally an outdoor market where foreign counterfeit goods have been sold by hawk vendors in booths, has been the subject of criticism and litigation. In 2005 its landlord was held liable by the Beijing Second Intermediate Court for its tenants' counterfeit sales, only to have the vendors move to and reopen at a new site, a building that is now its present site. In 2009 IntellecPro, on behalf of Gucci, Louis Vuitton, Prada, Chanel and Burberry, successfully sued vendors at the Silk Market, forcing the vendors to temporarily shut down their booths and causing a series of protests by the vendors. The Silk Market remains open today, and is commonly found on hotel tourist guides and maps.

[32] Chapter 2 of the Trade Agreement.

- Administrative and licensing requirements must not require technology transfers.
- Neither country can require technology transfer as a condition of favorable treatment.
- Administrative authorities shall not require disclosure of sensitive technical information as a condition of approval.
- Administrative authorities shall protect confidentiality of sensitive technical information disclosed as part of the approval process.

This is a pyrrhic victory for the United States. As referenced above in the discussion of China's new Foreign Investment Law, these proscriptions and requirements on technology transfer are already mandated in China's new Foreign Investment Law, which took effect January 1st of this year. The one benefit of including these provisions in a trade agreement is to allow foreign monitoring and/or enforcement of these requirements. However, the Trade Agreement does not provide for this. Instead, each country is required to set up its enforcement mechanisms internally. The Trade Agreement provides that each country must ensure transparency through impartial and fair enforcement, transparent and published rules of procedure, meaningful opportunity to respond to administrative proceedings against them, and the right to legal counsel in administrative proceedings. China's new Foreign Investment already establishes a general complaint mechanism. One must question whether the U.S. gained anything new here.

C. Financial Services

One area in which the United States received concessions from China is the ability of certain financial services firms to operate in China. While no new financial services industries were given greater market access, the Trade Agreement addressed the qualifications and administrative requirements for U.S. financial services FIEs to ease the access of these firms into the Chinese market.[33] Requirements and administrative hurdles were loosened for U.S. banks, credit rating services, electronic payment services such as American Express, MasterCard and Visa, insurance companies, asset management loan portfolio companies, and securities companies. Some of the measures include, as applicable to the respective industry prescribed in this chapter of the Trade Agreement, lifting Chinese majority control of joint ventures, allowing for previously limited or prohibited Chinese investments, removal of foreign equity caps and limits in certain insurance sectors and securities firms, more expeditious approval processes and time periods and non-discriminatory treatment. On the flip side, the United States commits to affirm the current pending licensing applications of CITIC Group, China Reinsurance Group, China International Capital Corporation and other similar Chinese institutions.

D. Bilateral Evaluation and Dispute Resolution

The Trade Agreement establishes the Bilateral Evaluation and Dispute Resolution Arrangement for the resolution of disputes under the Trade Agreement, to discuss the implementation of Agreement and to arrange for future work between the countries. Of particular interest is the

[33] Chapter 4 of the Trade Agreement.

dispute resolution mechanism.[34] The Arrangement contemplates a Bilateral Evaluation and Dispute Resolution Office headed by a designated high level official of each country (a Deputy United States Trade Representative and a Vice Minister under a Chinese Vice Premier). If one country has a complaint, it may submit it to this Office for resolution through consultation. If there is no resolution, the country bringing the complaint can appeal to the designated Deputy U.S.T.R. and Chinese Vice Minister. If these officials cannot resolve through consultations, then the complaining country can then appeal to the U.S. Trade Representative and the designated Chinese Vice Premier.

If these consultations fail to bring the issue to resolution, the complaining country is authorized to resort to taking proportional remedial measures. Moreover, if the country against whom the complaint was brought considers on its own that the complaint was brought in bad faith, it can withdraw from the Agreement.

This mechanism is flawed from the U.S. perspective. Unlike many trade agreements to which the United States is a party, there is no independent arbiter to resolve disputes. Instead, the party against whom the compliant is made must agree to any resolution under this process, and there is no effective enforcement mechanism if a resolution is not achieved. The United States can resort to the existing WTO dispute resolution process outside of the Bilateral Evaluation and Dispute Resolution Arrangement, a process which has always been available to it prior to the Trade Agreement.

IV. What Does All This Mean?

While previous U.S. administrations have pressured China to open its markets to foreign investment and to protect intellectual property rights of FIEs regarding patents, trademarks and trade secrets, the Trump Administration has been more aggressive in its policies toward China. It enacted FIRRMA and the Export Control Reform Act in late 2018, it implemented several measures, including Executive Order 13873, to hinder technology transfers, and it imposed the tariffs discussed above, with the goal of negotiating an agreement with the Chinese Government that would address and resolve these issues in favor of the United States. It is not clear that this strategy worked as hoped.

China has been methodically and strategically opening its markets, while at the same time balancing its objective of preventing foreign domination of its industries until such time as China can compete globally. While one can understand why China has been slow in allowing market access, it has now become a global economic power and has become a worthy global competitor. It is reaching the time when its emerging company mentality and fear of foreign domination cannot justify its market access limitations. The United States has a fair beef that China's companies for the most part have relatively unfettered access to the U.S. market (with the exception of CFIUS), without reciprocity from China. The Trade Agreement did not really move the ball in this regard.

The enactment of FIRRMA is a legitimate response both from the perspective of U.S. national security and as a response to a lack of market access reciprocity by China. This has been effective in limiting Chinese acquisition of and investment in strategically important technology through

[34] Chapter 7 of the Trade Agreement.

the enactment of FIRRMA. The CFIUS process is opaque and the public has no public record of which transactions were cleared and which were mitigated. Therefore, we cannot assess the extent of economic considerations in CFIUS decision-making. But there is evidence that Chinese companies are opting to file with the Committee out of fear of FIRRMA, so FIRRMA is having an effect.

Since FIRRMA was enacted as a federal law, it is not a bargaining chip that can be used by the Trump Administration in any U.S.-China negotiations or in any trade agreement. It is a relatively permanent restriction on China's ability to access technology in the U.S. and gain control of certain U. S. businesses. CFIUS has been on the books since 1988, with only two substantive amendments since then. It is unlikely to see further amendment in the immediate future.

The CFIUS Committee has attempted within the framework of FIRRMA to strike a balance between protecting national security and not stifling foreign investment. First, the new FIRRMA regulations contain specific guidance to foreign investors making covered (minority) investments and covered real estate investments to the extent possible, keeping in mind that the Committee must allow leeway to consider all factors in any specific transaction. Its definitions of critical technology and covered investment critical infrastructure are detailed and targeted. It has listed the actual industries and tasks constituting covered investment critical infrastructure. Its definition of sensitive personal data gives objective standards wherever possible. While limiting Chinese purchase or leasing of militarily sensitive real estate sites, it has listed the actual military sites and the proximity distances. Chinese investors should take comfort in this guidance. At the same time it has enhanced tools for evaluating whether the national security of the United States is threatened. It is also anticipated that, when the U.S. Department of Commerce issues its regulations defining emerging and foundational technologies, the Committee will amend the CFIUS regulations on critical technologies to make it easier to determine whether filing with the Committee is necessary.

Another objective of the Committee was to not unduly hinder foreign investment, including Chinese investment. While a number of transactions have been blocked recently under CFIUS, the vast majority of transactions, including a vast majority of Chinese transactions, have been cleared. Understandably, more transactions have been blocked due to the expansion of FIRRMA, but the expanded scope of FIRRMA is not that extensive.

One area in which China has made some progress, and which the United States has every justification to push for, is the protection of intellectual property, whether it is patents, trademarks or trade secrets. Historically, China's culture was one that did not value intellectual property as the West does. With a communal history dating back to the days of the emperor, Chinese society valued the interests of the whole over the interests of the individual, unlike the West, and particularly the United States, where the interests of the individual drive the values of society. Furthermore, enforcement of intellectual property in the modern Chinese legal system is based on enforcement by governmental agencies, unlike in the West, where the primary driver for enforcement of intellectual property rights is litigation between private litigants in the court system, which has proven to be more effective. We are now witnessing more intellectual property enforcement through the Chinese court system, including among domestic Chinese companies, which may be a harbinger of greater intellectual property rights enforcement in that country. The Chinese government has made significant strides in its intellectual property laws, as it recognizes

the importance of intellectual property rights in the development of a strong economic system in a global playing field. It is in China's long-term interest.

Pressure from the United States over the last twenty years, including the provisions in the Phase I U.S.-China Trade Agreement, is helping to force China to implement measures to protect intellectual property. It is this author's view that China was and is on a trajectory of greater intellectual property enforcement and that the intellectual property provisions of the Phase I U.S.-China Trade Agreement are more a reflection of changes in China than a driving force.

Similarly with the West's complaint of forced technology transfers, China had already adopted the Foreign Investment Law, which prohibits forced technology transfers, in March of 2019, well before the U.S.-China Trade Agreement negotiations. It is hard to tell whether the Chinese Government had already realized it needed to head in that direction as part of China's integration into the global economy, or whether the Chinese Government foresaw negotiations with the Trump Administration and wanted to be in a position of giving something in the negotiations at no cost to China. In either case China has taken this important step, at least on paper.

Another reason for China's movement on technology transfers is the development of its innovation engine. While not at the level of the United States except for a few industries, China has become more sophisticated in its innovation of technology. Under no circumstances will China retreat from its China 2025 vision. What country would abandon its goal of becoming technologically more advanced, particularly the second largest economy in the world? The Trump Administration was, and most likely in the next phases of the Trade Agreement will, be unsuccessful in imposing real limitations on this fundamental mission of President Xi, which is now part of the Chinese Constitution.

From China's perspective, it recognizes the need to open up and to conform to international norms if it wants to take its rightful place in the global economic society. On the other hand, it seeks the recognition and respect deserving of a country that has grown to be the second largest economy globally. It wants to be the predominant economic power in its region and understandably needs a strong presence regionally for its own national security. Nor does it want to be reliant on the United States to the same extent as it has in the past. It recognizes the contributions of the United States and the West to its phenomenal economic growth and wants to maintain good relations with the United States, but it wants to chart its own course.

In response to its newly found (or rejuvenated) prominence globally, China has started to and will continue to de-link itself from the United States to minimize its reliance on the United States. This is reflected in the Phase I U.S.-China Trade Agreement, in which the United States was unable to obtain major fundamental concessions from the Chinese Government. We have also witnessed a significant decrease in Chinese foreign direct investment into the United States since 2018, partly due to the enactment of FIRRMA by the United States, but also partly due to China's adopting a more restrictive approval process for overseas direct investment. This decoupling will continue and probably accelerate.

In this author's view, as China becomes more technologically advanced, it will undertake stricter intellectual property enforcement to protect its homegrown technology and will become less

dependent on technology transfers from the West. These concerns of the West will become less prevalent.

The economic clash between these two countries and cultures requires careful handling. It is important that the United States maintain a strong working economic relationship with China. As China becomes more powerful and more consequential in the global economy, both the United States and China would benefit by reciprocal trade and investment. Rather than driving a wedge between the two countries, they should work to explore how to maintain sound relationships notwithstanding the competitive friction.

Appendix

Temporary Emerging and Foundational Technologies

Industry	*NAICS Code*
Aircraft Manufacturing	NAICS Code: 336411.
Aircraft Engine and Engine Parts Manufacturing	NAICS Code: 336412.
Alumina Refining and Primary Aluminum Production	NAICS Code: 331313
Ball and Roller Bearing Manufacturing	NAICS Code: 332991.
Computer Storage Device Manufacturing	NAICS Code: 334112.
Electronic Computer Manufacturing	NAICS Code: 334111.
Guided Missile and Space Vehicle Manufacturing	NAICS Code: 336414.
Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	NAICS Code: 336415.
Military Armored Vehicle, Tank, and Tank Component Manufacturing	NAICS Code: 336992.
Nuclear Electric Power Generation	NAICS Code: 221113
Optical Instrument and Lens Manufacturing	NAICS Code: 333314.
Other Basic Inorganic Chemical Manufacturing	NAICS Code: 325180.
Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	NAICS Code: 336419.
Petrochemical Manufacturing	NAICS Code: 325110.
Petrochemical Manufacturing Powder Metallurgy Part Manufacturing	NAICS Code: 332117.
Power, Distribution, and Specialty Transformer Manufacturing	NAICS Code: 335311.
Primary Battery Manufacturing	NAICS Code: 335912.
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	NAICS Code: 334220.
Research and Development in Nanotechnology	NAICS Code: 541713.
Research and Development in Biotechnology (except Nanobiotechnology)	NAICS Code: 541714.
Secondary Smelting and Alloying of Aluminum	NAICS Code: 331314.
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	NAICS Code: 334511.
Semiconductor and Related Device Manufacturing	NAICS Code: 334413.

Semiconductor Machinery Manufacturing	NAICS Code: 333242.
Storage Battery Manufacturing	NAICS Code: 335911.
Telephone Apparatus Manufacturing	NAICS Code: 334210.
Turbine and Turbine Generator Set Units Manufacturing	NAICS Code: 333611.