

Web Memo



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After Dubai Ports: Getting CFIUS Reforms Right

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In the wake of the Dubai ports controversy, debate has centered over how much control Congress should wield over foreign direct investment (FDI). Proposals in the House and Senate would modify the law governing the Committee on Foreign Investments in United States (CFIUS), which reviews FDI deals that have national security implications. The bipartisan House legislation sponsored by Rep. Roy Blunt (R-MO) and others would strengthen the CFIUS process without unduly delaying or politicizing FDI deals. This approach meets national security needs while promoting foreign investment in America.

Foreign Investment and the American Economy

The United States is the world's dominant economy. America's economic potential and the openness of its markets make it a major destination for foreign investment. By the end of 2004, foreign investors held \$1.9 trillion in U.S. corporate stock and \$2.7 trillion in tangible assets. In 2005 alone, foreign investors increased their holdings in the U.S. by \$1.4 trillion. This investment is good for America, contributing to low interest rates, bolstering stock values, and generating new jobs. In fact, foreign investment today supports about 5.3 million jobs.

Any new rules restricting foreign investment will result in America paying the price in lower growth and fewer jobs. Raising protectionist barriers to

foreign investment through the implementation of an overly intrusive investment approval process would restrain economic growth and opportunity; undermining the American economy.

Moreover, there may be secondary consequences of enacting new foreign investment barriers. America could face less market access and opportunity abroad as countries enact retaliatory policies that result in ever higher barriers to global investment. This would put American investors at a global disadvantage.

Congress has a responsibility to ensure America's national security concerns are adequately addressed. However, backsliding into protectionism is not an acceptable solution.

CFIUS Today

The Exon-Florio provision, under which CFIUS operates, was implemented in 1988 to provide an objective, non-partisan mechanism to review foreign investment that may threaten national security and block those rare investments that fail the review. This review is conducted by CFIUS, composed of representatives from the 12 federal agencies that monitor FDI. The process is designed to be non-partisan and non-political, and decisions are based solely on the merits of the transaction and appropriate security concerns. In order to reduce the economic cost of delaying investment,

CFIUS conducts its reviews in as timely a manner as possible.

The furor over the sale of facilities in U.S. ports to Dubai Ports World raised concerns over whether CFIUS adequately addressed the deal's homeland security implications. The Exon-Florio provision has not been reviewed by Congress since 9/11. It is certainly appropriate for Congress to review and update the legislation.

CFIUS Tomorrow?

The Senate's reform proposal is intrusive. It would enable any CFIUS member agency to request a 30-day extension in the review process, likely doubling the time of most transactions. It also mandates a 45-day review of transactions involving the acquisition of "critical infrastructure," a classification that is overly broad and could represent almost any investment in the United States. Most troubling, the bill requires that congressional leaders and affected state governors be notified of confidential and proprietary details of an ongoing review. This provision would likely politicize the approval process.

Congress does not receive comprehensive notification in any other administrative procedure. Congress sets the law, establishes procedures to implement and enforce the law, and oversees the successful fulfillment of those procedures. As such, Congress plays no collaborative role in antitrust decisions, patent and trademark awards,

or International Trade Commission reviews. Likewise, a successful CFIUS process depends on Congress continuing its oversight role, without becoming a part of procedure.

In contrast to the Senate's approach, the House's bill focuses exclusively on redesigning the investment approval process and making it more transparent. The House approach gets to the heart of the CFIUS problem – appropriate reporting and consideration of investment by government-owned firms – without opening the door to protectionism and without restricting the great benefits of foreign direct investment. Under this proposal, congressional leaders would receive a report of exceptional cases within five days of the conclusion of the investigation.

Don't Politicize FDI or Security

The Senate approach is an invitation to protectionist activism and would politicize a necessary national security review process. The House approach would strengthen the CFIUS process without bogging down beneficial FDI.

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