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CFIUS AND THE ROLE OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

HEARING

BEFORE THE

SUBCOMMITTEE ON
DOMESTIC AND INTERNATIONAL
MONETARY POLICY, TRADE, AND TECHNOLOGY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

APRIL 27, 2006

Printed for the use of the Committee on Financial Services

Serial No. 109–89

U.S. GOVERNMENT PRINTING OFFICE

30–540 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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CFIUS AND THE ROLE OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

Thursday, April 27, 2006

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC AND
INTERNATIONAL MONETARY POLICY,
TRADE, AND TECHNOLOGY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:02 a.m., in room 2128, Rayburn House Office Building, Hon. Deborah Pryce [chairwoman of the subcommittee] presiding.

Present: Representatives Baker, Pryce of Ohio, Kelly, Manzullo, Neugebauer, McHenry, Waters, Maloney, Sherman, Crowley, Bean, Wasserman-Schultz, and Blunt.

Ex officio present: Representatives Oxley and Frank.

Chairwoman PRYCE. The Subcommittee on Domestic and International Monetary Policy, Trade, and Technology is now called to order. This is a hearing on CFIUS and the Role of Foreign Direct Investment in the United States. I'll begin with my opening statement, and then we'll use the Greenspan rule, which we're going to have to soon rename. And I'll allow Mrs. Maloney and our two chairmen to give opening statements.

I'm very pleased to welcome all of you here today. I'd like to thank our witnesses once again, and I appreciate the opportunity to discuss with you the CFIUS process and the role of foreign investments in the United States.

Over the last few years, we have heard much on the CFIUS process, and some transactions that have given pause to many Americans. Since 9/11, Congress has taken a strong position on the importance of national security by strengthening our ports of entry, increasing benefits for our men and women in uniform, and protecting our troops to ensure that our country remains safe.

In a post-9/11 world, Congress operates under heightened awareness when it comes to all aspects of national security. National security, however, is not mutually exclusive of economic security and trade. While strengthening our security, we have also continued our work to strengthen our relationships and open markets with nations abroad, nations like India and China. These countries have a growing appetite for foreign goods and products, American products, and American investment.

In the late 1990's, China began loosening its regulations on companies wanting to invest and build. India, a country whose economy is reportedly growing at 8 percent a year, had started to open

its markets to foreign investment after years of negotiations. American companies, brand names that we all recognize, like Nike and Budweiser, have grown exponentially because of these markets opening up, and growing American companies means a growing job force here at home.

At a time when the rest of the world is moving forward, some here in Congress are talking of taking a step back. Congress has no greater obligation than to protect our homeland. Our national security is paramount above all else, but we cannot let our national security concerns morph into economic protectionism that views foreign investment as inherently bad. I'm concerned that Congress's quick and politically heated reaction to a disappointing misstep by our Administration will lead to a decrease in international trade and foreign investment.

In Ohio, we have seen the benefits of welcoming companies like Siemens, Sodexho, Honda, Lexus, Nexus, and many other global companies. Honda of American Manufacturing, a U.S. subsidiary of the Japanese-based Honda Motor Corporation, has become the largest auto producer in Ohio. Honda began United States production in 1979, initially investing $35 million in Marysville, Ohio. Honda announced a new $123 million paint facility in Marysville, and to date, has invested $6.3 billion in my State.

Honda's North American plants purchased more than $6.5 billion in parts from 150 Ohio suppliers in 2005 alone. In 2004, Honda produced nearly 645,000 Accords, Civics, Elements, and Acuras in its Ohio facilities. It employs 8,500 people in my district alone. That is one good example of foreign investment in this country.

When a foreign company looks to invest in the United States, they are looking to grow their business, and that equals growing jobs in this country. A Wall Street Journal report on April 21st said that in an annual report on its survey of multinational corporations, the U.S. Department of Commerce said foreign firms other than banks doing business in the United States employed nearly 5.1 million employees in 2004, slightly less than 1 of every 20 workers in our private sector.

Since the Dubai Ports transaction, the posturing of some of those in our government has been to limit the role of foreign investment. Legislation has been passed and discussions in the press have led to a backlash in markets from Russia, China, India, and Mexico. India has just lowered investment retentions. Now they've voted to raise them again. The U.S. Chamber of Commerce recently noted that the Mexican Senate approved legislation that would create longer review periods, or that would bar foreign investment in specific sectors, such as transportation and telecommunications.

In Russia, President Putin has also proposed to limit foreign investment in key sectors, and there has been an explicit link to U.S. actions made by the economy minister as a justification for these new limits.

This issue of reforming CFIUS has the potential to undercut the United States' longstanding support for capital market access and free movement of capital. We must continue to focus our efforts on securing our Nation while remaining committed to free trade as one of the greatest engines of prosperity.

In recent weeks, Treasury has made strides in Congressional notification of pending deals that could potentially affect national security, but a wake-up call is simply not enough. More still needs to be done to ensure that a Dubai Ports World situation does not happen again.

When questions of national security or foreign government ownership arise, accountability is clearly needed. Clear standards of Congressional notification need to be set, and the President should remain the final judge for the most consequential deals.

This subcommittee has oversight of CFIUS. We have already held one hearing prior to today, and will continue to assess the process as we work on both sides of the aisle to draft legislation to reform the process of CFIUS with greater accountability. We want the American people to have more information about oversight and protections that are in place to determine if foreign investment is in the best interest of the United States' national security. CFIUS is in place to evaluate these risks, and my subcommittee is exercising its oversight of this process.

In a world entwined by global companies, it's important that we continue to protect U.S. national and economic security while promoting foreign investment. This issue touches every American who wants to know that each day, they wake up safe.

I look forward to hearing our witnesses' testimony, and I yield back the balance of my time and recognize my good friend, the gentlewoman from New York, Mrs. Maloney.

Mrs. MALONEY. And I thank the gentlelady for yielding and for her leadership on this and on so many issues, and for working constructively with all members of the committee, including Democrats, for steps forward in safety and soundness in our financial markets. I would also like to welcome all the panelists, particularly former Secretary of Commerce Evans. We worked together on the census, the accurate count, and other areas. It's good to see you again.

I would just like to say very briefly, while the immediate pressure to resolve the Dubai Ports fiasco has been lessened, we simply cannot pretend that the episode did not happen, or ignore the very real possibility that it could happen again. The task of this subcommittee, as I see it, is to develop not only sound oversight, but sound reform legislation that encourages foreign investment in the United States without putting our national security at risk or upsetting our capital markets.

Toward this end, I have introduced H.R. 4915, the CFIUS Reform Act, together with Ranking Members Frank and Gutierrez, and in a bipartisan show of support, with Representative Shays. We have many co-sponsors. I believe our bill is a moderate and balanced reform proposal that should be supported by industry. In fact, some members of industry have contacted my office already in support of it. Its provisions are based in large part on recommendations made by the General Accounting Office in a report they issued before—and I want to emphasize that this report came out before the Dubai Ports World crisis and before Dubai Ports World became a household word.

In their timely report, GAO found serious problems with the Administration's management of the Committee on Foreign Invest-

ment, CFIUS, and I believe it's time that we enact the simple reforms that they recommended. Some of the key elements of the CFIUS Reform Act are, first, ensuring adequate scrutiny of transactions that are most likely to raise national security concerns, such as those involving companies owned by foreign governments, while preserving a timely review process for cases that are of less concern.

Second, increasing the transparency of CFIUS operations without endangering the proprietary business information, our national security information. And third, ensuring that CFIUS adequately monitors transactions that either have been withdrawn from CFIUS or are subject to assurance agreements.

I look forward to working with the chairwoman and my other colleagues in a bipartisan manner to develop legislation to reform the CFIUS process, and I very much look forward to the testimony today. I yield back the balance of my time.

Chairwoman PRYCE. Thank you, Mrs. Maloney. We're waiting for Chairman Oxley. Let me just say that without objection, all members' statements will be made part of the record. But we'll go to Mr. Frank, if you don't object.

Mr. FRANK. Thank you, Madam Chairwoman. I appreciate you calling this hearing, and I know it's going to lead to a markup, and I am pleased that this is one of those issues in which we are proceeding on a bipartisan basis. And I will express in advance my regret that your side will probably get attacked in a Wall Street Journal editorial for our being collaborative in this. But hey, you take the good with the bad in our business. And I'm not sure from my standpoint that we're being attacked by the Wall Street Journal falls along that particular spectrum.

But I think we do recognize that foreign direct investment in particular is very important to our economy. And again, I say "direct investment." We are not talking here about simply investing in financial instruments. That doesn't get into this process. We are talking about foreign companies investing in real economic activity in our country. And there has been, I think, a history of people being too nervous about that.

I remember, having been here for a long time, when people were very upset that the Japanese were buying up these valuable assets. And they bought Rockefeller Center and Pebble Beach, and got one of the worst financial self-inflicted hosings in the history of the world. And it always seemed to me excessive to worry that the Japanese were somehow going to airlift Rockefeller Center to Tokyo. And in fact, Americans benefitted from that.

So we ought to be very clear, there's a lot of controversy about international economic activity. I understand that. And there were problems with buy-outs and mergers, and there were problems, in my judgment, with working people not being treated fairly.

But on the question of foreign direct investment, there shouldn't be any controversy. It's a good thing, in general. It is bringing real resources into real economic activity, and I don't want to see it unduly hindered.

And I have to say—and this may be outside of the parameters of our bipartisanship—one of the things that troubles me, frankly, is the fact that the Bush Administration messing up the Dubai

Ports issue could lead us to make changes beyond what is necessary in the law.

Now, we have different views of the competence of this Administration, obviously. But I think—look, we went through this with Hurricane Katrina, and we're going through it now. I do think people on my side have to be aware of the danger that we will overreact that every time this Administration messes something up, people say, "Well, we've got to change the law." Frankly, I have a better solution, which would, of course, be to change the Administration.

But leaving aside that, which isn't going to happen for a while, it is not always the case that because something was handled badly, the law is at fault. In this case, I think, frankly, the law was better than the way it was administered. That does not mean that there shouldn't be changes.

The gentlewoman from New York and I have talked, and she has legislation, and we talked about the GAO. Yes, I think there are ways that we can improve the process. I do not think this is a case where drastic change is needed. It is certainly not the case where we want to have this thing be more politicized.

Let me say at the beginning, any suggestion that we should get early advance notice, we and the Congress, of particular transactions on a confidential basis seems to me an invitation to greatly expand the law of insider trading abuses. I cannot think that it is useful for large numbers of Members of Congress and our staffs to be given confidential information about impending financial transactions. Let me be very clear. In this case, I don't want to know.

I do want rules that would say that if there are, in fact, things that are likely to be a problem, in that case, we may want to know.

I do think it is reasonable to differentiate between foreign governments and legitimate foreign enterprises which are non-governmental. That doesn't mean everything that the government does is bad. It means that it's logical to have a different set of rules apply. The rule ought to be that we welcome foreign direct investment, but we should also recognize that there is a category of exceptions, both with regard to who the purchaser would be, or the investor, and with regard to what the function should be that should require some heightened sensitivity. And that's our job is to improve that part of the process without putting any obstacles in the way.

I think there was an agreement—well, the analysis leading up to the agreement may differ. I think there was agreement among us—and that's the way we want to go—that we want to make it less likely that there will be problems in the future. In this case, by the way, it seems to me the problem could have been solved by someone in this Administration saying, "Probably not a good idea for Dubai to buy the ports at this point. Why don't you go buy some movie theaters or a chain of restaurants or something else?"

I think we can make it less likely that we will have this kind of mistake without making the kind of excessive changes that would interfere with something which is essentially positive, and that is foreign direct investment. Thank you, Madam Chairwoman.

Chairwoman PRYCE. Thank you, Mr. Frank. Chairman Oxley is not here yet, and he does have an opening statement. But I think

we will proceed and circle back. Oh, here he is. Well, that's very good timing. Are you ready to be recognized, Mr. Chairman?

The CHAIRMAN. I am, Madam Chairwoman.

Chairwoman PRYCE. Chairman Oxley is recognized.

The CHAIRMAN. That's ominous. All the members know that this time of year we have visiting school kids from all over the country, and I just happened to have one from my district, so—

Mr. FRANK. Will the gentleman yield?

The CHAIRMAN. I'd be glad to yield to my friend from Massachusetts.

Mr. FRANK. I just want to say for someone not running for reelection, to see a school group is real dedication.

The CHAIRMAN. Above and beyond, yes.

[Laughter]

The CHAIRMAN. I also found out that I was the only one standing between them and lunch.

Thank you, Madam Chairwoman, and thank you for holding this important hearing. You've been a leader in the effort to ensure that the American economy will have the needed investment muscle to continue its expansion and job creation, while not impairing national security, and we all appreciate your efforts.

The debate earlier this year about CFIUS was all about a single transaction that clearly could have been handled better. Congress and the Administration need to work out a better way for Congress to carry out the necessary oversight of that process.

However, the basic process works well in that it has done a good job of screening takeover proposals from foreign companies for American companies. I can think of quite a number of times that the process has stopped the deals that shouldn't go through and approved the ones that should, sometimes doing so with appropriate modifications to protect against the loss of a defense industrial base or a critical technology.

The results have been, in a nutshell, spectacular. U.S. subsidiaries of foreign-owned companies employ over 5 million Americans. The average salary for those workers is a healthy $60,000, and a third of those jobs are in manufacturing. In a time when we worry about our balance of trade, it's important to remember that more than 20 percent of U.S. exports are produced by U.S. subsidiaries of foreign companies. Even the phrase, "foreign company" is something of a misnomer. In our increasingly global financial economy, citizens of the United States invest heavily in the equities of so-called foreign companies, owning $2.9 trillion worth of those stocks. Nokia, the Finnish telecommunications company, is 40 percent American-owned. Twelve percent of Swedish automobile and construction equipment manufacturer Volvo is owned by Americans, either through direct stock ownership or mutual funds, and one of its 10 largest investors is a U.S. funds manager.

Though these firms are based overseas, Americans holding an ownership stake in these and other similar companies directly benefit from foreign investment in the United States. It's not even just manufacturing and service industry jobs that are in-sourced. A lot of the profits from these U.S. subsidiaries are reinvested here in the United States in new plant and equipment and in research and development.

The Swiss firm Navartis, in fact, has its worldwide research and development headquartered in Massachusetts. Panasonic was able to develop the plasma television sets we all know that we need so we can better watch golf and baseball after buying a U.S. company that developed a technology but couldn't find financing here to refinance breakthrough. That was a great breakthrough—high definition television and those kind of screens. I'm sure the former Secretary of Commerce agrees with that.

It's been a decade since the terms "foreign" and "domestic" were distinct, and we need to update our thinking to match our modern global economy. While the benefits of foreign direct investment should be apparent to all, and are probably in every Congressional district in the country in some shape or form, the downsides of erecting a protectionist wall cannot be overstated.

If Congress makes it too onerous to invest in this country, why would anyone in their right mind do business here? Labor is cheap in China. Resources are cheap in South America. Markets are huge in Europe. Already with the talk of making investment here more difficult, the parliaments of Russia, India, Mexico, and elsewhere have begun debating new retaliatory moves. There are a number of countries ready to use this issue as a reason to make their own markets harder to crack for Americans.

An incorrect move right now would be a particular setback when China is beginning to open up to foreign investments. The door to China is open to European manufacturers and financial institutions, but not to U.S. firms. I think we can all imagine the consequences.

Madam Chairwoman, I just returned from a trip with the Speaker to India and to Vietnam, and I was struck by the changes—I didn't know what to expect in Vietnam, but I was struck by the changes that have taken place there since the war. And they have rejected the old eastern European style economy that they had for 10 or so years, and have moved to a market-based economy that has produced immense growth in that part of the world, and they desperately want to have permanent normal trade relations with the United States and to join the WTO. That's how much the world has changed. Just 30 short years ago, we were killing each other in the rice paddies of Vietnam. It's an amazing, amazing change.

I think we can all take a deep breath before we decide to legislate things that might feel good, but actually do real damage to the country that we live in, that we will leave to our children. If America is to stay strong, we need the opportunities and challenges that foreign investment brings. We can protect our national security by constant vigilance, but we cannot protect it if we lack the economic prosperity that allows us for that protection.

With that, Madam Chairwoman, and with my sincere welcome to our distinguished panel, I yield back.

Chairwoman PRYCE. Thank you, Mr. Chairman. And it is an honor to have you gentlemen here with us today. And without objection, your written statements will be made part of the record. Each of you will be recognized for 5 minutes to summarize your testimony. And I will begin with introductions.

Don Evans, it's great to see you. Former Secretary of the Department of Commerce and current CEO of the Financial Services

Forum. The Financial Services Forum is an association comprising the chief executive officers of 20 of the largest financial institutions doing business in the United States. The Forum works to promote policies that enhance savings and investment in the United States, and that ensure an open, competitive, and sound global financial services marketplace. Welcome.

Mr. Paul Vikner, president and chief executive officer of Mack Trucks. Mack is a member of the Volvo Group, a publicly-held company headquartered in Gothenburg, Sweden. Today, Mack is one of North America's largest producers of heavy-duty trucks, and Mack vehicles are sold and serviced in more than 45 countries worldwide. Welcome.

Jeffrey Anderson is the executive director of Virginia's Economic Development Partnership. The VEDP identifies and markets to companies worldwide seeking to expand or relocate business facilities. In addition, VEDP promotes the export of Virginia products and services through its International Trade Division. In 2004, the organization accounted for the announcement of more than 45,000 new jobs for Virginians, and nearly $3.5 billion in new capital investment. Welcome.

And Daniel Tarullo—is that the correct—all right—is a professor at Georgetown University, teaching in the area of international economic regulation, international law, and banking law. Prior to his work with the University, Professor Tarullo worked in the Clinton Administration as an assistant to the President for International Economic Policies. We welcome all of the witnesses, and look forward to your summaries. And without objections, your statements will be made a part of the record, and we will proceed with testimony from Secretary Evans.

STATEMENT OF DONALD L. EVANS, CHIEF EXECUTIVE OFFICER, THE FINANCIAL SERVICES FORUM

Mr. EVANS. Thank you very much, Madam Chairwoman. I'm absolutely delighted to be here. And Ranking Member Maloney, I'm just delighted to see you. As I look all the way across the top row, I see friends that I made while I was here as Secretary of Commerce, and every one of you, I was able to work together with on various projects. I think we did some constructive things while I was here, and I thank you for your support.

I particularly like the spirit of bipartisanship on this specific issue. I've only heard one mild partisan remark since I've been here today, something about changing the Administration. Other than that, it seems like a very bipartisan kind of effort under way.

Let me proceed with my written testimony. Madam Chairwoman, I'm here as chief executive officer of the Financial Services Forum, which is an association comprising the chief executive officers of 20 of the largest and most diversified financial institutions with operations in the United States. The members of the Forum share Congress's commitment to national security. Our industry is deeply aware of the serious threats faced by our Nation and the need for Congress to consider all aspects of national security in its decision-making.

We fully support the President's authority to suspend or prohibit any foreign acquisition, merger, or takeover of a U.S. corporation

that is determined to threaten the national security of the United States. We also believe strongly that protecting U.S. national security and advancing U.S. global economic leadership are compatible and reinforceable goals. We cannot achieve one without pursuing the other. In today's interconnected world, the health and future of the U.S. economy and American jobs rests on open markets and the free flow of capital.

Indeed, a new poll released today by the Financial Services Forum shows that Americans value the benefits of foreign investment when they have the facts. When the interviewer explained that 5.3 million jobs were provided by foreign investment, and that those jobs paid more than the average, 52 percent said they had a more favorable view of foreign investment. Of those that initially had an unfavorable view of foreign investment, one in three, or 34 percent, said that they had a more favorable view after hearing the economic benefits. Given the importance of foreign investment to the U.S. economy, any changes to the CFIUS process should result from a thoughtful, considered, and fact-based assessment.

I'd like to mention four points which we believe should guide Congressional consideration of reforms to the CFIUS process.

First, the vast majority of foreign acquisitions have no bearing on U.S. national security. Rather, they play a positive role and make significant and increasing contributions to our economy by creating millions of jobs by American workers and for American workers and enhancing our competitive position in the global marketplace.

Second, successive Administrations of both political parties have for decades worked aggressively to establish a global rules-based system founded upon the principles of open investment and free trade. This continuity in policy has enabled America to prosper, assert a leadership role in the global economy, and to advance our broader foreign policy and strategic interests.

Third, the existing CFIUS process is fully capable of identifying and dealing with potential threats to our national security, although we recognize that the process has some shortcomings, particularly with regard to communications with Congress, and that some reform may be warranted. Existing law provides the President with sufficient authority to block any foreign acquisition or mitigate related national security concerns.

Finally, it is instructive that upon establishing CFIUS, Congress wisely chose to insulate it from political influence. And by imposing strict confidentiality requirements, Congress explicitly recognized the sensitivity of the data relative to such transactions from a national security standpoint, as well as a commercial standpoint. The rationale supporting both decisions is as valid today as it was 2 decades ago.

We support more open communications between the Administration and Congress regarding the CFIUS process. We are, however, very concerned about proposals that would give Congress unprecedented new power to delay or overturn decisions by CFIUS.

We are also troubled by proposals that would discourage foreign investment by requiring lengthy review periods, or proposals that, while intended to elevate national security scrutiny of foreign investments, might well prompt decisionmakers to disapprove meri-

torious investments that do not pose genuine national security threats.

Of particular concern are proposals that would provide for Congressional override of a Presidential decision regarding foreign investment, increase required time periods for review and investigation, require unprecedented notification to Congress and State officials, expand the scope of CFIUS to include notions of economic security, summarily deny foreign acquisitions or ownership, management or operation of U.S. critical infrastructure, and require a 45-day investigation for acquisitions of U.S. companies by state-owned entities.

Madam Chairwoman, as reform alternatives are further deliberated, we urge Congress to take a thoughtful and measured approach, ever mindful of the critical importance to America and to the world of thriving global trading relationships. We urge Congress to keep America's markets open, even as it protects America's security. Protecting national security and promoting foreign investment and free trade are not mutually exclusive. We can, and must, do both.

Thank you for the opportunity to appear before your committee.

[The prepared statement of Mr. Evans can be found on page 50 of the appendix.]

Chairwoman PRYCE. Thank you very much, Mr. Secretary. Now we'll hear from Mr. Vikner.

STATEMENT OF PAUL L. VIKNER, PRESIDENT AND CEO, MACK TRUCKS, INC.

Mr. VIKNER. Good morning, Madam Chairwoman, ranking members, and other members of the committee. My name is Paul Vikner. I am the president and CEO of Mack Trucks, Incorporated, and a member of the Group Executive Committee of the overall Volvo Group around the world. Volvo is Mack's parent company, and they are a member of OFII, and they're headquartered in Gothenburg, Sweden.

First, I should note that neither Mack nor Volvo has ever been through a CFIUS review, so I have no personal experience of the process. Moreover, on behalf of myself and the thousands of proud Americans and their families who work for Mack, we fully support appropriate and thorough oversight of foreign investment to ensure the security of our Nation and its people. But at the same time, we also recognize the need to establish the right balance between managing national security risks and preserving the benefits of an open investment policy to the United States and its people.

My goal today is to share Mack's experience with the benefits of foreign direct investment, or what we call in-sourcing, to provide you with the perspective of a global corporation like Volvo, that is routinely evaluating where in the world it should invest its capital.

Since 1900, 105 years, the Mack name has become something that stands for strength, and is one of the leading brands in the overall truck market here in the States and around the world. And we use a phrase that we use quite a bit, "It's built like a Mack truck." And it's become part of the language, I think, that many of us use, and we are very proud of that.

We are also one of North America's largest producers of heavy-duty trucks. We are the leader in construction, refuse, and the regional hauling segments of the industry, and we are the number one exporter of heavy trucks from our plants in North America to other world markets.

However, in the last 20 years, the truck industry has gone through some dramatic changes that have impacted the cost of developing and manufacturing products both around the world and here in the United States. And these costs are driven by the needs of an increasingly demanding client base, and by ever more stringent factors coming in the form of movements of various technologies around the world.

Ultimately, this has meant that a regional truck maker like Mack could not compete, and in fact, could probably not survive, only as a regional truck maker here with most of our business in the States.

In 2001, Mack was bought by Volvo, a global leader in capital equipment and commercial transportation products, with annual North American sales of approximately $8 billion, the Volvo Group's operations employ about 12,000 people in 19 States. With the Volvo Group support, Mack manufacturing operations in Pennsylvania and Virginia have been upgraded not just in terms of productivity and output, but also in terms of environmental responsibility and workplace safety.

Our ability to serve customers through our distributor network, which also employs tens of thousands of people, has also been improved, and the Volvo Group's investment in Mack has made possible the most extensive, rapid, and broadest product renewal of Mack products that we ever received in our 105-year history.

Now let me mention one specific investment by the Volvo Group in the United States. It's the $150 million transformation of our engine and transmission plant in western Maryland. And thanks to that commitment, the facility will provide Mack and Volvo trucks and other Volvo products in North America clean diesel engines that meet some of the strictest environmental standards in the world, all assembled by Americans here in the United States. And this investment could have been made, frankly, in other places around the world, but Volvo decided to invest in Hagerstown based upon, among other factors, the welcoming environment for international investment in the United States.

Our experience at Mack is by no means different from any other companies, and in my written testimony I note many ways that foreign direct investment is improving the employment, economic, and investment situation across the United States. Also in my written testimony, I note results from the annual CEO Survey conducted by OFII regarding competitiveness in the United States as a location for business investment.

For the sake of time, I will just point out that that survey, I feel, is a very important set of information, and I'm sure that OFII will be glad to share it with the members if asked.

In conclusion, I want to reiterate that the commitment of resources by our parent company is a major reason that Mack is able to compete not only in the United States, but around the world. I also want to again emphasize that both Mack and the Volvo Group

are fully committed to the concept that national security is any nation's first priority. But we also believe that a balance can be struck between those concerns and the economic value of open investment policy without raising unnecessary barriers to foreign investment.

I thank you, Madam Chairwoman, for the opportunity to appear before the committee today.

[The prepared statement of Mr. Vikner can be found on page 71 of the appendix.]

Chairwoman PRYCE. Thank you very much for your testimony.

Mr. Anderson.

STATEMENT OF JEFFREY M. ANDERSON, EXECUTIVE DIRECTOR, VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

Mr. ANDERSON. Good morning, Madam Chairwoman and ranking members. I'm Jeff Anderson. I'm the executive director of Virginia Economic Development Partnership, and I'm here today representing the Commonwealth of Virginia, and to briefly describe our focus on foreign investment in Virginia. We are the lead agency within the State of Virginia to drive investment and expansion of businesses across the Commonwealth. We are here to promote the positive business environment and the ability to grow businesses here in Virginia.

In 1607, an English venture known as the Virginia Company established a colony in Jamestown. Almost 400 years later, that investment has become the Commonwealth of Virginia. We believe today, 400 years later, that Virginia is the place for foreign investment in the United States. We currently have 145,000 people employed in the State of Virginia by companies that are foreign-owned. The Virginia Development Economic Partnership has tracked the investments of those companies since 1980. In the last 26 years, 62,000 jobs have been created, and $9 billion of capital has been invested.

One of the main selling points for Virginia is that we offer a competitive operating cost here in the United States. Virginia has become a business climate that is advantageous to all companies, foreign and domestic.

In 1968, Virginia became one of the first States to open up foreign offices to attract business capital from foreign markets. We initially opened up in Brussels, and subsequently moved our European base of operation to Frankfurt. In addition to our European operations, we have offices in Japan, South Korea, and Hong Kong. In addition, we have trade offices in Mexico and Brazil.

Companies have a choice in making location decisions. Transparent business regulations and open legal systems in the United States give Virginia a tremendous competitive advantage in the international marketplace. Competition is global, not just with competing States. Recently, we have competed with Asia, Latin America, and Europe for new jobs and new opportunities in Virginia.

I'd like to briefly go through two of the companies that are headquartered in Virginia that are foreign-owned. One is Infineon. Currently, Infineon employs 2,275 people in Henrico County, just outside of Richmond. They started off with an initial investment in

1996. In 2004, they announced a billion-dollar expansion of that plan, and subsequently will have 2,900 people employed in Henrico County.

The key point I'd like to make is that because of that Infineon investment in Henrico County, another 85 companies have located in Virginia to be suppliers and servicers of Infineon.

The other company I'd like to speak to is Maersk. In 2004, Maersk announced that they were going to be opening up a terminal in Portsmouth as a part of the Hampton Roads complex. They will be spending a half a billion dollars to open up that port, which will give us a 50 percent increase in capacity in addition to the Virginia Port Authority operation already existing there.

This is critically important to Virginia, because one of our key competitive advantages in the global marketplace is that we are the global logistics choice for the East Coast. With our deep water ports, our Virginia port operations, the Maersk terminal that is coming on line, our nine airports, one of which, Dulles Airport, is clearly international, our two major rail carriers, and our six interstate highway systems, we can and will use that foreign investment to both import and export goods and draw businesses into Virginia.

As we look forward, and as we look at Virginia's positioning, we know that this increase in foreign investment is going to continue. As we look at our pipeline today, we have opportunities that cut across medical, energy, building supplies, food products, and plastic industries. These companies are looking at Virginia and will be investing in Virginia because of the competitive nature and the open market in which we exist. Our people can respond to the challenge. We take technology and we deploy it in the most productive way on the globe.

In conclusion, the one thing I'd like to point out in my written testimony, we have listed some sample companies across the major industries in Virginia. Those companies are critical to our infrastructure and critical to our growth strategy.

Madam Chairwoman, thank you for calling me here today and let me explain our foreign investment strategy. And we hope that as you move forward with your regulation that you'll consider that and make the regulations specific to the needs of our security while still considering our need to grow our economy. Thank you.

[The prepared statement of Mr. Anderson can be found on page 40 of the appendix.]

Chairwoman PRYCE. Thank you very much.

Professor Tarullo.

STATEMENT OF DANIEL K. TARULLO, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER

Mr. TARULLO. Thank you, Madam Chairwoman, Mrs. Maloney, and members of the committee.

It goes without saying that there is nothing more important than Congress assuring that the laws that it has passed to protect the American people are being administered in an effective fashion. I think our presence here today is a reflection of the fact that, right now, a broad segment of the Congress does not have that level of confidence in the way in which Exon-Florio is being administered

by the Administration—the DP World incident being the obvious manifestation of that lack of confidence.

The sensitivities around this process have only increased, as the Chair suggested, since September 11th, when the increased emphasis on homeland security, as opposed to the traditional concerns of national security abroad, has been added and emphasized in the CFIUS process, among others. But as you consider how to shape or change this process so as better to effect your own intentions, I would urge you to keep in mind what I think is a simple but fundamental starting point for designing the legislative and administrative processes.

The resources of the CFIUS member agencies involved in the investment review process should be deployed to maximize the benefits for U.S. national security resulting from their activities. Now it seems very simple. Concentrate your resources on proposed acquisitions where the fact of foreign investment is going to raise real national security concerns.

There is a risk—many of you have already alluded to it—that overreaction, whether administrative or legislative, can produce counterproductive results rather than productive results, results that actually diminish the national security rather than enhance it. For example, to the degree that career government employees are spending more and more of their time initiating investigations in order to protect themselves from scrutiny later on, they will be spending less time investigating the kinds of transactions that raise real national security concerns.

The three gentlemen to my right have been emphasizing the importance of foreign investment. Explicit in Secretary Evans' testimony, implicit in the other two gentlemen's testimony, is a concern that casting too broad a net may serve as a disincentive to the foreign investment which can be extraordinarily helpful in the growth of the American economy.

I think, in fact, there need not be a trade-off here. Once you have decided on the national security standard that you want the Administration to implement, and once we acknowledge that there are limited resources to do any task that you set for the Administration, having CFIUS and its member agencies concentrate on the real national security concerns will mean that they will not spend their time in areas that simply discourage foreign investment, delay foreign investment, or have unnecessary effects on the kind of foreign investment that we want to encourage in the United States.

In general, then, effectively using CFIUS agency resources in pursuit of national security aims should be congruent with the aim of avoiding costly disruption of inward investment flows.

Now, as you go forward, you have multiple tools available to you. I recognize that you all know that. Obviously, you can legislate, and it feels to me as though there is legislation coming down the pike here. But you have other tools available as well.

I think that the mere fact, Madam Chairwoman, that you've held hearings, that your counterparts on the other side of the Hill have had hearings, has already had an effect. You have within your province the capacity to have later hearings, to call senior Administration officials up to meet with you to explain their plans for

change, to require some sort of follow-up. There are a variety of methods available to you to move the Administration to the point where you again have confidence in their administration of the Exon-Florio Act.

I included in my testimony a number of areas in which I think there is a need for change, whether effected administratively or through legislation. And I hope that the members of the committee will pursue those areas.

But as you go forward, I again urge you to keep in mind that the changes you will make legislatively will have a life well beyond the period it takes to turn Administration policies and practices around, and this is not necessarily something that you want to enact so as to encumber the process indefinitely.

Thank you for your attention.

[The prepared statement of Mr. Tarullo can be found on page 56 of the appendix.]

Chairwoman PRYCE. Thank you all very, very much. I believe that we have an opportunity here, as well as an obligation, an obligation to make sure that we protect our country and our infrastructure, and we secure America. But we also have an opportunity to take a good hard look at this CFIUS process, see if it's an old process, see if it is efficient in today's world, see if it can be changed. And if any of you have comments as to how we can make it better, I'd be very happy to hear those.

One thing I'd like someone to address. Perhaps Secretary Evans, you would maybe know more about this than the others. But these time frames that we deal with seem very arbitrary to me. And how were they arrived at, and are they useful? Should they be that straightforward and arbitrary, whether it's 15 or 45 or 30? Is that something that we should take a look at?

Mr. EVANS. Madam Chairwoman, I'm going to say certainly it's something that you ought to take a look at. My own judgment is, having been involved in the process while I was here for 4 years, is that the time line worked rather well.

And I think what you have to keep in mind is, let's just say for a moment that I'm a CEO of a foreign-owned company, and I'm considering an acquisition in the United States. Well, the first thing I'm going to do is I'm going to bring my team in, and I'm going to ask them what does it take to make an acquisition in the United States, and particularly if it may have some national security-related kind of issues. And what they're going to tell me is that well, there's the CFIUS process that is in place in the United States, and so, you know, you're going to need to make sure that you can meet all the requirements within that process, and this acquisition will not in any way impact the national security of America.

And so what happens is that lawyers that will be hired will sit down and talk to some 200-plus professionals who work for the United States Government in the CFIUS process well before a time clock ever begins. There are days and days—I don't know how many it might be, but it can be 30 or 60 or 90—where there's a lot of discussion before this mandatory 30-day time clock begins.

And so it's in that early stage there's a lot of facts on the table, a lot of discussion about what's going to kind of be acceptable and what won't be acceptable before the review period even begins.

And the review period, although it can start some say before you have an actual transaction to present, it typically won't start until an actual transaction has been agreed to. And it's in that time frame that it gets very sensitive with respect to the threat of proprietary confidential information getting out into the public domain. Because two parties have an agreement, and they're getting ready to go through this national security process which, justifiably so, rightly so, was designed to protect the confidentiality of the information for security purposes and commercial issues.

And so if you extend those 30-day, 30-day, 15-day periods too long, as a CEO of a company that's thinking about making an acquisition, well, wait a minute. I mean, I may be comfortable with kind of having myself exposed for the time periods of 30 days and 30 and 15, but I'm not sure how comfortable I am as people begin to kind of extend it beyond and beyond and beyond, particularly if—and I think there should be—some form of further notification to Congress of some sort in the process that does not exist today. And I think you've got to be pretty narrow and pretty careful with that.

But, you know, I think that kind of the time lines that were laid out 2 decades ago are really pretty healthy time lines once you consider the fact there's a lot of work that happens before you ever start the clock. And quite frankly, I think that 30-day period, that initial one, is an investigation period. It's not a kind of general review kind of period.

Chairwoman PRYCE. My time has expired. Do any of the other panelists disagree with that?

Mr. TARULLO. No, Madam Chairwoman. I would just add that if you look at the Omnibus Trade Act of 1988 of which Exon-Florio was a part, 15-day multiples were the order of the day. There's something slightly arbitrary about it. But then again, you have to pick some time period, and that was the period that was chosen, with some, as I recall—I happened to be working in the Senate at the time—there was some thought about exactly what the Secretary just said, how you would get the time frame long enough to make a decent decision without encumbering foreign investment.

Chairwoman PRYCE. And those 15-day pieces still work 30 years later in this marketplace.

Mr. TARULLO. Well, the Secretary alluded to a very important part of the CFIUS process, which is that frequently there is consultation before a notification is formally made. And in a smaller range of cases, the notification will be withdrawn, and the deal redone in order to address national security problems, and then refiled. So in fact, the committee does often take longer than 30 days, but it is not done within that formal, running clock period.

Chairwoman PRYCE. Thank you. My time has expired. Mrs. Maloney?

Mrs. MALONEY. Thank you. In the current CFIUS process, if the review panel determines that a business deal impacts on national security, then you have the 45-day longer period to review. And what happened with Dubai is that the committee determined that

selling 20 of our ports, including some of our largest in New York City and New Jersey, to a foreign-owned entity did not impact our national security. And I think that the American public really disagreed that it did not impact our national security.

So I would like all of the panelists, if they could discuss how they think national security interest should be defined in the CFIUS process. And I would like to quote from the GAO report in 2005 on the Exon-Florio report on this particular issue. And I quote, "The manner in which the committee implements Exon-Florio may limit its effectiveness because, number one, Treasury in its role as chair has narrowly defined what constitutes a threat to national security. And secondly, the committee is reluctant to initiate a 45-day investigation because of a perceived negative impact on foreign investment and a conflict with the U.S. open investment policy."

As a result of the narrow definition now in CFIUS, some issues that Defense, Homeland Security, and Justice officials have important national security implications such as security of supply, which is, I think, a very important issue, security of supply in our own country, may not be addressed. And I would like people to comment on really the GAO's comments on this and what you think should be the definition of national security that would then initiate this further review. I think that most Americans would think that selling 20 ports would be a national security concern.

I open it up to anyone. Mr. Tarullo, would you like to start?

Mr. TARULLO. Well, Mrs. Maloney, obviously, I don't have the inside knowledge, and I guess none of us do, which is part of the problem with the oversight function. I would just say the following. I think to a considerable extent, the—I'll say two things. One, the definition of national security, although it matters, is always going to be sufficiently broad, I think, that when a CFIUS review process identifies something that might be considered a problem, that definition will cover it.

And that, I think, takes us back again to the confidence that you have in how it's being administered right now. The absence of judicial review means that something can simply be passed through if it's not considered to be a national security problem; again, no matter what the definition says.

So I come back to this point of whether the confidence exists between the Congress and the Administration that their interpretation and their implementation of the law accords with what your intentions are.

The second thing I would say—I was in the Executive Branch. I worked in the Congress. There was something—I thought the GAO report was a very good report and extremely helpful in a lot of ways. And like you, some of the issues about not monitoring agreements were troubling and well-raised.

But there's one thing that did strike me as a little bit out of accord with my experience in the government, which is that if the Secretary of Defense or the Secretary of State or the Attorney General thought that there was a problem with a transaction, it doesn't strike me as too likely that an office director at Treasury would say, "Let's go full speed ahead."

Now, something else may be going on here. But I just—

Mrs. MALONEY. If I could, let the former commissioner of Commerce comment. And also, there was a concern raised by some of my colleagues that on this CFIUS review panel, there was no one from national defense. The NID director was not on it, or no one was on this review panel from Homeland Security. And in a post-9/11 world, there is a deep concern.

And I would say that most Americans in the Administration and out of the Administration would think that the selling of ports to a foreign government, 20 ports, would be a national security concern, therefore triggering the 45-day review. So there's a concern that I've heard from my constituents in a non-partisan way that, you know, how in the world can you make a determination in a CFIUS review panel that it was not a national concern?

So my question is do you think someone from national security or maybe Homeland Security—well, the floor is yours.

Mr. EVANS. You know, quickly, I would say that this is a post-9/11 world, and so that certainly has to be factored into this whole process. There's no question about that. And I think it already has been to some degree. Because when you look at what's happened in the last 4 years, I know there has been 3 times the number of cases that have been looked at and reviewed than the previous decade. So I know there has been some expansion of thinking as to what all really should be reviewed and looked at.

The other thing I would say about my own personal experience is when they get into the investigation process, there is a very spirited debate. I must tell you that, as Secretary, I was always informed as to what the progress was with any case that was in the investigation stage.

My then-deputy, now Secretary Sam Bodman, always kept me informed as to what his views were and what was going on and what our point of view was. And I can assure you that there was a very, very spirited debate that was taking place during that process. I can also assure you that I don't know any American, particularly any of the 200-plus career professionals who are involved in the process, who would want to be there putting their stamp on something that they would be approving that they would think in any way would jeopardize the national security of this country.

Now, to your specific point as to who ought to be there at the lead or at the table, I mean, certainly any department that has much more responsibility over the national security, homeland security of the country should be at the table. In fact, the process is set up so that they can lead it. The Treasury Secretary, or the Department, is just kind of the coordinator, and they have to look at the specific case and say, "Well, that should be led by the Department of Defense," or "That ought to be led by Homeland Security," or "That ought to be led by the Department of Labor," or whomever it is.

And so it's something certainly to look at, if, in fact, some of the right players were not at the table. But I can assure you my experience was through the process, not only was this a lot of front-end activity, but in the investigation process, there was a lot of spirited debate that, you know, I've heard feedback on throughout the process.

The CHAIRMAN. [presiding] The gentleman's time has expired. The Chair will now ask unanimous consent that the gentleman from Missouri be recognized, the majority whip who has been active in this issue, and is actually—he's on leave from this committee. Without objection, the gentleman from Missouri is recognized for 5 minutes.

Mr. BLUNT. I thank the chairman. I apologize to the panel for not being here to hear the testimony, though I had a chance to read the testimony last evening that was submitted by three of you. And I'm going to have brief questions for three of you, and then I'll look at the testimony that was presented that I hadn't seen, and we may have a written question or two on that. But again, I apologize for getting caught up and not being able to be over here when your testimony was issued.

Certainly in a post-9/11 world, as I just heard the Secretary say, we have concerns that we didn't once have on national security issues. But in a global economy, we have concerns that a decade ago we wouldn't have had that those things continue to work right as well.

So Mr. Evans, first I'd like to—I know as Secretary of Commerce, you did so much work with financial institutions and investors both here and foreign investment. What do you see is the impact of this process if it gets too onerous, and where would you give me a couple of guidelines that would be the place we'd want to be careful not to go in terms of disclosing too much information about an existing opportunity that's out there, or how much time it takes to get that procedure completed before you really begin to drive away the opportunity for that investment to be made?

Mr. EVANS. If you go too far with it, you clearly run the risk of beginning to chill foreign investment coming into this country. If you go—if you put up non-tariff barriers here in this country, then other countries will begin to think about their own non-tariff barriers. So all of a sudden, not only do you have the free flow of capital and open market into the United States, you begin to restrict opening up markets and open markets and the free flow of capital for other investment opportunities in other parts of the world for American investors, you know, which is obviously a very big issue when we think about here in America, we've got 5 percent of the people, and 95 percent of the people live outside of the borders of the United States.

So one of our major thrusts for Administration after Administration in the past number of decades has been to open up markets for our own foreign direct investment in other parts of the world, so there winds up being some kind of quid pro quo, you know. If you're going to really freeze your own markets or put up trade barriers for our investors coming into your country, we're going to do the same thing for your investors coming into our country.

And so I think that's, you know, a very serious economic consideration that you have to think through. I think there are ways—my judgment is there are ways—to make reasonable kinds of changes within the CFIUS process that I think will address some of the concerns that Congress understandably has, particularly in the area of notification, without threatening the freezing of foreign investments coming into America.

But it's a big—you know, we've got to be careful, because we're in a period that people are talking about are we going to retreat within our own borders and be protectionists and isolationists here in this country, or are we going to open ourselves up and engage the global economy?

And so any signals that we send out there that no, we really want to—you know, we're going to put up some barriers and protect ourselves and isolate ourselves, I think that runs the risk of doing some pretty serious damage to the long-term growth of our economy. Our economy cannot grow at its full potential if we put up barriers which will result in other barriers to us going into other parts of the world.

Mr. BLUNT. It seems to me also that there appears to be some receptivity toward us looking at government-controlled entities in a different way than we do entities that aren't government-controlled. Do you have a response to that at all?

Mr. EVANS. No, I don't. I really don't. I mean, maybe there's some further scrutiny that's needed there, but I don't—I'm not sure. We've got to be very careful.

First of all, I know a very small percentage of the foreign ownership in this country right now is foreign governments. It's 2 percent. So it's a very tiny piece of it. And if the will of the Congress is maybe we need to look at that a little closer, well, you know, I think that's something that we can—that maybe one can think about. But I wouldn't be one that had a lot of serious concern about that.

Can I make one other statement, though? I think my friend here on my left, Paul, who was talking about Mack Truck—let me tell you one of the other things you lose when you start putting up these barriers. Volvo, who bought Mack Truck, they have recognition as one of the safest manufacturers of automobiles and vehicles in the world. I've been to their plant. They've got a safety record that is second to none.

So that intellectual knowledge comes into our own country, is part of Mack Truck. And all of a sudden, you know, Mack trucks are maybe safer. They're built well, and everybody thinks, "Built like a Mack Truck." But, you know, you get the advantage of having that intellectual capacity from other countries, and all of a sudden, we have safer vehicles on the road here in America because of that, which is one of the other benefits of engaging in trade globally.

Mr. BLUNT. Well, let's go to Mr. Vikner, then. I know you are on the Global Management Team for Volvo, Mr. Vikner. Maybe just your sense of the global perception of the United States right now as a place to invest money? Whatever you're hearing from people who have traditionally been investing about their future plans? Any insight you can give us there?

Mr. VIKNER. Well, the United States is certainly one of the most important markets in the world. And I think any true global player in the kind of equipment business that we are in is becoming increasingly aware—you know, we are becoming increasingly aware now that you have to be a player in all of the major markets of the world in order to be competitive in any of the one market of the world.

So in other words, with what's going on with technology development, with the emissions issues, with regulations, it isn't just a matter of whether a company like Mack can survive without foreign investment. We frankly can't. You know, you have to be part of a global manufacturer in order to be competitive, even in our own market.

And one of my concerns is is that if we do not allow this to continue to take place in many of the markets similar to the truck business, not only will the United States miss out on opportunities, but I think it will even weaken the companies that are in this country if we cannot become part of a global organization.

Technology is changing investments. And diesel engine technology is costing billions and billions and billions of dollars. And in order for us to be competitive even in the United States, we have to be part of a global organization to do that.

Mr. BLUNT. Thank you. Mr. Tarullo, I know you've had a lot of experience working with foreign companies. What kind of burdens could we put here that would be the most onerous, the things that we should be the most thoughtful about as we look at this process? I think it goes without saying that the process is going to change in some way. So how do we—what do we really need to be thoughtful—most thoughtful about in terms of not turning away these investments? Which, when we do that, we reduce the value of American assets, American stockholders' portfolios and pension plans and other things, and we don't want to do that.

Mr. TARULLO. Thank you, Congressman. It seems to me that what you want to do is to give the maximum assurance to foreign acquirers who are not going to raise national security problems that they are not going to have their acquisitions delayed. They are not going to have their acquisitions subject to a politicized debate just because they're a foreign owner rather than a domestic owner, but that instead, they are going to be able to move forward.

And I think, in accordance with my principle that we all want to focus the CFIUS resources on the acquisitions that could raise real threats, the best thing the Congress, the Administration can do is to make sure the resources are focused there, and to the degree possible, allow other investors to know that they're not going to have to wait 90 days because they're acquiring an ice cream company somewhere, that they're not going to have to think that this is another layer of review no matter what issues are raised.

I think what you want to do is get to the point where a small segment of foreign acquisitions is understood to need to go through this process, but that most potential foreign acquirers are told by their advisors and attorneys, "You don't have any problem with Exon-Florio. You'll be able to just go ahead and do your Hart-Scott-Redino filing and make the acquisition."

Mr. BLUNT. And you may have covered this in your testimony, but in doing that, do we need to be particularly thoughtful if we went that direction about how we define critical infrastructure, and then how we define whether or not it takes experience in the field or something running these facilities other places? Or what would you—

Mr. TARULLO. Congressman, again, I think it is going to be very hard—and this is true with so much legislation. It is very difficult

to write a standard which clearly embraces everything you want to embrace without embracing a whole lot more. And that is why there has to be this sense of back and forth and trust between the Congress and whoever's administering the law.

So it seems to me that ideally, the situation is one in which the CFIUS agencies can make a judgment whether here, (A) the critical infrastructure is genuinely critical and (B), the fact of foreign ownership presents a real national security risk, but not to get such a broad definition that these men and women who work at the CFIUS agencies are spending hours and hours and hours pursuing acquisitions where, in the end, they're going to say, "No, there are no real issues here at all." Because every hour spent doing that is an hour not spent looking at the troublesome cases or surveying the area to make sure there hasn't been an acquisition that hasn't been notified.

Mr. BLUNT. Mr. Chairman, if I have the time for one last question, I'd just like to ask our friend from Virginia. I know you spend your time, obviously, on economic development. I think it ought to be in Missouri if it can. You think it should be in Virginia if it can. In all of those discussions you're having all the time, what do we need to be thoughtful about here so that we don't do the best possible economic development plan for Canada?

Mr. ANDERSON. I think, Congressman, that several of the points that have been made and I think I'd just like to reinforce is as companies look, and as we have a kind of dialogue today with companies who are looking at investing in Virginia, the one thing they want to be assured of is that the major benefit that they have, which is the access to our work force and our work force's ability to integrate their technologies and move them to the next level, isn't in any way deterred.

The reason companies are investing in the United States is because of our work force and the ability to move that capital and that intellectual property into enhanced products. Anything we do that deters from that will push people into other markets, such as Canada and other places. Because at the end of the day, our free flow of ideas, our free flow of management, our free flow of intellectual property is what makes us different and allows us to compete.

Mr. BLUNT. Thank you, Mr. Anderson, and thank you, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired. The gentleman from New York. Mr. Crowley?

Mr. CROWLEY. Thank you, Mr. Chairman. Thank you to all of the panelists. I, too, was not here for all of the testimony, but I have your written testimony and I'll go through it.

I have two questions while I have you here, though, to both Secretary Evans and to Professor Tarullo initially, and that is in regard to the monitoring of the mitigation agreements that are entered into by CFIUS with certain foreign investment companies. The GAO has indicated that these agreements are ofttimes entered into in a manner that makes it difficult, to say the least, maybe, or at worst, unenforceable, that these agreements are unenforceable the way in which they're written. I was wondering if either one of you can give comment on the issue and suggest remedies that we could look into in terms of addressing it.

For example, should CFIUS have an annual review? Should there be a mechanism for CFIUS to overturn a decision based on failure to comply with the mitigation agreement? And if that's the case, how would we go about implementing that?

Mr. TARULLO. Congressman, I had the same reaction you did to the GAO report on this point. It is one of a number of areas in which you need assurance, the American people need assurance, and we may need some change. It seems to me that without trying to micro-manage the process, what you should be asking for is a system that monitors assurance agreements in a systematic fashion. And that means having an agency, an individual in that agency with clear responsibility. If everybody has responsibility, nobody has responsibility. It needs to be focused in a single office, and there needs to be a system which is tracked by Treasury, as the chair of CFIUS, to assure that they are getting regular reports from the agencies that are assigned to do this monitoring.

You raise a second point as to whether the discovery of a failure to comply should trigger some new review or investigation. And I would say absolutely, at least on an informal level. That is, if something has not been complied with, then, at the very least, you need an inquiry, an investigation, a report to the other people at CFIUS. How much beyond that would probably depend on the seriousness of the breach.

Mr. CROWLEY. Secretary Evans?

Mr. EVANS. Yes, thanks. You know, I would associate myself with those same comments. I think the one thing that I would say is you do have to be very, very careful how it is structured and how the annual review might be structured. You don't want to put a company in the position of making what they consider is a long-term investment with the uncertainty that somebody may come along a year from now and take that away from them. You've got to make sure that it's not in any way politicized. You've got to make sure it stays within the professional—the career professionals. You've got to make sure that it's, you know, very, very clear language about what would constitute some sort of violation.

Because if I'm going to invest shareholder capital in something, and somebody tells me, "Well, they're going to come look at you every 15 minutes, or every year or something," I'd say, "Wait a minute. This is a 10-year commitment I'm making."

And so I want to know what it might be that would cause somebody that I don't know, I've never met, maybe somebody new next year, who might arbitrarily say, "Sorry. You don't meet the requirements."

Mr. CROWLEY. But recognizing your reservation, you do recognize as well that there is an issue here in terms of the compliance, or that these ancillary agreements that are entered into, or side agreements, are not necessarily—don't necessarily have the teeth that one would expect it would have, given the circumstances that called for the sidebar in the first place. I mean, obviously, the reason why they called for it is because somebody has put a red flag up and said, "There are some issues here that we need you to address on the side. You're going to get the deal, but you need to have it addressed."

So your concern is that it's politicized in some way outside of the CFIUS process. Is that what you're suggesting?

Mr. EVANS. Yes. I associated my remarks with what the professor said. I agree with him totally. You do have to have some kind of follow-up. You can't just ignore it. "Oh, yes. Well, let's trust them and they'll be fine, and don't worry about it." I mean, there has to be something, but it sure better be clear.

Mr. CROWLEY. I appreciate that. Okay. This is to all the panelists. And again, I know that I have limited time, but if someone would comment on it. I'm eager to continue foreign investment. I'm from New York City. I understand the significance of it.

But I'm worried about the politics, as you are, Secretary Evans, entering too deeply into the CFIUS process. This Congress needs to be—I think Congress, this and others, needs to be notified about the actions of CFIUS, and this Administration, I believe, personally speaking, has been MIA there. But I don't believe we should have any final say or veto over the CFIUS process either.

How would you recommend we draft language to provide Congress with the knowledge about the CFIUS process we need to have careful oversight of without allowing us to get too bogged down, as what was described, in the politics that really shouldn't be on our plate?

Mr. EVANS. Congressman, I think just—generally speaking, I think that I agree that Congress has oversight responsibilities of this. I agree they should be notified in a timely way. I think you have to stay pretty narrow, though, as to how Congress is notified or who is notified. I mean, I see leadership being notified. I see chairmen of certain committees being notified.

But the idea that you might notify every office up here on the Hill would trouble me. Because as was determined 2 decades ago when this was first—2-and-a-half decades ago when this was first put in place, I think they recognized the importance, the confidentiality of the information from a commercial standpoint, from a national security standpoint. And I think—again, I'm trying to put myself in the shoes of a CEO—if I've got a transaction going through this process, and it's got proprietary information on it, and somebody tells me that, "You know what? They're going to tell everybody in Congress exactly what's going on here," I'm going to worry a lot about just the potential of that information getting out in the public domain.

The CHAIRMAN. The gentleman's time has expired. The gentleman from Illinois.

Mr. MANZULLO. Thank you, Mr. Chairman. The Congressional district that I represent has been a huge beneficiary of foreign direct investigation. And FDI is aimed in large part on manufacturing facilities. And as American companies have left, the European companies have come back and recaptured the factories that the grandfathers left Europe to come to the United States to establish. And we have an Israeli company that bought out Ingersoll, a cutting tool division. That's 600 jobs. An Italian company bought Ingersoll, a machine tool division. That's 300 jobs. A Japanese company saved the last sewing machine company in the United States, Union Specialties.

And through our Congressional district, we found that the Europeans and the Asians are very good Americans, because they want to source American parts to put into the final product that they make, because they realize it's important that people have jobs in order to buy the products that they make.

And so we are very indebted to foreign direct investment, and want to do everything possible in order to not only keep it, but increase it.

My concern really is paired within an article in the New York Times of February 24th that deals with state-owned enterprises that don't have to show profit. They could come in and muscle their way through, buy an industry just to gain market share, and not have to worry about the rules of capitalism, the rules of fair play that are attached to 99.9 percent of the rest of the companies of the world.

The article talks about the fact that this is the acquisition price of DP. It also reflects the advantage that a number of the fastest-growing companies enjoy their government's deep pockets. DP World paid about 20 percent more than analysts thought the company was worth. Publicly-traded companies that were potential bidders were scared off long before DP World's final offer. I think that's extremely scary, especially with a Chinese state-owned enterprise.

And the question becomes should the CFIUS process reflect some type of an economic determinism that state-owned enterprises would use that thwart the ability of companies that operate on a free enterprise system?

Secretary Evans, you've got that frown on your face.

Mr. EVANS. No, no. I just say listen, I share your concern. I think, you know, as I traveled the world and talked about open-end trade, I always talked about a level playing field and how important that is. We've all got to play by, basically, the same rules. And that's what you're talking about, that state-owned enterprises often have a competitive advantage, an unfair advantage, because they don't have to worry about paying back the money, or they've got a lot of advantages that the private companies do not have.

I guess my question, Congressman, would be is this the right place to deal with that?

Mr. MANZULLO. I don't know. I'm raising it, because it's obviously an issue of economic security.

Mr. EVANS. I understand the issue totally, and I agree with you that we've got to level the playing field. We've got to look very hard at this. Are American companies competing with state-owned enterprises that come in here to acquire assets? I think that's something that needs to be addressed. It seems to me that this process itself is more focused on national security-related issues, and whether or not you introduce this at a more level playing field economic issue into the process. I just must admit to you I haven't thought through it.

Mr. MANZULLO. I guess the broader issue would be the definition of national security. For example, a foreign company coming in a state-owned enterprise and buying a company that produces a precious metal. Somewhere along the line, there could be national security interests on it.

Mr. EVANS. I wouldn't—you know, if it falls into the definition of a national security-related issue, then I could sure see how you would want to take a hard look at it.

Mr. MANZULLO. Does anyone else want to comment on that? Professor?

Mr. TARULLO. Thank you, Congressman. I agree with Secretary Evans for an additional reason, which is my experience in the Executive Branch that the more tasks you gave to a single group, an interagency committee, or a review group, the less likely it was they were going to do any of them well. And I think—

Mr. MANZULLO. Well, then, don't give them anything on that theory.

Mr. TARULLO. Well, no. If you give them—

Mr. MANZULLO. I mean, that's the bureaucrat's theory on how to get away from doing anything.

Mr. TARULLO. No. If you give them a task, and you say, "This is what we expect you to do. And we want you to focus in on it, and we want you to expend your resources in an efficient way," then I think you're more likely to get that result. And here, I agree with both parts of what Secretary Evans said. I agree both that it is probably not a good idea to get this into the CFIUS committee, because it begins to diffuse their consideration of things. And secondly, it is an issue that deserves some attention, deserves some attention by the Administration, by this committee.

Myself, I would think that we are probably at the stage where we need to gather more information about how much is going on, what are the case studies, what might we fear in the future, as opposed to being ready to legislate.

But I don't mean at all to disagree with your identification of an issue. It's just that my instinct is that we're probably not ready to legislate. And even if we were, we probably don't want to load on that kind of economic issue onto a—

Mr. MANZULLO. The reason I raise that is that perhaps something could be done before they buy the field that we're trying to level. It's just a thought.

The CHAIRMAN. The gentleman's time has expired. The gentlelady from Illinois, Ms. Bean.

Ms. BEAN. Thank you, Mr. Chairman. I'd like to ask the panel—and thank you for being here today. There's a movement to include critical infrastructure into the CFIUS decision-making process. How would you go about defining this in a way that would include non-traditional potential targets of security threats without being overly broad?

Mr. EVANS. All I would say is I would do it very carefully. That's how I would do it. I think you've got to be very, very careful not to expand it too broadly, back again to what the professor said earlier. I mean, you've got a limited number of resources that are going to kind of evaluate these cases. And the broader you make it, all of a sudden, you have so many cases that none of them are being handled in really a thoughtful, thorough, comprehensive kind of way.

So I would be very, very careful as to how broad and how—I mean, one can dream pretty broad if they want to. And myself, if it's been operating for 26 years or so, or Exon-Florio has been, and

it seems like it's worked pretty well for 26 years. Are there some things that need to be changed in a post-9/11 world? You bet. Expand it a little bit? Maybe so. But I would be very, very careful not to reach too broadly.

Mr. TARULLO. If I may, Congresswoman. I have a slightly different view, but not a radically different one. I think there's a distinction between how broadly you define something like critical infrastructure so that the CFIUS and the President can get at it if they need to. They can get at that deal, on the one hand. And, on the other hand, whether a broad definition forces CFIUS to do a whole lot of work in a whole lot of cases where it's not necessary.

I think it's perfectly okay for you to include in legislation a definition that is broad enough so that when it's necessary, the President can take action that he needs to take. I just think what you don't want to do—and I know you're not suggesting it. What you don't want to do is to define infrastructure, and then say, "And every time anyone is going to purchase any infrastructure, we need to have a full-blown investigation."

Ms. BEAN. Thank you. I yield back.

The CHAIRMAN. The gentlelady yields back. The gentleman from California?

Mr. SHERMAN. Thank you, Mr. Chairman. This hearing grows out of the failed trade policies of the United States. We have such a huge trade deficit that we have to somehow pay the world in a piece of ourselves. IOU's, or pieces of our infrastructure, pieces of our companies, some $800 billion a year.

It also grows out of our failure to do anything to fight for shipping jobs. We have turned over to the rest of the world all the jobs available in shipping, even though a huge portion of that shipping is bringing goods to the United States, usually coming here as a result of our failed trade policies. And, of course, with losing controlling of shipping, we've now given away our ports.

I think we owe a special debt of gratitude to the UAE taking this to the ultimate extreme, and having a country with very questionable security and very questionable policies when it comes to terror actually try to control our ports directly. And by putting this to the extreme, it's shown a spotlight on the overall failures.

Now, among the problems with the UAE, the fact that this is a country that's had telethons on its television where its president rallies its people to contribute to Hamas and other terrorist groups. I'd like to know whether this was taken into account by anyone when they looked at this UAE purchase. I realize we don't have the Administration before us here, but perhaps one of you gentlemen has some insight into how CFIUS made the most infamous of its decisions in its history.

Mr. EVANS. Congressman, I guess all I would say is I think—to that question is I think the Congress was very wise 26 years ago when they designed this as a confidential process, which means just that. It's confidential.

Mr. SHERMAN. Well, are the criteria confidential?

Mr. EVANS. Well, what they considered, or what they discussed, or what was talked about within the review of this, over 200 professionals that deal with this within the Administration, I just don't have knowledge to what—

Mr. SHERMAN. You can wrap language like "200 professionals" around it if you want to candy-coat it, but this is one of the stupidest decisions made by an Administration that has some other examples. But this one took the cake.

So you don't know whether the criteria for making the decision would include whether the host country of the company, or in this case, the owners of the company, had supported terrorism. We just don't know whether that's one of the criteria that—

Mr. EVANS. I'm not in the process, no, Congressman. Sorry.

Mr. SHERMAN. Well, you're right to point out that it is Congress's obligation. And for us not to have specified in statute that a country's record in fighting terrorism would be a very important factor, especially when we're looking, as in the UAE case, not in it being the host country, but it being the owner of the company, the ultimate owner and the supporter of terrorism is the same entity. And for that not to be a statutorily required consideration shows a failure of us to realize how blind and almost deliberately obtuse the Administration could be. And given their capacity for that, we ought to fix it. I yield back.

The CHAIRMAN. The gentleman yields back. The gentlelady from Florida?

Ms. WASSERMAN-SCHULTZ. Thank you, Mr. Chairman. I guess what I'd like to get a sense from you on is do you feel that there are significant differences in the incentives of foreign governments and their investment versus foreign companies? And in terms of those incentives, are those differences significant enough to warrant a separate process, perhaps, for review, one that might preclude foreign governments from, say, owning port terminals or other critical infrastructure?

And I know you were just expressing concern about how you define critical infrastructure. But it seems to me that there is quite a bit of difference between foreign investment and foreign government investment in terms of ownership and management of critical—or involvement in critical infrastructure. So if you could address that.

Mr. TARULLO. Sure, I'll try. A couple of things, Congressman. First, I think that as I said earlier, the larger issue of the potential distortion of economic costs that government-owned enterprises has is an important thing for the committee to consider and for the Administration to consider as a matter of economic policy going forward. That's number one.

Number two, I do think that there is a class of cases involving foreign government ownership that would set off, or should set off, a kind of alarm bell that wouldn't be set off purely because it was a foreign company.

Just an example from the past, there is certainly a possibility that industrial espionage efforts are made easier when you have a foreign government entity that has relationships with other parts of its government. I don't know that that—I don't think that's true in every case by a long shot. And as I said earlier, I think we're just getting to the point where we're seeing a trajectory now of potentially wider foreign government company acquisitions in the United States.

So my present view would be that I would hope CFIUS is considering that sort of issue. And I know, at least when I was in the government, that the espionage issue was something that people worried about. I would hope they're considering that and other kinds of issues now.

And getting back both to your concern and Congressman Sherman's concern, there is every—you have every right and responsibility in the world to ask the Administration to explain to you what its criteria for decisions are, what kinds of things affect their decisionmaking. Asking for—I know you're not doing this, but asking for business proprietary information, that's a whole different issue. But asking them to come up two or three or four times a year and say, "Here are the kinds of cases affecting homeland security we've had, here are the sorts of issues that have been raised, here are the kinds of things we've taken into account, and here's why we've made the kinds of decisions that we have,"—if GAO can do it, and they do in their reports, I don't quite understand why the Administration can't do it.

Ms. WASSERMAN-SCHULTZ. It would seem to me that even if you didn't reform significantly the CFIUS process, that when it came to foreign government investment, that you could adapt the process for a greater degree of scrutiny with foreign government-owned—

Mr. TARULLO. I would hope and expect that the people in CFIUS have enough acquired expertise and experience that when a particular kind of foreign government investment, for example, comes along, it sets off another set of questions that they ask. And for that matter, there are going to be other classes of acquisitions, even by non-governmental foreign corporations based on history, experience, and the like that set off those kinds of questions.

Mr. EVANS. I would not—you know, what I would say is I certainly would not want any foreign entity of any sort to have in their hands any information that would threaten the national security of this country. And so I don't care if it's a private company or a foreign government. I don't want any information that threatens the national security of this country getting into their hands.

Now, having said that, I do recognize that foreign governments are—they're political is what they are. And they're not accountable to shareholders to create value. You know, they're political organizations. And so, you know, should that be thought about as it's going through the process? Well, yes, it probably should.

But I think the criteria is, you know, we don't want any information getting into the hands of any foreign company or government that would threaten the national security of the country.

Ms. WASSERMAN-SCHULTZ. But see, that's why I don't understand why the alarm bells weren't set off with the Administration when it came to the DPW deal. Because, you know, we're talking about a foreign government-owned corporation that would have leased, owned, and operated these port terminals in major ports, and have intimate knowledge of our port security. And so if that's not potentially compromising national security, I don't know what is.

And I realize my time has expired, Mr. Chairman. But in closing, if any of the panelists could just address whether you think we need to change the law to do what Mr. Tarullo described, or whether that's something that we could trust would be done internally.

Mr. EVANS. Well, I think it's—you know, look, I don't think I've got enough, really, of the facts to make a recommendation to you. I'm sorry, Congresswoman. I understand your concern. It is political. Whether or not you need to have a separate kind of criteria for foreign-owned government acquisition and just foreign company, I'm not prepared to make a recommendation to you. Sorry.

The CHAIRMAN. The gentlelady's time has expired. Let me—Professor Tarullo, you talk about trying to define—within the CFIUS process, to define the real threats. And hindsight really is 20/20 in this business. But if you look at the facts of the Dubai Ports issue, not looking back, but looking at the process and the way it went through, here was a port—first of all, there was a lot of misinformation out there that somehow this foreign government was going to control the port. And that was put forth by a lot of partisan folks who didn't really know the facts.

Secondly, that the CFIUS process had worked extremely well on a number of fronts. And part of the strength of the CFIUS process is that you don't have a bunch of politicians sitting around making those kinds of decisions.

So it comes down to—well, let me ask you this. Does it appear to you on the surface that there was—that the CFIUS process broke down in this particular case?

Mr. TARULLO. Mr. Chairman, I honestly don't feel I have enough information to answer that question. I do know that the process of the Administration communicating with this committee, its counterpart on the other side of the Hill, and the American people broke down rather badly. And I do get the impression, based on the widespread view in Washington that senior Treasury and Administration and White House people were not even informed that this was happening, I get a sense that there was an internal breakdown in exercising judgment and oversight. But I feel as though I really don't have enough facts to make a decision on the merits, as it were.

And of course, that is the problem that you all face. If you're not getting enough information in an appropriate form to reassure you that the right kinds of things are being taken into account and the right kinds of decisions made, then it leads to the situation we have today.

The CHAIRMAN. Let me ask the panel, there are proposals out there, for example, that would identify critical infrastructure. The chairman of the Armed Services Committee, for example, is looking at legislation that would apply a rather broad definition to critical infrastructure as it relates to foreign investment.

How would we—if we wanted to, how would we go about trying to define what is really critical infrastructure, or indeed, what is not critical infrastructure? Is the auto industry in Ohio, Honda of America, that employs 60,000 Ohioans, is that a critical infrastructure? I would suspect that if you ask the auto industry, they would say they're part of the critical infrastructure. And if you ask my constituents who drive those automobiles, they'd say, "Yes, that's part of the critical infrastructure."

If we get into this definition game, I don't know where we end up. I have some fears of where we're going to end up, which would basically include virtually everything under that critical infrastruc-

ture, and would essentially have a dampening effect, if not a totally negative effect, on foreign investment in the first place. I'd appreciate, Mr. Secretary, your comments.

Mr. EVANS. Well, Mr. Chairman, I just agree with you. I don't know where it goes. And I think you really run the risk of sending a very, very chilling message to potential investors around the world. Because I don't know where—is it the food chain? Is it those who build the highways? Is it automobile companies? Is it banks? Is it—I mean, you can go a lot of places that cover the lion's share of this economy and somehow tie it back to critical infrastructure. Or economic security. I've heard people even talk about well, just if it, you know, affects the economic security of this country, you know, then it may fall into that category.

So I just think it's something you're going to have to be very, very careful with. Because if it gets defined too broadly, too large, then all of that's just going to have a chilling effect of foreign—or it's looking for places to send capital.

Look, it's all about a free flow of capital, open markets, and creating a friendly environment for that capital to come here to America and create jobs. And if you start sending the message out there that, "Well, we're not sure how much we want your capital to invest in contractors that build highways, or food manufacturers, or automobile companies." I mean, you know, it sends a very strong protectionist, isolationist message to those outside of America, in my judgment.

The CHAIRMAN. Thank you. Mr. Vikner, I would assume if you would ask the folks that build those excellent Mack trucks if they're part of the critical infrastructure, I would guess it would be about 100 percent; would it not?

Mr. VIKNER. I would guess so, yes. I think the trucking industry is certainly a very, very important part of the economic fabric of this country.

The CHAIRMAN. Mr. Anderson, in Virginia, can you identify any major manufacturers or any major companies that would not be part of the critical infrastructure?

Mr. ANDERSON. Not if you're employed by them.

The CHAIRMAN. Very good. You wouldn't want to tell the Governor that, "You have some components that are not part of the critical infrastructure," would you?

Mr. ANDERSON. No, sir.

The CHAIRMAN. Professor, do you have a take on that?

Mr. TARULLO. Only this, Mr. Chairman, that as I said a few moments ago, I think it's important to draw a distinction between giving CFIUS and the President the power to act where necessary, and throwing the net so broadly where they have to act, that you're creating all the problems that I think your questions bring out. I think we absolutely want to be assured that the President, where necessary, can take action that will protect things like our cyber infrastructure, things like the payment system in the United States. Obviously, things like the ports. That's come up already. But I think you can do that without forcing everybody to say, "Any time you buy anything, you're engaged in the critical infrastructure."

You know, if you recall, Congressman, what happened 18 years ago with Exon-Florio. Initially, the first few years, there were per-

haps 4- or 500 filings, notifications a year, because no one was quite sure what it meant. And then CFIUS went to work, and by 1994/1995, during the period where I was in government, the filings had declined to about 50 or 60 a year. And the reason was that people understood that yes, these are the sorts of issues that are raised.

And I would think with critical infrastructure, the same thing could happen. Initially, yes, you may have some uncertainty. But if people are doing their job, and they're honing in on what really matters, then you can avoid the parade of horribles of everything being critical infrastructure and everybody filing, while still making sure that CFIUS is doing what this Congress wants it to do, which is to protect the Nation's critical infrastructure.

The CHAIRMAN. But it would be our role, actually, to define critical infrastructure. If we allow bureaucrats to define critical infrastructure, we really—it seems to me we haven't done our jobs, have we?

Mr. TARULLO. Well, as with all legislating, it's—you know, as a law professor, this is what we do every day as we try to hone in on the problems in legislating, and then administering under that legislation. Because one wants to write a standard or write a law broad enough to potentially capture all the conduct you may want to prevent or punish, but at the same time, you recognize that by drawing it that way, you may pull in a lot of other things as well. That's when we rely on the discretion of the people who administer the law, whether it's courts or police officers or administrative agencies.

And here, I think what we should be looking for is to define critical infrastructure broadly enough so they can take action, not to define it so that they have to start an investigation every time something is arguably included, but to say, "Look, we want you focused on the critical infrastructure of this country. We want you to do an investigation where you see a real national security threat." And then we do have to have an iterative process that helps people understand what in particular circumstances is or is not critical.

So I don't think you're at all abdicating your responsibility by having a fairly general definition. And so long as that definition doesn't do anything more than empower the President, that it doesn't require all the kinds of things that Secretary Evans worries about, then I think you're okay.

The CHAIRMAN. Well, Professor, the first thing that I would do if I was to introduce a bill under Title I would be to apply the Hippocratic Oath to every congressman and senator.

Mr. TARULLO. That's your province, Mr. Chairman. That's not my province.

The CHAIRMAN. I understand. And by the way, the Hill's Angels defeated the Georgetown law faculty, the Hoya Lawyas, in basketball once again.

Mr. TARULLO. I was out of town, Mr. Chairman. Had I been there, the outcome, I'm sure, would have been different.

The CHAIRMAN. Well, I wasn't available that night either, and I can make the same argument.

Mr. TARULLO. So we both might have fouled out.

The CHAIRMAN. That was a live pair. Let me—

Mr. CROWLEY. Mr. Chairman, would you yield for just a moment?

The CHAIRMAN. Oh, the gentleman from New York.

Mr. CROWLEY. Was that the Hippocratic Oath or the Hypocrite Oath?

The CHAIRMAN. I beg your pardon.

Mr. CROWLEY. I'm sorry.

The CHAIRMAN. The Banking Committee, our counterpart in the other body, which we can now call the Senate, by the way, has passed legislation dealing with the CFIUS process. I'm wondering if any of you gentlemen have had an opportunity to take a look at that and critique the approach that the Banking Committee has taken. Do we have any volunteers? I know it happened rather quickly, but I just wondered if there was any—

Mr. EVANS. Yes, why not? I guess an observation that I would make, Mr. Chairman, is kind of an extended time line. And not only extended time line, it seems like to me a time line that would push many more of the cases into the investigation phase, as opposed to cutting that off earlier. Some of that would be because of the expanded definition of critical infrastructure.

But I just—you know, if you take the time line and you move it from 90 days to 115 days, then certainly, that has some sort of chilling effect on the investment. I don't know how much, but some. And I think if you also make the requirement such that more of the cases will move into this 45-day investigation period, then I believe that that has some chilling effect on the process as well.

And I don't know the language specifically, but I think it also—one other aspect I'm concerned about is the requirement of the secretaries to sign/certify every case. I think there may be some level the deputy can designate it, and another level the secretary can designate it to the deputy. Or that's what we'd like to see anyway. If you're requiring the Secretary to sign every case, then, you know, I'm not sure you're running into more kind of obstacles of slowing down the process.

I know when I was involved in it, I knew what was going on. And I had an active discussion with the deputy as the process proceeded, but he certainly had my authority to sign off on it.

The CHAIRMAN. But that was—that procedure, though, was really unique to Commerce in that case. Each department has different culture and procedures. That's correct, right?

Mr. EVANS. Well, I don't know how unique it was. I mean, certainly, we had a very—you know, we had a partnership relationship, and so I knew what was going on all the time. I mean—

The CHAIRMAN. But there was nothing structured.

Mr. EVANS. Nothing structured.

The CHAIRMAN. Right. Professor, do you have any comment on that, on the general question on the Senate bill?

Mr. TARULLO. Not in general, Congressman. I think there are some things in there that probably raise some questions, and some other things, such as tracking and withdrawn notifications, that are probably a good idea.

The CHAIRMAN. Let me yield to my friend from New York, because we've got to close down.

Mr. CROWLEY. Yes. Mr. Chairman, thank you for the moment. Professor, could you comment on the ranking that is offered in the Senate bill in terms of ranking countries in numerical? And as well, if you could, former Secretary Evans, respond to my question in regards to notification of Congress without over-politicizing, how would you recommend that, if you can answer that as well?

Mr. TARULLO. With respect to the country groupings, Congressman, again, this is probably coming more from my instinct as someone who used to be in the White House than as someone outside right now. But my reaction is, frankly, the following. That it better be the case that CFIUS members have something of a predisposition based on the country from which the investment is coming, a predisposition in the following sense, a predisposition that this is a country which should raise particular kinds of concerns because of things going on in that country.

How productive it is formally to go through a process of putting people in categories, and then you say, "Well, jeepers, has this country changed? Do we need to now change the category?" I'm a little bit more skeptical about the utility of that. It strikes me as the sort of thing, frankly, where if trust in the Administration has really fallen, you might be—you know, people have an instinct to push them in that direction. But I would hope that you could have a process whereby that was more an informal part of what they did.

With respect to Congressional notification, as you can tell from my written testimony and from what I've said here today, I do think that Congress and the American people need to have a better sense of how the Administration is approaching its implementation of Exon-Florio, that as I said earlier, if GAO can do it, they can do it too.

On pending cases, as Congressman Frank said at the beginning of the hearing, at some level, I'm not sure how much Congress should want. I don't know that Congress should want a notification made to CFIUS and immediately reported to the Congress.

Again, it seems to me that the better outcome, if you could achieve it—if you could achieve it, and I don't know if you can. But the better outcome would be that the Administration, whoever's in the White House, the Administration exercises its judgment to know when it needs to consult with, to mention, to notify Congress of something of a decision, for example, that they're about to make.

But regularizing it, having every notification come up here, that does seem to me to put you in a position that, number one, you may not want to be in collectively, and, number two, to raise much greater prospects of the information getting out and being used for commercial purposes or to politicize things, with the chilling effect that Secretary Evans referred to.

So again, I can't say with confidence how much you should require, how much you should rely on the Administration. But I think what one really wants to bear in mind is we don't want to politicize the process, and we don't want to get to the point where every CFIUS notification is becoming a public issue. That's not where any of us wants to be.

The CHAIRMAN. The gentleman's time has expired. The gentlelady, briefly.

Mrs. MALONEY. Yes. Although there is a concern about having a definition of what is infrastructure, there is no question or debate that selling 20 ports was infrastructure. And I want to be associated with Mr. Manzullo on the other side of the aisle, his comments on foreign-owned government subsidizing, outbidding, and really, American companies not being able to compete against them in that respect.

So the other item that many people have raised today is judgment, of making the proper decision. And my question to you, since this is a security issue, should we include on the CFIUS panel the director of national intelligence?

The President reorganized our government in response to 9/11 for the first time in 47 years, since 1947. And I certainly supported his efforts in reorganizing the intelligence system, which many people feel was the problem that led to 9/11. And why shouldn't we—shouldn't we have someone from the intelligence community whose job it is as our national security be part of this review panel? And I'd like to hear your comments on that.

Mr. TARULLO. Not a problem from my point of view.

Mr. EVANS. Yes. I mean, I don't think I have—I don't know all the facts, but I don't think I have a problem with that either. I mean, you know, certainly, it gets back to the Congressman's question about ranking of countries, and do you want to rank them in some kind of way. What you want to have about them is intelligence and what's going on in those countries. And so it seems like to me that somebody from the intelligence community should be sitting at the table.

The CHAIRMAN. The Chair wants to thank all of the panelists today. It's been an excellent discussion of give and take. With that, the committee stands adjourned.

[Whereupon, at 12:59 p.m., the subcommittee was adjourned.]

A P P E N D I X

April 27, 2006

Remarks Prepared for Delivery by
Chairman Michael G. Oxley
During a Hearing: "CFIUS and the Role of
Foreign Direct Investment in the United States"
April 27, 2006

Thank you, Madam Chairman, and thank you for holding this important hearing. You have been a leader in the effort to insure that the American economy will have the needed investment muscle to continue its expansion and job creation while not impairing national security, and we all appreciate your efforts.

Madam Chairman, the debate earlier this year about CFIUS was all about a single transaction that clearly could have been handled better. I and many others do not particularly think there is much wrong with the CFIUS process that a good spring cleaning wouldn't fix. Clearly there needs to be a little more accountability within an Administration after the Committee has done its objective reviews, and clearly Congress and the Administration need to work out a better way for Congress to carry out the necessary oversight of the process.

But from my standpoint, the basic process works, and works well, in that it has done a good job of screening takeover proposals from foreign companies for American companies, making sure the deals that shouldn't go through, don't, and the ones that should, do so with appropriate modifications to protect against the loss of a defense industrial base or a critical technology.

The results have been, in a nutshell, spectacular. U.S. subsidiaries of foreign-owned companies employ nearly five and a half million Americans. The average salary for those workers is a healthy $60,000 – and a third of those jobs are in manufacturing. In a time when we worry about our balance of trade, it is important to remember that more than 20 percent of U.S. exports are produced by U.S. subsidiaries of foreign companies.

Even the phrase "foreign company" is something of a misnomer, Madam Chairman. In our increasingly global financial economy, citizens of the United States invest heavily in the equities of so-called "foreign companies," owning $2.9 trillion worth of their stocks. Nokia, the Finnish telecom company, is 40 percent American-owned. Twelve percent of Swedish automobile and construction equipment manufacturer Volvo is owned by Americans either through direct stock ownership or mutual funds, and one of its ten largest investors is a U.S. funds manager. Though these firms are based overseas, Americans holding an ownership stake in these and other similar companies directly benefit from foreign investment in the U.S.

It's not even just manufacturing and service-industry jobs that are "in-sourced," Madam Chairman. A lot of the profits from these U.S. subsidiaries are re-invested here in the United States in new plant and equipment, and in R&D. the Swiss firm Novartis, in fact, has its worldwide R&D headquartered in Massachusetts. Panasonic was able to develop the plasma television sets we all

know that we need so we can better watch golf and baseball after buying a U.S. company that developed the technology but couldn't find financing here to refine its breakthrough.

In closing, Madam Chairman, let me say that while the benefits of foreign direct investment should be apparent to all – and are probably in every Congressional district in the country in some shape or form – the downsides of erecting a protectionist wall cannot be overstated. If Congress makes it too onerous to invest in this country, why would anyone in their right mind do business here? Labor is cheap in China, resources are cheap in South America, markets are huge in Europe. Already, with the talk of making investment here more difficult, parliaments in Russia, in India and elsewhere have begun debating retaliatory moves. That is particularly a bad development at a time when China is beginning to open op to foreign investments. If the door to China is open to European manufacturers and financial institutions, but not to U.S. firms, I think we all can imagine the consequences.

Thus, I think we must all take a deep breath before we decide to legislate things that might feel good, but actually do real damage to the country that we live in and that we will leave to our children. If America is to stay strong, we need the opportunities and challenges that foreign investment brings. We can protect our national security by constant vigilance, but we cannot protect it if we have no economy to pay for that protection. With that, Madam Chairman, I yield back the balance of my time.

Testimony

of

Jeffrey Anderson

Executive Director,

Virginia Economic Development Partnership

April 27, 2006

Before the

House Financial Services Committee

Subcommittee on Domestic and International Monetary Policy, Trade, and Technology

Good morning Madam Chairman, Ranking Member Maloney, Chairman Oxley, Ranking Member Frank, Majority Whip Blunt and Members of the Committee. My name is Jeff Anderson and I am the Executive Director of the Virginia Economic Development Partnership.

I am pleased to be here today to represent the Commonwealth of Virginia. The Virginia Economic Development Partnership is the state's lead agency for helping existing businesses expand and attracting new businesses to Virginia. My agency partners with local and regional economic development organizations across the state to promote Virginia's positive business climate to growing companies in the U.S. and abroad.

I will explain to you how Virginia benefits from foreign direct investment, which is encouraged by the open business climate of the United States. Since I have no expertise in the workings of the Committee on Foreign Investment in the United States (CFIUS), I will not be addressing that issue today.

Foreign Investment in Virginia

In 1607, an English business venture called the Virginia Company established the Jamestown Colony as a commercial project. That enterprise became the Commonwealth of Virginia. Almost 400 years later, I believe Virginia continues to be fertile ground in which foreign companies can grow.

The U.S. Bureau of Economic Analysis (BEA) tracks foreign direct investment at the national and state level. In 2003 (most current data) Virginia had 144,800 people employed by foreign companies. To put that employment figure in the context of two localities in Northern Virginia, 121,400 people worked in Loudoun County and 167,400 worked in Prince William County in 2003, according to the Virginia Employment Commission. Virginia accounts for only 2.5% of foreign employment in the U.S., but those jobs are very important to those 144,800 people. Foreign investment in Virginia totals $19.6 billion, and Virginia accounts for 1.6% of all foreign investment in the U.S.

The Virginia Economic Development Partnership has tracked announcements of planned job creation and capital investment by foreign companies since 1980. In the past 26 years, 61,900 jobs and $9 billion of investments have been announced for Virginia by foreign companies. Jobs announced by foreign companies represent 11% of all announced employment, and foreign investment accounts for 19% of all announced investment. The top countries for foreign employment are Germany, the United Kingdom, Japan, Canada, and Sweden. These countries represent 72% of all foreign employment. The leading countries for foreign investment are Germany, Japan, the United Kingdom, Denmark, and Canada. These countries represent 79% of all foreign investment. Virginia also has foreign companies from China, Iceland, India, Ireland, Israel, Mexico, and South Korea. Some industry sectors in Virginia with high levels of foreign direct investment are information technology, transportation equipment, electronics, plastics, rubber, and machinery manufacturing. Not all foreign direct investment is for big projects. The average size, based on jobs created, is 71 jobs but the median is 30 jobs created. The average size, based on capital investment creation, is $10.39 million but the median is $1.50 million.

The Organization for International Investment (OFII) analyzed the BEA data to determine the national average compensation per employee was $59,981 for U.S. subsidiaries of foreign companies. This compares to national average annual pay of $37,508 as calculated by the U.S. Bureau of Labor Statistics (BLS). Unfortunately, the BEA does not provide enough data at the state level for a similar comparison for Virginia. VEDP analysis shows the foreign affiliated projects which received discretionary grants from Virginia had an average salary of $44,671 in 2005. This is higher than the average salary for Virginia of $40,117 as calculated by the BLS. This analysis supports OFII's position that employees at foreign affiliated companies in the U.S. make higher than average wages.

The Virginia Economic Development Partnership

The Virginia Economic Development Partnership is the lead economic development agency for the Commonwealth of Virginia. One of the main selling points for Virginia is that it offers some of the most competitive operating costs in the U.S. Virginia has a business climate that is advantageous to all types of companies.

Foreign investment has long been a priority for Virginia. In 1968, Virginia became one of the first states to set up an overseas investment office in Europe when it opened an office in Brussels, Belgium. VEDP's investment office moved to Frankfurt in 1996. Successful foreign companies in Virginia not only continue to reinvest in their operations here, they become examples to other companies in their home country and to other companies in their industry. Their success makes it easier to attract similar companies to Virginia. VEDP also maintains proactive investment offices in Japan, South Korea, and Hong Kong. The agency's trade offices in Mexico and Brazil offer investment assistance as needed. VEDP maintains an aggressive marketing program to attract foreign companies to Virginia, as staff in Virginia and the overseas offices make direct calls on foreign-owned companies. VEDP is in the process of analyzing emerging international markets to determine which ones will produce investment activity in the coming years. Through ongoing strategic analysis, VEDP expects to continue to increase the level of foreign investment in Virginia.

Companies have a choice in making a location decision, and the transparent business regulations and open legal system of the U.S. help to keep Virginia competitive in the international marketplace. Competition for companies is now global, not just with neighboring states. Recent projects have pitted Virginia against countries in Asia, Eastern Europe, and Latin America. Virginia has a business-friendly environment, but increased regulations for foreign companies will reduce the attractiveness of Virginia and the U.S. in the global competition for businesses. Government regulations should not be an obstacle in companies' decision-making process.

Foreign Companies in Virginia

Instead of giving you more numbers about foreign businesses in Virginia, I will describe some of their successes.

Infineon – Based in Germany, (formerly White Oak Semiconductor) operates a semiconductor plant in Henrico County that employs 1,700 people. The initial 1996 announcement was for a 600,000 square-foot semiconductor manufacturing complex, which has been expanded twice

since then. Infineon's most recent expansion was in 2004 when it announced it would hire an additional 1,200 employees through a $1 billion investment to move forward with plans (delayed by market conditions) to manufacture memory chips using 300-mm wafers.

- Robert LeFort, President of Infineon Technologies North America Corp. cited that "the Commonwealth of Virginia has been a great partner in supporting the development of Infineon by providing performance based grants, training assistance and support for higher education," and that Richmond offers "excellent infrastructure and state-of-the art manufacturing expertise" that enables Infineon "to quickly bring 300mm capacity on line in a way that is consistent with our corporate capital expenditure plans and thus make this the fastest and most cost effective way for us to respond to changing market conditions."

In addition to the direct benefits the Infineon plant brings to Virginia, VEDP has identified 85 supplier companies that have located to Virginia to support Infineon's operations.

Volvo – In 1981, the Swedish company Volvo AB acquired the White Motor Company of Ohio, including its heavy truck production plant in Dublin, Virginia. General Motors took a minority stake in Volvo-White Corporation in 1986, but by 1994 Volvo Heavy Trucks North America was exclusively part of Volvo AB. In 1999, Volvo announced plans to double the size of its plant through an investment of $148 million and the creation of 1,277 jobs. Although market forces resulted in lower than expected employment creation, the investment went ahead as planned, so Pulaski County has benefited from increased tax revenues generated by the larger plant and additional machinery.

- At the time the project was announced, Marc F. Gustafson, the then-president of Volvo said "… we are moving ahead in Virginia, where state and business development leaders lend their support to expand employment opportunities for residents. The success of our company hinges on our people, like the 600 new employees we hired recently. Together … we will all work together to help expand our business throughout North America."

Starting in 2003, Virginia's Volvo plant also began producing Mack trucks. Volvo currently employs more than 3,000 people in the southwestern part of the state, which has helped diversify the region's economy away from its traditional industries of coal mining, furniture, and textiles.

Maersk – In 2004, the Danish shipping line Maersk and its sister company APM Terminals announced they would spend $450 million to build a new container terminal in Portsmouth that will employ 210 people after it begins operations. This facility is the first privately developed container terminal in the U.S. Maersk's current facility is adjacent to the Port of Virginia, so this expansion also will allow the state to improve capacity at its port operations.

- "This facility will create opportunities in global commerce for our customers while maintaining the highest standards in safety and security. Our vision is to create a port that will act as a catalyst for international business in the local and regional economies by creating a new, broader long term platform for business growth," said Thomas Thune Andersen, President & CEO, Maersk Inc.
- The Virginia Port Authority (VPA) has its own Police Department that is comprised of 76 state officers, sworn and certified through the Department of Criminal Justice Services. VPA officers provide access control and terminals security 24 hours a day, 7 days a week. U.S. Customs is also present at the ports offering constant and thorough inspection of cargo, as well as protection services. The U.S. Coast Guard is responsible for patrolling the surrounding waters. Additionally, Maersk will provide its own security personnel to help protect its assets.

The new Maersk terminal ties into VEDP's Global Logistics initiative. In addition to the deepwater terminals in Hampton Roads, other components of Virginia's transportation system are 6 interstates; 9 commercial airports, including Washington-Dulles International; and two major railroads, Norfolk Southern and CSX. VEDP wants to help Virginia become the global logistics hub for the East Coast. Our continued partnering and investing with domestic and foreign entities is critical to the implementation of this strategy.

Stihl – Located in Virginia Beach, STIHL Inc. is one of seven manufacturing facilities of Germany's STIHL Group. STIHL employs approximately 1,600 people in a 700,000 sq. ft. facility with manufacturing and warehouse space. The Virginia Beach operation began in 1974 with only 50 people. STIHL expanded its manufacturing space in 1983, in 1990 and again in 2004. The company opened new warehouse facilities in 1996 and 2004. In 2005 STIHL announced a $78.4 million expansion of its manufacturing facility which would create 150 new jobs. This announcement was one of the largest investments in the history of the company.

- Fred Whyte, President of STIHL Inc. said, "Although we export to more than 80 countries, the United States is still the largest market for our products. Consequently, expanding manufacturing in Virginia Beach has repeatedly proven to be a sound business decision for STIHL."
- "Since arriving here more than 25 years ago, STIHL has constantly pursued the most innovative manufacturing methods possible. Our expansions and manufacturing investments are driven by our need to keep pace with growing customer demand for our products around the world. The highly skilled and dedicated workforce in Virginia Beach and Hampton Roads has been key to successfully keeping pace with this demand." (Peter K. Mueller, Executive Vice President of Operations)

BAE Systems – The British company BAE Systems provides information technology solutions to a variety of federal government agencies, including the Department of Defense, the armed services, and the Department of Homeland Security. In May 2005, BAE Systems announced an investment of $25 million to establish a new information technology work center in Fairfax County to support the company's expanding federal IT business which should create 700 new jobs over the next two years. BAE has been in Fairfax County for more than twenty years and has continued to invest and add jobs, making them one of the top 25 private sector employers in Fairfax County, providing over 2,000 jobs in that community alone. BAE also operates in other Northern Virginia locations and in Hampton Roads.

- BAE Systems' rationale for choosing Virginia was explained by BAE Systems Information Technology President Bill Shernit, "Virginia, and Fairfax County in particular, has a strong, pro-business climate, an educated workforce, an excellent communications infrastructure and is in close proximity to our major customers."

Koyo Steering – In 1999, the automotive supplier Koyo Seiko of Japan announced it would set up a new operation in Virginia's Shenandoah Valley near the city of Roanoke that would employ 200 people with an initial investment of $37 million. Koyo builds parts for U.S. automakers as well as the Japanese factories in the U.S.

- "The Roanoke Valley of Virginia is the best location for Koyo to start this new venture," Secretary of Koyo Steering Systems of USA Akihisa Muyama said. "The experience of other Japanese companies in the region gave us confidence that we would be successful here."

In 2005, Koyo expanded the plant through a $36 million investment.

- Plant Manager John Goetz said "Koyo Steering Systems USA has found an ideal location in Botetourt County".

Essel Propack – The Indian company Essel Propack chose Danville as the location for its first U.S. manufacturing facility in 2002. Essel is one of the first Indian companies to set up operations in Virginia. The company has expanded twice since then in less than three years with the most recent expansion in 2005 to invest $15 million in the facility to allow the company to supply laminated tubes and caps to Procter & Gamble and other toothpaste and cosmetic product companies in the United States. Essel has helped Southside Virginia diversify its economy during a period which has seen the decline of the textile industry and reduced tobacco output.

- Manuel Diez, Essel Propack America LLC Executive Vice President, cited Danville and Virginia as the ideal place for his company to be and expand for the following reasons: Danville's strategic location and excellent business climate, the area offers adequate industrial infrastructure, a skilled workforce, a quality education system to train their employees, excellent transportation access, and significant cost benefits, the strong partnership between the local government and Essel Propack, and an efficient process where Danville respected their tight timelines.

Virginia's foreign company activity has been on an upward trend since 1994. Based on VEDP's current pipeline of projects, foreign investment should continue to play an important role in Virginia's economic growth. We currently are pursuing projects with major multinational companies in the medical equipment, energy, metal building materials, food products, and plastics industries.

In addition to the companies and activities listed above, the following list outlines notable foreign companies with an existing Virginia presence in key industry sectors:

Advanced Manufacturing

Food Processing

- Nestle (Switzerland)
- Lipton (U.K.)

Natural Resources

- Alcan Packaging (Canada)
- DaiEi Papers (Japan)
- Titan Cement (Greece)

Chemicals

- Boehringer Ingelheim Chemicals (Germany)
- Goldschmidt Chemical (Germany)
- Mitsubishi Gas Chemical (Japan)

Plastics/Polymers

- Amcor Packaging (Australia)
- Klockner Pentaplast (Germany)
- Toray Plastics (Japan)

Science & Research

Biotechnology

- Biovail Technologies (Canada)
- Novozymes Biologicals (Denmark) (Germany)

Research & Development

- Celanese Acetate (Germany)
- Degremont North American Research (France)

Energy

- ABB Power Generation (Switzerland)
- Framatome ANP (France)

Services & Security

Information Technology

- CGI-AMS (Canada)
- BAE Systems (U.K.)

Finance & Insurance

- Cap Gemini (France)
- Royal Bank of Canada (Canada)

Professional & Business Services

- Canon ITS (Japan)
- Nortel (Canada)

North American Headquarters

- Airbus (France)
- Wolseley (U.K.)

Transportation

Automotive

- Continental Teves (Germany)
- Volvo (Sweden)

Aerospace

- Agusta Westland (Italy)
- Rolls Royce (U.K.)

Global Logistics

- Maersk (Denmark)
- NYK Logistics (Japan)

Warehouse/Distribution

- Food Lion (Belgium)
- HUDD Distribution Services (Denmark)

Conclusion

Virginia has a long history of participating in the international business arena. The success of foreign businesses in Virginia currently translates into 144,800 Virginians employed by foreign firms. VEDP's analysis of its announcements data for foreign companies from 2003 to 2005 shows every job created by a foreign company supports an additional 1.59 jobs across Virginia. The success of Virginia's existing foreign businesses makes it easier for VEDP to attract other growing international companies to Virginia. Many of the foreign manufacturers in Virginia have been so successful here that their products are exported to markets abroad.

Madam Chairman, thank you again for calling this hearing and letting me explain how foreign direct investment is an integral part of Virginia's economy. Foreign direct investment has become a politically charged topic, but I hope I have been able to describe how FDI is important to Virginia and the U.S. I also hope my testimony helps this committee as it considers new legislation.

Statement of the Honorable Donald L. Evans
Chief Executive Officer
The Financial Services Forum

Testimony Before the
Subcommittee on Domestic and International Monetary Policy, Trade, and Technology
of the
House Financial Services Committee

April 27, 2006

Overview

Madame Chairwoman Pryce, Vice Chairwoman Biggert, and Ranking Member Maloney, thank you for the opportunity to participate in this important hearing on the Committee on Foreign Investment in the United States (CFIUS).

I am here as Chief Executive Officer of the Financial Services Forum. The Financial Services Forum is an association comprising the chief executive officers of 20 of the largest and most diversified financial institutions doing business in the U.S. The Forum works to promote policies that enhance savings and investment in the U.S. and that ensure an open, competitive, and sound global financial services marketplace. As a group, the Forum's member institutions employ more than 1.5 million people and hold combined assets of more than $12 trillion.

All members of the Forum share Congress' commitment to national security. Our industry is deeply aware of the serious threats faced by our nation and the need for Congress to consider all aspects of national security in its decision-making. Addressing threats to U.S. national security must be undertaken with absolute resolve and come second to no other priority. For this reason, we fully support the President's authority to suspend or prohibit any foreign acquisition, merger, or takeover of a U.S. corporation that is determined to threaten the national security of the United States.

We also believe strongly that protecting U.S. national security and advancing America's global economic leadership are compatible and reinforcing goals. We cannot achieve one without pursuing the other. In today's interconnected world, the health and future of the U.S. economy, and American jobs, rest on open markets and the free flow of capital. U.S. investments abroad support economic growth at home, access to resources and, in turn, national security. Therefore, we respectfully urge Congress to not adopt unwise and unnecessary new restraints on open markets and the free flow of capital as it considers possible reforms to the CFIUS process. Any changes should result from a thoughtful, considered, and fact-based assessment.

I'd like to raise four points that we believe should guide Congressional consideration of reforms to the CFIUS process:

- First, the vast majority of foreign acquisitions have no bearing on U.S. national security. Rather, they play a positive role and make significant – and increasing – contributions to

our economy by creating millions of jobs for American workers and enhancing our competitive position in the global marketplace. Expanding CFIUS' mandate beyond genuine national security concerns would create a major disincentive for foreign investment and have a negative impact on U.S. economic growth and job creation.

- Second, successive Administrations of both political parties have for decades worked aggressively to establish a global rules-based system founded upon the principles of open investment and free trade. This continuity in policy has enabled America to prosper, assert a leadership role in the global economy, and advance our broader foreign policy and strategic interests. We risk eroding this prosperity and leadership position by adopting new laws which discriminate against foreign investment.

- Third, the existing CFIUS process is fully capable of identifying and dealing with potential threats to our national security. Although we recognize the process has shortcomings, particularly with regard to communications with Congress, and that some reform may be warranted, existing law provides the President with sufficient authority to block any foreign acquisition or mitigate related national security concerns. Agencies represented on CFIUS have on numerous occasions affirmed their readiness to use the full authority of the law.

- Finally, it is instructive that upon establishing CFIUS Congress wisely chose to insulate it from political influence. And, by imposing strict confidentiality requirements, Congress explicitly recognized the sensitivity of the data relevant to such transactions, from a national security and commercial standpoint. The rationale supporting both decisions is as valid today as it was two decades ago.

The Benefits to the U.S. Economy of Foreign Investment

Today, more than ever, the U.S. economy depends on foreign investment. U.S. subsidiaries of foreign-based companies employ more than 5 million Americans throughout all fifty states – roughly one out of every twenty jobs in this country – paying compensation totaling $318 billion annually.

Foreign companies also account for roughly twenty percent of all U.S. exports, fifteen percent of private sector research and development, ten percent of private-sector capital investments, and 12 percent of corporate taxes collected.

Ninety four percent of foreign investment comes from OECD countries. Ninety eight percent is from private sector firms – only two percent of foreign assets are owned by companies controlled by foreign governments. The financial services sector is a major beneficiary of foreign direct investment, receiving approximately 15 percent of all such investment in 2004. German and British interests account for most investment in the sector, with Dutch, British, French, and Canadian investments account for over half.

Open, stable, and predictable markets are a prerequisite for attracting global capital. While the United States is currently a favored destination for foreign investment, it is prudent to be mindful

that markets in Europe and Asia are increasingly competitive. The introduction of a single currency in Europe has eliminated currency conversion costs and exchange rate risk, making Europe much more attractive. And with the Chinese and Indian economies growing at 9 and 6 percent respectively, those economies are already attracting enormous amounts of investment capital.

Global capital is sensitive to changes in the political climate. Poorly considered proposals to reform CFIUS would surely have a "chilling effect" on the inflow of foreign investment, with results that might well include higher interest rates, lower equity prices, and slower economic growth. Finally, it should be recalled that the United States is the world's largest investor, with over $10 trillion in assets overseas. Erecting unreasonable barriers to participation in U.S. markets would likely invite retaliation by other countries, at great cost to U.S. interests.

The CFIUS Process

The Committee on Foreign Investment in the United States was established in 1975 with the purpose of evaluating the security impact of foreign investment. In 1988, the so-called Exon-Florio provision provided the President, following a review by CFIUS, with authority to block an acquisition of a U.S. business by a foreign person if the acquisition is determined to threaten the "national security" of the United States.

The process is initiated when parties to a proposed transaction file a voluntary written notice with CFIUS, or when a CFIUS member agency takes this action on its own. In either case, upon receiving this notification CFIUS begins a review of the transaction which lasts a maximum of 30 days. The process is terminated if CFIUS concludes at the end of this 30 day period that there are no national security issues warranting further review. In cases where a significant question of national security arises, CFIUS will undertake an investigation that may last a total of 45 days. At the end of this investigation, CFIUS provides a written recommendation to the President, who has 15 days to decide to approve or block the transaction. Therefore, a full CFIUS review cycle is 90 days. The President's decision is not subject to judicial review.

Since the enactment of Exon-Florio in 1988, CFIUS has reviewed over 1,600 foreign acquisitions of companies for potential national security concerns. Only one transaction has ended with a forced divestment. That case, in 1989, involved the purchase by CATIC, a company controlled by the Chinese government, of MAMCO, a small aerospace parts manufacturer in the state of Washington.

However, these figures do not reflect the full impact of the CFIUS process on addressing national security concerns raised by proposed foreign acquisitions of U.S. companies. For example, there are many instances in which CFIUS has worked with individual companies to devise security measures that precluded the need for a full investigation. Moreover, there have been many cases where parties voluntarily restructured a transaction to address national security concerns, or withdrew from the transaction altogether.

It should also be pointed out that it is relatively common for parties to a transaction to meet with CFIUS agency officials well in advance of filing a notice in order to explain the proposed transaction, provide information about the parties, and solicit comments from CFIUS members

about their potential concerns. Therefore, the time necessary to consider potential national security implications of a transaction can be considerably longer than 90 days. In many cases, issues can be resolved before the notice is even filed. In others, this pre-filing consultation may lead the parties to conclude that a transaction will not pass CFIUS review, in which case they may restructure their transaction to address national security concerns or abandon it entirely.

Since September 11, 2001, CFIUS has applied greater scrutiny to foreign investments on national security grounds, imposed stricter security requirements as a condition for approving specific transactions, and toughened enforcement of security agreements negotiated through the CFIUS process. There have been more investigations and withdrawals in just the past three years than during the previous decade. CFIUS has also significantly broadened the scope of its "national security" reviews. Prior to September 11th, CFIUS focused primarily on protection of the U.S. defense industrial base and the export of controlled technologies. Since then, CFIUS has intensified its focus on the additional goal of protecting critical infrastructure.

Proposals to Reform CFIUS

The Congress has a vital role to play in exercising its oversight authority to ensure that the CFIUS process is structured and implemented in a way that fully protects U.S. national security. Ultimately, CFIUS cannot be effective absent public confidence in its ability and willingness to do what is necessary to safeguard our security. To this end, we support more open communication between the Administration and Congress regarding the CFIUS process, so long as the confidentiality of proprietary information is protected.

We are very concerned, however, about proposals that would give Congress unprecedented new power to delay or overturn decisions by CFIUS. Legitimate national security concerns should be pursued vigorously, but introducing overt political considerations into the process would undermine investor confidence in U.S. markets and, consequently, reduce economic growth, threaten job creation, and jeopardize U.S. efforts to open foreign markets.

We are also troubled by proposals that would discourage foreign investment by requiring lengthy review periods, or proposals that, while intended to elevate national security scrutiny of foreign investments, might well prompt decision makers to disapprove meritorious investments that do not pose genuine national security threats.

In addition, the CFIUS process must retain a high degree of integrity and confidentiality. By its nature the CFIUS handles sensitive, proprietary information which relates to national security. Making this information accessible in the public domain could undermine the integrity of the CFIUS process and ultimately make it less effective in carrying out its primary mission of identifying and addressing transactions which implicate genuine national security concerns.

Of particular concern are proposals that would:

- Provide for Congressional Disapproval of President's Decision: Proposals to grant Congress power to over-ride Presidential decisions regarding foreign investment would unnecessarily 'politicize' the CFIUS review process. In addition, Congress is simply not

best equipped for making sensitive, fact-based, case-by-case decisions. Congress makes law and oversees administrative procedure, but does not second-guess International Trade Commission (ITC) decisions or individual patent awards and should not do so with respect to CFIUS decisions.

- Increase Required Time Periods for Review and Investigations: Proposals to require longer review or investigation periods stem from a perception that CFIUS reviews are cursory and not substantive, when the opposite is true. The necessary confidentiality of the CFIUS process reinforces this suspicion. These proposals would in many cases create an unacceptable level of risk and uncertainty for foreign investors, thus establishing a barrier to their participation in the U.S. market. They could also drive other countries to reform their rules for foreign investment to the detriment of U.S. companies seeking to invest overseas.

- Require Unprecedented Notifications to the Congress and State Officials: Unprecedented notification and reporting requirements would increase the risk of "politicizing" transactions and allow competitors to achieve through politics what they could not in the marketplace. Such notification and reporting requirements would also create opportunities for information sent to Congress to be exploited for commercial purposes, rather than for advancing national security.

- Expand the Scope of CFIUS to Include "Economic" Security: Reforms calling for CFIUS to expand the scope of its mandate to include "economic" security would provide grounds to block any and all foreign investment in the United States, and would overload CFIUS' review process without enhancing national security. The existing national security factors in the CFIUS process are sufficiently broad to cover threats to American security. Such changes would also divert scare government resources away from national security, the principal focus of the CFIUS process.

- Summarily Deny Foreign Acquisitions or Ownership, Management or Operation of U.S. Critical Infrastructure: The CFIUS process should focus on legitimate national security concerns. Outright bans or significant restrictions on foreign ownership of significant sectors of the U.S. economy would have severe consequences not only for the health of the U.S. economy, but also the ability of U.S. companies, investors, and individuals to compete and invest abroad.

- Require 45-Day Investigation for Acquisitions of U.S. Companies by State-Owned Entities: Again, the CFIUS process should focus on those acquisitions that raise genuine national security concerns. Requiring 45-day investigations of acquisitions made by state-owned entities that in no way implicate national security concerns would be an unnecessary disincentive for foreign investment and use of government resources.

Conclusion

Madame Chairwoman, as reform alternatives are further deliberated, we urge Congress to take a thoughtful and measured approach – ever mindful of the critical importance to America and to the world of thriving global trading relationships. We urge Congress to keep America's markets open, even as it protects America's security.

Protecting national security and promoting foreign investment and free trade are not mutually exclusive. We can and must do both.

Thank you for the opportunity to appear before the Subcommittee.

UNITED STATES HOUSE OF REPRESENTATIVES
Subcommittee on Domestic and International Monetary Policy, Trade and Technology
Committee on Financial Services

Hearing on CFIUS and the Role of Foreign Direct Investment in the United States
April 27, 2006

Prepared Statement of
Daniel K. Tarullo

Thank you for your invitation to testify this morning. I am a Professor of Law at Georgetown University Law Center and a non-resident senior fellow at the Center for American Progress. I held several economic policy positions in the Clinton Administration, ultimately as Assistant to the President for International Economic Policy. I testify today in my individual capacity as an academic, with no client interests or representation.

This hearing takes place, of course, against the backdrop of the recent controversy over the proposed acquisition by Dubai Ports World of the British-owned Peninsula and Oriental Steam Navigation Company, including its wholly-owned U.S. subsidiary, which operates two dozen terminals at various U.S. ports. In the wake of this episode and certain other recent proposed acquisitions of U.S. companies by foreign purchasers, it has become clear that there is a widespread lack of confidence within the Congress in the Administration's discharge of its responsibilities under Section 721 of the Defense Production Act of 1950, as amended, popularly known as the Exon-Florio Amendment. The central question before us is what the Congress should do as a result of its dissatisfaction, given the co-existence of important national security and economic impacts from administration of this law.

In the balance of my testimony, I will first describe the background of Section 721 and identify with more specificity the key developments that provide the context within which this

important policy question arises. Then I will suggest the principles that ought to inform our approach to national security screening of foreign investment in the United States. Finally, I will turn to an assessment of the basic tools for change that are available to the Congress and the areas in which change would be helpful.

The Context Created by Recent Exon-Florio Developments

The statutory design of the national security investment review process is an unusual one. Section 721 was added to the Defense Production Act by the Omnibus Trade and Competitiveness Act of 1988. By its own terms, Section 721 is meant to complement other laws designed to protect the national security. It establishes a system of voluntary notification by foreign investors of their intentions to make acquisitions in the United States that could raise national security concerns, along with a broad grant of authority to the President to suspend or prohibit acquisitions that would threaten the national security. The incentive of investors to notify is that, once the statutory time limits have passed, the acquisition is protected from action by the President under Section 721. The statute is generally understood to create continuing authority in the President to order divestment of transactions that have not passed through the review process, as elaborated in Treasury Department regulations.

Section 721 itself does not prescribe an administrative mechanism for conducting reviews and investigations, other than to permit reviews by the "President's designee." Shortly after passage of the 1988 legislation, President Reagan delegated his review and investigatory responsibilities to the Committee on Foreign Investment in the United States (CFIUS), a Treasury-chaired interagency group that had been established thirteen years earlier. Over the

years, the membership of CFIUS has grown to include five other Cabinet departments and numerous White House offices.

There are three developments of particular importance for understanding the policy question confronting us today.

First is the emergence since September 2001 of homeland security issues as an element of Section 721 reviews. To be sure, the breadth of the "national security" concerns in the Exon-Florio Amendment has been debatable – and debated – since before its passage. Disagreement has centered mainly on the degree to which reviews should extend beyond directly defense-related production and technologies to include those that are currently of economic, but not strategic, importance. Although the post-September 11 concern with homeland security, and specifically with critical infrastructure, can be fit into the broad language of Section 721, this concern was simply not present during the debates of the mid-1980s that produced the Exon-Florio Amendment. Thus, as with so many areas of public policy, the national security foreign investment review process has had to adapt to this new emphasis.

The addition of a new set of national security concerns highlights the *second* development creating the context for today's discussion. CFIUS practice has never been especially transparent compared to most forms of economic regulation. This is justified in part by the business sensitivity that often surrounds tender offers and other acquisitions, and in part by the relevance of classified military or defense information to CFIUS reviews. Only when CFIUS moves from a "review" to a statutory "investigation" is a reporting requirement triggered. Since there have been fewer than ten "investigations" in the last decade, the disposition of the vast majority of the roughly 600 transactions notified to CFIUS during this period has not been reported or explained by the President or CFIUS.

The result is a fairly opaque process that is very difficult for potential investors, the American public, and perhaps even the Congress to penetrate. Much of the publicly available information about CFIUS practice comes from the various reports issued by GAO in response to Congressional inquiries over the years. Of necessity, these reports are selective and sometimes dip back quite a ways into the past. At present, then, there is little systematic, publicly available knowledge as to how CFIUS has evaluated more recent transactions. Given the ongoing concerns of Congress and the public with the adequacy of homeland security measures taken in the last four and a half years, the absence of information on the CFIUS process could be worrisome.

This leads us to the *third* and, I think, most important development framing the terms of current debate over the CFIUS process – the development that has led to your hearings in March and today: Congress has obviously lost confidence in the Administration's handling of Section 721 cases. While the proposed DP World acquisition was the catalyst that elevated the issue to prominence throughout the Congress, concerns had existed beforehand, with respect to both "traditional" Exon-Florio cases and the more recent brand of homeland security cases. In 2004, Senators Shelby, Sarbanes, and Bayh requested a GAO investigation of the effectiveness of the entire Section 721 process. Last October the Senate Banking Committee held two hearings on the results of that investigation.

Although several Administration officials have, in the wake of the controversy over DP World, offered some more detail on the process followed by CFIUS in this case, the public still does not have a complete explanation of the Administration's decision not to take action. Thus it is difficult to determine how much of the problem was poor analysis, how much poor judgment, and how much poor communication. Clearly many members of Congress are

disturbed with the process, the outcome, or both. For many, this case has crystallized concerns with the CFIUS process that were already growing.

Here, then, is the crux of the challenge facing this Committee and the Congress as a whole: You have reason to believe that the process is not functioning as contemplated in the legislation passed by the 100th Congress in 1988, and as you in the 109th Congress would like. But, at least based on present information, it is hard to say with confidence why. As is often true in such situations, imposing a solution before the nature of the problem is fully understood may produce some unintended and unwanted consequences.

Principles for Effective National Security Review of Foreign Investments

There is widespread agreement, verging on consensus, that two important interests are implicated by Section 721. One, of course, is protection of the national security. The other is the nation's economic interest in receiving foreign direct investment.

The national security interest protected by Section 721, while in a sense obvious, is narrower than it is sometimes characterized. The specific interest is in foreclosing foreign acquisitions of U.S. firms where the very fact of foreign ownership is correlated with an increased risk of harm to the national security through such things as the leakage of critical defense technologies. Where this is the case, it is incumbent on CFIUS to seek special assurances or arrangements that will eliminate this particular risk to the national security or, where this is not possible, to indicate an intention to recommend action by the President to prevent the acquisition.

On the other hand, many national security risks, such as those arising from the presence of a rogue employee in a sensitive position, can exist in domestically-owned firms as well. If,

taking into account various protections required by other laws and regulations, the residual risk is roughly comparable in a given firm whether it is owned by a specific foreign entity or by a domestic entity, then the fact of foreign ownership is unlikely to be a critical variable in devising an appropriate national security response.

Inward direct foreign investment (FDI) has a number of potential economic benefits for the country.* The very ability of foreign entities to bid for U.S. companies increases potential demand and thus, to a greater or lesser extent, the price to be obtained by current owners for those companies. If, as is often the case, U.S. nationals are the current owners, they will thereby realize a greater return on their investment and have more capital available to redirect to other uses. Once the acquisition is made, the new foreign owner may introduce new technologies or production methods that enhance the efficiency of the productive resource. The new owner may invigorate competition in the U.S. industry, leading to lower prices, additional innovation, or both. To the degree that the new foreign owner has correctly anticipated that it can operate the acquired firm more profitably than its previous owner, the jobs at that firm may be more secure and the tax revenues paid by that firm may be higher.

The fact that inward FDI is generally a plus for the U.S. economy does not mean that every foreign acquisition of a U.S. firm is an economic success or, indeed, that every such acquisition is desirable. For example, an acquisition of a U.S. firm by a foreign firm that currently competes in the U.S. market might reduce competition enough to raise antitrust concerns. Similarly, at the heart of Section 721 is the recognition that the foreign acquisition of a U.S. firm could in some instances compromise national security. The point, then, is not that all inward FDI is good. The point, rather, is that inward FDI is in general good for the U. S.

* One important form of FDI – so-called "greenfield" investment, meaning the creation of new productive facilities – is not affected by Section 721, which applies only to acquisitions of, or mergers with, existing firms. In industrialized economies, there is considerably less greenfield FDI than acquisition of existing companies.

economy and thus, in the absence of strong countervailing considerations, we should avoid regulatory or political action that could discourage that form of investment.

With this understanding of the aim of Section 721, and of the economic costs that can be incurred when investment is restricted or discouraged, we can identify several principles to guide implementation of the law.

First, the resources of the CFIUS member agencies involved in the investment review process must be deployed so as to maximize the benefits for U.S. national security resulting from actions of the Committee and, where necessary, the President. This principle means, most importantly, that resources should be concentrated on proposed acquisitions that raise the most serious risks. Self-evident as this principle may seem, some proposals for change in the CFIUS process that have been discussed in recent months nonetheless seem not to pay it proper heed. For example, forcing the Committee members to review at length transactions that are unlikely to pose serious risks takes away time they could be spending on activities more likely to enhance national security:

- reviewing thoroughly the more serious cases;
- monitoring assurance agreements previously reached with foreign acquirers;
- tracking transactions that have been notified and then withdrawn to be sure they have not been completed;
- surveying other sources of information to discover transactions with national security implications that have not been notified to CFIUS; and
- conducting non-case-specific studies of categories of risk in certain kinds of industries to improve subsequent review of individual notified transactions.

Note that this principle will, if skillfully implemented, at once increase national security benefits and minimize impediments to foreign investment. That is, by focusing on the more serious risks, the CFIUS process will not hinder those transactions where foreign ownership does not, in and of itself, pose an additional significant risk. This fact may not be immediately obvious, because we sometimes think of the national security and economic goals as at odds with one another. In principle there may indeed be a trade-off. But once the basic statutory standard is set and the real-world constraints of limited resources taken into account, the most effective use of those resources to enhance national security should be generally congruent with the aim of avoiding costly disruptions of inward investment flows.

A *second* principle to guide implementation of Section 721 is that CFIUS must communicate its policies and practices effectively. This principle seems at first glance both counter-factual and counter-intuitive. Counter-factual because, since passage of the Exon-Florio Amendment eighteen years ago, CFIUS has not communicated very much to the public. So far as I am aware, there had not been much communication with Congress over the last several years, until quite recently. The principle seems counter-intuitive because of the pervasiveness of sensitive national security and business proprietary information in the CFIUS process.

Yet the costs of non-communication are apparent. Most obviously, the failure to communicate with Congress has contributed to the circumstance of mistrust that gives rise to calls for changes in Section 721. Congress cannot very well perform its oversight function if it is not adequately informed as to CFIUS practice. So too, particularly in light of the current emphasis upon homeland security, the American public deserves to know what approach to national security reviews CFIUS has taken. As the DP World situation made abundantly clear,

in the current environment if the Administration does not adequately explain its actions, Congress, the press, and the public will draw their own conclusions – without the benefit of full information.

For obvious reasons, CFIUS cannot and should not make full and immediate disclosure of all its activities. The need to preserve the integrity of the decision-making process in pending cases is particularly acute. But it is now apparent that CFIUS must change its current presumption of secrecy about its practice in completed transactions, which has been overcome only when a Congressional committee holds hearings in the wake of a controversy or on the rare occasion when the President acts on the basis of a CFIUS recommendation following an investigation. If the Government Accountability Office can summarize CFIUS practice and past CFIUS cases without violating confidentiality concerns, as it has in its various reports over the years, then CFIUS itself should be able to produce similar reports on a periodic basis.

Such a pattern of communication can also contribute to removing some of the uncertainty among potential foreign investors as to the kinds of acquisitions that may evoke CFIUS concerns. As a result, potential investors may have a better sense of such matters as whether a CFIUS filing is advisable or whether a deal needs to be restructured to meet particular kinds of national security concerns. To the degree potential acquirers have this information before they enter the CFIUS process, they can reduce the costs and delays that might otherwise affect their bid and thereby minimize impediments to investment flows.

Optimally, the CFIUS process would be both supple and rigorous. It would concentrate its resources on the situations and cases raising the most serious potential national security concerns. It would adapt to the specifics of each case in an appropriate way. It would take full advantage of all sources of information within the government, including from our intelligence

services, which could help identify unnotified transactions or potential problems in notified transactions. It would, when necessary, negotiate exacting safeguards with acquiring companies and monitor faithfully the implementation of those safeguards.

This kind of CFIUS process would require substantial discretion to be lodged in CFIUS and its member agencies. It would depend upon senior Departmental and White House officials providing guidance and exercising oversight, to assure accountability and the exercise of judgment.

Obviously the many members of Congress who have proposed changes to Section 721 believe we are a considerable distance from an optimal CFIUS process. Many – including, I suspect, some members of this Committee – are skeptical that the requisite accountability and oversight have been exercised within the Administration. Many are, accordingly, reluctant to permit CFIUS and the Administration the requisite discretion needed to arrive at an effective, reliable screening process. The remaining question is how to resolve this tension.

Congressional Methods for Enhancing Accountability

If one surveys the range of proposals for change in Section 721, a striking fact becomes evident. Nearly all the proposed changes could be effected without legislation. Some of the proposals are good ideas, some reflect good concepts but are in need of refinement, and some are not-so-good ideas. But almost all of them could be put into place very quickly if the Administration chose to do so. No additional statutory authority is necessary. A notable exception is any proposal to increase the time limits within which CFIUS must act on a review or investigation.

The lack of knowledge about what CFIUS *has* been doing makes any proposal for a program of specific changes a bit imperfect. Still, based on information gleaned from recent hearings, stories in the press, accounts from practitioners who have represented notifying investors, and GAO reports, I have identified five areas in which I would hope to see changes or, alternatively, assurances that CFIUS practice has already been conformed to the norms set forth here:

1. *Procedure for tracking the underlying transactions in withdrawn notifications.* Transactions where notification is withdrawn are likely to be of two sorts -- either the proposed acquisition has been abandoned for reasons unrelated to the CFIUS review process (such as financing or antitrust problems), or issues have been raised in the CFIUS review process that require additional analysis or modification of the transaction. In some cases the required modification may be so significant as effectively to require abandonment. It appears that withdrawals in some cases are made with the agreement and cooperation of CFIUS, to allow time for further analysis before the statutory time limits run or so that changes can be made in the transaction. If the transaction is not abandoned, it is then refiled before it is completed. This is a reasonable procedure. But GAO reports that at least some such transactions have closed without a subsequent cleared notification. This is a matter of potential great concern. While there are different ways to track withdrawals and determine if transactions have subsequently proceeded without clearance, it is important that some effective procedure be institutionalized.

2. *Monitoring assurance agreements in completed transactions.* In some cases that have raised national security concerns, CFIUS has negotiated agreements with the acquiring company that include such commitments as hiring specific security personnel, permitting

inspections of facilities, or instituting certain practices to provide an additional level of security protection. It goes without saying that, where these agreements have been negotiated, they should be scrupulously implemented. Where the agreement requires the acquiring company affirmatively to undertake action of some sort, compliance with that agreement should be monitored by CFIUS or a designated government agency that reports back to CFIUS.

3. *Systematize information-gathering on unreported transactions.* Because Section 721 is a voluntary reporting mechanism, it is possible for a foreign purchaser to acquire a U.S. company with sensitive national security relationships without a notification to CFIUS. While most purchasers will want the assurance that their transactions have passed scrutiny and will not be investigated post-acquisition, it is possible that some will choose never to file, even where national security issues may be present. Surely it would not be an efficient use of resources for CFIUS to attempt to track *all* acquisitions in the United States, the majority of which raise no national security concerns. But, insofar as there are additional reporting and monitoring mechanisms under the Defense Production Act and other laws, it seems only sensible to establish a system for cross-checking information on acquisitions obtained through these other mechanisms.

4. *Involvement of senior officials in CFIUS policies and decision-making.* There is a widespread belief in Washington that senior Treasury and White House officials were not consulted on, or notified of, the DP World notification before the review was closed. I certainly have no first-hand knowledge as to what actually occurred. Needless to say, though, one would expect regular information flows up the chain of command in cases that might raise substantive problems or public sensitivities.

5. *Achieving appropriate transparency.* I discussed this issue at some length earlier in my testimony. I will just summarize here by saying that, while nothing should be done that would compromise the integrity of ongoing reviews or investigations, and protections must exist for sensitive national security and business proprietary information even after the fact, there needs to be a system that will produce regular explanations of CFIUS practices and procedures.

* * *

Which of these changes should be legislated? There is not necessarily a clear answer. Some of the changes I have identified – such as requiring CFIUS to establish a monitoring system for negotiated assurances – seem to me entirely appropriate for legislation. Others may be less so. For example, legislating the involvement of particular senior officials in all CFIUS cases may not be the most productive way to ensure appropriate attention from those officials.

The decision on how much to legislate obviously rests with you – not just as a Constitutional matter, but because it is your trust in the Administration that is at issue. However, I would offer two observations as you decide what matters to address in your legislation and how much detail to include.

First, some measures that are motivated by unhappiness with current Administration practice may have counterproductive effects in the longer term. In some respects, you confront an unattractive trade-off between increasing the accountability of this Administration at this moment and creating difficulties in the CFIUS process into the indefinite future. For example, legislating a required investigation for a broad class of transactions would reflect mistrust that the Administration will undertake investigations where necessary in particular cases and assure that those investigations will occur. Unfortunately, since such a requirement will almost

certainly capture a broader set of transactions than those that raise significant national security issues, it also risks tying up resources that could be better utilized elsewhere. This requirement would also make some otherwise desirable foreign investment plans more costly or uncertain, and thus less likely to be made.

Second, there is another method by which Congress could seek to assure itself of the efficiency and effectiveness of the CFIUS process, one that can complement a legislative approach. Appropriate committees within the Congress can exercise frequent and extensive oversight over the CFIUS process for such time as is necessary to allow Congress to regain confidence in the CFIUS process. The Members of this Committee know better than I the variety of means available to achieve this end – from presentations by senior officials of planned changes, to updates on how those plans have been implemented, to reports or briefings on recent CFIUS practice. A combination of informal and formal means can be chosen. Where necessary, the dialogue between Congress and the Executive may be confidential or even classified.

This approach would allow Congress to determine with more precision how much of its concern arises from poor analysis, how much from poor judgment, and how much from poor communication. It may reveal that some things are better than you suspect today; it might reveal that some are worse. It would allow CFIUS the room to adapt investigatory and reporting practices if initial efforts raise unanticipated difficulties. Hearings could be scheduled – perhaps in six months' time – to take formal stock of whether the CFIUS process, and the communication of the workings of that process, had satisfactorily evolved. If adequate confidence has not been restored, then additional legislation would remain an option, and the

intervening period will have made the legislation better informed by knowledge of the CFIUS process.

Thank you for your attention. I would be happy to answer any questions you might have for me.

Testimony

of

Paul L. Vikner

President & CEO

Mack Trucks, Inc.

Member, Group Executive Committee, Volvo Group

April 27, 2006

Before the

House Financial Services Committee

Subcommittee on Domestic and International Monetary Policy,
Trade, and Technology

Good morning Madam Chairman, Ranking Member Maloney, Chairman Oxley, Ranking Member Frank, Majority Whip Blunt and Members of the Committee. My name is Paul Vikner, and I am President and CEO of Mack Trucks, Inc., headquartered in Allentown, PA. I am very pleased to be here today to represent Mack and its parent company, the Volvo Group of Sweden. In addition to my responsibilities at Mack , I also serve on the Volvo Group Executive Committee, the top management body for the parent company, which is a global leader in commercial transportation solutions. I'm also pleased to say that the Volvo Group is a member of the Organization for International Investment (OFII), an association representing the interests of over 140 U.S. subsidiaries of companies based abroad. In fact, I am in Washington today to attend OFII's annual CEO Conference.

My goal today is to share the experience that Mack has had with regard to the benefits of foreign direct investment – also known as "insourcing." And I would like to provide you the additional perspective of a global corporation that has the ability to choose where in the world to invest its capital. I also want to share with you some of the results of OFII's annual CEO Survey – which was released today and outlines our view of the United States as an attractive location for capital investment.

I want to say at the outset that I have no personal expertise in the workings of the Committee on Foreign Investment in the United States (CFIUS) over which this Committee has jurisdiction. Neither Mack nor Volvo has ever had an acquisition in the United States that falls within the realm of national security, and therefore we have not been through a review by CFIUS. Moreover, on behalf of myself and the thousands of proud Americans working for Mack, we fully support the appropriate and thorough oversight of these situations to ensure the security of our nation and its people. At the same time, I believe we all recognize the need to establish the right balance between managing national security risk, and preserving the benefits of an open investment policy that attracts international capital and provides jobs for American workers.

My hope is that my testimony will help Members of this Committee as they consider this issue, by providing insight on how an American company like Mack specifically benefits from foreign investment. I believe that the Mack/Volvo situation is an excellent example of the overall benefit the United States and its people can derive from greater foreign direct investment in the U.S.

About Mack and Volvo:

The Mack truck is one of the few products that has achieved iconic status in American life. Over the last 105 years, the Mack name has come to symbolize some of the best characteristics of the American character – strength, durability, and dependability. Our products have done the job for our customers in war and peace, in good economic times and in challenging ones, and in step with a society that has traveled from the age of the horse-drawn carriage to the technological marvels that are today's cars and trucks.

I could go on and on about our company's history – its legacy of technological advancement, the extraordinary list of projects around the country and the world on which Mack trucks have worked, and Mack's service to the defense of our country's freedom – all the way from the trenches of the First World War to today's global war on terror. But maybe the best summary of that history is also the simplest – when an American seeks to praise someone or something for surpassing quality and steadfastness, he or she often gives them the ultimate compliment: that they're "Built Like A Mack Truck."

Today, Mack Trucks, Inc. is one of North America's largest producers of heavy-duty trucks, sold and serviced in more than 45 countries through a worldwide network of more than 670 sales, parts and service centers. We're the leader in the construction, refuse and local and regional hauling segments of the U.S. heavy-duty truck market, as well as being number one among North American truck brands in exporting to other markets around the world.

But all that success over the last century did not make us immune to the pressures of change in our industry – and in the past 20 years our business has changed dramatically, especially in the rising cost of development and manufacturing of new products to meet emerging customer expectations, and more stringent regulatory requirements. It became very clear to us that a truckmaker with a regional focus, like Mack, would not be able to compete – or in fact survive – in the increasingly global marketplace.

In 2001, Mack was acquired by the Volvo Group, a publicly held company headquartered in Gothenburg, Sweden. With 2005 sales of approximately $US 31 billion, Volvo's business areas include heavy trucks, buses, construction equipment, marine and industrial drive systems, aerospace, and financial services. The Volvo Group manufactures products in 25 different countries and sells in more than 185 nations. For your information, Volvo Cars is no longer part of the Volvo Group, as the unit was sold to the Ford Motor Company in 1999. Volvo Group shares are listed on NASDAQ. Roughly 14% of Volvo's shares are owned in the United States, and one of the ten largest shareholders in Volvo worldwide is the U.S. money manager Dodge & Cox.

Last year, the Volvo Group's consolidated operations in North America, which include Mack, amounted to almost $8 billion in sales, and we employ about 12,000 people in 19 states – including manufacturing operations in Pennsylvania, Maryland, Virginia, North Carolina, Tennesee and Connecticut. The Volvo Group is the United States's leading exporter of heavy-duty trucks and components, shipping more than $500 million in products to foreign markets in 2004.

The Volvo Group's purchase of Mack gave it a marquee North American brand, recognized for its 100 years of industry leadership and outstanding American work force. And for Mack, the alignment with a global partner has provided (and continues to provide) access to the resources we need to ensure that we continue to meet and exceed the expectations of our customers in the future.

Under the Volvo Group's ownership and financial backing, Mack has strengthened and expanded its North American operations. Our manufacturing operations in Macungie and

Middletown, Pennsylvania, and in New River Valley, Virginia have been upgraded – not just in terms of productivity, but also in terms of environmental responsibility, quality and workplace safety. Our distributor network throughout the U.S. and Canada – and our nationwide parts and service operations – have also been strengthened significantly, giving us the opportunity to compete in areas beyond our traditional business segments. And most important for the future, the partnership with the Volvo Group has made possible the most extensive and rapid product renewal in the history of Mack – a complete line of new and improved truck models, chassis and powertrain systems designed to return greater value to our customers now and in the future.

Speaking of powertrains, allow me to bring to your attention one of the Volvo Group's most significant investments in its U.S. operations – our state-of-the-art engine development and production facility in Hagerstown, Maryland. Mack has had an engine plant in Hagerstown since 1961, and has been one of the largest employers in the western part of the state since that time.

In 2002, Volvo faced a major decision about allocation of resources to new production and research capability in engines and powertrains. After thorough investigation and debate, Volvo's Board of Directors decided to invest an additional $150 million in the existing Hagerstown facility, in order to create a North American "Center of Excellence" for heavy-duty powertrains. Highlights of the new facility are:

1. By 2007, this plant will be producing a totally new product line of clean diesel engines that meet some of the strictest environmental standards in the world.
2. These "Made in the U.S.A" engines, based on a common global platform, will power all Mack and Volvo brand trucks assembled in North America..
3. Prior to this major investment in Hagerstown, Volvo brand truck engines were imported from Sweden. But as of January 1, 2007, these engines will be completely assembled here in the United States, which will take six to eight weeks off the production lead time for Volvo brand trucks produced in the U.S.
4. Another significant benefit derived from this investment is that our new engine development laboratory in Hagerstown will be directly linked to the global research and

development efforts of Volvo Group -- the largest heavy-duty diesel engine manufacturer in the world today.

Please keep in mind that the Volvo Group's decision to invest in Hagerstown was not a foregone conclusion. Volvo investigated relocation of its Hagerstown operations to other locations, many of which were outside the U.S. However, our senior management ultimately concluded that the Hagerstown facility was the best place to invest. This decision was based on the following factors:

- A hardworking and loyal workforce with extensive diesel engine knowledge;
- A highly experienced and qualified team for research and development (300 engineers);
- Good support from federal, state and local authorities;
- A good logistical location (access to customers, suppliers, harbors, etc.);
- Good relations with the local/national labor organizations;
- A stable, non-discriminatory legal environment;
- And, a welcoming environment in the U.S. for foreign investment.

The Benefits of Foreign Investment In The U.S.

The story of Mack and Volvo is but one positive illustration of the significant benefits that the U.S. economy derives from international investment. According to the most recent government figures, the benefits of foreign direct investment to the U.S. economy are clear:

- U.S. subsidiaries employ 5.3 million Americans and operate in all 50 states.
- U.S. subsidiaries support an annual payroll of $317.9 billion.
- Average compensation per employee is $60,527 – 34% more than the average compensation at all U.S. firms.

- U.S. subsidiaries heavily invest in the American manufacturing sector. Thirty-four percent of the jobs at U.S. subsidiaries are in manufacturing.

- Contrary to many people's assumptions, these companies don't just invest here to access our market. U.S. subsidiaries account for over 21% of all U.S. exports.

- New foreign direct investment (FDI) in the U.S. totals $79.8 billion, an increase of $16.2 billion or 26 percent over the previous year.

- U.S. subsidiaries reinvested $45 billion in their U.S. operations. In other words, profits earned here, stay here.

- U.S. subsidiaries spent $29.5 billion on U.S. research and development activities, up $2 billion from the previous year.

- Ninety-four percent of total assets owned by foreign companies are from OECD countries.

- Ninety-eight percent of U.S. FDI is from private sector firms – only two percent of total direct investment (*assets*) is owned by companies that are controlled by foreign governments.

- On the other side of the coin, American investors increasingly are participating in the global economy. Through their mutual funds and pension funds, Americans now hold over $2.9 trillion in foreign equities. The percentage of U.S. shareholders in the Volvo Group is 14%; and in companies like Nokia, the percentage is as high as 40%. I believe that direct foreign investment in the U.S. by global companies is a factor in these investment decisions.

- And of course, U.S. managers are playing important policymaking roles in global companies, reflecting the importance of this country as a manufacturing location and a major market. I've noted that I'm proud to serve on the Volvo Group Executive Committee, which oversees activities of the entire company around the world. Similar situations can be found in many global companies today. And in fact many of my colleagues at OFII member companies have gone on to lead their company's worldwide – Don Shepard at Aegon, Klaus Kleinfeld at Siemens and Marjorie Scardino at Pearson, just to name a few.

Results of the *OFII CEO SURVEY*: Competitiveness of the U.S. as a Location for Investment

Today the Organization for International Investment released the results of its annual CEO survey regarding the competitiveness of the U.S. as a location for business investment. I want to mention a couple of the results because I think that the views of this group of CEOs regarding how the U.S. is perceived around the world as a location for investment is quite relevant to your hearing.

Ongoing foreign investment in the United States is not a foregone conclusion. Changes in policy, perceptions of hostility to foreign investment, and basic economic factors all go into the decision about whether to locate that new plant in one of the 50 U.S. states, or in a province of Canada, or China. Each of my fellow CEOs is engaged in a constant battle for allocation of scarce resources with colleagues who run operations in Europe, Latin America or Asia. This survey is the only quantifiable measurement of where we think the U.S. is strong, and where it needs to improve.

Let me give you a few highlights of the Survey results:

- First, OFII CEOs maintain a "bullish" investment outlook for the United States, and are focused on growing and expanding existing operations.

- Respondents report that their employment levels in the U.S. will continue to increase, or at least maintain current levels.

- The main reason companies plan to maintain or increase their U.S. investment is the quality of our workforce. A majority of respondents believe that a "knowledgeable/skilled workforce" is more important than labor costs when making an investment decision.

- But the United States continues to receive poor marks for high cost basis of operations – health care costs and the legal environment being the main concerns.

- When asked where else their companies are investing, China remains the leading alternative.

That's just an overview, and I should mention that full results of the CEO Survey are available on OFII's web site at www.ofii.org.

Conclusion

In conclusion, I want to again stress the importance of direct foreign investment to my company. Simply put, the commitment of resources by our parent company is a major reason that Mack is in a position to compete in the challenging truck market of the future. Because of that direct foreign investment, the quintessentially American business icon of the Mack Bulldog can continue to contribute to the economic health of our nation, as it has for more than a century.

I also want to again emphasize that both Mack and the Volvo Group are fully committed to the concept that national security is any nation's first priority. But we also believe it must be managed alongside other important national priorities. In 1988, when Congress enacted the Exon-Florio statute that vested power in CFIUS, it struck a balance between two interrelated priorities: national security protection, and the economic benefits of an open investment policy.

The business community has a strong interest in making sure that both the public and policymakers have confidence in the CFIUS process. OFII and other leading business groups like the U.S. Chamber of Commerce, the Business Roundtable and the Financial Services Forum have engaged Congress in a discussion of those measures that would improve the CFIUS process while not unnecessarily raising barriers to foreign investment, and I believe these organizations are making an important contribution to your consideration of these issues.

Madam Chairman, thank you again for calling this hearing. On behalf of Mack, the Volvo Group, and the Organization for International Investment, we look forward to working with you and your colleagues in this important area.

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