110TH CONGRESS
1st Session

COMMITTEE PRINT

S. PRT.
110–25

AN EVALUATION OF CFIUS REFORM AFTER DP WORLD: BALANCING OPEN INVESTMENT POLICY AND NATIONAL SECURITY

A Report to Members

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

Richard G. Lugar, Ranking Member

ONE HUNDRED TENTH CONGRESS
FIRST SESSION

JUNE 20, 2007

Printed for the use of the Committee on Foreign Relations

Available via World Wide Web: http://www.access.gpo.gov/congress/senate

U.S. GOVERNMENT PRINTING OFFICE
35–996 PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
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LETTER OF TRANSMITTAL

JUNE 20, 2007.

DEAR COLLEAGUES:

The committee recently sent Manisha Singh of the professional staff to the United Kingdom and the United Arab Emirates in order to evaluate the status of foreign direct investment after the failed Dubai Ports World (DP World) transaction last year and in light of subsequent reforms proposed in the process of the Committee on Foreign Investments in the United States (CFIUS). She met with key government officials and private sector participants to collect and evaluate information to analyze the effects of post DP World reform on potential foreign direct investment (FDI) flows into the United States.

We are pleased to share with you her trip report, which we believe provides an effective explanation of CIFUS and its background. It also shares insightful details about current perceptions of potential investors abroad seeking to invest in the U.S. In addition, it describes measures that have been taken to counteract adverse effects occurring after DP World. The conclusion is a concise summary of the way we should proceed going forward. We look forward to continuing to work with you on these issues and welcome any comments you may have on this report.

RICHARD G. LUGAR,
Ranking Member.

AN EVALUATION OF CFIUS REFORM AFTER DP WORLD: BALANCING OPEN INVESTMENT POLICY AND NATIONAL SECURITY

OVERVIEW

The U.S. has historically been an open market receptive to foreign direct investment (FDI). Post World War II, during the reconstruction of the economies of many countries, there were efforts to form organizations that would restore diplomacy. Additionally, nations sought measures to facilitate and enable international commerce. Over the last several decades, commerce has grown to become increasingly global in nature. One of the challenges that has arisen is the need allow foreign investment in the U.S., while still maintaining a close watch on how such investment affects national security. There have been various periods of specific concern over increasing foreign ownership in the U.S. The result was the creation of the Committee on Foreign Investments in the United States (CFIUS), an inter-agency body designed to review foreign investment for national security purposes. A further result was adoption of the Exon-Florio amendment to the Defense Production Act, legislation designed to give the President authority over business transactions that may adversely impact national security.

COMMITTEE ON FOREIGN INVESTMENTS IN THE UNITED STATES (CFIUS)

Concerns over increased FDI gained heightened significance during the 1970's resulting in the creation of CFIUS. It was established by an Executive Order of President Gerald Ford and originally consisted of the Secretaries of State, Treasury, Defense and Commerce, the United States Trade Representative, the Attorney General, the Chairman of the Council of Economic Advisers, and the Director of the Office of Management and Budget.[1] The Secretary of the Treasury was to be the chair with the ability to invite representatives of other agencies to participate in the committee's functions. In 1993, President Bill Clinton expanded the committee's membership to include the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy.[2]

CFIUS was tasked with "... monitoring the impact of foreign direct investment in the United States, both direct and portfolio, and

[1] Executive Order 11858, Foreign Investment in the United States, May 7, 1975, 40 F.E. 20263.

[2] Executive Order 12860, Adding Members to the Committee on Foreign Investment in the United States, September 3, 1993.

for coordinating the implementation of United States policy on such investment."[3] In order to carry out its functions, CFIUS was to authorize preparation of analyses of foreign investment trends; guide foreign governments on their potential investments in the U.S.; review investments, which in its judgment affect U.S. national interests; consider new proposals for regulating foreign investment and set the views of the Executive Branch on the issue overall, as well as carry out the responsibilities of the relevant sections of the Defense Production Act. The Commerce Secretary was given responsibility for assimilating information on foreign direct investment flows into the U.S. including the evaluation of significant transactions. The committee was also to determine whether a transaction should be investigated and make such investigation if necessary. If an investigation were deemed necessary, it would commence no later than 30 days after receipt of notice of the transaction, and the investigation would be completed within 45 days of such determination. If the committee decided not to investigate a particular transaction and a member disagreed with this decision, the chair of the committee was to submit a report to the President discussing the differing views so that the President could decide. If all members were in agreement that no investigation was required, then the matter was concluded and the President was so notified. If the committee were unable to reach a unanimous decision, then the chair was to submit a report with the different views in order for the President to make a decision.

EXON-FLORIO AMENDMENT

In 1988, rising public concerns about increased foreign direct investment from Japan resulted in passage of the Exon-Florio provision. Exon-Florio granted the President authority to investigate transactions in order to determine the effects on national security. Its guidelines are similar to those set forth in the President Johnson's Executive Order. An investigation is to be commenced within 30 days of notification and completed within 45 days of determination of the need to investigate. Based on the findings of these investigations, the President has the authority to suspend or prohibit transactions in the interest of national security. The President can exercise this authority if there are findings of credible evidence that a foreign entity taking control could impair national security, and relevant existing law does not provide for national security.[4]

PROPOSED DP WORLD ACQUISITION OF PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY

In mid-October 2005, DP World, a United Arab Emirates government controlled company, was in the process of acquiring Peninsular and Oriental Steam Navigation Company (P&O), a private British company. P&O managed six ports in the United States: New York, Miami, Newark, Philadelphia, New Orleans and Baltimore. Upon consummation of the transaction, management respon-

[3] Executive Order 11858, Section 1(b).

[4] Section 721 of Pub. L. 100–418, 102 Stat. 1107, made permanent law by section 8 of Pub. L. 102–99, 105 Stat. 487 (50 U.S.C. App. 2170) and amended by section 837 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, 106 Stat. 2315, 2463.

sibilities for these six ports would have shifted to DP World. Due to this portion of the transaction, DP World notified and sought clearance from CFIUS.

Although there is no requirement that purchasers seek CFIUS approval, many do so because CFIUS can require complete unwinding if it later determines that a transaction is a threat to national security. Congress amended the Exon-Florio statue in 1992 to require that CFIUS investigate transactions where: (1) the acquirer is controlled by or acting on behalf of a foreign government; and (2) the acquisition results in control over interstate commerce that could affect national security. The DP World transaction met these criteria. The Department of Treasury, chair of CFIUS, notified DP World that its acquisition had cleared. CFIUS grants such clearance under the authority of the President.

Reports indicate that subsequently, a Florida company which had joint ventures with P&O became concerned when it learned of the acquisition. The company alerted members of Congress, who in turn took the story to the media. At this point, questions arose as to whether the President or senior White House staff were aware of the deal. This was significant since CFIUS is viewed to be carrying out the policies of the President. In February 2006, DP World postponed the final acquisition of the U.S. ports part of the deal in order for Congress to conduct a review. During this time, several members of Congress introduced legislation blocking the transaction or calling for CFIUS reform. The President threatened to veto any bill blocking the transaction. On March 8, House Appropriations voted to impair the acquisition.[5] The following day, DP World divested management of the U.S. ports to a U.S. entity.

REFORM LEGISLATION

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In the wake of the DP World transaction, the House and the Senate both passed legislation significantly reforming CFIUS and Congressional notification requirements.[6] The 109th Congress concluded with no conference convened on the measures. The move to reform CFIUS has been overwhelming. Although the goal is to enhance national security, it has generated significant concern in the global community that it will also have a chilling effect on the desire of foreign companies to invest in the U.S. The Federal Government currently does not undertake any significant affirmative steps to attract foreign investment. There are concerns that the detrimental effect of DP World combined with the lack of any active measures could lead to declines in foreign investment.

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House of Representatives. During this Congress, the House has passed H.R. 556, the National Security Foreign Investment Reform and Strengthened Transparency Act of 2007, which has been sent to the Senate for consideration. This legislation directs the President, through CFIUS, upon written notification of a covered trans-

[5] The House Appropriations Committee voted 62–2 to include an amendment in an emergency supplemental bill.

[6] The House passed H.R. 5337 and Senate passed S. 3549 on July 26, 2006.

action, to identify any potential effects on national security. A "covered transaction" is defined as any "merger, acquisition, or takeover by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States."[7] It specifies that any party to the transaction, the President, the committee or anyone acting on behalf of the committee can determine to put the transaction forward for a review. Any review which results in a finding that (1) there is a threat to national security which has not been mitigated or (2) there is a foreign government controlled transaction, is subject to further investigation. Additionally, if a roll call vote of the committee results in any one member objecting to the transaction or the Director of National Intelligence identifies particular concerns that could not be mitigated, then the transaction is also subject to further review. It provides statutory authority establishing CFIUS, comprised of the Secretaries of Treasury, Homeland Security, Commerce, Defense, State and Energy, the Attorney General, the Chairman of the Council of Economic Advisers, the United States Trade Representative, the Director of the Office of Management and Budget, the Director of the National Economic Council, the Director of the Office of Science and Technology Policy, the President's Assistant for National Security Affairs and any other designee of the President. There are also several provisions regarding increased oversight by Congress. Within 5 days after completion of an investigation, reports are to be sent to the Majority and Minority Leaders of the Senate, and the Speaker and Minority Leader of the House. Additionally, there are requirements for the committee to provide briefings if requested by members of Congress and further studies and reports required on the functioning of the CFIUS process.[8]

Senate. The Banking Committee has reported the Foreign Investment and National Security Act of 2007 to the full Senate for consideration. The Senate bill is significantly similar to the House passed bill. It is therefore likely that should this bill pass the full Senate and proceed to conference with the House bill, differences will not be difficult to resolve and the final legislation sent to the President will meet with approval of both chambers. The Senate bill provides for statutory establishment of CFIUS. It also enhances the role of the Director of National Intelligence in the committee. It further requires that in addition to Treasury, a lead agency be designated for each transaction which will be tasked with oversight of any mitigation agreements and follow-up for compliance with such agreements. It provides for an exception to the requirement that a state-owned agency automatically go through the investigation process if designated officials determine that there is no impairment to national security. In addition, it expands the list of criteria to be considered by CFIUS when conducting reviews. Similar to the House passed bill, it provides for reports to be submitted to Congress and additional reporting and oversight on the functioning of the CFIUS process overall.[9]

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[7] H.R. 556, Sec. 2. (a)(3).
[8] H.R. 556.
[9] S. 1610.

SUBSEQUENT TRANSACTIONS

Currently, no reform legislation has reached the stage of passage by both chambers and signature of the President. However, there have been impacts on the CFIUS process in transactions since DP World. Two such transactions merit attention as a part of this analysis. The first is Nokia Corp.'s acquisition of Siemens AG. Neither company is based in the U.S., however, Siemens supplies equipment to various branches of the U.S. government and has provided services in the area of airport security.[10] Because of this, the transaction fell into CFIUS review and a mitigation agreement was required to address U.S. national security issues. This prompted concerns in the international business community about the reach of U.S. CFIUS review since a condition was imposed on a transaction between two European headquartered companies. The CFIUS position is that although neither was based in the U.S., their conduct of business did affect U.S. national security.[11] The second is the acquisition of the U.S. company Lucent Technologies by French company Alcatel. This transaction generated interest due to the inclusion of an "evergreen" provision, meaning that the government would have the ability to unwind the transaction for an indefinite period if security commitments were breached. The opinions of the national security agencies have been given more weight in the post DP World CFIUS reviews. This generated a strong reaction from the business community which felt that it was far reaching and a departure from past practice.[12] There are strong concerns about the overall impacts of DP World on the CFIUS process. These concerns exist not only regarding deterred foreign investment in the U.S., but also regarding backlash against U.S. companies seeking to invest in other countries.[13] However, the business community has recently reacted positively to both the House passed and Senate proposed legislation.[14]

UNITED KINGDOM

There were several aspects of the DP World transaction which were felt in London. The initial was that the subject of DP World's acquisition was a British company, and subsequently, there were concerns that the U.S. public might fear foreign ownership gen-

[10] U.S. Expands Oversight of Deals; Ron Orol, The Deal, L.L.C., January 10, 2007.

[11] Assistant Secretary of Treasury Clay Lowery, Testimony before the House Armed Services Committee, November 14, 2006.

[12] "That CFIUS sought to and, apparently, did impose this condition on the Alcatel-Lucent merger is a disturbing departure from the government's stated support for an open trade and investment regime. Such conditions can chill investment, make those who do invest more cautious about the types of commitments they are willing to give the government in the context of the CFIUS review, and ultimately, harm the economy." Letter from Business Roundtable, Financial Services Forum, Organization for International Investment and United States Chamber of Commerce, December 5, 2006.

[13] "Just last week, the Russian government approved two laws. The first would create a CFIUS-like review process for foreign investments in 39 sectors. The second would ban foreign ownership in certain gas, oil, gold and copper assets. It September, China passed a new regulation allowing the government to block transactions that negatively affect China's "economic security" and state owned enterprises. Debate has started in Korea about whether they need an Exon-Florio law. In November, Canada's Minister of Finance called for a "principle-based approach" to address situations where "a particular foreign investment might damage Canada's long-term interests." The Indian government has begun an internal consultation process on the need for legislation to deal with foreign investments that have national security implications." David Marchik, Partner, Covington and Burling; Testimony before the House Financial Services Committee, February 7, 2007.

[14] *See* Appendix A.

erally, regardless of nationality. The private sector in London seems to have determined to approach the CFIUS reforms from a practical perspective. Multinational companies indicated an understanding that it was inevitable that the process would be reformed after the circumstances surrounding the DP World transaction. They were focused on understanding the new process and factoring it in to their business analysis. One of the primary considerations is when a CFIUS filing is required. After DP World, companies indicated they will err on the side of making a filing rather than not in order to safeguard the transaction from potential peril down the road. If a company determined that in spite of the time and cost of a CFIUS filing, it was still commercially beneficial to proceed, there are other aspects which could impede the transaction. For instance, if financing from an outside source were required, that source would have to make a determination regarding the risk. In transactions since DP World which could trigger a CFIUS filing, funding sources must now add in the additional time, cost and risk of possibility that the transaction might not proceed. Another factor increasing time and cost is the need to educate corporate executives regarding the CFIUS process.

Some of the larger multinational companies indicated they would be slightly more cautious when investing in the U.S. due to the CFIUS process. If the risk were too great, a transaction might be abandoned altogether. Executives also said they are currently exploring developing markets and that governments in these markets have affirmatively reached out to attract foreign investors. Commonly cited examples of such markets are India and China. For many, investing in the U.S. is their first choice; however, to the extent that it becomes more difficult to do so, they will explore these other markets. There was also a sense, however, that because they had been navigating the CFIUS process for so long and had become experienced in it, they were developing the expertise to proceed with CFIUS reported transactions. Concerns would be stronger from smaller companies and those who are not as experienced at investing in the U.S. These entities could potentially be disadvantaged when attempting to determine the appropriate procedures to follow due to lack of experience and resources.

UNITED ARAB EMIRATES

Meetings with U.S. embassy officials in Abu Dhabi provided broader context for the overall bilateral relationship. They indicated that in addition to the bilateral trade and investment relationship, it is important to understand the significance of the relationship for purposes of regional stability. The UAE government has pledged money and training resources for U.S. operations in Iraq and Lebanon. It has also historically supported and assisted moderate elements in the region.

U.S. officials indicated that the UAE was not inclined to let the DP World transaction compromise the overall bilateral relationship. There was a sense that government-owned entities would continue to seek to invest in the U.S., but would be more cautious in looking at investments which might trigger CFIUS filings. There was also concern that the UAE public was feeling as if foreign direct investment from Arab countries in particular was not welcome.

The larger, more sophisticated investors are still able to contemplate investments in the U.S., however, small and medium size companies have expressed reluctance in trying to do so. Although it is difficult to quantify the overall effect of investment flows from the UAE to the U.S., it was felt that there has been adverse effect.

UAE government officials indicated that they were surprised at the extent of the political fallout surrounding the DP World transaction. It was entered into as purely a commercial transaction. They explained that when the business opportunity arose, it was to purchase the British company P&O. The fact that P&O managed several U.S. ports was an incidental factor and not the reason for the transaction. From their perspective, the bilateral relationship is still considered strong and this single event will not change its nature altogether, however, there was a sense of disappointment that it occurred in spite of the strides that they felt have been taken to cooperate with the U.S. on national security. They also felt that although government to government discussions on a range of matters would continue to progress, there has been an impact in the private sector. Corporate executives signaled to the government that they did feel less welcome and more cautious when considering whether or not to invest in the U.S.

The failed DP World transaction also complicated other aspects of the commercial relationship. It was not cited as the reason for the halt in free trade agreement (FTA) talks, however, there were indications that post-DPW, UAE trade officials would be less willing to compromise their position in the negotiations. The President had notified Congress in November 2004 of his intent to commence FTA discussions with the UAE, which began in early 2005. Although many issues have been resolved, some, such as labor and investor-state dispute settlement remain open. The renewal of Trade Promotion Authority (TPA) may ultimately determine from the U.S. side if talks are resumed. There have been concerns that the DP World transaction fueled protectionist fears and could potentially have an adverse effect on renewal of TPA and other upcoming free trade measures.

Executives of the government owned or controlled corporations in Abu Dhabi indicated that although foreign perceptions are that the majority of UAE capital is housed in Dubai, in reality it is in Abu Dhabi. These executives, therefore, followed the DP World transaction carefully. They explained that any enhanced compliance requirements for investment from "government controlled" entities would have greater consequences in the UAE due to the fact that such entities are the largest source of investment outflows. There were also fears that in the case of foreign investors, the U.S. government could seize assets or take other forms of adverse unilateral action. However, they still indicated a desire to invest in the U.S., and to be a part of an environment where no single issue controls the bilateral relationship. The potential to have to make a CFIUS filing is a relevant issue when determining whether or not to do business in the U.S., but it did not appear to be the only, or the determinative issue. Other significant factors cited when determining whether to invest in the U.S. were travel and immigration. They felt that it has become more difficult to navigate U.S. immigration policies and to enter the country to do business.

Business executives, whether in wholly private owned or government owned companies, all indicated a desire to move beyond the DP World issues and find other ways to generate increased business relations. An FTA was discussed as something that could serve this purpose. In addition to the actual technical reduced tariffs and duties from such an agreement, simply its existence would signal an affirmative desire on the part of both governments to increase bilateral trade. Another area of increased cooperation discussed was student exchanges. Executives indicated that they previously sponsored students to study in the U.S., but the numbers have now dropped significantly. There was a sense that student exchange was an effective way to create a comfort level for the up-and-coming generations in both countries. To the extent there are greater common understandings, there is more trust and more possibility for cooperation on all fronts.

MEASURES TO ATTRACT FDI

During the 109th Congress, subsequent to the DP World fallout, there was a growing perception that the U.S. was no longer a welcome destination for foreign direct investment. In order to counteract this sentiment, Senators Bingaman and Lugar introduced legislation aimed at attracting foreign direct investment so that the benefits that flow to the U.S. from FDI would not be lost. Statistics indicate the foreign companies not only employ significant numbers of workers in each state, but employ such workers in higher wage jobs.[15] The bill has been introduced in the 110th Congress as the Invest USA Act of 2007.[16]

It provides guidelines for the establishment of a new division in the Department of Commerce, the United States Investment Administration, which would be headed by a newly created Under Secretary of Commerce for Investment. The responsibilities of this new agency and Under Secretary would be to gather specific data about foreign investment and create a report to be submitted to Congress. The duties of the Under Secretary would include coordination with the administration on the CFIUS process. It also provides for an annual investment report. The report would specifically include the amount of investment coming into each state, a description of programs designed to attract foreign investment, comparisons of investment flows into the other countries, the sectors into which investment is being made and sectors in which it is lacking. The bill contains details on how the analysis should be made including the impact that investment trends have on the competitiveness of domestic industries globally, employment in the U.S., and the provision of health care and benefits by companies to domestic workers. Based on this report, the agency would develop and implement policies which would seek to increase foreign investment in communities where employment has been adversely affected due to trade.

The bill also requires an Annual Investment Agenda (AIA) which includes an evaluation of research and development (R&D) expenditures being made, particularly with respect to the high technology

[15] *See* Appendix B.
[16] Introduced in the 109th Congress as the United States Direct Investment Act of 2006.

industry. In the AIA, the new Under Secretary would also be required to develop proposals that encourage investment which will enhance domestic competitiveness, and increase job opportunities. In addition, there is a requirement for consultation with Congress in development and implementation of the AIA. The bill further provides for the establishment of an interagency Investment Promotion Committee comprised of the Commerce Secretary, Treasury Secretary, Agriculture Secretary, the USTR, members of the International Trade Commission and National Economic Council.[17] It is currently pending before the Senate Finance Committee. Subsequent to introduction of this bill, the Department of Commerce, International Trade Administration, introduced its own initiative to affirmatively attract foreign direct investment, "Investing in America," which based on the same concepts in the Invest USA Act.

In discussions with embassy officials in the UK and the UAE, including U.S. Foreign Commercial Service (FCS) officers, all indicated that such affirmative measures seeking foreign investment were welcome and needed. The stated purpose of the FCS is to assist American companies seeking to do business abroad. Occasionally, they receive inquiries from foreign companies in their host countries that ask advice on how to do business in the U.S., however, such counseling is beyond their mandate and they often lack the time and resources to provide such advice.

CONCLUSIONS AND RECOMMENDATIONS

It is difficult to quantify the business effects of the DP World transaction on foreign direct investment into the U.S. in terms of numbers. It is safe to say that there was adverse effect, both in terms of actual parties seeking to invest here and in the perception of those who might seek to do so in the future. However, there was an overriding sentiment that because the U.S. is the largest consumer market in the world, investors who want to achieve world class business status would continue to come here and learn to navigate the process. The reactions varied from the UK to UAE, with those in the UAE being a bit more wary and concerned that there would be discriminatory effects on UAE companies due to ethnicity.

The experience of DP World, combined with the legislation pending in both the House and Senate should provide some certainty and increased transparency in the process. It will also provide for increased communication between the administration and Congress, which has been cited by many as one of the major reasons for the political fallout from DP World. Both the current House and Senate bills provide for reporting to Congress and more information for those Members whose states and districts may be affected.

In addition to the affect on FDI, DP World and the publicity it garnered had an impact from a diplomatic perspective. Foreign companies doing business here and American companies doing business abroad create more than just bilateral commerce. They also contribute to common understandings among populations, which are vital in shaping and maintaining a greater diplomacy. Cooperation on the commercial front increases the ability to work

[17] S. 740.

with nations on all other fronts and seek solutions to common concerns. It is essential that we maintain global ties because it is our open market which provides opportunity for the American worker and our open diplomacy which provides well being for the American public.

Over the last several decades, and in particular after September 11, 2001, it has become more challenging to balance a strong national security while remaining open to foreign direct investment from all regions of the world. It is vital to achieve the correct balance for many reasons. Our national security should never be compromised. However, we can continue to maintain it while still remaining relatively open to foreign investment. In fact, the perception that the U.S. is no longer open to foreign ownership, and in particular ownership from certain parts of the world, may work against our national interest. There should be a transparent process and careful review of any questionable transactions. Those that are in the commercial and diplomatic interest of the U.S. and which do not compromise our national security should go forward. "A world with strong investment flows is the opposite of a zero sum game. We believe there are only winners, no losers, and all participants gain from it." [18]

[18] Ronald Reagan Statement on Investment Policy, September 9, 1983.

APPENDIXES

APPENDIX A

May 16, 2007.

The Hon. Harry Reid,
U.S. Senate, Washington, DC.

The Hon. Mitch McConnell,
U.S. Senate, Washington, DC.

DEAR SENATORS REID AND MCCONNELL: We are writing to express our support for the Foreign Investment and National Security Act of 2007 which passed unanimously out of the Senate Banking Committee today. The bipartisan legislation will protect our national security and American jobs, and restore certainty to the CFIUS process while avoiding undue barriers to foreign investment in the United States. For this reason, we would urge you to quickly schedule this bill for floor consideration.

We commend Chairman Chris Dodd and Ranking Member Richard Shelby and other members of the Senate Banking Committee for working in a bipartisan manner to craft legislation that, like its House counterpart, recognizes the significance of foreign investment to the U.S. economy while ensuring that the President maintains the necessary clear authority to block the foreign acquisition of a U.S. company if the transaction were found to have an adverse impact on our national security.

This is important legislation for our economy, and we applaud the efforts of the Senate Banking Committee in passage of the Foreign Investment and National Security Act. We would strongly urge that this bill be moved expeditiously through the full Senate. Thank you for your time and consideration.

Sincerely,

JOHN CASTELLANI,
President, Business Roundtable.

ROB NICHOLS,
President and COO Financial Services Forum.

TODD MALAN,
President and CEO, Organization for International Investment.

THOMAS DONOHUE,
President and CEO, U.S. Chamber of Commerce

BUSINESS COMMUNITY STATEMENT ON HOUSE PASSAGE OF CFIUS LEGISLATION

WASHINGTON, DC.—Business Roundtable, The Financial Services Forum, the Organization for International Investment and the U.S. Chamber of Commerce issued the following statement on today's vote in the House of Representatives to pass H.R. 556, legislation reforming the Committee on Foreign Investment in the United States (CFIUS):

> The passage today of bipartisan CFIUS legislation is a victory for American jobs and a demonstration of how both parties can work together on legislation that will protect our national security while restoring certainty to the CFIUS process. We commend Chairman Frank, Ranking Member Bachus, Minority Whip Blunt and Representatives Maloney, Pryce, and Crowley for crafting a bill that strikes a critical balance between protecting national security and encouraging beneficial foreign investment. The bill recognizes the importance of foreign investment in the United States and the 5.1 million American jobs it supports. At the same time, it ensures that the President has the clear authority to block a foreign acquisition of a U.S. company to adequately and effectively protect our national security.
>
> We look forward to working with Senate Banking Committee Chairman Christopher Dodd, Ranking Member Richard Shelby, and Senate leadership as the Senate considers this issue. We encourage the Senate to act promptly on this key legislation.

Together, Business Roundtable, The Financial Services Forum, the Organization for International Investment and the US. Chamber of Commerce represent a broad range of U.S. businesses employing tens of millions of Americans. The organizations recognize the critical importance of foreign investment to both the US. economy and to the over five million American jobs it supports.

APPENDIX B

INSOURCING STATISTICS[1]

The Facts About Insourcing

- U.S. subsidiaries employ 5.1 million Americans. OFII has compiled a state jobs study, detailing the insourcing employment in each state.
- U.S. subsidiaries of companies headquartered abroad support an annual payroll of $324.5 billion—with average compensation per worker of $63,428, over 32 percent higher than compensation at all U.S. companies.
- U.S. subsidiaries heavily invest in the American manufacturing sector; with 31 percent of the jobs at U.S. subsidiaries in manufacturing industries.
- U.S. subsidiaries manufacture in America to export goods around the world—accounting for nearly 19% of all U.S. exports, or $153.9 billion.
- U.S. subsidiaries of companies headquartered abroad reinvested a record-high of $80.3 billion in their U.S. operations in 2006.
- U.S. subsidiaries share of American employment represented 28.2% of the American chemicals industry, 24% in the U.S. motor vehicles industry and nearly 24% of the U.S. non-metallic mineral products industry.
- U.S. subsidiaries' federal income taxes went up 57% from the previous year, to an all-time high of $29.9 billion.
- Foreign direct investment (FDI) in the U.S. totaled $183.5 billion in 2006; an increase of 67 percent from the previous year (OFII analysis of Commerce Department numbers.)
- U.S. subsidiaries spent $29.9 billion on U.S. reasearch and development activities, up from $29.8 billion the previous year.
- U.S subsidiaries also spent $108 billion plant construction and new equipment.
- 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.

[1] Excerpted from Organization for International Investment website, www.ofii.org. The information was reformatted for inclusion in this report.