

Senate Committee on Banking, Housing, and Urban Affairs
Hearing on Foreign Investment in the US
Testimony 10.20.2005

The current CFIUS process for reviewing foreign acquisitions leaves our nation vulnerable to foreign threats. In our modern day global economy threats to our national security assume many different forms. CFIUS has not accounted for this dynamic.

My attention to the CFIUS process began last April when I delivered four speeches on China. My concern was with the growing threat China is posing to our military, economic and energy security. While examining this issue I came across a disturbing example of China buying a US company, Magnequench, and moving it piecemeal back to mainland China. Let me read from the floor speech I gave on April 4, 2005.

“I believe that CFIUS does not have a broad enough conception of U.S. security. I understand that Representatives Hyde, Hunter and Manzullo expressed similar views in a January letter to Treasury Secretary John Snow, the chairman of CFIUS. One example of CFIUS falling short is with Magnequench International Incorporated. In 1995 Chinese corporations bought GM’s Magnequench, a supplier of rare earth metals used in the guidance systems of smart-bombs. Over twelve years, the company has been moved piecemeal to mainland China, leaving the U.S. with no domestic supplier of neodymium, a critical component of rare-earth magnets. CFIUS approved this transfer.”

The United States now has no domestic supplier of rare earth metals, which are essential for precision-guided munitions. I’d say that’s a clear national security concern.

More recently I was concerned with China’s state-owned CNOOC attempted to buyout Unocal, a US oil company. This demonstrates the kind of foreign acquisition that requires a deep examination in terms of national energy security.

I also testified before the US-China Commission on July 21, 2005, explaining my concerns with the CFIUS process. At the time I had introduced an amendment to the Defense Authorization Bill that would have made some of the necessary changes. With that bill stalled, I chose to introduce the changes as a stand-alone bill (S. 1797) which has been referred to this committee.

Over the past months, I have been pointing out that the CFIUS process has ignored some major issues which threaten our national security. The Government Accountability Office has recently issued a report on CFIUS that is right in line with this (September 28, 2005).

Non-traditional security concerns

One of the biggest problems that I have been trying to draw attention to is the inadequate definition of “national security”. CFIUS, under the leadership of Treasury, has chosen to define national security in the most limited of terms.

The GAO report details how, “...they have limited the definition to export-controlled technologies or items and classified contacts, or specific derogatory intelligence on the foreign company.”

I am aware of at least one instance where the Departments of Defense and Homeland Security believed national security was at risk, but were overruled because the threat did not meet this narrow definition set forth by Treasury.

The language I have proposed in the bill *requires* CFIUS to investigate transactions of national security concern, *including* economic and energy security.

Length of review period

The length of the review period is also of concern. Presently, there are only 30 days allotted for CFIUS to determine if an acquisition needs to enter the 45 day investigation process. Now some say that this is sufficient because if the investigating agencies need more time, CFIUS

has the company withdraw and refile. Besides being intellectually dishonest, this method shows how interrupted and inconsistent the process is. I believe we need to extend the review process to a maximum of 60 days.

The Justice department, a member agency of CFIUS, agrees with this, stating, “gathering timely and fully vetted input from the intelligence community is critical to a thorough and comprehensive national security assessment. Any potential extension of time available to the participants for the collection of that information would be helpful.”

Withdrawn acquisitions

CFIUS has received over 1,520 notifications and investigated only 24. Of those, only one acquisition has been stopped by the President.

Now some say this extremely low number is because there are many opportunities for companies to alter the nature of their acquisition. They are more right than they realize. CFIUS is less a strict procedure and more a porous and open-ended process by which companies can enter and leave whenever they feel the transaction may be threatened. *This* is the reason for the low number of investigations and single prohibition.

Worse, there has been no enforcement or tracking of these companies once they withdraw. I know of one example, cited in the GAO report, where a company was allowed to withdraw from the review process. After four years, that company still hasn't refilled despite security concerns raised by some CFIUS agencies. They are, for all intents, free to continue with the acquisition without any review.

Congressional Oversight

I believe congressional oversight is an effective tool to fix this problem. The bill I introduced requires:

Unclassified quarterly submissions of acquisitions that have occurred over a 90 period with a classified section that includes dissenting views.

The findings of the review process to be reported to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

A layover period of ten days after a transaction is allowed to proceed, during which time a resolution of disapproval can be introduced in Congress.

The power for a Chairman or ranking member of an oversight committee (Banking/ Finance) to initiate a review.

Conclusion

The current CFIUS process is more than “opaque.” It is clearly broken. And it is up to us in congress to fix it. I look forward to what this hearing will reveal and hope we have the courage to act on what we learn.

A vital part of understanding this issue is a comprehensive analysis of transactions that have occurred. I have two questions along this line that I request be submitted to the witnesses that they can answer for the record.

Thank you for your time.