

Written Statement of
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before the

Committee on Banking, Housing, and Urban Affairs
Senate

October 20, 2005

Mr. Chairman, Ranking Member Sarbanes, and distinguished members of the Committee.

Thank you for the opportunity to speak briefly today on the Department of Homeland Security's role as a member of the Committee on Foreign Investment in the United States.

The Department of Homeland Security is the newest member of CFIUS. We became a member in March 2003, soon after standing up as an amalgam of 22 diverse agencies whose common mission is the protection and security of our nation and people. Since that time, we have participated in the review of more than 125 foreign acquisitions or investments involving some of the nation's most critical infrastructure assets and components as well as technology companies vital to the defense technology base.

I mention our origins in order to stress what I believe is a key strength of the Department—we bring to CFIUS a diversity of viewpoints, expertise and skills. The government agencies from which we were formed give DHS a

broad perspective, informed by an understanding of infrastructure threats, vulnerabilities and consequences.

You have already heard some of my colleagues speak about achieving a balance between the desire for free and open markets and our responsibility to provide for the nation's security in the post-9/11 environment. DHS is well aware of the importance of free and open markets; it must maintain a close partnership with private industry in addressing critical infrastructure protection. Although our mission and expertise lead us to focus primarily on the security issues, we can never ignore the important role that foreign investment plays in our economy and, ultimately, in our national security. Indeed, we consider our CFIUS colleagues whose missions and expertise are traditionally in the economic arena to be crucial allies in the endeavor to protect and secure our nation, and we welcome the vigorous debates that sometimes arise as opportunities to better assess and articulate the risks that these transactions may represent.

Early Warning Program and Information Sharing

To that end, we have established a program that enables us to identify transactions of potential concern well before they are formally filed with CFIUS, and we both produce and share with our colleagues on the Committee detailed summaries and assessments to inform our discussions.

Soon after joining the Committee, DHS developed a rigorous in-house process of formal reviews for individual CFIUS filings and began producing detailed assessments for each filing, bringing to bear the full scope of unclassified and classified resources available. During this process, DHS

studies any consequences, vulnerabilities, and threats that may be present and makes a determination on the total risk to national security. If the risk is at an unacceptable level, DHS, together with other interested CFIUS parties, will develop tailored risk mitigation measures that are often memorialized in formal agreements.

In the past two years, DHS, along with DOD, DOJ, and the other CFIUS agencies, has made great efforts to share as much information as possible. We believe that bringing together each agency's unique resources spanning law enforcement, national intelligence, and open source information produces the best quality analysis. As part of this effort, DHS implemented an early warning program soon after joining the Committee. The purpose of this program is to identify those foreign investments in U.S. critical infrastructure and industrial base technology companies that may result in CFIUS filings or may pose a national security risk. We share this information with Treasury and our other partners. In many cases, prior to any CFIUS filing, we reach out to the companies involved in these transactions to ask for technical and financial briefings. We believe that this early outreach helps all parties concerned. CFIUS members get more information earlier, while the private parties have an early opportunity to explain the transaction and to allay national security concerns.

In fact, we find that sophisticated companies and experienced counsel increasingly do not wait for our outreach. Instead, they often approach DHS or other CFIUS members to offer briefings and discuss Government interests before they file. This provides more information to the government and greater certainty to the companies involved. It sometimes allows us to

agree on more effective risk management and mitigation, without the strict timelines that Exxon-Florio imposes. This is particularly important for large, complex transactions, and we are pleased that counsel in such transactions also see the benefits of early consultation.

Compliance Monitoring

DHS has made another contribution to the CFIUS process – systematic, predictable enforcement. When we enter into an agreement, we expect all sides to carry it out as written. To ensure compliance, DHS takes a disciplined approach to monitoring risk mitigation agreements that it enters into. DHS analyzes each agreement to which it is a signatory and extracts the timetables, policies, and deliverables that must be tracked to determine the companies' current compliance status. DHS uses both passive and active compliance verification strategies to ensure that foreign companies continue to abide by the terms of their agreement. In sum, we believe that the Department is providing an effective, credible, and capable program to deter or promptly resolve actions that a foreign company might take to endanger the national security.

Closing Statement

In closing, I would like to observe that the occasionally differing views among the agencies within CFIUS are not signs that the process is broken. Rather, they are signs that the process is working. The best way to get to the truth is a healthy debate. CFIUS is a diverse group of executive agencies. The balance between an open investment policy and protecting national security is a delicate one, and each CFIUS case deserves to be thoroughly analyzed from all angles in order to get the best overall, comprehensive

determination. Spirited discussions mean that the right people are talking to each other, and they are more likely to produce the right result.

Thank you again for the opportunity to address this important issue. I look forward to your questions.