

Comment

The Reformed CFIUS Regulatory Framework: Mediating Between Continued Openness to Foreign Investment and National Security

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Introduction

The regulatory regime that governs the national security review of foreign acquisitions of U.S. companies has drawn significant attention recently as a result of several high-profile transactions. In 2005, the proposed acquisition of U.S. energy giant Unocal by a subsidiary of the government-controlled China National Offshore Oil Corporation was derailed by intense political pressure and national security allegations that were never proven.¹ In 2006, a similar outcry forced Dubai Ports World (DP World), a United Arab Emirates state-controlled entity, to relinquish control over the U.S. operations of the British port management company it had acquired.² Public criticism accompanied even transactions that were successful, such as the \$1.75 billion sale of IBM's personal computer business to Chinese computer giant Lenovo in 2004.³ Similar episodes of scrutiny mixed with criticism are now being played out almost weekly due to the intensified activities of sovereign wealth funds—investment funds that are closely linked with states.⁴

The frequent political opposition to foreign acquisitions can be driven not only by genuine national security concerns, but also by protectionist impulses. Consequently, the regulatory regime that is in place strives to pay due attention to the former and to filter out the latter, all within the framework of keeping the

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¹ See Jonathan Weisman & Peter S. Goodman, *China's Oil Bid Riles Congress: Attempt to Take Over U.S. Firm Spurs Call for Retaliation*, WASH. POST, June 24, 2005, at A1; see also Joshua W. Casselman, *China's Latest 'Threat' to the United States: The Failed CNOOC-Unocal Merger and Its Implications for Exon-Florio and CFIUS*, 17 IND. INT'L & COMP. L. REV. 155 (2007).

² See Stephanie Kirchgaessner et al., *Stinging Defeat for Bush as DP World Gives Up U.S. Ports*, FIN. TIMES, Mar. 10, 2006, at 1; see also Deborah M. Mostaghel, *Dubai Ports World Under Exon-Florio: A Threat to National Security or a Tempest in a Seaport?*, 70 ALB. L. REV. 583 (2007).

³ See, e.g., Steve Lohr, *Is I.B.M.'s Lenovo Proposal a Threat to National Security?*, N.Y. TIMES, Jan. 31, 2005, at C6.

⁴ See Tony Tassell & Joanna Chung, *How Sovereign Wealth Funds are Muscling in on Global Markets*, FIN. TIMES, May 24, 2007, at 7.

United States open to foreign investment. Success in achieving this goal depends on several specific choices made in the design of the mechanism for reviewing transactions. As a starting point, the review process is likely to yield different results depending on whether the primary oversight responsibility lies within the executive branch or is shared with Congress or the courts. Furthermore, the U.S. framework has a significant impact on other jurisdictions' regulatory posture with regard to foreign investment. If the United States is seen as using national security review to engage in protectionism, this could provoke a protectionist backlash in other parts of the world and hurt U.S. companies. Similarly, other jurisdictions could take advantage of inadequacies in the U.S. regulatory regime and divert foreign investment away from the U.S. economy through more liberal laws.⁵

The Foreign Investment and National Security Act of 2007 (the Act),⁶ which was signed into law on July 26, 2007⁷ and went into effect on October 24, 2007, is the latest effort to modify and update the regulatory framework governing the foreign acquisition of U.S. companies. This Comment describes the most important changes introduced by the Act and evaluates the extent to which the updated legislation strikes a reasonable balance between addressing national security concerns and maintaining the openness of the U.S. economy.

I. The Structure of CFIUS Review

The origins of the current regulatory system can be traced back to 1975, when President Gerald Ford created the Committee on Foreign Investments in the United States (CFIUS), an interagency body within the executive branch chaired by the Department of the Treasury. The Department of the Treasury originally tasked CFIUS with monitoring the impact of inbound foreign investment and coordinating U.S. investment policy.⁸ The President's power to act in this domain was formalized by the International Investment Survey Act of 1976.⁹ In the 1980s, mounting concerns over the acquisition of U.S. firms by Japanese and British investors prompted Congress to introduce a system of

5 A similar process is well underway in the area of securities regulation, where problems associated with the Sarbanes-Oxley Act of 2002 have shifted business away from U.S. financial centers and toward European and Asian cities. See MICHAEL R. BLOOMBERG & CHARLES E. SCHUMER, CITY OF NEW YORK AND U.S. SENATE, SUSTAINING NEW YORK'S AND THE US' GLOBAL FINANCIAL SERVICES LEADERSHIP (2007), available at http://schumer.senate.gov/SchumerWebsite/pressroom/special_reports/2007/NY_REPORT%20_FINAL.pdf.

6 Pub. L. No. 110-49, 121 Stat. 246 (2007) (to be codified at 50 U.S.C. app. § 2061).

7 Press Release, The White House, President Bush Signs Foreign Investment and National Security Act of 2007 (July 26, 2007), <http://www.whitehouse.gov/news/releases/2007/07/20070726-6.html>.

8 Exec. Order No. 11,858, 40 Fed. Reg. 20,263 (May 9, 1975), as amended by Exec. Order No. 12,188, 45 Fed. Reg. 989 (Jan. 4, 1980); Exec. Order No. 12,661, 54 Fed. Reg. 779 (Jan. 9, 1989); Exec. Order No. 12,860, 58 Fed. Reg. 47,201 (Sept. 8, 1993); and Exec. Order No. 13,286, 68 Fed. Reg. 10,619 (Mar. 5, 2003). For an overview of the early years of CFIUS activity, see JAMES K. JACKSON, CONG. RESEARCH SERV., REPORT NO. RL33388, THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES 2-4 (2007), available at <http://www.fas.org/sgp/crs/natsec/RL33388.pdf>.

9 22 U.S.C. §§ 3101-3108 (2000).

formal review of these transactions through the Exon-Florio Amendment to the Defense Production Act of 1950.¹⁰ The Amendment authorized the President to investigate the effect of foreign acquisitions on U.S. national security and, acting based on “credible evidence,” to suspend or prohibit acquisitions that might threaten national security.¹¹ Prior to the Amendment, foreign acquisitions could be blocked only if the President declared a national emergency or regulators found a violation of federal antitrust, environmental, or securities laws. Congress acted again in 1992, adding a statutory requirement for CFIUS to carry out *mandatory* investigations of transactions where the acquirer is “controlled by or acting on behalf of a foreign government,” and “seeks to engage in an acquisition that could affect the national security of the United States.”¹²

The regulatory regime was developed further through a series of Executive Orders¹³ and Department of the Treasury implementing regulations.¹⁴ CFIUS presently has twelve members, including the Secretaries of State, the Treasury, Defense, Homeland Security, and Commerce; the U.S. Trade Representative; the Chair of the Council of Economic Advisers; the Attorney General; the Directors of the Office of Management and Budget and 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.¹⁵ The process of CFIUS review can begin either with a voluntary notice from a party to a potential transaction or on recommendation from a CFIUS member agency that believes a given transaction might affect U.S. national security.¹⁶ In practice, however, CFIUS has not initiated reviews but has instead encouraged parties to not-yet-notified sensitive transactions to file a notice voluntarily.¹⁷

Neither the statute nor the implementing regulations provide a definition of “national security,” but they do contain a non-exhaustive list of factors that may be considered when determining whether a threat to national security exists. These factors include domestic production needed for projected national defense requirements, the capability and capacity of domestic industries to meet national defense requirements, the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet national security requirements, the potential effects

10 Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418 § 5021, 102 Stat. 1107, 1425 (codified as amended at 50 U.S.C. app. §§ 2158-2170 (2000)).

11 50 U.S.C. app. § 2170(e)(1).

12 National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484 § 837, 106 Stat. 2315, 2463-65 (1992) (codified at 50 U.S.C. app. § 2170(b) (2000)).

13 For a list of these orders, see *supra* note 8.

14 31 C.F.R. pt. 800 (2006).

15 JACKSON, *supra* note 8, at 6.

16 See National Defense Authorization Act § 2170(b).

17 See U.S. GOV'T ACCOUNTABILITY OFFICE, ENHANCEMENTS TO THE IMPLEMENTATION OF EXON-FLORIO COULD STRENGTHEN THE LAW'S EFFECTIVENESS (2005), *available at* <http://www.gao.gov/new.items/d05686.pdf>.

of an acquisition on sales of military goods, equipment, or technology to countries supporting terrorism or raising proliferation concerns, and the potential effects on U.S. technological leadership in areas affecting national security.¹⁸

Even though the 2007 amendments responded to several points of criticism, they did not change the core structure of the CFIUS process. Currently, after it receives notice of an acquisition, CFIUS may begin a thirty-day review to determine whether the transaction could pose a threat to national security.¹⁹ At the end of this period, the Committee may conclude that no such threat exists and end the review, or it may commence a forty-five-day investigation. Upon the conclusion of the investigation, the Committee is required to submit a report to the President containing its recommendations.²⁰ Within fifteen days, the Office of the President may suspend, prohibit, or order certain modifications to the transaction through a mitigation agreement, or it may permit the acquisition by not taking any action. Regardless of the outcome, it must submit a report to Congress explaining its decision.²¹ This structure resembles the two-stage merger review process under the Hart-Scott-Rodino Act of 1976,²² but understandably involves much less transparency given the sensitive nature of national security information. For this reason, and also because the executive's findings are not subject to judicial review, the confidence in the Hart-Scott-Rodino regime cannot be automatically transposed onto the CFIUS framework.

The main benefit of a voluntary CFIUS filing for companies is that any notified transaction with potential national security implications enjoys a regulatory safe harbor, immunizing it against subsequent reviews or actions by the President except in cases where the parties have engaged in misrepresentations during the CFIUS process.²³ In contrast, a transaction *without* a voluntary filing with CFIUS that subsequently raises national security concerns can be reviewed and unwound by the President at any time, even long after closing. Another benefit of filing involves the opportunity for informal guidance whereby the regulator and the company discuss the adequacy of the filing and the expected shape of the CFIUS process. Although such guidance can help companies to provide relevant information and not waste resources on a transaction that is unlikely to be approved, the dialogue between the regulator and companies has halted in the aftermath of the DP World controversy.²⁴

18 50 U.S.C. app. § 2170(f) (2000) (pre-amendment).

19 50 U.S.C. app. § 2170(a).

20 31 C.F.R. § 800.504(b) (2006).

21 50 U.S.C. app. § 2170(g).

22 15 U.S.C. § 18(a) (2000).

23 31 C.F.R. § 800.601(d) (2006).

24 See ALAN P. LARSON & DAVID M. MARCHICK, COUNCIL ON FOREIGN RELATIONS, FOREIGN INVESTMENT AND NATIONAL SECURITY: GETTING THE BALANCE RIGHT 11 (2006).

II. Criticisms and Defenses of the CFIUS Process

Most criticisms of the CFIUS review process have been prompted by the high-profile acquisitions of the past few years.²⁵ Prominent among the criticisms was the view that because CFIUS is chaired by the Department of the Treasury, economic concerns would prevail over national security concerns. Furthermore, the definition of “national security” was sometimes interpreted too narrowly and the list of factors used to evaluate national security threats was viewed as too vague. There have been arguments to include “energy security” or even “economic security” as part of that definition. Finally, Congress has complained that the review process is not sufficiently transparent and that the White House has taken a hands-off approach, resulting in reviews that are not sufficiently detailed.²⁶

When evaluating these criticisms, it is important to remember that the number of foreign acquisitions that require CFIUS review is very small and that the potential for harm in the form of negative business attitudes towards U.S. firms abroad is disproportionately large. For example, among the over 1500 notices filed with CFIUS between 1988 and 2005, the Committee found it necessary to open an investigation in only twenty-five cases.²⁷ After investigation, thirteen proposed transactions were withdrawn, while twelve transactions were sent to the White House.²⁸ The President has used the authority to block a transaction only once, in 1990.²⁹ Even assuming that the withdrawn transactions would have resulted in a prohibition, problematic transactions would still comprise less than one percent of all notified transactions. The transactions which CFIUS needed to investigate comprise only two percent of the total number of notified transactions. It should also be remembered that *ex ante* control of foreign acquisitions is not the only way to ensure that such transactions do not threaten national security. Problems can certainly arise outside of a change of corporate ownership or control and, consequently, there should be appropriate mechanisms for detecting and remedying such problems. The CFIUS process should be seen as a small complement to more comprehensive monitoring mechanisms and not as a tool that can address national security concerns all by itself.

Finally, it is helpful to bear in mind that unsubstantiated alarmist statements could originate from parties that are not unbiased or disinterested, e.g., politicians representing domestic constituents with economic stakes, or spurned bidders who would benefit directly if a transaction falls through. The possibility that foreign acquisitions could be threats to national security is a serious one, but it should not become a pretext for the stealth promulgation of

25 See *supra* notes 1-3.

26 See LARSON & MARCHICK, *supra* note 24, at 13-24.

27 *Fact Sheet: CFIUS*, WASH. POST, July 3, 2005, at F3.

28 *Id.*

29 See Stuart Auerbach, *President Tells China To Sell Seattle Firm*, WASH. POST, Feb. 3, 1990, at A1.

policies in other areas, or for the defense of labor, environmental, and industrial special interests.

III. Emerging Realities in the Markets for Investment and Regulation

The importance of striking an appropriate balance between openness to foreign investment and the protection of national security is highlighted by two emerging trends. First, sovereign wealth funds have come to play a larger and more visible role in the global market for investment and their targets frequently include U.S. companies. Second, the increased interplay between the regulatory frameworks of countries seeking to attract foreign investment suggests that the CFIUS regime can have unintended international effects.

The global marketplace has seen the emergence of a new investor type—sovereign wealth funds that are either directly or indirectly controlled by national governments.³⁰ As recent transactions have shown, the prototypical new purchasers of major assets, such as a British grocery store chain (Sainsbury's), large blocks of shares in global banks (Barclays and Citigroup), or a U.S. stock exchange (NASDAQ) are government-controlled Chinese companies and the sovereign investment funds of petrol-rich Gulf states.³¹ The substantial depreciation of the U.S. dollar in 2007³² has made U.S. assets much cheaper for foreign-based entities, be they governments, companies, or individual investors. Domestic politicians may view some of these entities with suspicion, but the capital inflows they bring are needed for the continued economic strength of the United States.

On a more global scale, the modifications and the ongoing performance of the framework regulating foreign investment in the United States are closely monitored by other countries and could well set the tone for the degree of openness to such investment worldwide. In recent years, a number of jurisdictions have begun establishing CFIUS-style bodies or procedures, including major U.S. trade partners, such as China,³³ Canada,³⁴ Germany,³⁵

30 See Tassell & Chung, *supra* note 4.

31 *Keep Your T-Bonds, We'll Take the Bank*, ECONOMIST, July 26, 2007, at 75; Simeon Kerr, *Gulf Arabs Flex Muscles for Global Buy-Outs as Funds Gain Confidence*, FIN. TIMES, Sept. 12, 2007, at 9; Joseph B. Treaster, *Dubai to Buy Large Stake in Nasdaq*, N.Y. TIMES, Sept. 20, 2007, at C1; Steven R. Weisman, *Oil Producers See the World And Buy It Up*, N.Y. TIMES, Nov. 28, 2007, at A1.

32 See Ralph Atkins & Krishna Guha, *ECB Chief Points to Concerns Over Weak Dollar*, FIN. TIMES, Nov. 9, 2007, at 1.

33 See LARSON & MARCHICK, *supra* note 24, at 8.

34 Shawn McCarthy, *Ottawa Looks to Tighten Foreign Investment Rules*, GLOBE & MAIL, Oct. 3, 2007, at B5; see also Shawn McCarthy, *Taqi Deal Faces Strict Review; Ottawa Will Weigh State Control When Assessing Abu Dhabi's Purchase of PrimeWest*, GLOBE & MAIL, Sept. 23, 2007, at B3 (discussing internal pressure for review of the \$5 billion acquisition of a national energy company by a state-owned Abu Dhabi company).

35 Tony Barber et al., *Germany Drafts Plans for Own CFIUS Deal Watchdog*, FIN. TIMES, Sept. 27, 2007, available at <http://www.ft.com/cms/s/0/48128c56-6c82-11dc-a0cf-0000779fd2ac.html> (noting that the German regulatory framework is expected to be a "minimalist version" of the U.S. mechanism).

and the European Union.³⁶ Maintaining attractiveness to foreign investment therefore requires a relative assessment that compares the domestic CFIUS framework with those of other recipient countries. Some countries view the U.S. regime as unnecessarily onerous and could attempt to create more investment-friendly frameworks that would divert foreign investment away from the United States. Others, such as China, could use national security review as a pretext for blocking U.S. purchases of domestic assets, or at least for raising their cost. Finally, the increased prevalence of arguments that use the concept of “national industrial policy” could work to strengthen the protectionist tendencies that already exist in certain European countries.³⁷

Even in cases where the regulatory regimes do not differ formally, the cost of generating negative publicity through politicization can be substantial. In the case of DP World, for example, CFIUS approved the acquisition through its regular review process, but members of Congress and other political and economic actors criticized and ultimately unraveled part of the transaction by forcing the sale of DP World’s U.S. assets. Analysts have suggested that as a result of this episode, foreign investment in the United States originating from the United Arab Emirates alone fell by over \$1 billion in 2006.³⁸

IV. Evaluation of the 2007 Amendments

The Foreign Investment and National Security Act of 2007 was the result of reform efforts (and, ultimately, compromise) in the House and the Senate. The more extensive House bill³⁹ was eventually replaced with a Senate Banking, Housing and Urban Affairs Committee bill that paid somewhat greater attention to input from the business community.⁴⁰ The final version of the Act addresses many of the concerns of Congress: it strengthens the oversight of CFIUS, codifies many existing good practices, and makes the process more transparent. At the same time, the Act managed to avoid proposals that would have placed onerous regulatory constraints upon CFIUS. Overall, the Act appears to strike a careful balance between the need for greater transparency and more detailed review on the one hand, and the interest in promoting foreign investment on the other. In the very least, the reforms should increase public confidence in the process and reduce the likelihood that future transactions will be disrupted in the post-review stages, as was the case with

36 *Communication from the Commission to the European Council and the European Parliament: An Energy Policy for Europe*, COM (2007) 1 final (Oct. 1, 2007), available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0001en01.pdf.

37 See Patrick Sabatier, *Globalization à la Carte*, INT’L HERALD TRIB., May 18, 2006, <http://www.iht.com/articles/2006/05/18/opinion/edsabat.php> (discussing the French government’s opposition to PepsiCo’s attempts to acquire national “industrial champion” Danone and to the purchase of European steel giant Arcelor by the Indian Mittal Steel); see also *European Takeovers: To the Barricades*, ECONOMIST, Mar. 2, 2006, at 55-56.

38 *DP World’s Long Shadow*, ECONOMIST, June 16, 2007, at 74-75.

39 H.R. 556, 110th Cong. (2007).

40 S. 1610, 110th Cong. (2007).

DP World.⁴¹ Nonetheless, much of the Act's effectiveness will be determined by the content and the application of the new implementing regulations that the Department of the Treasury must issue⁴² and by the actions of members of Congress during future CFIUS reviews. The discussion that follows focuses on three of the most notable changes in the regulatory regime and on their expected effects.

Perhaps most significantly, the Act increased the role of Congress and created substantial congressional reporting requirements. CFIUS must now inform the majority and minority leaders of the Senate and the House of Representatives, as well as the chairs and ranking members of the congressional committees of jurisdiction, at the conclusion of a thirty-day review process that does not result in a forty-five-day investigation, or a forty-five-day investigation that does not refer a case to the President.⁴³ The CFIUS report must describe the transaction and the determinative factors in the Committee's decision and certify that there are no unresolved national security concerns with the transaction. Furthermore, CFIUS must submit annual reports to Congress, and Congress may require a briefing on any transaction that has been reviewed or whenever there is an issue of compliance with national security mitigation agreements.⁴⁴

While extensive, these changes do not go as far as allowing Congress to block specific transactions or requiring mandatory notification to the congressional delegations and governors of states likely to be impacted by a transaction.⁴⁵ The new provisions allow for greater transparency while maintaining the evaluation and decision-making process entirely within the executive branch. As such, they should not diminish the efficiency of the CFIUS framework but should allay concerns by members of Congress that national security interests have not been respected. The congressional outcry following the clearance of the DP World transaction was not anticipated by CFIUS and both the Committee and the President were unable to provide coordinated and persuasive evidence in support of the decision to approve the transaction.⁴⁶ The changes in the regulatory regime would ensure that whenever CFIUS decides to clear potentially controversial transactions, it would be armed with a strong case in support of its decision and would be able to respond more persuasively to close congressional scrutiny. Ultimately, this could only raise confidence in the review process.

Another major change introduced by the 2007 Act is the expansion of the factors that CFIUS may consider in evaluating transactions for their impact on

41 See *supra* note 2.

42 Foreign Investment and National Security Act of 2007, sec. 9, § 721(h), 121 Stat. 246, 259 (2007).

43 *Id.* sec. 2(b), § 721(b), 121 Stat. at 247.

44 *Id.* sec. 7(b), § 721(m), 121 Stat. at 257.

45 Such proposals had been considered leading up to passage of the Act. See Douglas Holtz-Eakin, *You Can't Be CFIUS*, WALL ST. J., July 13, 2006, at A8.

46 See Edward Alden & Holly Yeager, *Arab Ally Senses That Bush No Longer Has Control in Washington*, FIN. TIMES, Mar. 10, 2006, at 8.

national security. To the factors already noted,⁴⁷ the new list adds the potential effects of a transaction on critical infrastructure including major energy assets; the potential effects on sales of military goods or technology to countries posing a regional military threat to the United States; the potential effects on critical technologies deemed essential to national defense (regardless of whether the acquirer is controlled by a foreign government); involved foreign nations' adherence to nonproliferation agreements, cooperation with counter-terrorism efforts, and prevention of diversion of military technologies; and the long-term projections of U.S. energy requirements.⁴⁸ Because consideration of these factors is neither mandatory nor dispositive, their addition does not place rigid constraints on the CFIUS process, but it does suggest that the process would be more probing. At the same time, the adopted version of the Act avoids earlier proposals to rank countries based on their counter-proliferation and counter-terrorism policies.⁴⁹ Such an approach would have rendered the review process more formulaic and less effectual. The precise meaning of the expanded set of factors that CFIUS may consider will not be clarified until the Department of the Treasury updates its guidance on the types of transactions likely to raise national security issues. It is important for the Department not to overreach because actions based on an expansive conception of "national security" could conflict with U.S. obligations under bilateral and multilateral investment treaties which place a limit on the grounds for blocking inbound foreign direct investment.⁵⁰

A third significant change in the regulatory framework is the formalization of the role of intelligence agencies in the CFIUS process. Under the 2007 Act, the Director of National Intelligence is required to provide CFIUS with an analysis of the national security implications of a transaction within twenty days of receiving a CFIUS notice. The Director is now an *ex officio* non-voting member of the Committee.⁵¹ Given the nature of CFIUS review, it is likely that intelligence agencies were already involved in the process. The codification of their role, however, will do much to dispel fears that national security concerns are downplayed because the Committee is chaired by the Department of the Treasury. This provision in the final version of the Act once again struck a compromise between the status quo and more far-reaching proposals suggesting that the CFIUS process be chaired by the Department of Homeland Security, rather than the Department of the Treasury.⁵²

47 See *supra* note 18 and accompanying text.

48 Foreign Investment and National Security Act sec. 4, § 721(f), 121 Stat. at 253.

49 See Holtz-Eakin, *supra* note 45.

50 See Jose E. Alvarez, *Political Protectionism and United States International Investment Obligations in Conflict: The Hazards of Exon-Florio*, 30 VA. J. INT'L L. 1, 118-21 (1989).

51 Foreign Investment and National Security Act sec. 2(b)(4)(D), § 721(b), 121 Stat. at 251.

52 See LARSON & MARCHICK, *supra* note 24.

V. Conclusion

The recent changes in the framework governing the review of foreign acquisitions of U.S. companies responded to two interconnected developments: the raised awareness of the potential national security risks associated with foreign ownership of important U.S. assets and the growing frequency of such foreign acquisitions by sovereign wealth funds. At their core, the 2007 amendments to the CFIUS regime provided additional statutory guidance for the scope and content of the review process. They also increased its overall transparency and the amount of information available to Congress, both in the aggregate and with respect to specific cases. The drafters of the amendments did not yield to pressures to adopt a number of highly restrictive measures with questionable national security benefits; instead, they appear to have struck a workable balance between maintaining openness to foreign investment and the protection of national security. The real test for the amended regulatory framework, however, will be in its implementation by the Department of the Treasury, and in the ability of the executive branch to inspire and maintain public confidence in the new CFIUS process.