

**STATEMENT OF JOHN J. CASTELLANI**

**PRESIDENT, BUSINESS ROUNDTABLE**

**BEFORE THE**

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE**

**TUESDAY, JULY 11, 2006**

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Thank you for giving me the opportunity to appear before you today to discuss with you the Committee on Foreign Investment in the United States (CFIUS) and express our support for HR 5337, the “National Security Foreign Investment Reform and Strengthened Transparency Act of 2006.” I am here as President of the Business Roundtable, an association of chief executive officers of approximately 160 leading U.S. companies with over \$4.5 trillion in annual revenues and more than 10 million employees.

As CEOs of major U.S. companies, Business Roundtable members know firsthand the critical importance of foreign investment, in particular foreign investment in the United States, which supports over 5 million American jobs. The Business Roundtable also recognizes that protecting national security is paramount. If an acquisition of a U.S. company would impair national security, the President should not hesitate to exercise his authority to block any such deal or insist on conditions that will adequately and effectively protect our national security.

As your Committee considers the CFIUS legislation, we urge you to recognize that protecting national security and foreign investment are not incompatible goals, and that proposals to reform the CFIUS process need to be balanced and constructive so that they do not place unnecessary, damaging and counterproductive restrictions on foreign investment.

I would like to focus my remarks today on three topics: First, how important foreign investment is to the U.S. economy; second, the three central principles we believe should guide your thinking about the CFIUS process and its reform; and, third, why the Business Roundtable supports H.R. 5337.

**FOREIGN INVESTMENT IN THE U.S. ECONOMY**

First, foreign investment in the United States is essential to the continued vitality of the American economy. In 2004, foreign investors invested more than \$115 billion in the United States, providing U.S. companies and workers with important capital for expansion of U.S. production facilities, increased R&D spending, and other investments to help grow the U.S. economy. U.S. subsidiaries of foreign companies spent about \$30 billion in R&D and accounted for 21 percent of total U.S. exports in 2003. Nearly 20 percent of U.S. manufacturing GDP is attributable to subsidiaries of foreign firms. Indeed, the very presence of such companies in the United States sets into motion a multiplier effect that parcels out benefits—including tax revenue—throughout local and national economies felt by all Americans, including small businesses.

This data demonstrates that if foreign companies were to spend less in America as a result of perceptions that the United States no longer welcomes foreign investment, reduced investment would harm U.S. economic growth, choke innovation, and undermine our overall economic competitiveness in today's global economy.

Just as significantly, losing foreign investment to our overseas competition would cost American workers good jobs. Foreign companies with operations in the United States support nearly 5.3 million American jobs spread throughout all 50 states. Put differently, almost 5 percent of Americans working in the private sector are employed by foreign companies. These U.S. workers receive compensation totaling \$318 billion annually, with an average annual compensation of over \$60,000 (which is over 34 percent higher than compensation at all U.S. companies), and their ranks are growing rapidly. Over 90 percent of these investments come from friendly countries belonging to the Organization for Economic Cooperation and Development and only 2 percent involve firms that own assets that are owned or controlled by foreign governments.

Besides putting good-paying American jobs at risk, restricting foreign investment in the United States would harm U.S. investors' stock portfolio. For example, cell phone manufacturer Nokia may be headquartered in Helsinki, but 40 percent of its shares are owned in America. Broad restrictions on ownership of U.S. assets would harm U.S. pensions, mutual funds, and investors through falling stock prices and lower investment returns.

Foreign investment is also vital to the success of our capital markets, which provide the "seed corn" essential to the creation of new businesses, innovations, and ideas. Our growing economy and robust capital markets attract more foreign investment than any other single country: from \$185 billion in 1985 to more than \$1.5 trillion today. Shut off that spigot and our mighty economic engine will sputter.

Just like foreign companies, numerous U.S. firms make significant foreign investments in other countries in order to expand their markets and establish worldwide production and distribution networks in the ongoing struggle to maintain their international competitiveness. U.S.-owned foreign assets total about \$9 trillion. While nearly 90 percent of U.S. company investments on an annual basis are made in the United States, the fact is we invest considerably more in foreign countries than they do in ours. Given the U.S. business community's global reach and increasing dependence on foreign markets and foreign earnings, U.S. companies rightly fear the prospect of confronting an anti-investment, anti-U.S. business backlash in important markets outside the United States.

It is therefore important to recognize that burdensome or discriminatory barriers to foreign investment in the United States will jeopardize U.S. investments overseas by inviting retaliatory treatment against American investors. Already, some of our trading partners are now considering legislation to place new limits on foreign investment. For example, Mexico is contemplating restrictions on foreign investment related to infrastructure projects. Other countries, including China, France, and India, have taken similar types of steps to restrict

investment in a number of important sectors, and are prepared to use any restrictive U.S. legislation as a ready excuse to implement protectionist measures.

In addition to causing harm to U.S. businesses and workers, as well as the overall American economy, any retaliatory measures to curtail U.S. ownership of “critical infrastructure” overseas would undermine U.S. national security by limiting our access to energy and critical mineral resources. For example, the United States imports about 58 percent of its oil today (compared to 33 percent in 1973). By 2020, that figure could jump to 70 percent. Yet, U.S. proposals to restrict foreign ownership of “critical infrastructure” unrelated to national security provide a pretext for countries with strategic natural resources to impose their own restrictions on U.S. companies investing overseas.

## **PRINCIPLES FOR CFIUS REFORM**

Given the importance of foreign investment to the U.S. economy, we believe the legislative process to reform CFIUS should be guided by three central principles:

- National security should continue to be the principal focus of the foreign investment review process.
- The CFIUS process should continue to be objective and fair, and non-political; it should not create obstacles to investment that put a damper on legitimate business activities.
- Maintaining an open, fair, and non-discriminatory investment environment for legitimate foreign investment is important to the U.S. national interest.

I will briefly talk about each of these main principles and then conclude by discussing why HR 5337 is a tough, effective bill that is consistent with these ideas.

### **First, national security should continue to be the principal focus of the foreign investment review process.**

At the outset, it is important to recognize there is no inconsistency between our national security and investment in the United States by overseas companies. Foreign investment is an important contributor to a strong U.S. economy, which is vital to our security. Our nation cannot be secure unless our economy continues to be strong and vibrant. In many instances, foreign investment helps modernize U.S. infrastructure needed to improve the international competitiveness of U.S.-based companies and their workers and to protect our national and homeland security.

The existing national security factors in the CFIUS process are sufficiently broad enough to cover threats to American security that have evolved in recent years, and to continue to do so as technology and global politics change. One of the strengths of the current law is its flexibility to adjust with the times: The Internet was barely known in 1988 when the law was written, but CFIUS now reviews most cross-border telecom transactions because the Internet backbone is part of critical communications infrastructure.

Attempts to redefine national security by, for example, identifying specific sectors or including economic factors would only have the unintended adverse consequence of discouraging legitimate foreign investment. Such efforts are often misguided attempts at protectionism masquerading as national security policy.

Moreover, proposals that introduce political or economic considerations unrelated to national security into the CFIUS process would divert scarce government resources away from keeping America safe, the principal focus of the CFIUS process. Such measures would also provide competitors opportunities to interfere with transactions for reasons that have nothing to do with national security.

**Second, the review process should continue to be objective and fair, and non-political; it should not create obstacles to investment that put a damper on legitimate business activities.**

We understand that an improved relationship with the Executive Branch is needed to ensure that the Congress can effectively fulfill its responsibility to oversee the operation of the CFIUS process.

We also believe that the CFIUS process should be rigorous, thorough, and comprehensive in order to fully and properly protect national security. However, if it is allowed to become unduly political or burdensome, the CFIUS process will deter foreign investors from making legitimate investments that are vital to the U.S. economy. For example, establishing unprecedented Congressional reporting requirements on a case-by-case basis would be especially counterproductive because it invites politicization of the CFIUS process. Such measures would introduce regulatory uncertainty that would chill foreign investment in the United States, diminish the value of U.S. assets, and adversely effect U.S. economic growth.

At the same time, reform measures ought not to threaten the confidentiality of sensitive business proprietary information. Submission of all relevant information by companies to CFIUS allows it to conduct complete and timely reviews and investigations of transactions. A system that does not guarantee confidential treatment of business proprietary information will undermine the entire process and risks the unintended consequence of discouraging companies from making investments in the United States.

**Third, maintaining an open, fair and non-discriminatory environment for legitimate foreign investment is important to the U.S. national interest.**

As discussed above, foreign investors provide U.S. companies and workers with millions of quality jobs at high wages, important capital for expansion of U.S. production facilities, increased R&D spending, and other investments to help grow the U.S. economy. If the Congress were to adopt excessive changes to the CFIUS process, there is a significant risk that such changes would discourage legitimate foreign investment in the United States and encourage other countries to discriminate against U.S. companies investing overseas.

## **H.R. 5337, “NATIONAL SECURITY FOREIGN INVESTMENT REFORM AND STRENGTHENED TRANSPARENCY ACT OF 2006”**

Looking ahead, after eighteen years of operation, we understand why Congress sees a need to fine-tune the CFIUS review process to restore the confidence of Congress and the American public. While we know the CFIUS process to be extremely rigorous, there is room for improvement. That is why the Business Roundtable supports the general consensus in Congress that the CFIUS process should be refined through measures that increase transparency, establish greater accountability, and above all enhance national security, but do not stifle legitimate foreign investment and U.S. economic growth.

The CFIUS reform process in the House has to date proceeded in a deliberative and bipartisan manner that strikes an appropriate balance between safeguarding our national security and protecting job-creating foreign investment.

H.R. 5337 is generally consistent with the three general principles I have discussed today. It keeps national security as the principal focus of the foreign investment review process without putting a damper on foreign investment that is critical to U.S. economic growth and job creation. H.R. 5337 also reforms the CFIUS process in an objective, fair-minded, and non-political manner without adding unnecessary regulatory burdens that will curtail foreign investment that is critical to the U.S. economy.

The bill takes a number of important steps to protect against foreign acquisitions that could threaten national security:

- It ensures that foreign government owned investors will be required to go through an investigation.
- It provides CFIUS with the ability to extend the investigation period if security issues are not resolved, while at the same time authorizing greater investigative authority.
- It strengthens transparency and achieves greater accountability by requiring CFIUS to collect and share more data, on an aggregate basis, through reports to the Congress, without creating burdensome notice and reporting requirements that would risk politicization of the process or leakage of business proprietary data.
- It retains needed flexibility by permitting CFIUS to negotiate mitigation agreements, but also requires improved monitoring of those agreements, and authorizes CFIUS to reconsider previously approved transactions if security agreements are materially breached.
- It creates a clear statutory role for the Director of National Intelligence to review proposed acquisitions and furnish relevant information and analysis.

These measures represent significant substantive and procedural enhancements to the existing national security review process.

Mr. Chairman, as the Committee participates in CFIUS reform, let me close by reiterating that real threats to U.S. national security must be tackled with purpose and resolve—no business deal is worth jeopardizing the safety of the American people. But at the same time, challenges to U.S. economic success must be met with a similar commitment to global leadership and engagement in opening markets that has contributed to increasing national and global prosperity.

National security and open economic policies that promote growth go hand-in-hand. Indeed, an important aspect of protecting national security is open economic policies, including investment policies, which can help generate wealth, ideas, and innovations to meet our national security requirements. We look forward to continuing our work with Congress to reform the CFIUS process in ways that both strengthen national security and promote foreign investment.

Thank you for the opportunity to appear before the Committee. I look forward to your questions.