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DEFENSE TRADE

National Security Reviews of Foreign Acquisitions of U.S. Companies Could Be Improved

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Highlights

Highlights of GAO-07-661T, a testimony before the House Committee on Homeland Security, Subcommittee on Transportation Security and Infrastructure Protection

Why GAO Did This Study

The Exon-Florio amendment to the Defense Production Act of 1950, enacted in 1988, authorized the President to suspend or prohibit foreign acquisitions of U.S. companies that pose a threat to national security.

The Committee on Foreign Investment in the United States—chaired by the Department of Treasury with 11 other members, including the Departments of Commerce, Defense, and Homeland Security—implements Exon-Florio through a four-step review process: (1) voluntary notice by the companies of pending or completed acquisitions; (2) a 30-day review to determine whether the acquisition could pose a threat to national security; (3) a 45-day investigation period to determine whether concerns require possible action by the President; and (4) a presidential decision to permit, suspend, or prohibit the acquisition.

Over the past decade, GAO has conducted several reviews of the Committee's process and has found areas where improvements were needed. GAO's most recent work, conducted in 2005, indicated concerns remained.

What GAO Recommends

In 2005, GAO offered several matters for Congressional consideration aimed at improving the Committee's process. The Committee has taken some actions to reform the process, but GAO has not examined these actions.

www.gao.gov/cgi-bin/getrpt?GAO-07-661T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Ann Calvaresi-Barr (202) 512-4841 or calvaresibarra@gao.gov.

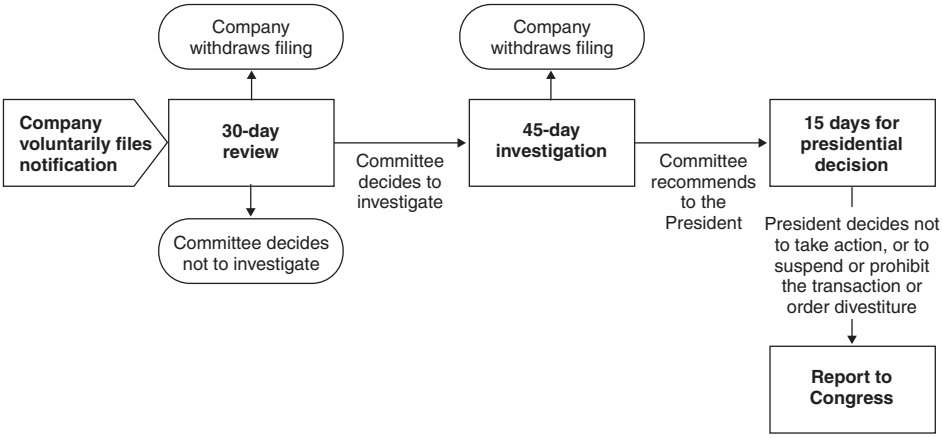
What GAO Found

Exon-Florio reviews are meant to serve as a safety net when other laws may be inadequate to protect national security. GAO found that several aspects of the review process may have weakened the law's effectiveness. First, member disagreement about what defines a threat to national security may have limited the Committee's analyses. Some argued that reviews should be limited to concerns about export-controlled technologies or items, classified contracts, or specific derogatory intelligence concerning the company. Others argued for a broader scope, one that considers potential threats to U.S. critical infrastructure, defense supply, and technology superiority.

Committee members also differed on the criteria that should be used to determine when an investigation is warranted. Some applied essentially the criteria in the law for a presidential decision—that is, there is credible evidence that the foreign controlling interest may take action that threatens national security and that no other laws other than the International Emergency Economic Powers Act are adequate to protect national security. Others argued that these criteria are inappropriate because the purpose of an investigation is to determine if credible evidence of a threat exists.

While most cases can be completed within the 30-day review period, complex acquisitions may require more time. Concerned that an investigation could discourage foreign investment, the Committee allowed companies to withdraw notifications rather than proceed to investigation. While this practice can provide additional review time without chilling foreign investment, it may also heighten the risk to national security in transactions where there are concerns and the acquisition has been completed or is likely to be completed during the withdrawal period. Finally, because few cases are investigated, few require a presidential decision, giving Congress little insight into the Committee's process.

The Committee on Foreign Investment in the United States' Review Process



Source: GAO analysis based on 50 U.S.C. app. § 2170 and 31 C.F.R. Part 800 and case file reviews.