



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 27, 2007
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 556 – National Security Foreign Investment Reform and Strengthened Transparency

(Rep. Maloney (D) NY and 58 cosponsors)

The Administration supports House passage of H.R. 556 and appreciates the efforts of the House Financial Services Committee to strengthen the Committee on Foreign Investment in the United States (CFIUS). The Administration regards the Nation's security as its top priority. In addition, the Administration views investment, including investment from overseas, as vital to continued economic growth, job creation, and building an ever-stronger America. Therefore, the Administration seeks to improve the CFIUS process in a manner that protects national security and ensures a strong U.S. economy and an open investment environment that will serve as an example and thereby support U.S. investment abroad.

In light of the President's responsibility to ensure the Nation's security, and in the context of comity between the executive and legislative branches, we believe the President should retain substantial flexibility to determine CFIUS's membership and administrative procedures and to make adjustments when national security so requires. Accordingly, the Administration has concerns with some of the provisions of H.R. 556 and looks forward to working with Congress to address these concerns, to strengthen CFIUS, and to ensure the protection of America's homeland and the strength of our economy.

Establishment and Membership of CFIUS

The President should retain the flexibility to determine and adjust the appropriate Executive Branch membership of CFIUS and their roles. H.R. 556 should not mandate that CFIUS have Vice Chairs, nor that CFIUS include members of the Executive Office of the President. Further, the President should retain the flexibility to determine roles and responsibilities of CFIUS and its members. For example, the Administration opposes any language in Section 6 that would call for the designation of a lead agency or agencies to represent other agencies or the Committee in negotiating, entering into, imposing, modifying, monitoring, or enforcing mitigation agreements.

Deliberations and Decision-Making of the Committee

The Administration is concerned that the legislation imposes procedural requirements, such as roll call voting and motions, which are ill-suited for executive bodies such as CFIUS and are inconsistent with the vesting of the executive power in the President. Given the bill's reporting requirements, such procedures will deter the full and open interagency discussion that is required to consider CFIUS cases properly.

The Administration fully shares Congress' goal of ensuring senior-level accountability for CFIUS decisions. The Administration supports requiring the Secretary, Deputy Secretary, or an Under Secretary of the Treasury to sign CFIUS decisions at the conclusion of a second-stage

(45-day) investigation, as H.R. 556 provides. With respect to cases for which CFIUS concludes its action at the end of the first-stage (30-day) investigation, the Administration supports the House Financial Services Committee's decision to authorize delegation of this authority. However, in view of the volume and variety of cases and to ensure that our most senior officials are able to focus on those cases that do raise national security concerns, this authority should be further delegable to other officials appointed by the President and confirmed by the U.S. Senate.

The Administration believes that the current 30-day and 45-day time frames for first-stage and second-stage investigations provide CFIUS with sufficient time to examine transactions. The possibility of extensions may discourage foreign investment by generating uncertainty and delay for the parties to proposed transactions. The Administration therefore opposes allowing CFIUS to extend the second stage (45-day) investigation period. The Administration notes that the current CFIUS practice of encouraging parties to transactions to consult with CFIUS prior to filing provides CFIUS with additional time and flexibility to examine complex transactions.

The Administration supports the role of the intelligence community as an independent advisor to CFIUS and appreciates the bill's inclusion of a provision that ensures that the Director of National Intelligence (DNI) is provided adequate time to complete the DNI's analysis of any threat to the national security of a covered transaction. However, language in H.R. 556 also appears to provide the DNI with the ability to force a second-stage (45-day) investigation if the DNI has identified particularly complex intelligence concerns and CFIUS was not able to satisfactorily mitigate the threat. Such a policy role would be inconsistent with the independent advisory role of the DNI envisioned in the legislation and supported by the Administration.

Notification and Reports to Congress

The Administration supports enhanced communication with Congress on CFIUS matters to better facilitate Congress' performance of its functions. CFIUS should be required to notify Congress of transactions only after all deliberative action is concluded, as H.R. 556 provides. As discussed above, roll call voting, particularly if reported outside the Executive Branch, would deter the full and open interagency discussion that is required to consider CFIUS cases, and reporting on internal Executive Branch deliberations, including the positions of individual CFIUS members, should not be required.

Authorities of CFIUS

The Administration believes current law and regulations give the President and CFIUS adequate authority to gather all information needed to conduct CFIUS investigations. The Administration is concerned that provisions of the bill that provide CFIUS with additional statutory authority to collect evidence and require the attendance and testimony of witnesses and the production of documents would make the CFIUS process more adversarial and less effective.

The Administration believes its ability to protect national security would be enhanced by a statutory grant of authority to impose civil penalties for a breach of a mitigation agreement. This authority to seek civil penalties, which could be calibrated to the seriousness of the non-compliance, would be a useful and effective tool for enforcing those agreements.

Presidential Review and Decision

The Administration supports requiring the President to make the final decision on a case only when CFIUS recommends that a transaction be blocked or when CFIUS fails to reach a consensus after a second-stage investigation. Requiring Presidential action in a broader set of cases would undermine the President's ability to determine how best to exercise Executive Branch decision-making authority.

The Administration looks forward to working with Congress on these important issues.

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