

Statement of Robert S. Nichols
President and Chief Operating Officer
The Financial Services Forum

Testimony Before the
House Financial Services Committee

February 7, 2007

Overview

Chairman Frank, Ranking Member Bachus, members of the Committee, thank you for the opportunity to participate in this important hearing on the Committee on Foreign Investment in the United States (CFIUS). In particular, I'd like to thank Chairwoman Maloney and Congresswoman Pryce for their leadership on this critically important issue and their sponsorship of H.R. 556.

I am here as president and chief operating officer of the Financial Services Forum, a financial and economic policy organization comprising the chief executive officers of 21 of the largest and most diversified financial institutions doing business in the U.S. The Forum works to promote policies that enhance savings and investment in the U.S. and that ensure an open, competitive, and sound global financial services marketplace. As a group, the Forum's member institutions employ more than 2 million people in 175 countries and hold combined assets of more than \$16 trillion.

The financial services industry is acutely aware of the serious threats faced by our nation, and the need for Congress to consider all aspects of national security in its decision-making. Addressing threats to U.S. national security must be undertaken with absolute resolve and come second to no other priority. For this reason, we fully support the President's authority to suspend or prohibit any foreign acquisition, merger, or takeover of a U.S. corporation that is determined to threaten the national security of the United States.

We also strongly believe that protecting U.S. national security and advancing America's global economic leadership are compatible and reinforcing goals. Indeed, we cannot achieve one without pursuing the other. In an increasingly interconnected world, the health and vitality of the U.S. economy – and, therefore, American jobs – depend on open markets and the free flow of capital. U.S. investments abroad support economic growth at home, access to resources and, in turn, national security. Similarly, foreign investment in the United States brings trillions of dollars of capital, new ideas, techniques, and methodologies – all of which promote U.S. economic growth, enhance our competitive position in the global marketplace, and help to create millions of American jobs. At present, more than 5 million American jobs can be directly tied to foreign investment in the United States. Indeed, when asked to rank 10 potential threats to the continued expansion of the U.S. economy in a survey the Forum conducted this past October, our 21 member CEOs ranked “protectionism” as the most serious threat – ahead of “terrorism.”

Unfortunately, in the wake of the Dubai Ports World controversy last year, securing approvals within the CFIUS process of foreign investments has become more difficult and is taking longer:

- In 2006, there were 113 CFIUS filings (up 73 percent over 2005), 7 second-stage investigations (up 250 percent), and 5 withdrawals (up 150 percent). The dramatic increase in filings strongly suggests that foreign investors and their legal counsel are increasingly uncertain about U.S. approval requirements, leading them to more frequently file proposed transactions for CFIUS review, straining CFIUS' limited resources. The dramatic increase in the number of second-stage investigations and withdrawals further suggests that foreign investors are finding it more difficult to close deals in a commercially timely fashion.¹
- While mandated timetables have not changed, caution with CFIUS has resulted in longer review periods, causing a growing number of transactions to be withdrawn. Presidential approval of the Lucent-Alcatel merger, for example, came more than 7 months after the proposed merger was announced. Longer approval periods discourage foreign investors from investing in the United States, and discourage U.S. companies from considering foreign partners.

These developments are not good news for the U.S. economy. Limiting the pool of potential investors and buyers of American assets undermines the value of those assets, harming business owners, their workers, the interests of shareholders, and Americans with money invested in stocks, mutual funds, 401(k) retirement, and pension funds.

These developments are also contrary to U.S. security interests. Given CFIUS' limited resources, an overly cautious environment that encourages companies to file with CFIUS regarding transactions with little or no impact on national security distracts CFIUS staff from focusing on those proposed acquisitions with genuine national security implications and therefore legitimately requiring of greater scrutiny.

With these concerns in mind, we respectfully urge Congress to reject unwise and unnecessary new restraints on open markets and the free flow of capital as it considers possible reforms to the CFIUS process. Any changes should result from a thoughtful, considered, and fact-based assessment, and should seek to restore confidence, certainty, and predictability to the prospect of investing in America.

In my time before the Committee, I'd like to raise four points that we believe should guide Congressional consideration of reforms to the CFIUS process:

- First, the vast majority of foreign acquisitions have no bearing on U.S. national security. 94 percent of foreign-owned U.S. assets are owned by companies from OECD countries, and 98 percent of foreign direct investment in the United States is from private sector firms. Expanding CFIUS' mandate beyond genuine national security concerns would create a major disincentive for foreign investment and have a negative impact on U.S. economic growth and job creation.

¹ See "Swinging the Pendulum Too Far: An Analysis of the CFIUS Process Post-Dubai Ports World," by David Marchick, The National Foundation for American Policy, January 2007

- Second, successive Administrations of both political parties have for decades worked aggressively to establish a global rules-based system founded upon the principles of open investment and free trade. This continuity in policy has enabled America to prosper, assert a leadership role in the global economy, and advance our broader foreign policy and strategic interests. We risk eroding this prosperity and leadership position by adopting new laws which discriminate against foreign investment.
- Third, the existing CFIUS process is fully capable of identifying and dealing with potential threats to our national security. Although we recognize the process has shortcomings – particularly with regard to communications with Congress – and that some reform may be warranted, existing law provides the President with sufficient authority to block any foreign acquisition or mitigate related national security concerns. Agencies represented on CFIUS have on numerous occasions affirmed their readiness to use the full authority of the law.
- Finally, it is instructive that upon establishing CFIUS Congress wisely chose to insulate it from political influence. And, by imposing strict confidentiality requirements, Congress explicitly recognized the sensitivity of the data relevant to such transactions, from a national security and commercial standpoint. The rationale supporting both decisions is as valid today as it was two decades ago.

The Benefits to the U.S. Economy of Foreign Investment

Today, more than ever, the U.S. economy depends on foreign investment. U.S. subsidiaries of foreign-based companies employ more than 5 million Americans throughout all fifty states, paying compensation totaling \$325 billion annually.

Foreign companies also account for roughly 20 percent of all U.S. exports, 15 percent of private sector research and development, 10 percent of private-sector capital investments, and 12 percent of corporate taxes collected.

And when supplied with the facts, Americans clearly value the benefits of foreign investment, according to a survey we at the Financial Services Forum conducted recently. When asked about foreign investment in the United States, more than half of respondents indicated a favorable opinion. When told that more than 5 million American jobs were provided by foreign-based employers and that those jobs paid more than average, **61 percent** said they had a more favorable view of foreign investment. Of those that initially had an unfavorable view of foreign investment, better than a third (**39 percent**) said they had a more favorable view after hearing the economic benefits.

Open, stable, and predictable markets are a prerequisite for attracting global capital. While the United States is currently a favored destination for foreign investment, it is prudent to be mindful that markets in Europe and Asia are increasingly competitive. The introduction of a single currency in Europe has eliminated currency conversion costs and exchange rate risk, making Europe much more attractive. And with the Chinese and Indian economies growing at 9 and 6 percent respectively, those economies are already attracting enormous amounts of investment

capital. Indeed, in 2003, for the first time, China eclipsed the United States as the largest recipient of foreign direct investment

Global capital is sensitive to changes in the political climate. Poorly considered proposals to reform CFIUS would surely have a chilling effect on the inflow of foreign investment, with results that might well include higher interest rates, lower equity prices, and slower economic growth. Finally, it should be recalled that the United States is the world's largest investor, with over \$10 trillion in assets overseas. Erecting unreasonable barriers to participation in U.S. markets would likely invite retaliation by other countries, at great cost to U.S. interests.

The CFIUS Process

The Committee on Foreign Investment in the United States was established in 1975 with the purpose of evaluating the security impact of foreign investment. In 1988, the so-called Exon-Florio provision provided the President, following a review by CFIUS, with authority to block an acquisition of a U.S. business by a foreign person if the acquisition is determined to threaten the "national security" of the United States.

The process is initiated when parties to a proposed transaction file a voluntary written notice with CFIUS, or when a CFIUS member agency takes this action on its own. In either case, upon receiving this notification CFIUS begins a review of the transaction which lasts a maximum of 30 days. The process is terminated if CFIUS concludes at the end of this 30 day period that there are no national security issues warranting further review. In cases where a significant question of national security arises, CFIUS will undertake an investigation that may last a total of 45 days. At the end of this investigation, CFIUS provides a written recommendation to the President, who has 15 days to decide to approve or block the transaction. Therefore, a full CFIUS review cycle is 90 days. The President's decision is not subject to judicial review.

Since the enactment of Exon-Florio in 1988, CFIUS has reviewed over 1,600 foreign acquisitions of companies for potential national security concerns. Only one transaction has ended with a forced divestment. That case, in 1989, involved the purchase by CATIC, a company controlled by the Chinese government, of MAMCO, a small aerospace parts manufacturer in the state of Washington.

However, these figures do not reflect the full impact of the CFIUS process on addressing national security concerns raised by proposed foreign acquisitions of U.S. companies. For example, there are many instances in which CFIUS has worked with individual companies to devise security measures that precluded the need for a full investigation. Moreover, there have been many cases where parties voluntarily restructured a transaction to address national security concerns, or withdrew from the transaction altogether.

It should also be pointed out that it is relatively common for parties to a transaction to meet with CFIUS agency officials well in advance of filing a notice in order to explain the proposed transaction, provide information about the parties, and solicit comments from CFIUS members about their potential concerns. Therefore, the time necessary to consider potential national security implications of a transaction can be considerably longer than 90 days. In many cases, issues can be resolved before the notice is even filed. In others, this pre-filing consultation may

lead the parties to conclude that a transaction will not pass CFIUS review, in which case they may restructure their transaction to address national security concerns or abandon it entirely.

Since September 11, 2001, CFIUS has applied greater scrutiny to foreign investments on national security grounds, imposed stricter security requirements as a condition for approving specific transactions, and toughened enforcement of security agreements negotiated through the CFIUS process. There have been more investigations and withdrawals in just the past three years than during the previous decade. CFIUS has also significantly broadened the scope of its national security reviews. Prior to September 11th, CFIUS focused primarily on protection of the U.S. defense industrial base and the export of controlled technologies. Since then, CFIUS has intensified its focus on the additional goal of protecting critical infrastructure.

Proposals to Reform CFIUS

The Congress has a vital role to play in exercising its oversight authority to ensure that the CFIUS process is structured and implemented in a way that fully protects U.S. national security. Ultimately, CFIUS cannot be effective absent public confidence in its ability and willingness to do what is necessary to safeguard our security. To this end, we support more open communication between the Administration and Congress regarding the CFIUS process, so long as the confidentiality of proprietary information is protected.

We are very concerned, however, about proposals that would give Congress unprecedented new power to delay or overturn decisions by CFIUS. Legitimate national security concerns should be pursued vigorously, but introducing overt political considerations into the process would undermine investor confidence in U.S. markets and, consequently, reduce economic growth, threaten job creation, and jeopardize U.S. efforts to open foreign markets.

We are also troubled by proposals that would discourage foreign investment by requiring lengthy review periods, or proposals that, while intended to elevate national security scrutiny of foreign investments, might well prompt decision makers to disapprove meritorious investments that do not pose genuine national security threats.

In addition, the CFIUS process must retain a high degree of integrity and confidentiality. By its nature the CFIUS handles sensitive, proprietary information which relates to national security. Making this information accessible in the public domain could undermine the integrity of the CFIUS process and ultimately make it less effective in carrying out its primary mission of identifying and addressing transactions which implicate genuine national security concerns.

Of particular concern are proposals that would:

- Provide for Congressional Disapproval of President's Decision: Proposals to grant Congress power to over-ride Presidential decisions regarding foreign investment would unnecessarily politicize the CFIUS review process. In addition, Congress is simply not best equipped for making sensitive, fact-based, case-by-case decisions. Congress makes law and oversees administrative procedure, but does not second-guess International Trade Commission (ITC) decisions or individual patent awards and should not do so with respect to CFIUS decisions.

- Increase Required Time Periods for Review and Investigations: Proposals to require longer review or investigation periods stem from a perception that CFIUS reviews are cursory and not substantive, when the opposite is true. The necessary confidentiality of the CFIUS process reinforces this suspicion. These proposals would in many cases create an unacceptable level of risk and uncertainty for foreign investors, thus establishing a barrier to their participation in the U.S. market. They could also drive other countries to reform their rules for foreign investment to the detriment of U.S. companies seeking to invest overseas.
- Require Unprecedented Notifications to the Congress and State Officials: Unprecedented notification and reporting requirements would increase the risk of politicizing transactions and allow competitors to achieve through politics what they could not in the marketplace. Such notification and reporting requirements would also create opportunities for information sent to Congress to be exploited for commercial purposes, rather than for advancing national security.
- Expand the Scope of CFIUS to Include “Economic” Security: Reforms calling for CFIUS to expand the scope of its mandate to include “economic” security would provide grounds to block any and all foreign investment in the United States, and would overload CFIUS’ review process without enhancing national security. The existing national security factors in the CFIUS process are sufficiently broad to cover threats to American security. Such changes would also divert scarce government resources away from national security, the principal focus of the CFIUS process.
- Summarily Deny Foreign Acquisitions or Ownership, Management or Operation of U.S. Critical Infrastructure: The CFIUS process should focus on legitimate national security concerns. Outright bans or significant restrictions on foreign ownership of significant sectors of the U.S. economy would have severe consequences not only for the health of the U.S. economy, but also the ability of U.S. companies, investors, and individuals to compete and invest abroad.
- Mandatory Investigations of Acquisitions of U.S. Companies by State-Owned Entities: Again, the CFIUS process should focus on those acquisitions that raise genuine national security concerns, and CFIUS should have the discretion to determine which transactions raise legitimate concerns. As a recent transaction involving the Ontario Teachers Pension Fund illustrates, government ownership in and of itself is not a meaningful indicator of national security concerns. Mandatory investigations of acquisitions made by state-owned entities that in no way implicate national security concerns would be an unnecessary disincentive for foreign investment and use of government resources.
- Evergreen Provision: A hospitable foreign investment environment requires procedural predictability and legal certainty – principles critically undermined by provisions that would allow for the re-opening and evaluation of an approved transaction sometime in the future.

Conclusion

Mr. Chairman, as reform alternatives are further deliberated, we urge Congress to take a thoughtful and measured approach – ever mindful of the critical importance to America and to the world of thriving global trading relationships. We urge Congress to keep America’s markets open, even as it protects America’s security.

Protecting national security and promoting foreign investment and free trade are not mutually exclusive. We can and must do both. Thank you for the opportunity to appear before the Committee.

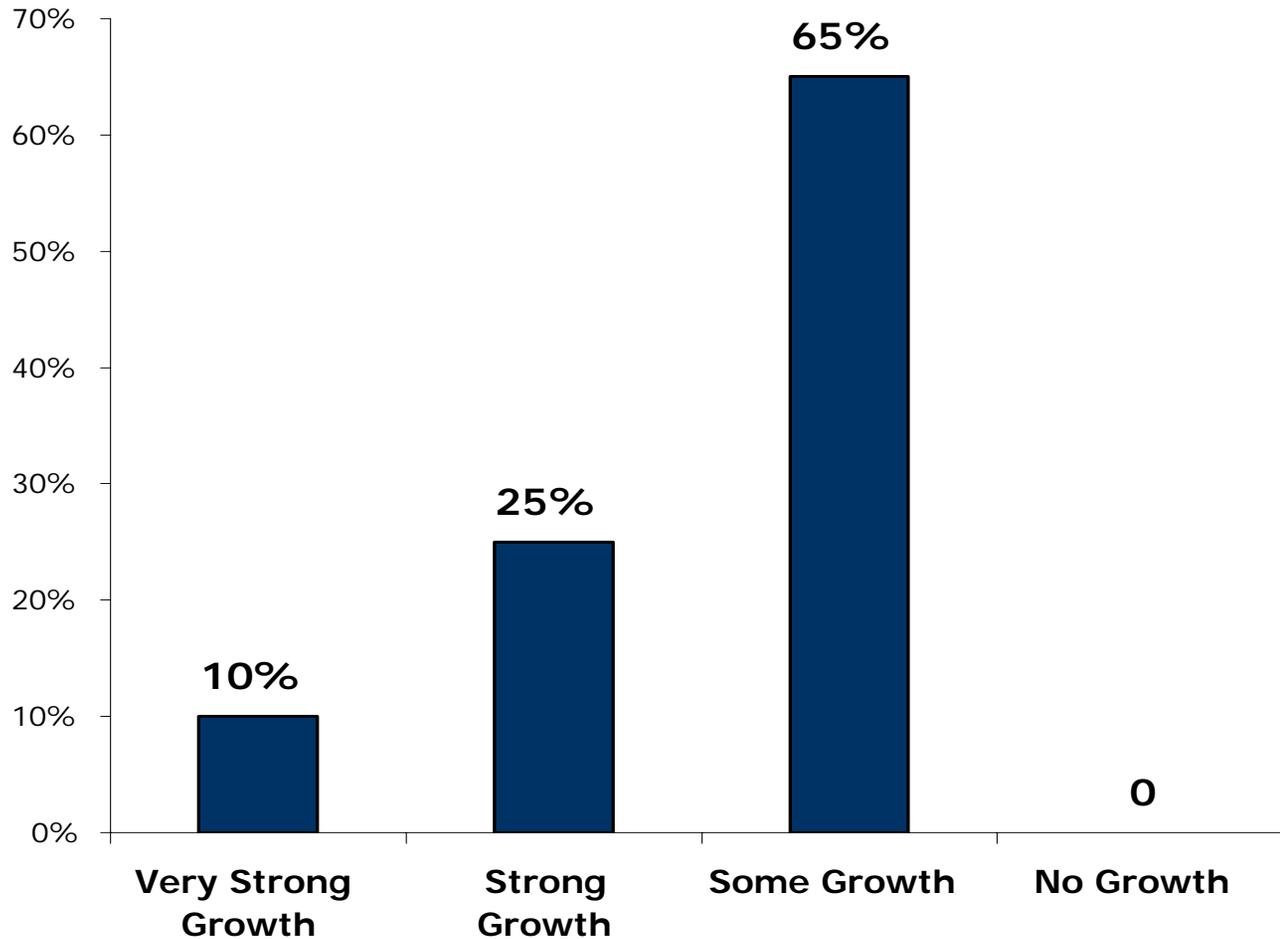


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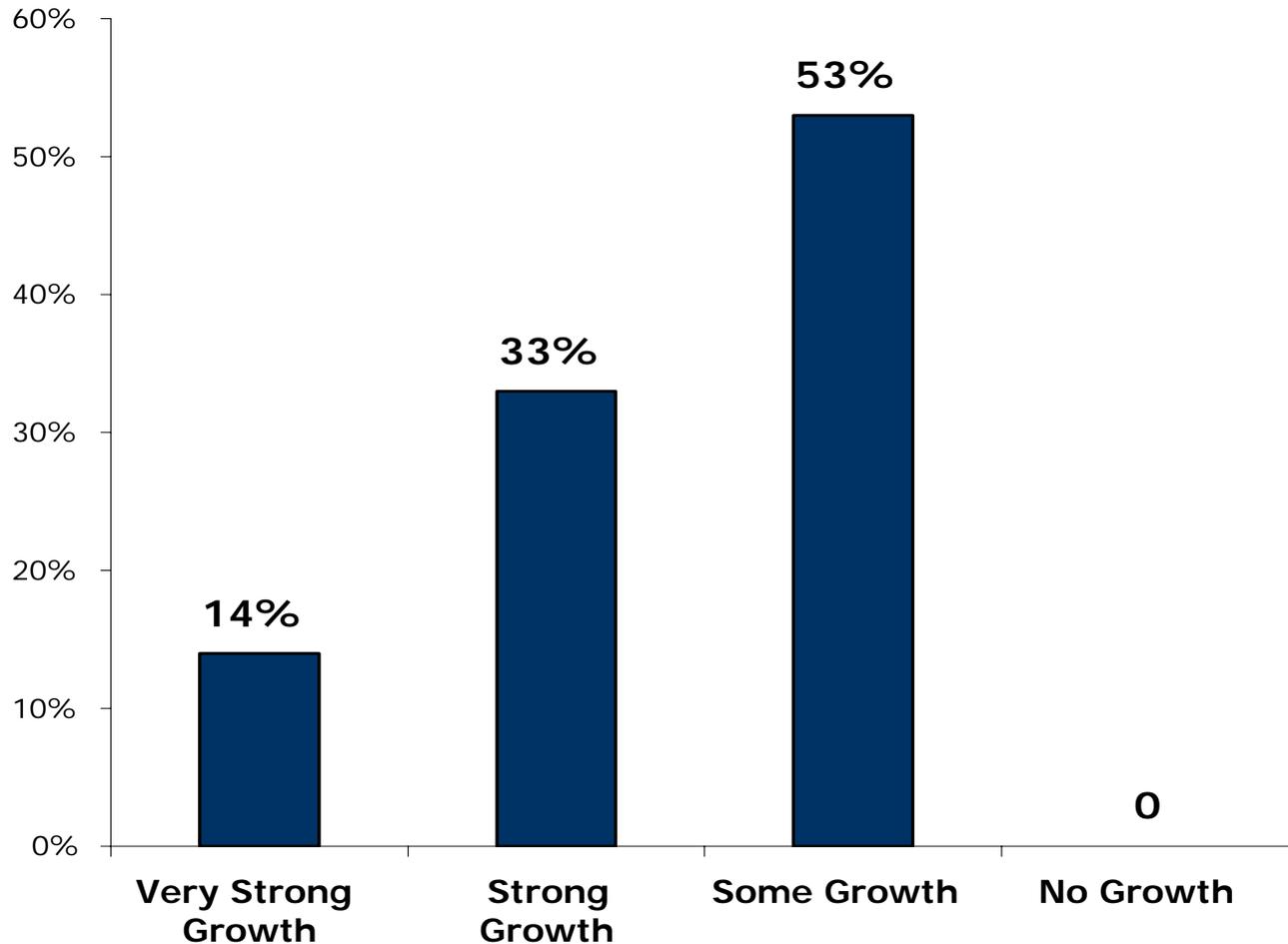
CEO Economic Outlook Survey

October 31, 2006

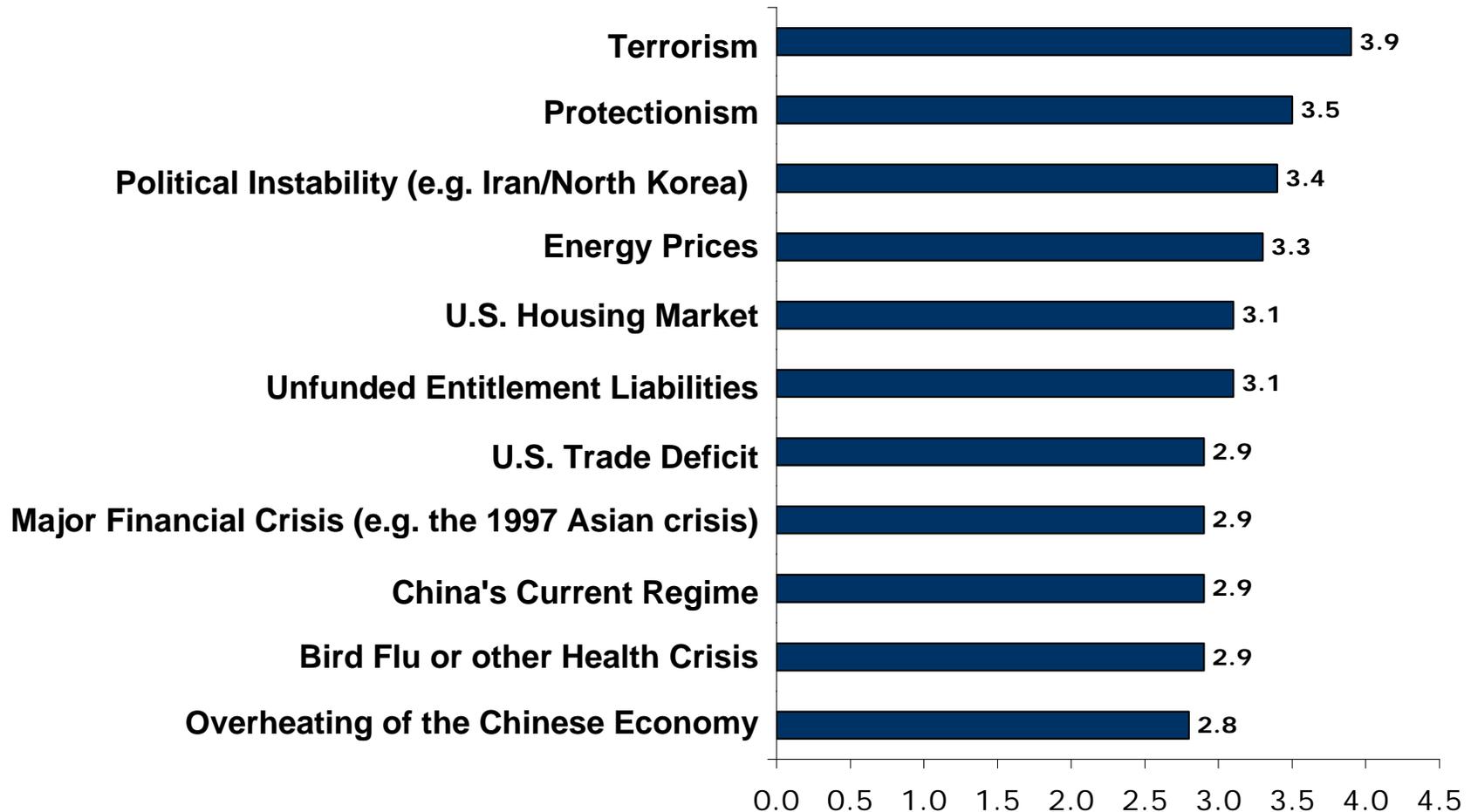
How would you characterize your expectations regarding growth in the global economy over the next year?



How would you characterize your expectations regarding growth in the global economy over the next 2-3 years?

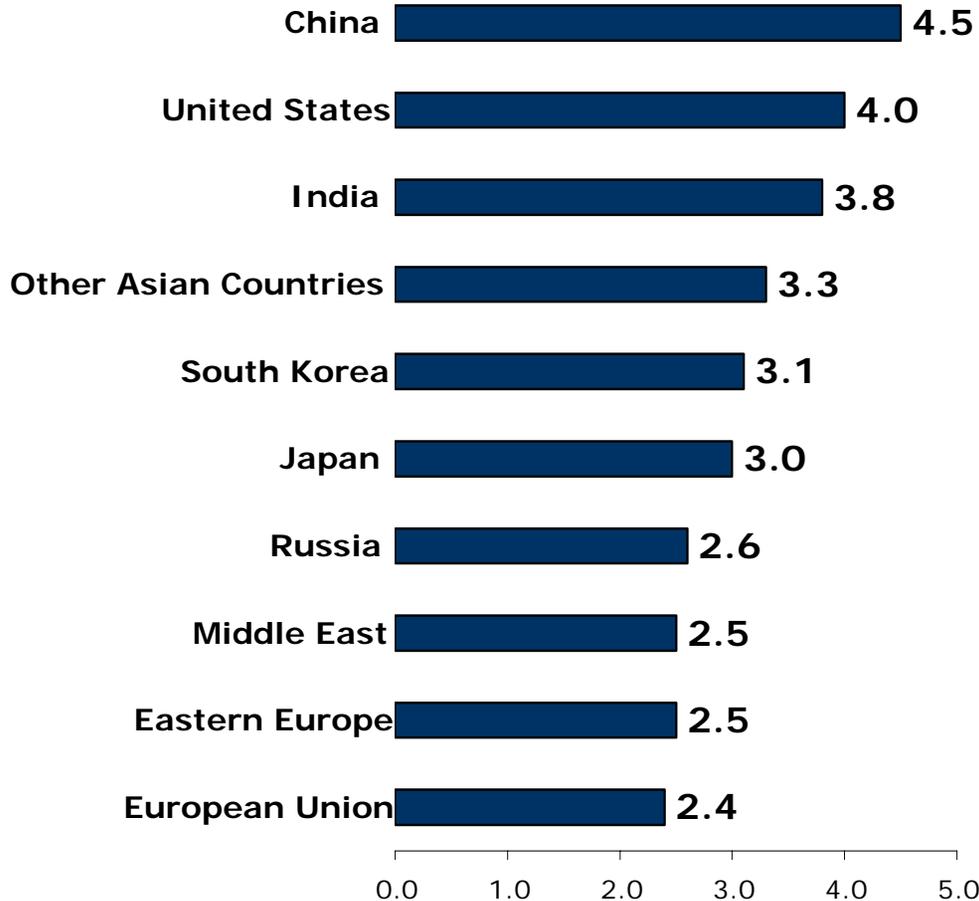


On a scale between “1” and “5” (with “1” being “not serious” and “5” being “the most serious”), please rate the following as threats to global economic growth.

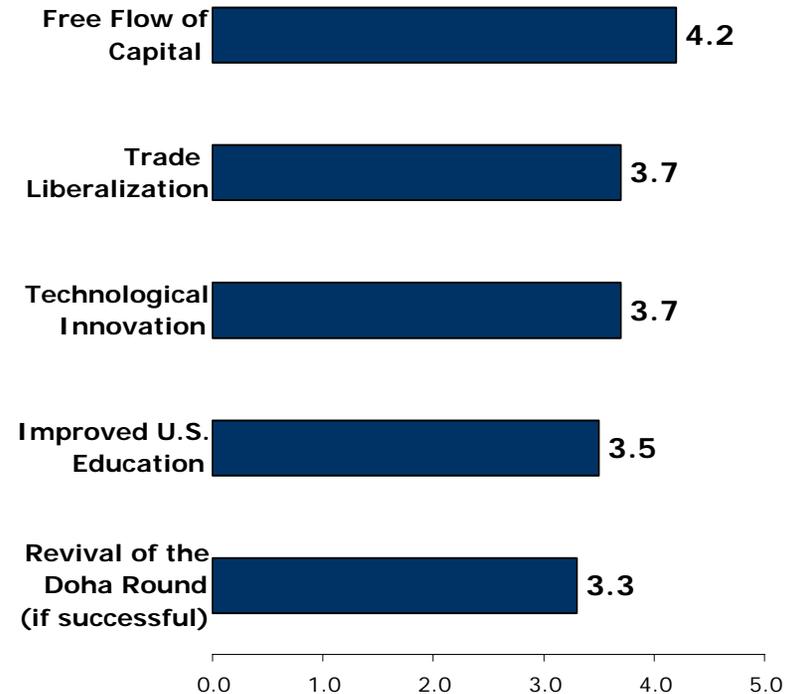


On a scale between “1” and “5” (with “1” being “not important” and “5” being “the most important”), please rate the following regions and economic factors in terms of their expected contribution to global economic growth over the next decade.

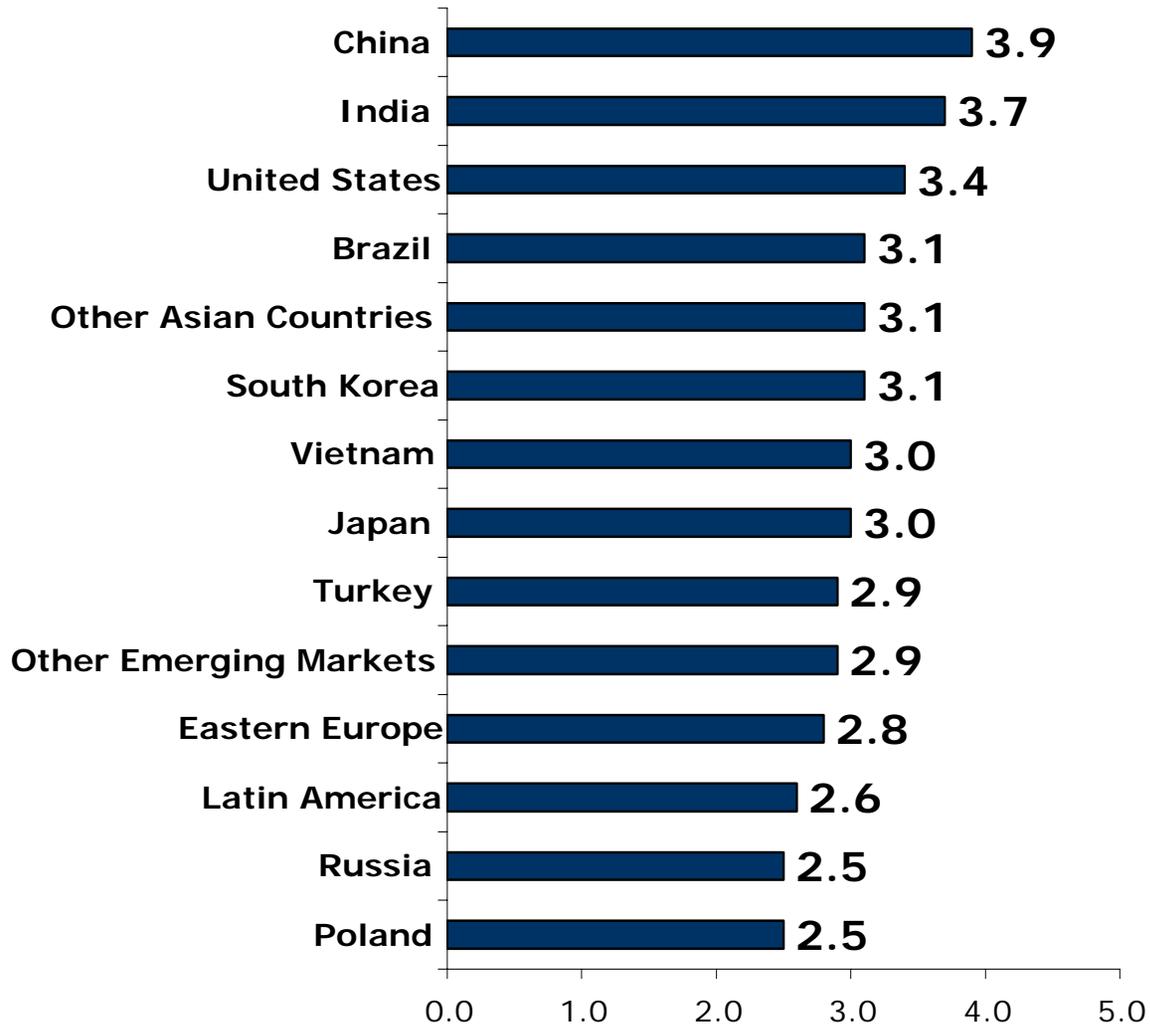
Countries and Regions



Factors Affecting Growth



On a scale between “1” and “5” (with “1” being “not attractive” and “5” being “the most attractive”), please rate the following countries in terms of the investment opportunity they represent.

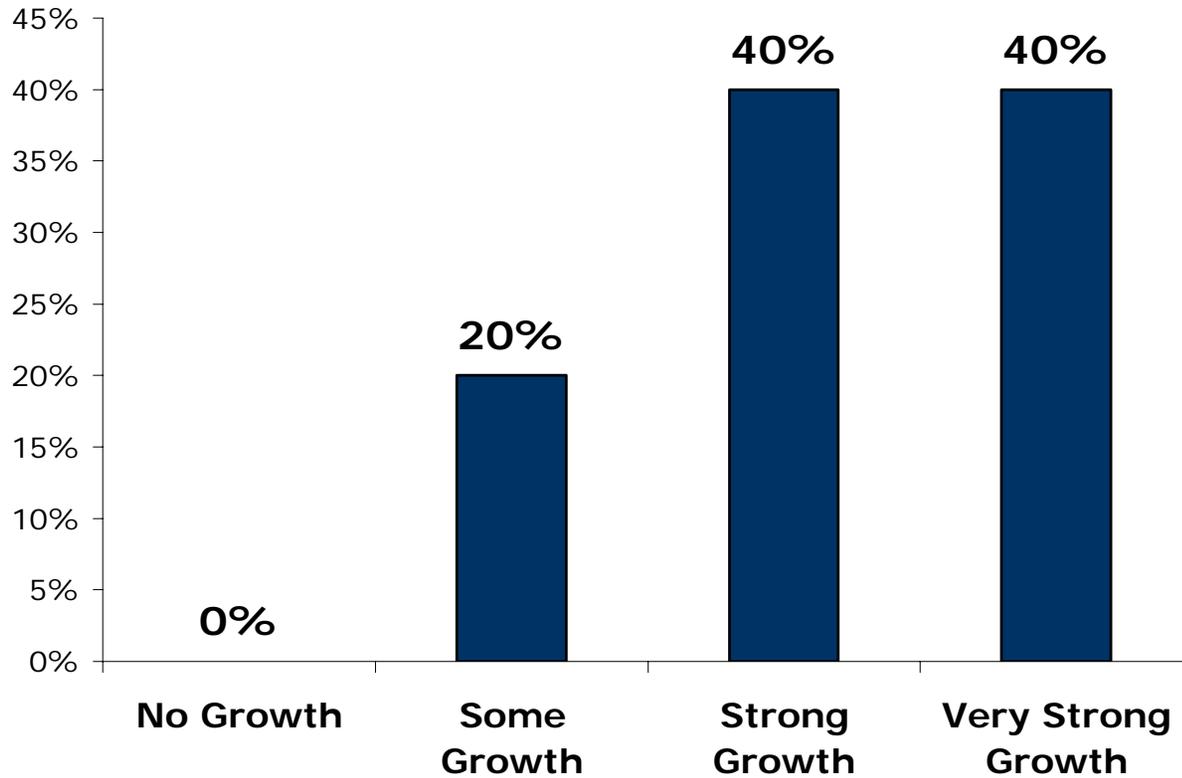


At what rate do you expect U.S. real GDP to grow?

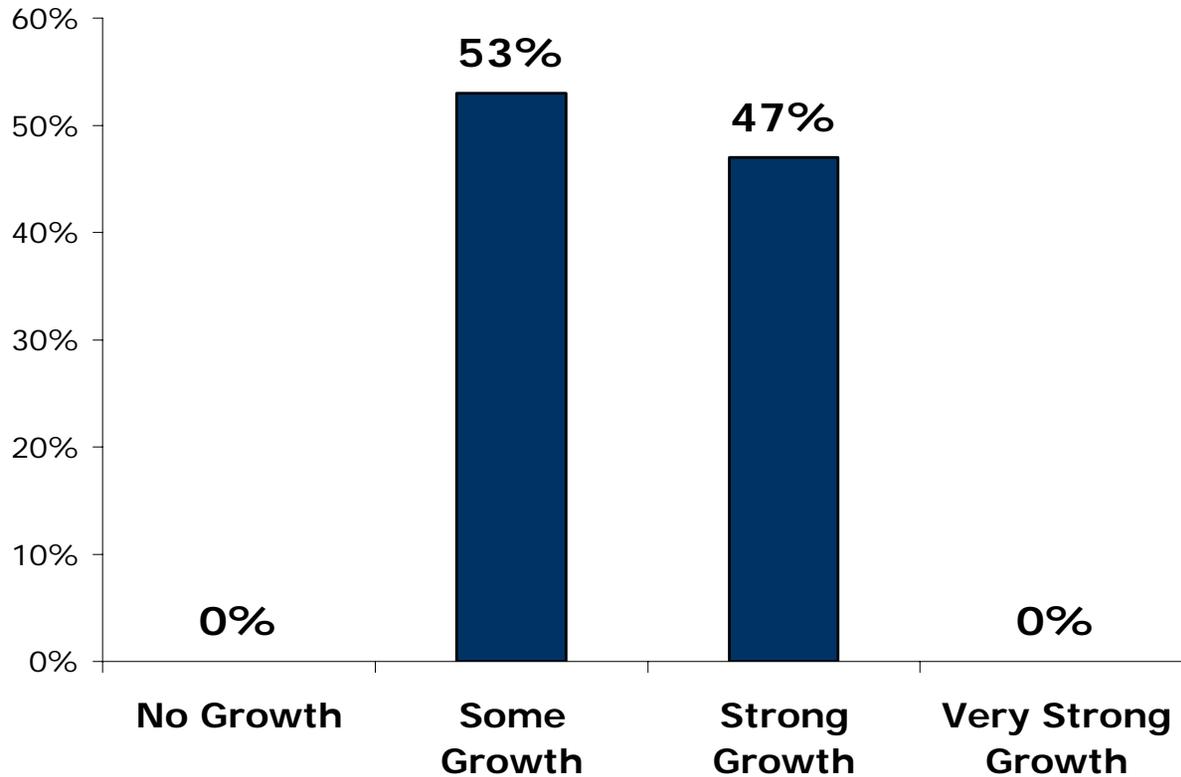
2006

U.S. real GDP growth rate: Average: 3.13%

How would you characterize your expectations regarding growth in the U.S. economy over the next year?



How would you characterize your expectations regarding growth in the U.S. economy over the next 2-3 years?



What is your expectation regarding the federal funds rate at year-end 2006? Year-end 2007?

Year-end 2006

Year-end 2007

Federal funds rate:

Average: 5.25%

Average: 4.75%

Where will the Dow Jones Industrial Average be at year-end 2006? At year-end 2007?

Year-end 2006

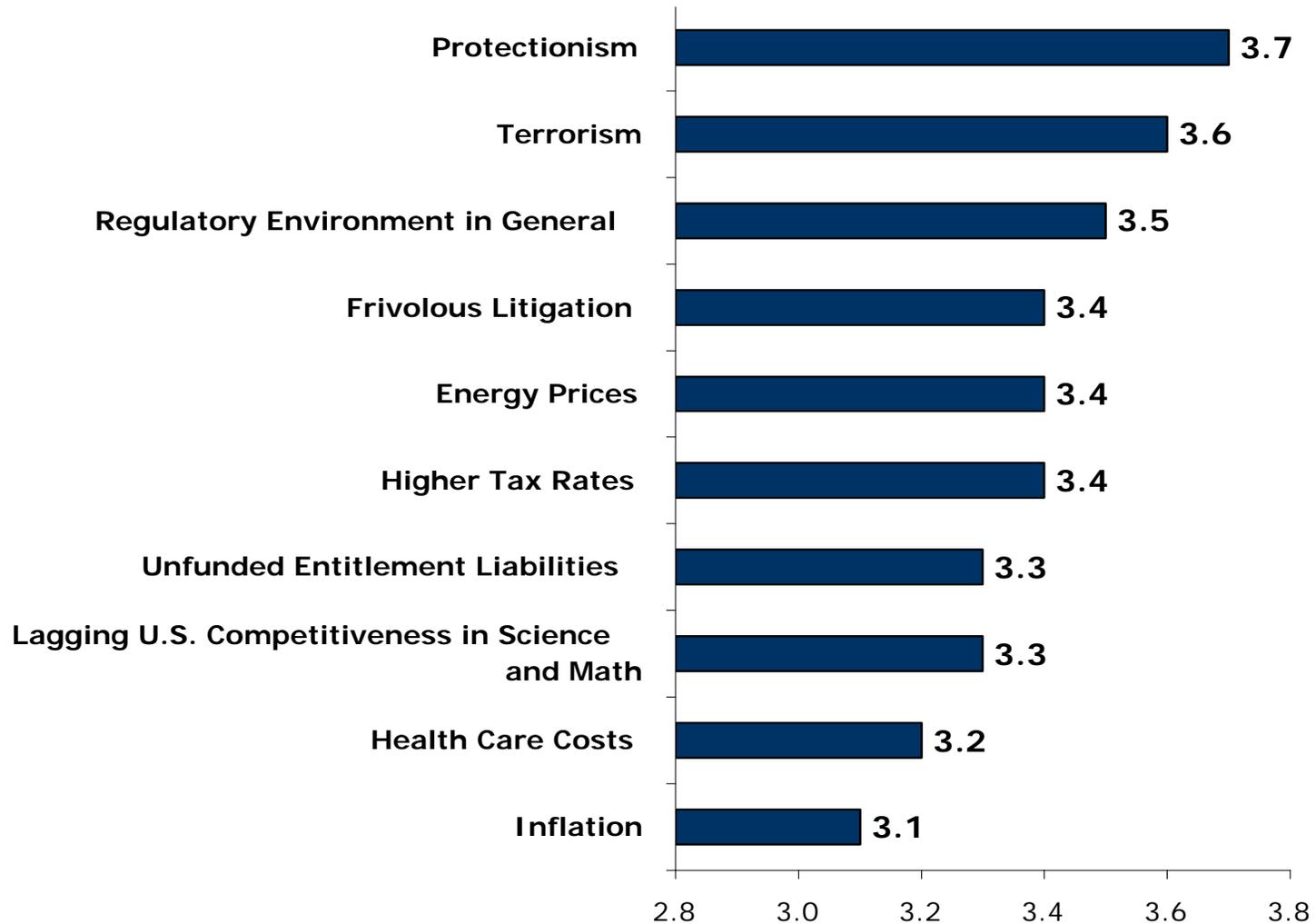
Year-end 2007

Dow Jones Industrial Average:

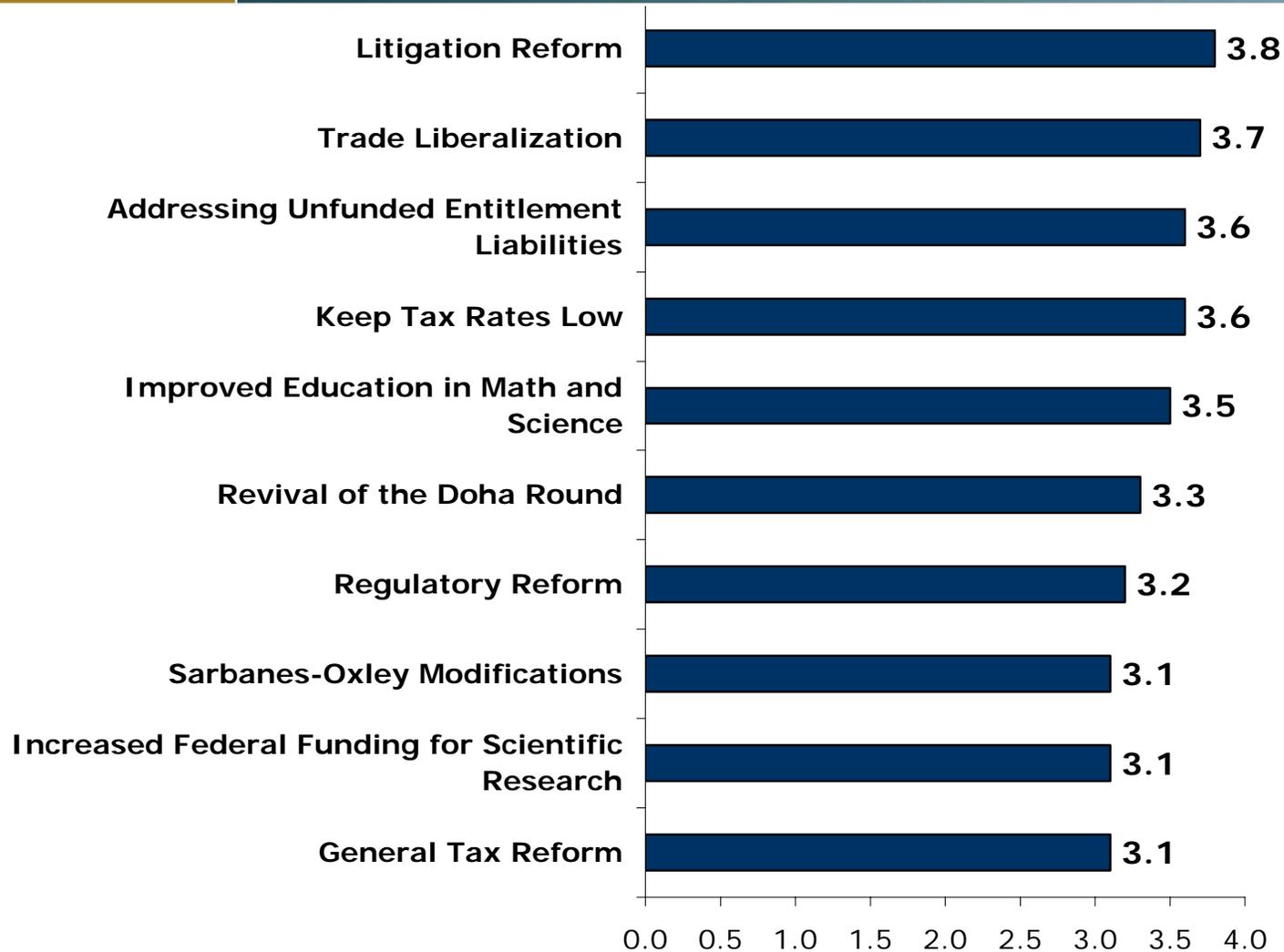
11,995

12,546

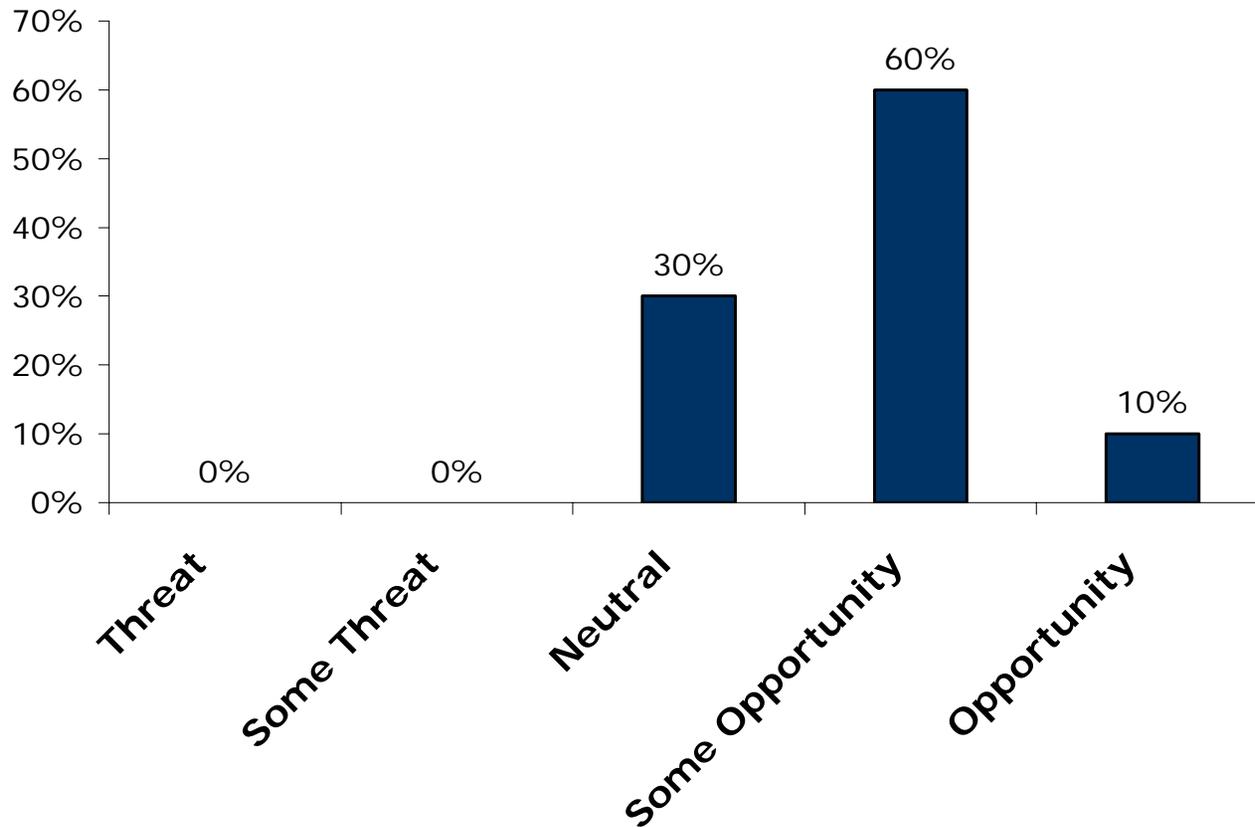
On a scale between “1” and “5” (with “1” being “not serious” and “5” being “the most serious”), please rate the following as threats to the continued expansion of the U.S. economy.



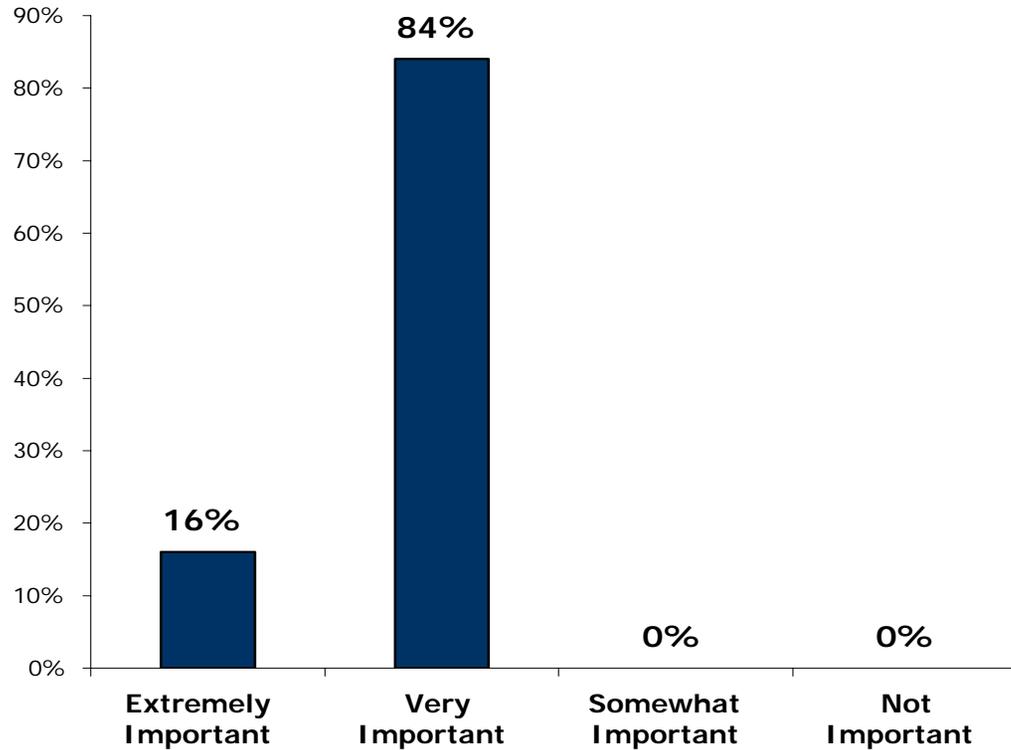
Please rate the following policy goals in terms of their value to continued U.S. economic growth and enhanced competitiveness, with 5 being the “most valuable” and 1 being “least valuable.”



Over the next few years, will China be more of an opportunity as a new market and a source of labor and resources, OR more of a threat to American companies, American culture and influence around the world? Please rate on a scale of 1 to 5 with “1” being a threat and “5” being an opportunity.



What degree of importance do you attach to corporate social and environmental responsibility?





THE FINANCIAL SERVICES
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FOR IMMEDIATE RELEASE

February 2, 2007

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SURVEY FINDS RISING SUPPORT FOR FOREIGN INVESTMENT

A Year After Dubai Ports, a Majority of Americans View Foreign Investment Favorably

WASHINGTON, DC – As Congress begins to consider legislation to reform the Committee on Foreign Investment in the United States (CFIUS), a new survey conducted by the Financial Services Forum finds a more favorable view of foreign investment among the American public a year after the Dubai Ports debate.

Public Support for Foreign Investment Rising

Support for foreign investment has risen to **51 percent** in the most recent survey, conducted January 18-21, 2007, compared to **47 percent** in the previous survey conducted in April of 2006 in the wake of the Dubai Ports debate. More importantly, when told that foreign companies operating in the U.S. provide more than 5 million jobs, **61 percent** had a more favorable view of foreign investment compared to **52 percent** in the previous survey. Of those that initially had an unfavorable view of foreign investment **39 percent** had a more favorable view once they understood the economic benefits.

Public Support for Foreign Investment Crosses Party Lines

The survey also found that while Republicans tended to be somewhat more supportive of foreign investment generally (**54 percent favorable**) than Democrats (**45 percent favorable**), when respondents understood the number of jobs foreign investment creates, **66 percent** of Democrats had a more favorable view versus **59 percent** of Republicans.

Public Still Concerned about Legislation if it Discourages Foreign Investment

Public concern that legislation in Congress may discourage foreign investment remains steady at **57 percent** in the new survey; the same level measured last April.

“The results of the survey demonstrate the importance of CFIUS reform that returns certainty to the CFIUS process and protects national security while encouraging vital foreign investment that creates jobs and helps to strengthen our economy,” said Forum CEO Donald L. Evans. “We can achieve both priorities and the survey results demonstrate that is exactly the approach the public wants our leaders to take.”

A summary of the poll results is attached.

RT Strategies National Omnibus Poll
Thomas Riehle and Lance Tarrance, Partners
And
Financial Services Forum Poll
Conducted April 6-9, 2006 and January 18-21, 2007
N = 1,000 adults nationwide, Margin of Error: $\pm 3.1\%$

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Financial Services Forum

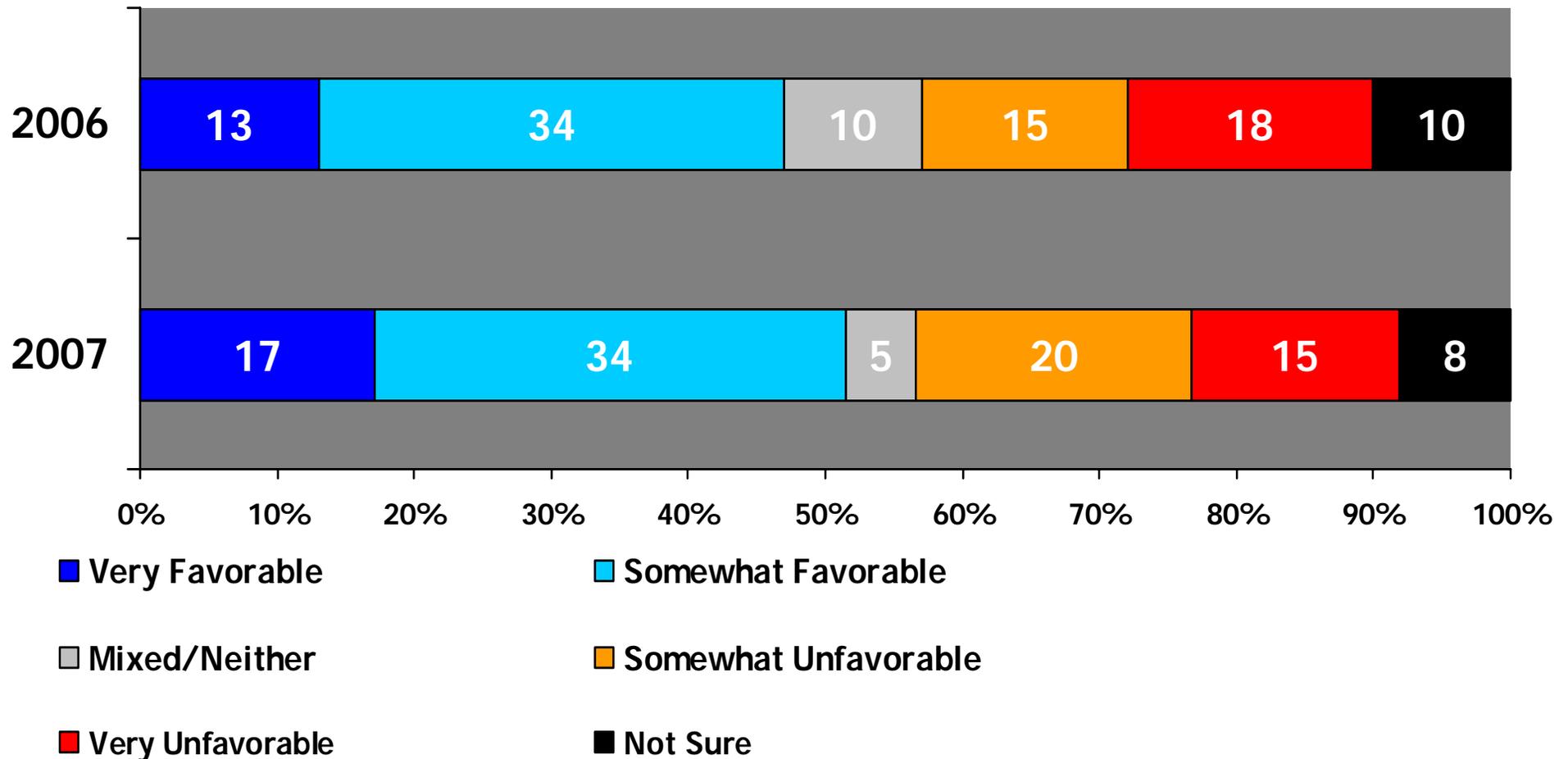
Foreign Investment * January 18-21, 2007
Survey of 1,000 Adults, 872 Registered Voters
Nationwide

Margin of Error: ± 3.1 for all adults, ± 3.3 for registered voters

Foreign Investment

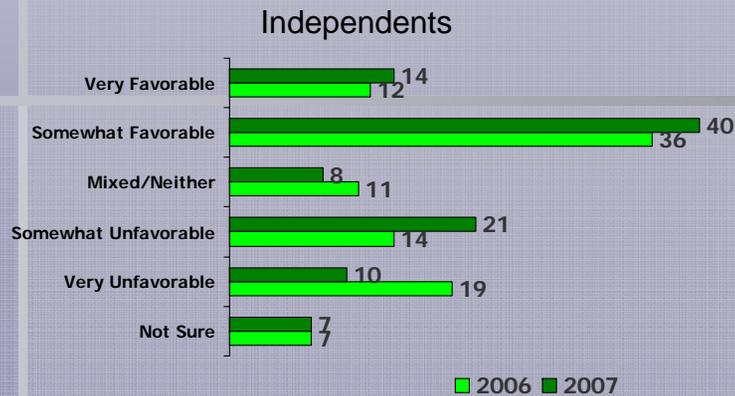
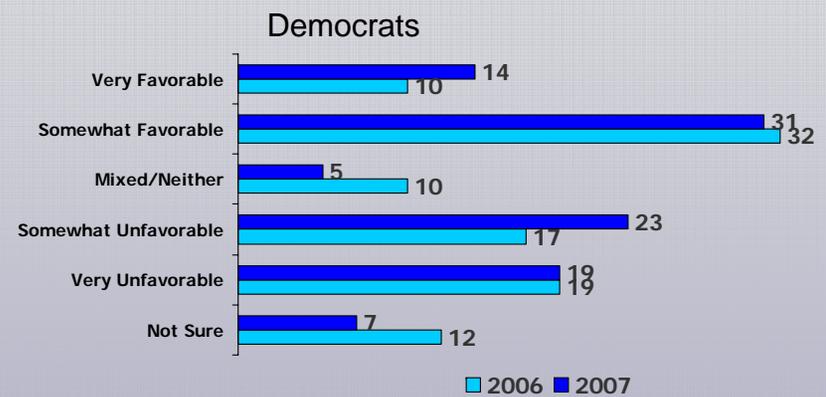
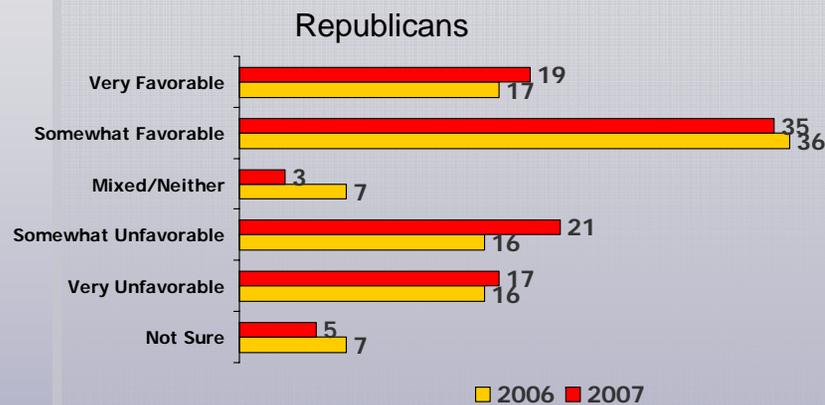
Foreign Investment in the U.S.

Generally speaking, do you have a (ROTATE:) favorable OR unfavorable opinion of foreign investment in the United States - in other words, foreign companies or individuals who invest in the U.S. or operate businesses here. (IF FAVORABLE/UNFAVORABLE, ASK:) Is that very (FAVORABLE/UNFAVORABLE), or only somewhat (FAVORABLE/UNFAVORABLE)?



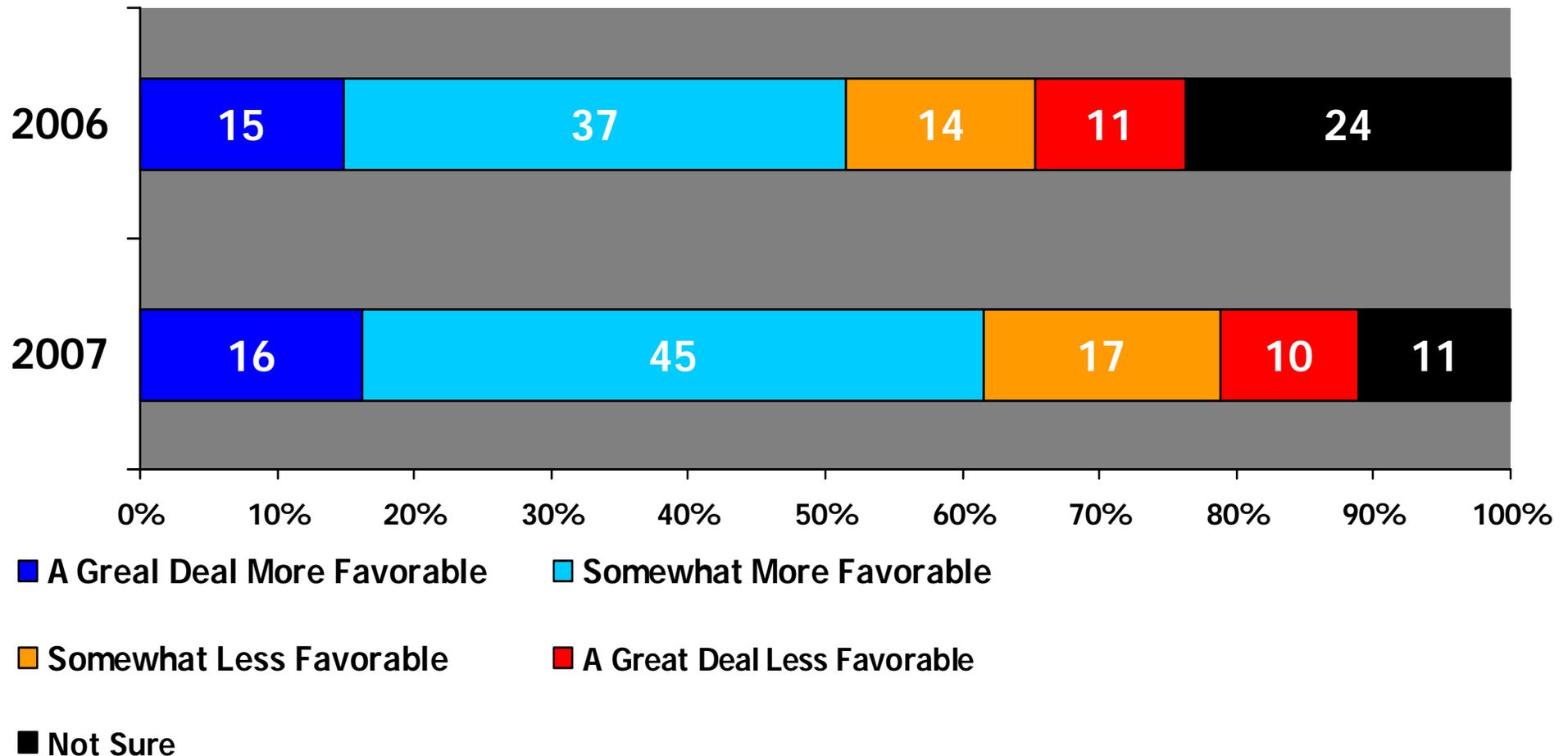
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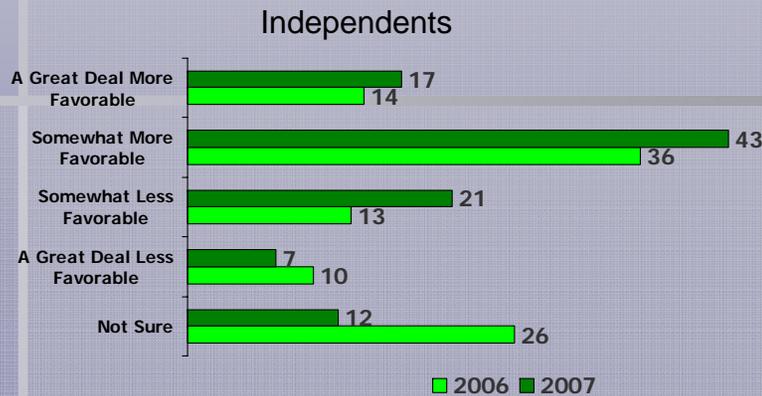
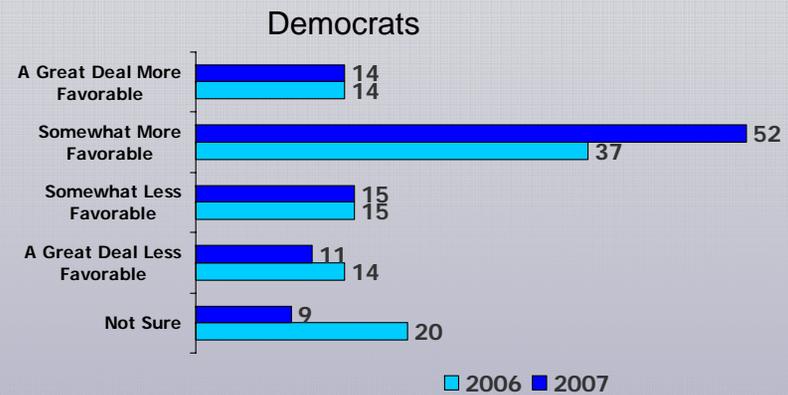
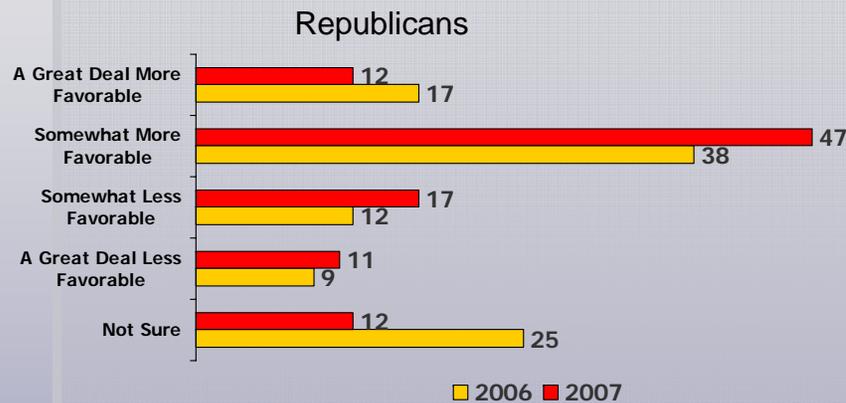
Foreign Company Employment

Economists report foreign companies operating in the U.S. today employ nearly 1 out of every 20 American workers – providing more than 5 million jobs that offer above-average pay of more than \$60,000 a year per worker, on average. Does hearing that make you feel (ROTATE:) more favorable OR less favorable toward foreign investment in the United States? (IF MORE FAVORABLE/LESS FAVORABLE, ASK:) Is that a great deal (MORE/LESS) favorable, or only somewhat (MORE/LESS) favorable?



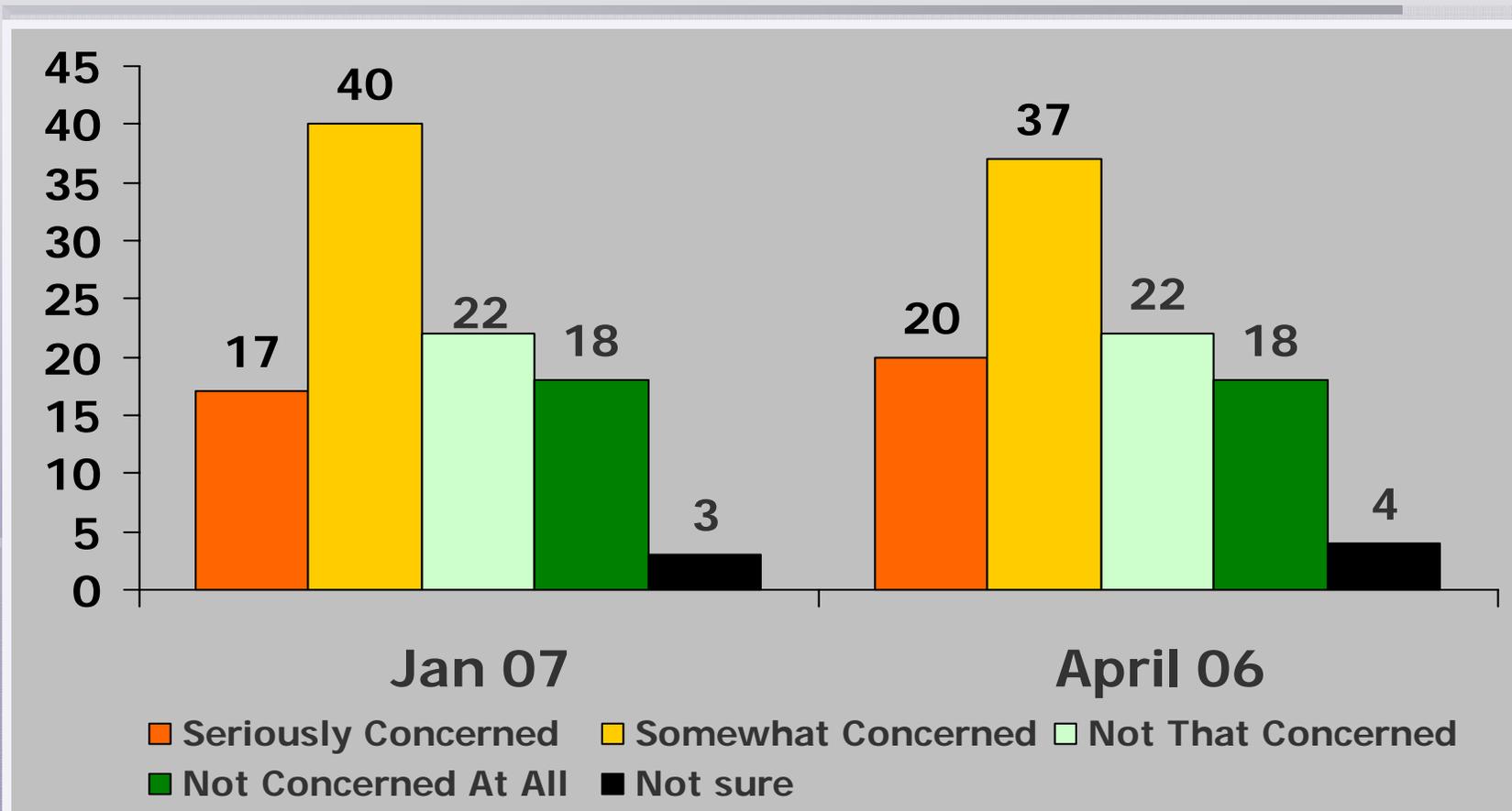
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Discouraging Foreign Investment

Turning now to the U.S. Congress – as a result of the controversy last year over the possibility that some U.S. ports might be managed by a foreign firm, Congress continues to consider proposals about the broader issue of foreign ownership and investment in the United States. Some say these kinds of proposals might discourage foreign investment or make investment in the U.S. less attractive. Considering the economic benefits of foreign investment we just discussed, how concerned are you that actions in Congress might make foreign investment in the U.S. less attractive?



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