

**House Financial Services Committee
Subcommittee on Monetary Policy and Trade
Hearing on “Examining the Operations of the Committee
on Foreign Investment in the United States”
Testimony of Nancy McLernon
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Chairman Barr, Ranking Member Moore, and other distinguished members of the Subcommittee, thank you for the invitation to testify this morning. My name is Nancy McLernon and I serve as the President and CEO of the Organization for International Investment (OFII). OFII is the only business association exclusively comprised of U.S. subsidiaries of foreign companies. Our mission is to ensure that the United States remains the most attractive destination for foreign direct investment (FDI). As such, we advocate for non-discriminatory treatment in U.S. law and regulation for these firms and the millions of Americans they employ. Given our unique membership, I believe OFII is well positioned to be a constructive voice in your deliberations moving forward as our companies are some of the Committee on Foreign Investment in the United States’ (CFIUS) primary users.

The inbound business community applauds efforts of this Subcommittee to carefully examine the current operations of CFIUS and efforts by Senator Cornyn and Representative Pittenger, among others, to reform and modernize CFIUS. Working to safeguard the United States from those who would exploit this country’s open economy to do us harm is of paramount importance. We welcome the recognition that as part of this legislative undertaking, it is critically important to truly focus on national security and not hinder the economic openness that has propelled our nation’s prosperity.

Impact of Foreign Direct Investment in the United States

The impact of FDI in the United States is tremendously beneficial. International companies employ 6.8 million workers in the United States – including 20 percent of the U.S. manufacturing workforce.¹ In fact, between 2010 and 2014, two thirds of all new manufacturing jobs that were created can be attributed to FDI.² Across the country, U.S. workers at FDI companies earn 24 percent higher compensation than the economy-wide average.³ In addition, these companies engage in high levels of research and development (R&D), accounting for 16 percent of all R&D performed by U.S. companies.⁴ They also make extensive capital investments in new facilities and equipment totaling nearly \$100 billion dollars annually and produce 23 percent of U.S. exports – that’s nearly a billion dollars of exports every single day.⁵ Further, international companies fuel local growth by purchasing hundreds of billions of dollars

¹ Department of Commerce Bureau of Economic Analysis, Survey of Current Business Activities of U.S. Affiliates of Foreign Multinational Enterprises, (Washington, DC: Aug. 2017).

² Lesley Wroughton and Howard Schneider, “‘Bad’ Foreign Firms Drive U.S. Manufacturing Jobs Revival,” Reuters, (June 2017).

³ Department of Commerce Bureau of Economic Analysis, Survey of Current Business Activities of U.S. Affiliates of Foreign Multinational Enterprises, (Washington, DC: Aug. 2017).

⁴ Ibid.

⁵ Ibid.

in goods and services from local U.S. suppliers – creating huge opportunities for America’s small businesses.⁶

Historically, mergers and acquisitions (M&A) make up more than 80 percent of FDI activity in the United States. This is true in most developed countries. Therefore, most of the benefits derived from FDI is attributable to M&A activity. Given this reality, it is critical we ensure the environment for cross-border M&A remains open. Importantly, the vast majority of FDI entering the United States is in industries totally unrelated to U.S. national security.

For example, L’Oréal USA leads America’s beauty industry in part because of their strategic acquisitions of local brands such as Kiehl’s and Urban Decay. These acquisitions have expanded L’Oréal’s footprint in the United States to include research, manufacturing and distribution facilities across 13 states including Arkansas, California, Florida, Kentucky, New Jersey, Ohio, Texas and Washington with a workforce of more than 11,000 employees.

International companies are also closely tied to their communities. They provide world-class workforce training and help strengthen the communities in which they sustainably operate. For example, Toyota, whose Kentucky plant is their largest manufacturing facility in the world, is applying its manufacturing know-how to help other manufacturers, non-profits, community organizations, and government entities develop better ways of doing their day-to-day work. Through an organization called the Toyota Production System Support Center (or TSSC), Toyota has helped Children’s Hospitals reduce infection rates within neonatal intensive care units. As a result, infections have decreased by approximately 80 percent.

America has long been the preferred destination for FDI because of our economy, infrastructure, rule of law and workforce. However, competition to attract and retain FDI has never been stronger, providing companies with an unprecedented array of options when looking to expand into new markets around the world. Unfortunately, over the past few years, the United States has seen its share of FDI dramatically decline, from 37 percent in 2000 to just 24 percent in 2016.⁷ Therefore, it is critically important to implement policies that make the United States more attractive for international companies – including modernizing the CFIUS process.

OFII Support for Reforming CFIUS

OFII has strongly supported the efforts of the Financial Services Committee and others to ensure America’s open economy does not hamper U.S. national security. OFII members have extensive experience with national security reviews conducted by CFIUS, as authorized under Section 721 of the Defense Production Act of 1950.

Ten years after Congress enacted the Foreign Investment and National Security Act of 2007 (FINSA), which extensively amended Section 721, it is timely for this Subcommittee to evaluate how Congress’s vision for Section 721 has worked, and whether the tools Congress provided to address national security concerns arising from foreign investment remain adequate for our current economic and security environment.

⁶ OFII, Global Investment Provides the Jobs We Need, (Washington, DC: June 2016), 12.

⁷ UNCTAD, World Investment Report 2017.

From the perspective of OFII members, the Section 721 process has largely achieved FINSA's objectives of enabling thorough, nonpoliticized reviews cross-border mergers and acquisitions for possible national security concerns. FINSA, the result of extensive deliberations in Congress, laid the foundation for success. Importantly, in 2008, CFIUS engaged in an equally thoughtful rulemaking process to implement FINSA. The resulting regulations carefully capture the balance that Congress sought, providing helpful guidance on the kind of transactions that are within the purview of CFIUS and the wide range of factors relevant to national security assessments.

CFIUS' annual reports over the past decade generally show that the CFIUS process has functioned as expected. The most recent report, for 2015, indicates that once again, CFIUS cleared more than half of all filed transactions during the initial review period. Only 11 cases (8%) resulted in mitigation agreements, with another 13 notices (9%) being withdrawn.⁸ These numbers are generally in line with those from prior years, and indicate that CFIUS has indeed focused its resources on transactions that warrant inquiry.

A critical factor in the attraction of the United States to foreign investors is our country's commitment to the rule of law, and the predictability and stability that regulatory consistency can provide. OFII believes that CFIUS has administered Section 721 largely to this end.

Recent Developments

Although the CFIUS reports for the past two years will not be available for some time, based on publicly available information, and the anecdotal experience of OFII members, it seems clear that the CFIUS process is under stress and that the prior years' pattern of CFIUS outcomes is changing. There appear to be more investigations and mitigation agreements, withdrawals of cases, and lengthening periods for resolution of cases. CFIUS's interpretations of its regulations has also become more unpredictable.

Many factors contribute to this period of uncertainty. Robust investment activity is occurring in the tech sector, and others, where national security concerns particularly reside. New commercial innovations, such as mining of big data, present complex new issues for assessment.

Without doubt, the nature and increased volume of outbound investment from China in recent years has influenced the administration of Section 721 by CFIUS and, more profoundly, the calculation of national security risk. OFII believes that as CFIUS adapts to new investment trends and challenges, it is especially critical to maintain a balanced, reasoned approach to risk assessment.

Supporting FDI With an Efficient and Effective CFIUS Process

As Congress considers proposals to reform CFIUS, I believe it is critical to remember the linkage between economic security and national security. As I referenced earlier, the United States is already experiencing a decline in its share of FDI. Unnecessary changes to the process will only further decrease U.S. competitiveness for cross-border investment.

Our member companies report that, although CFIUS staff continue to impress with their long hours and attention to the unique circumstances presented by each case, resource constraints are

⁸ CFIUS, Annual Report to Congress CY2015, (Sept. 2017), 1-2.

straining the CFIUS' ability to handle its current workload. The demands of new cases are compounded by the requirements of monitoring the increasing number of mitigation agreements.

OFII thus encourages Congress to review the current organization and funding of CFIUS activities. In addition, Congress and CFIUS should explore other ways of administratively easing the strain. One would be a "fast track" option that would allow for expedited resolution of transactions that lack the complexity or controversy that lead to delayed processing and systemic bottlenecks. Such delays in processing ultimately impact business and investment decisions. Another area for study is possible efficiencies in the oversight of mitigation agreements.

CFIUS should not be viewed as the panacea for espionage or trade imbalances. Illegal efforts to acquire U.S. technology, such as industrial espionage and cyber hacking, should be aggressively addressed, but such efforts are outside the scope and ability of CFIUS. It would be a critical error to shoehorn larger espionage concerns into the CFIUS mandate. Likewise, CFIUS should not become a way to address concerns that have been expressed concerning trade imbalances. If trade reciprocity is viewed to be a problem, Congress should work with the Administration to explore, utilize and modernize other tools at its disposal to alleviate those perceived concerns.

FDI plays a significant role in growing America's economy and creating the jobs our country needs. International companies invest in our local communities for the long-term. Efforts to reform CFIUS should be undertaken carefully and deliberately. Ensuring fairness, predictability and efficiency in national security reviews must remain tenets of the CFIUS process.

Once again, I thank the Chairman for the invitation to join the Subcommittee this morning and I look forward to answering your questions.