

SUBMITTED TESTIMONY OF

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**“PORT HOLES: THE CASE AGAINST
THE OPERATION OF U.S. PORT FACILITIES BY
DUBAI PORTS WORLD”**

HOUSE ARMED SERVICES COMMITTEE
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Mr. Chairman, it is a privilege to be afforded the opportunity once again to contribute to this Committee’s deliberations on a major public policy matter of potentially grave significance for the national security.

A Broken Process for Evaluating the Security Implications of Foreign Investments

The last such occasion was on July 13, 2005 when a foreign government-owned company was poised to acquire an important American strategic asset whose operations could have proven detrimental to our economic and security interests. Sound familiar? In fact, had the American people not become informed about and overwhelmingly opposed to the sale of the U.S. company, Unocal, to the PRC’s Chinese National Offshore Oil Company – and had the Congress not registered its strong objection to the deal, I am reasonably sure it would have been approved by the Committee on Foreign Investment in the United States (CFIUS).

This seems a safe bet since virtually every one of the foreign acquisitions that have been voluntarily submitted for review by CFIUS over the past eighteen years have been approved by that panel. I do not believe that is because none were, in fact, harmful to the national security. Rather, I am convinced that the process itself basically amounts to a “rigged game” – one in which the panel’s secretive deliberations are little more than a matter of checking the necessary boxes to achieve a foreordained, positive outcome.

Such a track record prompted me during my last appearance before this Committee to urge significant reforms of the CFIUS process. At the time, I testified:

It is imperative that the United States utilize a far more rigorous, transparent and national security-minded process for evaluating Chinese investments like CNOOC’s proposed purchase of Unocal. **The existing Committee on Foreign Investment in the United States (CFIUS) is clearly wholly inadequate to the task.** Having the Treasury Department – whose job it is to promote foreign investment in the United States – charged with evaluating such investments is a formula for precisely what we have seen to date: rubber stamp approval of virtually every transaction, with no

regard for the long-term or cumulative impact they will have on U.S. national security equities.

It does not help that the CFIUS process is a completely unaccountable “black-box” operation. I commend...the U.S.-China Economic and Security Review Commission for [its] leadership in recommending sweeping statutory changes in the configuration and workings of the Committee on Foreign Investment in the United States. It is past time for the United States to have a mechanism that is charged with thinking as strategically as the Chinese do about transactions that could constitute real problems for American security, to say nothing of economic interests.

The Latest CFIUS Debacle

I suggest that CFIUS’ past record serves as important background to your evaluation of the facts of the present case, involving a United Arab Emirates-owned company, Dubai Ports World, the security implications of its operations in as many as *twenty-two* American ports and the adequacy of the evaluations (past and ongoing) of those implications by the Committee on Foreign Investment in the United States. (There is some confusion about the number of ports affected with six being the number routinely cited in the press. It would appear that there are actually far more involved, including two in Texas – Beaumont and Corpus Christi – governed by contracts for the movement of materiel *for the U.S. Army.*)

To put it bluntly, if we had an effective CFIUS process, we would probably not be in our present fix. The Committee would have recognized and given appropriate weight to the obvious security concerns attending this transaction. And the company could have been quietly told that its operation of U.S. port facilities would not be approved, allowing DP World to restructure its purchase of the British company, Peninsula and Oriental Steam Navigation Company (P and O), that had those contracts so as to spin-off the U.S. ports, or to reconsider the acquisition altogether.

Instead, we have a situation where – in the face of the dysfunctional CFIUS and its secretive, rubber-stamp approval -- those security concerns have become a matter of intense public scrutiny and debate. I agree with Steve Flynn that some good will come of all this if, as a result, the yawning vulnerabilities of our ports finally start to receive the attention and remediation they have long needed.

Still, it is highly regrettable that the Nation is now confronted with two unpalatable choices:

- 1) Go forward with an arrangement that can only complicate – perhaps marginally so, perhaps significantly – our already dangerously inadequate port security posture. Or,
- 2) Give further offense to the UAE, with unknowable consequences to a valuable strategic relationship with a country that has been helpful in what I call the War for the Free World. At least, that is, helpful since *after 9/11*. Unfortunately, as this

committee knows, in the months leading up to the September 11, 2001 attacks, much of the operational planning and financing of those attacks was performed in the United Arab Emirates.

It is, of course, that last fact that prompts me to conclude Congress must do in this instance as it did in connection with the then-pending sale of a strategic energy asset to Communist China: interpose sufficient objections and, if necessary, be prepared to create legal impediments to prevent this transaction. Absent that, you can take it to the bank that the additional 45-day review period will produce the same, skewed results as did the previous go around. As Albert Einstein famously put it, “The definition of insanity is doing the same thing over and over again and expecting a different result.”

What is Wrong with this Picture?

Should Dubai Ports World’s bid to takeover operations at as many as twenty-two U.S. seaports go forward, there would seem to me to be at least three ways in which our existing port security vulnerabilities could be exacerbated, possibly fatally so:

- The Coast Guard has acknowledged (see an interview conducted by nationally syndicated radio host Hugh Hewitt with Rear Admiral Craig Bone USCG at <http://www.radioblogger.com/archives/february06.html#022206>) that DP World will be responsible for vetting the people assigned to its U.S. and other operations. While, according to *Newsweek*, the company has reportedly promised to “leave the [P and O-appointed] U.S. port managers in place for a time in a bid to ease the immediate political pressure,” there is no guarantee that other people will not be added to the rolls, *even before* simple attrition – if not management preferences after the “political pressure” eases – creates new openings.

At the risk of being politically incorrect, that reality will complicate the job of assuring that the personnel working in these ports pose no threat to their operations – or to the rest of us. To the extent that we must remain particularly vigilant about young male Arab nationals as potential terrorists, it makes no sense to provide legitimate grounds for such individuals to be in and around some of this country’s most important strategic assets.

- Huge quantities of cargo move through our ports every day, much of it of uncertain character and provenance, nearly all of it inadequately monitored. Matters can only be made worse if port management personnel include one or more individuals who might conspire to bring in dangerous containers, or simply look the other way when they arrive. My colleague, Mr. Flynn, has advanced some valuable ideas for improving the surveillance of containers, but we are a long way from having such techniques in place in most DP World-controlled facilities, let alone others that would simply ship cargo to and through such facilities.
- In the days since the DP World takeover became a matter of public knowledge and controversy, much has been made of the fact that primary responsibility for port

security will remain with American authorities. Common sense tells us, however, that managers of U.S. port facilities have to be read in on government-approved plans for securing those assets. After all, they bear some responsibility for implementing such plans.

Familiarity with security procedures inevitably offers insights into both the strengths and weaknesses of our protective measures – insights that are invaluable to those wishing to exploit the latter and avoid detection by the former. A port management arrangement that would allow that sort of information to be entrusted to those who may not be able adequately to safeguard it is what the lawyers call an “attractive nuisance” – like having a swimming pool without a fence securing it: Someone is going to get in and cause trouble. That seems especially likely in a country known to have been penetrated by terrorists.

For these reasons among others, it seems to me not just *irresponsible* to approve the DP World takeover of operations in U.S. ports. It would appear to be recklessly so.

Will the ‘Rigged Game’ be Allowed to Continue?

Unfortunately, unless Congress takes several steps *now*, just such an outcome must be expected from CFIUS’ present 45-day review. Such steps should include the following:

- First, the executive branch should assure that the Committee on Foreign Investment in the United States’ *principals* – including Defense Secretary Donald Rumsfeld and Homeland Security Secretary Michael Chertoff – should be required to participate personally in these deliberations, and to sign off on the outcome. There is reason to believe that participation on the part of the Defense Department was limited to relatively low-level staffers and that Mr. Rumsfeld was not made aware of the DP World matter until after CFIUS had approved it.
- Secretary of the Treasury John Snow should recuse himself since, in a previous incarnation, he sold seaport operations of the company he ran, CSX, to DP World. That gives at least the *appearance* of a conflict of interest in this matter. I would suggest that, under such circumstances, protocol should confer on Secretary of Defense Rumsfeld, the longest-serving of the participating principals, the role of chairman – rather than Deputy Treasury Secretary Robert Kimmett, who oversaw the previous, inadequate CFIUS review.
- The re-review should be guided by a *rigorous* security assessment, not one in which concerns about ties with the UAE are allowed to trump practical counterterrorism considerations. The possibility of setting a precedent that might raise questions (appropriately) about having state-owned and state-linked Communist Chinese companies operate facilities in American seaports should also be set aside for the purposes of this exercise.

Instead, the reassessment must thoroughly and demonstrably address, for example, how we can be confident about personnel security if DP World is to be responsible for vetting the people assigned to its U.S. operations. The review must also be able to show that the undermining of port security plans and cargo monitoring activities by insiders can be reliably prevented.

- Finally, a rule of thumb might be included in the mix: In the case of foreign government-owned and -tied companies seeking to operate American seaports or other critical infrastructure here, the unwillingness of the country in question to allow American companies, let alone our government, to perform similar functions in their countries (not to be confused with often-circumvented U.S. monitoring and customs missions in ports like Dubai's) would preclude the deal – even if every other aspect were satisfactory.

Needed: A Second Opinion for Congress

In addition to ensuring that the CFIUS re-review amounts to a bona fide, zero-based fresh look at the national security implications of the DP World deal, Congress should get a second-opinion. As members of this committee know all too well, the legislative branch normally could not even *name* a small group of outside experts – call it a Team B – to conduct such an assessment in forty-five days, let alone get them appointed and equipped with the necessary detailed information about the deal, and then obtain their conclusions.

The concerns that have been expressed across the political spectrum about this deal, however, may just make possible the sort of non-partisan, independent study so clearly required. The House and Senate leaders on both sides of the aisle should agree to designate half-a-dozen or so people who have the expertise, integrity and demonstrated ability to get the job done quickly and with high quality. They should be asked to provide an unvarnished assessment of the DP World transaction within the forty-five day window.

If these steps are taken, we may just be able to find a way to minimize further damage to an important strategic relationship with the United Arab Emirates, without risking potentially vast damage to our ports and people.

Two Final Recommendations

Mr. Chairman, let me conclude by reiterating two, highly relevant points made in my previous appearance before this committee.

First, I entreat you and your colleagues to make a priority of reforming the CFIUS process. The DP World decision should be the last instance in which this rigged game operates to the detriment of our national security. Recommendations like those offered by the U.S.-China Economic and Security Review Commission must be addressed with a view to making this mechanism what it was intended to be – a device

for giving priority to security considerations in the evaluation of foreign investments. It must be made more rigorous, accountable and transparent. And none of those changes are likely to occur without congressional action.

Second, in the course of the hearing last July, we discussed a larger concern of which problematic foreign investments like that of Dubai Ports World are but a part. In my judgment, we are, as a nation, becoming dangerously dependent upon overseas suppliers for industrial products, energy and other strategic resources, services (like port management), even components critical to our military capabilities. I am aware of no systematic effort to evaluate the extent of this dependency – let alone its implications for our economy, to say nothing of our national security.

I was delighted when, in the course of a discussion of this topic last summer, Mr. Chairman, you expressed the intention to make this topic a matter for urgent consideration by the Armed Services Committee. I very much hope that you will take up that task *now*. As this latest proposed transaction makes plain, in the absence of such oversight, we are likely to see the United States continue to allow the perceived imperatives of individual businesses and short-term profit – the driving forces behind “globalization” and much foreign investment – create and exacerbate real national security vulnerabilities.

Thank you again for the opportunity to participate in your deliberations on these and related matters. I look forward to taking your questions.