October 6, 2005

DEFENSE TRADE

Implementation of Exon-Florio

GAO Accountability·Integrity·Reliability

Highlights

Highlights of GAO-06-135T, a report to Senate Banking, Housing, and Urban Affairs Committee

Why GAO Did This Study

The 1988 Exon-Florio amendment to the Defense Production Act authorizes the President to suspend or prohibit foreign acquisitions of U.S. companies that may harm national security, an action the President has taken only once. Implementing Exon-Florio can pose a significant challenge because of the need to weigh security concerns against U.S. open investment policy—which requires equal treatment of foreign and domestic investors.

Exon-Florio's investigative authority was delegated to the Committee on Foreign Investment in the United States (Committee)—an interagency committee established in 1975 to monitor and coordinate U.S. policy on foreign investments. In September 2002, GAO reported on weaknesses in the Committee's implementation of Exon-Florio. This review further examined the Committee's implementation of Exon-Florio.

What GAO Recommends

GAO's accompanying report on Exon-Florio—*Defense Trade: Enhancements to the Implementation of Exon-Florio Could Strengthen the Law's Effectiveness*, GAO-05-686 (Washington, D.C.: Sept. 28, 2005)—contains matters for congressional consideration regarding Exon-Florio's coverage and needed improvements to the implementation of the law.

www.gao.gov/cgi-bin/getrpt?GAO-06-135T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Katherine V. Schinasi at (202) 512-4841 or schinasik@gao.gov.

What GAO Found

Several aspects of the process for implementing Exon-Florio could be enhanced thereby strengthening the law's effectiveness. First, in light of differing views among Committee members about the scope of Exon-Florio—specifically, what defines a threat to national security, we have suggested that Congress should consider amending Exon-Florio to more clearly emphasize the factors that should be considered in determining potential harm to national security.

Second, to provide additional time for analyzing transactions when necessary, while avoiding the perceived negative connotation of investigation on foreign investment in the United States we have suggested that the Congress eliminate the distinction between the 30-day review and the 45-day investigation and make the entire 75-day period available for review.

Third, the Committee's current approach to provide additional time for analysis or to resolve concerns while avoiding the potential negative impacts of an investigation on foreign investment in the United Stated is to encourage companies to withdraw their notifications of proposed or completed acquisitions and refile them at a later date. Since 1997, companies involved in 18 acquisitions have been allowed to withdraw their notification to refile at a later time. The new filing is considered a new case and restarts the 30-day clock. While withdrawing and refiling provides additional time while minimizing the risk of chilling foreign investment, withdrawal 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. We are therefore suggesting that the Congress consider requiring the Committee Chair to (1) establish interim protections where specific concerns have been raised, (2) specify time frames for refiling, and (3) establish a process for tracking any actions being taken during the withdrawal period.

Finally, to provide more transparency and facilitate congressional oversight, we are suggesting that the Congress may want to revisit the criterion for reporting circumstances surrounding cases to the Congress. Currently, the criterion is a presidential decision. However, there have only been two such decisions since 1997 and thus only two reports to Congress.