Exon-Florio

Harbinger of Economic Nationalism?

Susan W. Liebeler and William H. Lash III

Immediately after World War II, the United States was the preeminent economic power. U.S. firms had consistently better technology, managerial know-how, and a larger trade surplus in high-technology products than their foreign competitors. Accordingly, few foreign firms were able to compete in the United States, whereas many U.S. firms were able to compete abroad. The result was little foreign direct investment in the United States and a lot of U.S. investment overseas.

That gap was bound to close, and U.S. government policy hastened the process. We accomplished it, not by restraining advancement at home (in fact, U.S. postwar growth exceeded U.S. prewar growth), but by encouraging growth abroad. As a result, foreign growth rates in advanced economies generally exceeded U.S. growth rates in the postwar period, and U.S. investment and technology assisted in that growth. Today, foreign firms possess superior technology or management skills in many areas that allow them to succeed in the United States. That has led to a net rise in foreign direct investment in the United States.

During the 1980s foreign investors found the United States a particularly attractive place to invest. The rapid increase in foreign direct investment spawned considerable public debate. Congressional concern over the expanding foreign presence was heightened in 1987 when Fujitsu proposed its highly publicized purchase of Fairchild Semiconductor from the French parent, Schlumberger. Although the transaction was not consummated, critics claimed the existing—and rather considerable—regulatory framework was inadequate for protecting national security.

Susan W. Liebeler, a former chairman of the U.S. International Trade Commission, is a partner in the law firm of Irell & Manella. William H. Lash III is an assistant professor at St. Louis University School of Law.

The Regulatory Landscape before Exon-Florio

Although the United States was committed to an open investment policy, foreign acquisition of defense contractors had always attracted considerable scrutiny. The cold war made many Americans particularly nervous that our military secrets would end up in the wrong hands. A comprehensive regulatory structure prevented unauthorized transfers of classified technology and information to foreign interests. In 1975 after the Arab oil embargo President Gerald Ford established an interagency committee, the Committee on Foreign Investment in the United States (CFIUS). CFIUS was charged with monitoring the impact of foreign investment, coordinating U.S. policy on foreign investment, and reviewing transactions having major implications for U.S. national security.

Although CFIUS lacked enforcement power, it could rely on other regulatory mechanisms to deter the transfer of sophisticated technology and goods to foreign interests. Foreign investment is prohibited or restricted in certain sectors, including the broadcasting, domestic airline, maritime

Indeed, most Exon-Florio investigations are accompanied by congressional hearings and pressure to stop the acquisition. After a hard-fought battle involving Congress, CFIUS, the domestic semiconductor industry, and the Justice Department, Nippon Sanso of Tokyo purchased Semi-Gas Systems, a U.S. competitor. Semi-Gas produced nearly 50 percent of automated gas controls and purification systems used in U.S. production of semiconductor manufacturing equipment. Nippon Sanso controlled 50 percent of the Japanese market and 4 percent of the U.S. market, which raised the attention of the Antitrust Division of the Justice Department as well as of CFIUS and Capitol Hill. Semi-Gas, a member of Sematech, supplied the consortium with new products and performed daily maintenance at the Sematech facility. Industry representatives complained to congressional leaders and CFIUS that the sale was "a tremendous blow to U.S. competitiveness." Despite the opposition, CFIUS approved the acquisition on the condition that any work Semi-Gas does for Sematech be accomplished under the auspices of a subsidiary, at arm's length from Nippon Sanso.

Many foreign potential acquirors are not so lucky or steadfast as Nippon Sanso. Sometimes congressional pressure can stop foreign bidders, even if CFIUS is expected to approve the deal, as was the case with a potential acquisition of Moore Specialty Tool, a financially distressed producer of items used in manufacturing nuclear weapons. Despite months of searching for a U.S. buyer, the only viable purchaser was Fanuc of Japan. A House Energy and Commerce Subcommittee scheduled hearings, and congressional opposition grew. Fanuc eventually abandoned the deal although CFIUS was expected to approve the transaction.

The politicization of the Exon-Florio process is troubling. By applying pressure, Congress can substitute its uninformed judgment to halt foreign acquisitions before they even get to CFIUS as it did with Nikon's possible rescue of Perkin-Elmer's financially troubled semiconductor equipment manufacturing operations. As soon as the discussions between Nikon and Perkin-Elmer were made public, there was an outburst of congressional opposition. The pressure was so great that the deal was called off before an Exon-Florio filing was made. Not satisfied with Nikon's retreat, Sen. J. James Exon and former Rep. James J. Florio petitioned the administration to prohibit the sale of the semiconductor division to Nikon or any other foreign buyer on the ground that it would undermine and threaten national security. In a letter to the attorney general, Rep. Jack Brooks added his apprehensions that the sale of the Perkin-Elmer Corporation to a foreign buyer might lead the United States to become wholly dependent on Japan for chip technology and would be disastrous for U.S. efforts in international computer chips and electronic goods markets. Brooks sought antitrust review to express his lack of confidence in CFIUS and Exon-Florio.

Many members of Congress have pressured CFIUS to use Exon-Florio more widely for reasons having nothing to do with national security. Sen. Exon suggested that CFIUS could block an acquisition by Tokuyama Soda because of Tokuyama's role in a soda ash cartel. House majority leader Richard A. Gephardt has suggested that Exon-Florio can be used to protect "American competitiveness," whatever that means. Investment in South Africa was raised as a reason for stopping BTR's bid for Norton. Citing a disturbing pattern of labor policies in South Africa, Rep. Ronald V. Dellums warned President Bush that allowing BTR to expand its U.S. operations would risk "a potential backlash from African countries with whom the United States has vital political and economic interests."

The politicization of the Exon-Florio process is troubling. By applying pressure, Congress can substitute its uninformed judgment to halt foreign acquisitions before they even get to CFIUS. Many members of Congress have pressured CFIUS to use Exon-Florio more widely for reasons having nothing to do with national security.

The problem is that Exon-Florio is a potential tool for a future administration to use in implementing a policy of economic nationalism. The statute and implemention regulations neither define national security nor provide a list of industries exempt from Exon-Florio scrutiny. National security can be stretched fairly thin. In the past clothespin, peanut, pottery, shoe, pen, paper, and

pencil manufacturers have tried to justify government protection by invoking national security. Under another administration national security could be interpreted to encompass economic security. Changes in the political philosophy of future administrations could certainly result in a change in the makeup of CFIUS and the way Exon-Florio is administered.

Exon-Florio: A Harbinger of National Industrial Policy?

In fact, Exon-Florio appears destined to serve as a harbinger of economic nationalism; it is a convenient carrier for various schemes designed to widen the criteria for screening foreign acquisitions. Some would accomplish this by changing CFIUS.

Exon-Florio appears destined to serve as a harbinger of economic nationalism; it is a convenient carrier for various schemes designed to widen the criteria for screening foreign acquisitions.

Dissatisfied with CFIUS's administration of Exon-Florio, critics have advanced a series of proposals to alter its constituency and chairmanship. Memberships would be awarded to the president's national science adviser, the national security adviser, the presidential adviser for science and technology policy, and the secretary of energy. Such "troublemakers" as the chairman of the Council of Economic Advisers and the director of the Office of Management and Budget, who by virtue of their training and commitment to economic analysis historically have been unable to identify or appreciate critical industry sectors where government protection and intervention are justified, would forfeit their membership. One ambitious suggestion would eliminate CFIUS in favor of a "critical technologies commission" comprising the secretaries of defense, energy, labor, and commerce (H.R. 2445). In addition, many of the proposed amendments would significantly expand the role of the Commerce and Defense Departments in reviewing transactions. For example, one measure would require the president to block foreign acquisitions that are the subject of an Exon-Florio investigation until the secretary of defense certifies their acceptability on national security grounds (H.R. 5006). Several measures would transfer the chairmanship of CFIUS from the Treasury Department, known for its support of free trade and open investment policies, to the Commerce Department, or in one case to a new government agency, the Office of Strategic Trade and Technology (S. 1796), where advocates of industrial policy would presumably find a more sympathetic ear. Finally, the October 1992 amendments to Exon-Florio state the sense of Congress that the director of the Office of Science and Technology Policy and the assistant to the president for national security be added to CFIUS.

Such legislative proposals would not only alter the makeup of CFIUS, but would broaden the discretion and basis on which foreign acquisitions can be blocked. By adding new factors for the president to consider in reviewing foreign acquisitions, several bills would authorize screening foreign acquisitions that threaten economic security (H.R. 2386), that involve critical technology (H.R. 2424), that involve technological leadership in critical defense areas (S. 838), or that involve essential U.S. technologies (H.R. 52235). The most ambitious of them, H.R. 2424, would define national security to include the "interest of the U.S. government to preserve those basic conditions necessary for a domestic producer, using a critical technology, that are adequate to permit capital investment for needed improvements in technology that will enable the overall domestic industry to remain competitive."

In addition, some proposals would introduce performance requirements, masked as assurances, into the Exon-Florio process. The idea would be to require CFIUS to obtain written commitments to maintain production and research and development in the United States and not disrupt supplies to U.S. customers.

The latest rage is the introduction of measures aimed at discouraging investments by foreign, government-owned firms. CFIUS has investigated several such transactions, including the Thomson-LTV and CATIC-MAMCO transactions and an attempted acquisition by CMC Ltd., an Indian government-owned computer company of UniSoft Group PLC, whose U.S. subsidiary, Unisoft Corp., designed sophisticated software for military and commercial applications. Although none was consummated (except for CATIC-MAMCO, where divestiture later occurred under presidential

shipping, and the nuclear industries. More generally, the Department of Defense has comprehensive regulations under the Defense Industrial Security Program that cover the transfer and performance of government contracts involving classified information. A contractor must obtain a security clearance not only for itself, but for each employee with access to classified information. Furthermore, the contractor's principal officers and executive personnel must be individually cleared. Clearances are generally not issued to foreign nationals; contractors found to be under foreign ownership, control, or influence may not be able to obtain the necessary security clearances.

In some cases the contractor can secure the necessary clearances by insulating itself from the foreign owner's control and influence, either through a special security agreement, a proxy agreement, or a voting trust. The proxy and voting trust preclude a foreign owner from exercising control over a U.S. firm or from obtaining access to the classified and controlled information. The Defense Department must approve the proxy holders or trustees, and they must be U.S. citizens with no prior connection to any of the parties. They vote the stock independently without prior consultation with the foreign owners. A special security agreement is less draconian and permits the foreign investor to participate actively in the management of the U.S. firm, although the company's principal officers, chairman, and a majority of the board must be U.S. citizens. A company cleared under a special security agreement must also establish a defense security committee comprising outside directors approved by the Defense Department whose duty it is to ensure that foreign nationals are effectively precluded from access to classified information.

The International Traffic in Arms Regulations and the Export Administration Act restrict the export of sensitive goods, data, and technology. Those regulations require an exporter of defense and high-tech goods and classified information to obtain government approval, which, in some instances, can only be given to U.S. citizens. Moreover, under those regulations, exports requiring government approval include disclosure of technical data to a foreign buyer, an event that can be assumed to occur when a foreigner makes a direct investment in a U.S. business. Obtaining the necessary approval for such an "export" may be difficult or impossible, depending on the sensitivity and degree of sophistication of the technical data and the nationality of the foreign investor.

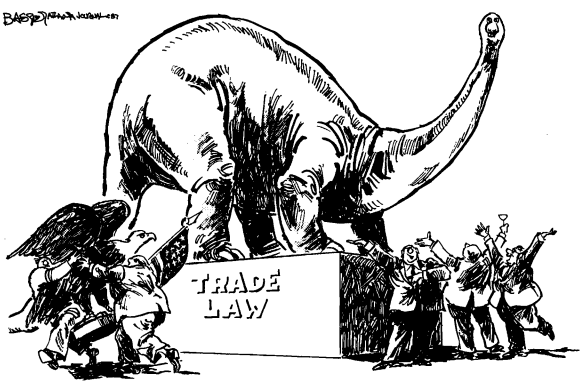
There are more general laws protecting our national security. For example, under the International Emergency Economic Powers Act, the president, after declaring a national emergency, may take a wide range of actions if foreign sources pose an unusual and extraordinary threat to national security, foreign policy, or the U.S. economy. The president used his authority under that act to block Iranian assets in the United States, to curtail trade with Nicaragua and Libya, to block transfers of U.S. funds to Panama, and to freeze Iraqi assets in the United States.

Finally, the ability of the U.S. government and its defense contractors to obtain necessary goods and services is protected under antitrust laws that affect all proposed acquisitions and permit premerger review and blockage of acquisitions that would restrain competition or create a monopoly.

Today, foreign firms possess superior technology or management skills in many areas that allow them to succeed in the United States. That has led to a net rise in foreign direct investment in the United States.

Those tools, together with congressional pressure and the inherent and persuasive powers of the presidency, dissuaded several foreign buyers from consummating controversial acquisitions or persuaded them to alter the transaction. The first test for the fledgling CFIUS came in 1981 when CFIUS examined the $2.5 billion acquisition of Santa Fe Petroleum by the state-owned Kuwait Petroleum Company. In addition to concerns over ownership of an American oil concern by a foreign government-owned firm, there were apprehensions about the possible transfer of military technology. C.F. Braun, a Santa Fe subsidiary, was a contractor for a U.S. nuclear facility. CFIUS acquiesced to the acquisition after the Department of Energy and the purchaser agreed to keep Braun's nuclear technology out of Kuwaiti controls.

In 1983 the Defense Department persuaded Allegheny-Ludlum not to sell its Special Metals Corp. subsidiary to Nippon Steel. Special Metals produced alloys used in military aircraft engines. The Department of Defense argued successfully



"FELLOW AMERICANS, your Congress is proud to present a new national symbol."

that the sale of Special Metals to a Japanese corporation would present the unacceptable risk of leakage of sensitive military information.

Similarly, in 1985 the Department of Defense, concerned about harm to defense interests, examined Japan-based Minebea's proposed acquisition of New Hampshire Ball Bearing, a manufacturer of ball bearings used in gyroscopes and other military instruments. Defense allowed the transaction to proceed after Minebea provided written assurances to continue ball bearing production at a New Hampshire plant.

The 1988 enactment of the Exon-Florio amendment to the Defense Production Act gives the president the authority, without judicial review, to block mergers, acquisitions, or takeovers of U.S. businesses by foreign persons if they threaten to impair U.S. national security, a term Congress chose not to define.

Those examples illustrate the effectiveness of the regulatory framework in insulating U.S. defense firms from foreign control. In 1987, at a time when foreign direct investment had become a volatile trade issue, Japan-based Fujitsu Ltd. attempted to acquire 80 percent of Fairchild Semiconductor Corporation from its French parent, Schlumberger. Fairchild was a leading U.S. manufacturer of logic computer chips crucial to U.S. defense. Opposition to the transaction developed quickly as defense officials and others became concerned that the U.S. industry might become dependent on Japan for semiconductor technology. When the Department of Justice raised antitrust concerns and the secretary of commerce announced his opposition, Fujitsu bowed to political pressure and abandoned its plan to buy Fairchild.

The Exon-Florio Provision

Although Fujitsu withdrew its bid for Fairchild, many critics believed that the president lacked sufficient authority, short of declaring a national emergency against an ally under the Emergency Powers Act, to block objectional acquisitions. The incident served as a catalyst for the 1988 enactment of the Exon-Florio amendment to the Defense Production Act. The provision gives the president the authority, without judicial review, to block mergers, acquisitions, or takeovers of U.S. businesses by foreign persons if they threaten to impair U.S. national security, a term Congress chose not to define.

Exon-Florio provides that if the president finds "credible evidence" that a "foreign interest exercising control might take action that threatens to impair the national security" and that certain other provisions of federal law do not adequately protect national security, the president may take a number of actions to block the acquisition, including suspending or prohibiting the acquisition and directing the attorney general to seek relief in the federal district courts.

Exon-Florio is administered by CFIUS, whose members now include the secretaries of commerce, state, and defense, the attorney general, the U.S. trade representative, the chairman of the Council of Economic Advisers, the director of the Office of Management and Budget, and the secretary of treasury, who serves as chairman. Operating through the Office of International Investment at the Treasury Department, CFIUS conducts investigations and makes recommendations to the president, who makes the final decision whether to block a foreign acquisition.

Exon-Florio establishes a screening mechanism for foreign acquisitions and provides for a review period of up to ninety days. Within thirty days of receipt of written notice of a transaction by one of the parties or a committee member, CFIUS must decide whether to investigate the transaction. A

unanimous CFIUS decision not to investigate further terminates the process. It takes only one member of the committee to involve the president. If CFIUS is split, the president will decide whether to proceed after receiving a report setting forth the differing views of the members. A full investigation takes forty-five days more, and the president can take an additional fifteen days to decide whether to block the acquisition.

Because there is no legal requirement that the parties notify CFIUS of a transaction, Exon-Florio is often characterized as a "voluntary" reporting regime. The risk, however, is that transactions concluded without Exon-Florio notification remain subject to divestment indefinitely. Parties to commercial transactions seek certainty and, therefore, generally prefer to end their exposure under Exon-Florio by submitting to the screening process. As a result, when there is a foreign buyer, an Exon-Florio filing joins the rather significant list of compliance documents required in major transactions.

As of March 31, 1993, of approximately 800 transactions for which Exon-Florio filings were made, CFIUS opened only fifteen full investigations. Five investigations were terminated when the parties withdrew their notifications, although in one recent case the buyer withdrew in the face of almost certain presidential disapproval.

Ten investigations have been sent to the president for decision, and in only one case did he formally intervene to block or unwind a transaction. That occurred in February 1990 when President Bush ordered CATIC, the import-export arm of the Ministry of Aerospace Industry of the People's Republic of China, to divest its interest in MAMCO, a privately owned, Seattle-based manufacturer of civilian airplane parts, primarily for Boeing. Although CATIC notified CFIUS of the proposed acquisition, the transaction was closed before completion of the initial review period. The sale was perfectly legal, but it turned out to be an unfortunate and costly decision when President Bush later ordered divestiture.

Because CFIUS proceedings are confidential, the public is not privy to the exact nature of the national security threat. While some of MAMCO's machinery was subject to U.S. export controls, it had no classified government contracts. The national security concerns apparently related solely to the purchaser. According to classified information available to CFIUS, it appeared that CATIC may have previously violated export control regulations by trying to obtain access to technology useful for military purposes. In his report to Congress on the divestiture decision, the president indicated that the confidential information available to him raised serious concerns regarding CATIC's future actions.

Although only the MAMCO transaction was blocked, at least one other transaction was restructured when CFIUS informally indicated to Tokuyama Soda, a Japanese company, that it would recommend that the president block its proposed acquisition of General Ceramics, a manufacturer of ceramic beryllium components for nuclear warheads. Tokuyama withdrew its original offer and its Exon-Florio filing. After transferring the classified contract and related military assets to a U.S.-owned firm, General Ceramics obtained CFIUS approval to sell the rest of the company to Tokuyama.

Parties to commercial transactions generally prefer to end their exposure under Exon-Florio by submitting to the screening process. As a result, when there is a foreign buyer, an Exon-Florio filing joins the rather significant list of compliance documents required in major transactions.

In several other cases the foreign buyers have had to make certain commitments before obtaining approval. CFIUS investigated a proposed joint venture to manufacture and sell high-voltage electrical transmission and distribution equipment between Westinghouse and Asea Brown Boveri, a Swiss electronic engineering firm. Under the terms of the joint venture Asea Brown Boveri had an option to acquire a majority interest. There was a fear that the Swiss firm's acquisition of Westinghouse's interest could reduce the availability of high-powered electrical transmission equipment in the United States. The president followed CFIUS's recommendation not to intervene after the buyer provided assurance it intended to continue U.S. operations.

In another investigation France's MATRA SA proposed to buy three aerospace hardware and software divisions of Fairchild Industries. The

president accepted CFIUS's recommendation not to block the sale after the parties developed a comprehensive export control system. In a third case involving the sale of Monsanto Electric Co., a semiconductor manufacturer, to Germany's Huels SA, CFIUS approved the transaction only after Huels provided assurance that the research and development facilities would remain in the United States.

Under the Bush administration the committee, declining to cater to economic nationalism, acted reasonably and responsibly and adopted a narrow definition of national security. The committee did not lightly recommend that a transaction be blocked and properly viewed Exon-Florio as a means for protecting national security, not for raising obstacles to foreign investment.

The trouble with Exon-Florio is not its current configuration and administration but its potential for mischief. Not only can national security be interpreted to encompass economic security, but Exon-Florio can be altered in a number of ways to promote an aggressive industrial policy.

Abuses and Misuses of Exon-Florio

The trouble with Exon-Florio is not its current configuration and administration but its potential for mischief. Not only can national security be interpreted to encompass economic security, but Exon-Florio can be altered in a number of ways to promote an aggressive industrial policy. Moreover, the Exon-Florio process has become increasingly politicized as congressmen respond to the special interests of their constituents in delaying or thwarting proposed acquisitions.

Exon-Florio is currently featured in leading securities law textbooks as a valid corporate takeover defense. Almost since its inception, corporate lawyers have used Exon-Florio as a potent defense against hostile tender offers. Norton Co., a manufacturer of radomes, missile domes, and ceramic engine parts, successfully sought and obtained an Exon-Florio investigation as a means of discouraging a hostile bid by Britain's BTR PLC. Norton persuaded over 120 representatives and senators to sign a letter asking the president to direct CFIUS to initiate an investigation. After France's Compagnie de Saint-Gobain appeared with a higher offer and a promise to retain existing management, congressional interest in Exon-Florio waned, even though the Compagnie de Saint-Gobain bid presented exactly the same national security concerns as did the BTR offer. CFIUS opened an investigation into the Compagnie de Saint-Gobain tender offer despite Norton's change of heart, and the president accepted the committee's recommendation not to intervene. While CFIUS is sensitive to possible abuse of the Exon-Florio process in such situations, an Exon-Florio review presents target managers and competitors with an ideal opportunity to use congressional hearings and pressure to thwart or delay unwanted bids.

A ninety-day review process is bound to increase the buyer's risk that the deal will be derailed. Competitors, rival bidders, labor interests seeking job security, and any number of special interests have the opportunity to mobilize opposition. The recent example of French-based Thomson's proposed acquisition of LTV's missile operations is a classic case. LTV had been in Chapter 11 bankruptcy proceedings since 1986 and was forced to sell its missile and aircraft division. The bidding came down to Martin Marietta and Lockheed on the one hand and Thomson and the Carlyle Group on the other. Thomson intended to acquire the LTV missiles division with Hughes Aircraft as a minority shareholder. Carlyle, Thomson's partner, would acquire the aircraft division, with Northrop as a minority investor. The LTV creditors and the bankruptcy judge rejected Lockheed/Marietta's $385 million bid in favor of Thomson's offer of $450 million. Because the French government owned 60 percent of Thomson's parent, an Exon-Florio filing was made. Rather than increase their bid, Martin Marietta and Lockheed launched a broad-based lobbying campaign to derail the Thomson effort. During the Exon-Florio review, several congressional committees held widely publicized hearings where Martin Marietta and Lockheed and their expert witnesses portrayed the Thomson bid as a serious threat to national security. At the end of the forty-five-day investigation, there were reports that CFIUS would recommend that President Bush block the acquisition. In the face of almost certain presidential disapproval, Thomson withdrew its offer.

order) and although CFIUS appears to have handled each of those investigations competently, Congress was determined to intervene. Concerns about foreign ownership of the defense industrial base, especially by government-controlled entities, were heightened by Thomson's controversial attempt to buy LTV's missile and aerospace divisions and led Congress to pass even more legislation affecting foreign acquisitions.

The October 1992 amendments to Exon-Florio mandate a full CFIUS investigation (and a corresponding ninety-day delay) of all foreign government-controlled entities' acquisitions of U.S. businesses that could affect national security. Moreover, a foreign government-controlled entity cannot acquire certain Energy or Defense Department contractors unless CFIUS has reviewed the transaction. In addition, in deciding whether to use Exon-Florio to block a foreign acquisition, the president must now consider the risk that military goods or weapons technology will be diverted to hostile countries and the potential threat to U.S. technological leadership in areas affecting national security. If the secretary of defense determines that a foreign acquisition may compromise defense-critical technology, he must direct one of the Defense Department's intelligence agencies to assess that risk and to distribute the assessment to all CFIUS members. Finally, regardless of whether the president approves or blocks an acquisition, he must now give Congress a confidential report of the findings and factors he considered.

Critics of CFIUS and Exon-Florio contend that the fact that only a handful of transactions have been investigated illustrates the inadequacy of the screening process. But the proposed expansion of Exon-Florio and restructuring of CFIUS jeopardize the free flow of foreign capital that the United States has historically welcomed.

Those who advocate adopting an industrial policy have found a ready conduit in Exon-Florio. Critical technologies, technological leadership and technology risk assessments can be potent tools in the hands of such enthusiasts, and there is no shortage of them in the Clinton administration. One fan is the new chairman of the Council of Economic Advisers, who in 1992 testified against the proposed sale of an interest in McDonnell Douglas to the Taiwan Aerospace Corporation. More important, while serving as chairman of the Science, Technology and Space Subcommittee of the Senate Commerce Committee, Vice President Gore frequently revealed his preference for government intervention over market forces in criticizing the Bush administration's failure to consciously promote key industries and technologies of the future. Gore also attacked the Bush administration for permitting the sale of Semi-Gas to Nippon Sanso and advocated amending Exon-Florio to prohibit the sale.

Absent executive restraint and in an atmosphere of industrial policy, Exon-Florio could be transformed from a shield into a strategic weapon in the hands of competitors, target managers, special interests, and the lawyers and lobbyists who serve them.

Absent executive restraint and in an atmosphere of industrial policy, Exon-Florio could be transformed from a shield into a strategic weapon in the hands of competitors, target managers, special interests, and the lawyers and lobbyists who serve them.

Conclusion

The pressures of a declining defense budget will result in substantial downsizing of the defense industrial base. As companies attempt to sell off defense-related assets, we can expect to see more highly charged political debates over potential foreign acquisitions. Allowing foreign investors to participate in this rationalization is a far better solution than encouraging competitors, managers, and employees of financially troubled companies to misuse Exon-Florio as they lobby for protection against foreign investment. Unfortunately, in the current political and economic climate, a contrary result is more likely.

Selected Reading

Lash, W.H., III. ". . . In Our Stars: The Failure of American Trade Policy." *North Carolina Journal of International Law and Commercial Regulation,* Vol. 18, No. 1 (1992).