



Highlights of [GAO-05-686](#), a report to Congressional Requesters

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—an interagency committee established in 1975 to monitor U.S. policy on foreign investments. In September 2002, GAO reported on the implementation of Exon-Florio. This report further examines that implementation.

What GAO Recommends

This report contains matters for congressional consideration regarding Exon-Florio's coverage and improvements to the law's implementation. In commenting on a draft of this report, the Secretary of the Treasury, as Committee Chair, disagreed with GAO's characterization of the Committee's process and the adequacy of insight into that process. Based on GAO's review of the process, GAO continues to believe that increased insight and oversight could strengthen the law's effectiveness.

www.gao.gov/cgi-bin/getrpt?GAO-05-686.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Ann Calvaresi-Barr at (202) 512-4841 or calvaresibarra@gao.gov.

DEFENSE TRADE

Enhancements to the Implementation of Exon-Florio Could Strengthen the Law's Effectiveness

What GAO Found

Foreign acquisitions of U.S. companies can pose a significant challenge for the U. S. government in implementing the Exon-Florio amendment because while foreign investment can provide substantial economic benefits, these benefits must be weighed against the potential for harm to national security. Exon-Florio's effectiveness in protecting U.S. national security may be limited because the Department of the Treasury—as Chair of the Committee on Foreign Investment in the United States—and others narrowly defines what constitutes a threat to national security and, along with some other member agencies, is reluctant to initiate investigations to determine whether national security concerns require a recommendation for possible presidential action. Some Committee members have argued that this narrow definition is not sufficiently flexible to protect critical infrastructure, secure defense supply, and preserve technological superiority in the defense arena. The Committee's reluctance to initiate an investigation—due in part to concerns about potential negative effects on the U.S. open investment policy—limits the time available for member agencies to analyze national security concerns. To provide additional time, while avoiding an investigation, the Committee has encouraged companies to withdraw their notification of a pending or completed acquisition and to refile at a later date. However, for companies that have completed the acquisition, there is a substantially longer time before they refile to complete the Committee's process; in some cases they never do, leaving unresolved any outstanding concerns.

In our 2002 report, GAO recommended improvements in provisions to assist agencies in monitoring actions companies have agreed to take to address national security concerns. The Committee has improved provisions on monitoring compliance, and the Department of Homeland Security is actively involved in monitoring company actions.

Agencies Represented on the Committee on Foreign Investment in the United States

Executive Departments	Executive Office of the President
Department of the Treasury (chair)	Council of Economic Advisers
Department of Commerce	National Economic Council
Department of Defense	National Security Council
Department of Homeland Security	Office of Management and Budget
Department of Justice	Office of Science and Technology Policy
Department of State	Office of the U. S. Trade Representative

Source: Executive Order 11858, as amended.