

For Immediate Release
February 16, 2006

Lawmakers Begin Push for New Thorough Federal Review of United Arab Emirates-Owned Company Taking Control of Major U.S. Ports in NY, NJ and East Coast

On Monday a \$6.8 billion dollar deal put the operation and control of the major New York and New Jersey ports in the control of a firm in the United Arab Emirates and owned by the Government of Dubai, Dubai Ports World. Today, Senators Chuck Schumer, Tom Coburn, Frank Lautenberg, and Chris Dodd are being joined by Reps. Chris Shays, Vito Fossella and Mark Foley in sending a letter to Treasury Secretary John Snow urging him to review the deal immediately. The deal allows the UAE company to take control of most operations at six ports on the East Coast, including: New York, New Jersey, Baltimore, New Orleans, Miami and Philadelphia. Except for cargo screening functions performed by the Department of Homeland Security, the Port operator is responsible for securing cargo coming in and out of the port, the port facility itself, and the hiring of security personnel. In light of these critical functions being transferred from a private company based in Britain to a United Arab Emirates government-owned company based in Dubai, the bipartisan group of lawmakers today called for the Treasury Department to carefully review the new arrangement and scrutinize all security issues before control is turned over completely.

"Outsourcing the operations of our largest ports to a country with a dubious record on terrorism is a homeland security and commerce accident waiting to happen," **Schumer** said. "This United Arab Emirates government-owned and operated company could be perfectly qualified to operate ports around the world, but the question that needs to be answered is whether or not they can be trusted to operate our ports in this post 9-11 world. The Administration needs to take another look at this deal."

Coburn said, "Handing the keys to U.S. strategic ports to a regime that recognized the Taliban is not a sound next step in our war against terror. I urge Secretary Snow to investigate this agreement that could seriously undermine our national security."

"Dubai has allowed terrorists to pass freely through their own country. Why in the world should we let this rogue government control ports in the United States?" said **Lautenberg**. "The Administration must conduct a serious investigation before any deal is signed."

Shays stated, "Our ports are a welcome mat for terrorists trying to bring weapons of mass destruction into the United States. It is critical those in charge of our ports have our best interest as their interest. I am eager to understand why the Committee on Foreign Investment in the United States approved the sale, handing over several key ports to a company based in the United Arab Emirates, and ensure it is thoroughly inspected and investigated."

Fossella said, "At a time when America is leading the world in the War on Terrorism and spending billions of dollars to secure our homeland, we cannot cede control of strategic assets to foreign nations with spotty records on terrorism. This decision seems inconsistent with American efforts to enhance our national security. The lack of transparency has left many questions unanswered as to why the UAE would be granted control of United States strategic assets."

"I'm extremely concerned with this development," **Dodd** said. "Our ports are major potential terrorist targets and frankly this Administration hasn't done enough to commit greater resources for their protection. I strongly urge the Administration to thoroughly investigate this acquisition."

Foley said, "Six of our largest commercial ports are being handed over to a country that is seeking to be Iran's free trade partner and has been linked to the funding and planning of 9/11. If our ports are the most vulnerable targets for terrorism and if we are at war, as the President says, we should be overly critical of

handing over management of our ports to any foreign countries, post 9/11. Instead, this was done in the dead of night."

The Port of New York and New Jersey were controlled by a London-based company, Peninsular and Oriental Steam Navigation Co., the world's 4th largest port operator with operations in over 85 ports in 19 countries, including P&O subsidiary P&O Ports North America, which has operations in over 20 U.S. ports from Portland, Maine to Corpus Christi, Texas as well as Vancouver, Canada on the West Coast. But last week, the government of Dubai, United Arab Emirates won a bidding war to buy the venerable British firm. DP World's bid to buy the company was quietly cleared by a government panel without public scrutiny. The Committee on Foreign Investment in the United States (CFIUS) cleared the deal, without a public report or evaluation.

On Monday, Schumer sent a letter to Homeland Security Secretary Michael Chertoff asking him to conduct a thorough evaluation of the security ramifications of the take over and present his report to Congress within one month.

Ports have long been considered the most vulnerable targets for a terrorist attack and experts agree that shipping containers are the best way to smuggle a Weapon of Mass Destruction (WMD) in to the United States. Only 5 percent of containers entering our ports are actually inspected, with the rest in under the control of the port operator. Nuclear, Chemical, or Biological materials could easily be delivered directly to a U.S. port, many of which are located within or adjacent to major population centers (NY-NJ, Philadelphia, Baltimore, Norfolk, Miami, New Orleans, Houston).

The Port of New York and New Jersey has seen a significant boost in sea cargo over the last few years with a substantial rise in Asian trade helping to boost growth by more than 10 percent during the first six months of 2005. Overall, the port offloaded 1,654,483 cargo containers during the first six months of 2005.

The bipartisan letter to Snow follows:

February 16, 2006

Secretary John W. Snow

Department of Treasury

1500 Pennsylvania Ave., NW

Washington, DC 20220

Dear Secretary Snow,

We are writing to express our concerns with the impending acquisition of Peninsular and Oriental Steamship Navigation Co. (P&O) by DP World, a company owned and controlled by the Government of Dubai, United Arab Emirates (UAE). This transaction will result in foreign government control of P&O Ports, North America (P&O subsidiary), the largest port operator on both the Eastern U.S. Coast and U.S. Gulf Coast. We are concerned that the Administration is not giving this case the appropriate level of scrutiny required by law and ask that you direct the Committee on Foreign Investment in the United States (CFIUS) to conduct a full 45-day investigation.

Federal law requires the President or his designee investigate the impact on national security of a foreign acquisition if the acquisition "could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States." (50 USC App. §2170). The President has delegated this investigative authority to CFIUS of which you are Chairman. We understand that CFIUS has chosen not to conduct a formal investigation.

The law further mandates one of several factors be considered in determining a threat to national security: "The control of domestic industries and commercial activity by foreign citizens as it affects the capability and

capacity of the United States to meet the requirements of national security." Our country's maritime ports are critical to our national security, vital to our military capability, and essential to our economy. Some 95 percent of all goods imported to the U.S. arrive through our ports.

Most importantly, our ports are our most vulnerable targets for terrorist attack. Despite efforts to improve port security by the Administration, only one in 20 shipping containers entering the U.S. is physically inspected. A single terrorist incident could shut down our system of container transportation, affecting our entire economy, as well as facilities relied on by the Department of Defense as military load-out ports.

Dubai, which owns and controls the acquiring company in this case, has been named as a key transfer point for shipments of nuclear components that were shipped to Iran, North Korea, and Libya, which were sold by Pakistan's nuclear scientist A.Q. Khan. In addition, the UAE was one of only 3 countries (including Pakistan and Saudi Arabia) that recognized the Taliban as the legitimate government of Afghanistan.

According to the Congressional Research Service, many U.S. officials believed that al Qaeda activists have spent time in the UAE. In fact, two of the 9/11 hijackers were UAE nationals (Fayez Banihammad and Marwan al-Shehhi), and the Federal Bureau of Investigation claimed the money used for the attacks was transferred to the 9/11 hijackers primarily through the UAE's banking system. Furthermore, after the 9/11 attacks, your department complained of a lack of cooperation by the UAE and other Arab countries as the U.S. was trying to track down Osama bin Laden's bank accounts.

In light of these considerations, we expect CFIUS, as the President's designee, to undertake a complete and thorough investigation of this acquisition in accordance with Federal law. The National Commission on Terrorist Attacks Upon the United States (a.k.a., "the 9/11 Commission") found that on September 11, 2001, the "most important failure was one of imagination."

Committee on Foreign Investments in the United States (CFIUS)

U.S. DEPARTMENT OF TREASURY

OFFICE OF THE ASSISTANT SECRETARY INTERNATIONAL AFFAIRS

OFFICE OF INTERNATIONAL INVESTMENT

EXON-FLORIO PROVISION

Introduction. The United States has traditionally welcomed Foreign Direct Investment (FDI) and provided foreign investors fair, equitable and nondiscriminatory treatment with few limited exceptions designed to protect national security. The Exon-Florio provision is implemented within the context of this open investment policy. The intent of Exon-Florio is not to discourage FDI generally, but to provide a mechanism to review and, if the President finds necessary, to restrict FDI that threatens the national security.

The Exon-Florio provision is implemented by the Committee on Foreign Investment in the United States ("CFIUS"), an inter-agency committee chaired by the Secretary of Treasury. CFIUS seeks to serve U.S. investment policy through thorough reviews that protect national security while maintaining the credibility of our open investment policy and preserving the confidence of foreign investors here and of U.S. investors abroad that they will not be subject to retaliatory discrimination.

The Statute. Section 5021 of the Omnibus Trade and Competitiveness Act of 1988 amended Section 721 of the Defense Production Act of 1950 to provide authority to the President to suspend or prohibit any foreign acquisition, merger or takeover of a U.S. corporation that is determined to threaten the national security of the United States. The President can exercise this authority under section 721 (also known as the "Exon-Florio provision") to block a foreign acquisition of a U.S. corporation only if he finds:

(1) there is credible evidence that the foreign entity exercising control might take action that threatens national security, and

(2) the provisions of law, other than the International Emergency Economic Powers Act do not provide adequate and appropriate authority to protect the national security.

To assist in making this determination, Exon-Florio provides for the President or his designee to receive written notice of an acquisition, merger or takeover of a U.S. corporation by a foreign entity. Once CFIUS has received a complete notification, it begins a thorough review of the notified transaction. In some cases, it is necessary to undertake an extended review or "investigation." An investigation, if necessary, must begin no later than 30 days after receipt of a notice. Any investigation is required to end within 45 days.

Information provided by companies contemplating a transaction subject to Exon-Florio is held confidential and is not made public, except in the case of an administrative or judicial action or proceeding. Nothing in section 721 shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

Factors To Be Considered. The Exon-Florio provision lists the following factors that the President or his designee may consider in determining the effects of a foreign acquisition on national security. These factors are:

(1) domestic production needed for projected national defense requirements;

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services;

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the U.S. to meet the requirements of national security;

(4) the potential effects of the transaction on the sales of military goods, equipment, or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; and

(5) the potential effects of the transaction on U.S. technological leadership in areas affecting U.S. national security.

Amendments. Section 837(a) of the National Defense Authorization Act for Fiscal Year 1993, called the "Byrd Amendment," amended Section 721 of the Defense Production Act (the "Exon-Florio provision"). It requires an investigation in cases where:

o the acquirer is controlled by or acting on behalf of a foreign government; and

o the acquisition "could result in control of a person engaged in interstate commerce in the U.S. that could affect the national security of the U.S."

Legislative Cite. Section 721 of Pub. L. 100-418, 102 Stat. 1107, made permanent law by section 8 of Pub. L. 102-99, 105 Stat. 487 (50 U.S.C. App. 2170) and amended by section 837 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, 106 Stat. 2315, 2463.

CFIUS

Executive Order. The Committee on Foreign Investment in the United States ("CFIUS") was originally established by Executive Order 11858 in 1975 mainly to monitor and evaluate the impact of foreign investment in the United States. In 1988, the President, pursuant to Executive Order 12661, delegated to CFIUS his responsibilities under Section 721. Specifically, E.O. 12661 designated CFIUS to receive notices of foreign acquisitions of U.S. companies, to determine whether a particular acquisition has national security issues sufficient to warrant an investigation and to undertake an investigation, if necessary, under the Exon-Florio provision. This order also provides for CFIUS to submit a report and recommendation to the President at the conclusion of an investigation.

In 1993, in response to a sense of Congress resolution, CFIUS membership was expanded by Executive Order 12860 to include the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy. In February 2003, the Department of Homeland Security was added to CFIUS. This brought the membership of CFIUS to twelve under the chairmanship of the Secretary of Treasury. The other members are the Secretaries of State, Defense, and Commerce, the Attorney General, the Director of the Office of Management and Budget, the U.S. Trade Representative, and the Chairman of the Council of Economic Advisers.

Regulations. The Exon-Florio provision requested that the President issue implementing regulations. These regulations were issued in 1991. They set up a voluntary system of notification with the possibility of CFIUS member-agency notice for non-notified transactions. The President retains full authority to protect the national security with respect to any acquisition covered by this statute, regardless of whether the parties file a notification.

The Exon-Florio regulations do not define national security. The preamble to the regulations provides guidance that products, services and technologies important to U.S. defense requirements would be significant to national security. Even though notification is voluntary, CFIUS would consider notification of these transactions appropriate.

Code of Federal Regulations Citation. Office of International Investment, Department of Treasury -- Regulations pertaining to mergers, acquisitions, and takeovers by foreign persons, 31 CFR Part 800.

Procedures. Treasury, acting at the staff level through the Director of the Office of International Investment in the Office of the Assistant Secretary of International Affairs, acts as the secretariat for CFIUS. It receives and circulates notices to CFIUS agencies and coordinates reviews. Reviews are conducted on a case-by-case basis.

The Exon-Florio statute established a 30-day review following receipt of a notification. For those transactions for which an extended 45-day review (or "investigation") is completed, a report must be provided to the President, who must by law announce the final decision within 15 days. In total, the process can not exceed 90 days. The statute requires the President to inform Congress of his determination of whether or not to take action under section 721.

The parties to an acquisition subject to section 721 may submit a voluntary notice to CFIUS of the proposed or completed acquisition by sending 13 copies of the information requested in part 800.402 of the Exon-Florio regulations to:

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