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Guest Comment

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A Little Free-Trade Good News
Foreign direct investment is up, and more.

By Stuart Anderson

Free-trade advocates have been wringing their hands over the failure of the Doha trade round and the end of the president's fast-track trade negotiating authority. But 2007 has brought good news to free traders on several fronts, in particular foreign direct investment.

The attempt by Dubai Ports World to acquire certain U.S. port operations was one of the biggest news stories of 2006, with a remarkable 41 percent of Americans saying they followed the issue closely — only slightly less than followed the war in Iraq — according to the Pew Research Center. In the aftermath of that failed deal, many businesses and free traders feared that Congress would enact harsh new requirements that would stifle international investment in the United States.

But this week, Congress passed a bill (S. 1610) that makes reasonable security reforms to the process of approving certain foreign acquisitions. The credit for moderating the tenor of this contentious debate goes to House Financial Services Committee chairman Barney Frank (D., Mass.) and a bipartisan group of legislators that includes Rep. Carolyn Maloney (D., N.Y.), Rep. Roy Blunt (R., Mo.), Rep. Joseph Crowley (D., N.Y.), Rep. Deborah Pryce (R., Ohio), Senate Banking chair Chris Dodd (D., Conn.), and Sen. Richard Shelby (R., Ala.).

This is good news for the markets, which have been doing their part on the free-trade front. Despite the Dubai Ports World furor, foreign direct investment in the U.S. increased by 76.7 percent in 2006 to $161.5 billion, the highest level since 2000, according to the U.S. Department of Commerce. Foreign direct investment is an important economic indicator, and when it's high it shows significant confidence in the U.S. economy and its growth prospects. (Of course, this development has gone virtually unreported in the media, which seems drawn only to negative economic indicators.)

Another positive free-trade development comes from the Oval Office, which has decided to make clear to the world that the U.S. welcomes foreign investment. In May, in the first official statement on America's open-investment policy in more than a decade, President Bush declared,

> As both the world's largest investor and the world's largest recipient of investment, the United States has a key stake in promoting an open investment regime. The United States

> unequivocally supports international investment in this country and is equally committed to securing fair, equitable, and nondiscriminatory treatment for U.S. investors abroad.

Related to this, the U.S. Department of Commerce recently launched a new program to help recruit international companies to invest in the United States, while Treasury Secretary Hank Paulson has promoted foreign investment at public events.

Still, not everything is rosy. A January 2007 National Foundation for American Policy study by David Marchick, a partner at the Washington, D.C.-based law firm of Covington & Burling, concluded, "The process for securing approvals within CFIUS (the interagency Committee for Foreign Investment in the United States) has grown more difficult for foreign investors, adding to uncertainty and increasing the regulatory risk associated with certain foreign acquisitions."

CFIUS, a twelve-agency committee chaired by the secretary of the Treasury and staffed by career professionals from the departments of Defense, Justice, Commerce, and other agencies, reviews foreign acquisitions for their national security implications. In 2006, there were 113 filings to CFIUS (up 73 percent over 2005), 7 second-stage investigations (up 250 percent), and 5 withdrawals (up 150 percent) during the second-stage investigation period. Marchick noted that the dramatic increase in filings demonstrates that foreign investors and their counsels are increasingly uncertain about the approval process for foreign acquisitions, leading them to be much more cautious in deciding whether and when to file transactions for government review. On top of that, the dramatic increase in the number of second-stage investigations and withdrawals suggests that foreign investors are having a more difficult time closing transactions in a timely fashion.

While most states actively seek foreign investment, states such as New Jersey have sought to enact double taxation by disallowing deductions for interest and royalty payments of U.S-based affiliates to the parent company. There is also a risk that without loosening current tight quotas on skilled foreign-born scientists, engineers, and professionals, both U.S. and foreign companies will invest more resources outside the United States. Investment dollars, as they always do, follow the global talent; Microsoft's recent announcement of establishing a new facility in Vancouver at least partly reflects frustration with U.S. immigration laws.

In a world where nations compete to attract the type of investment that spurs job creation, innovation, and a higher standard of living, policies that encourage foreign direct investment are crucial. In 2006, congressional criticism of the Dubai Ports World deal led the CFIUS bureaucracy to tighten the process for foreign acquisitions. But now that Congress has passed a bill that specifies its intent on national-security-related reviews, it is up to officials in the agencies that comprise CFIUS to ensure a balanced process for approvals of foreign acquisitions.

Otherwise, this year's positive developments on foreign investment will have gone for naught.

*— Stuart Anderson is executive director of the **National Foundation for American Policy**.*