

REQUESTING THE PRESIDENT AND DIRECTING THE SECRETARY OF HOMELAND SECURITY TO PROVIDE TO THE HOUSE OF REPRESENTATIVES CERTAIN DOCUMENTS IN THEIR POSSESSION RELATING TO THE DUBAI PORTS WORLD ACQUISITION OF 6 UNITED STATES COMMERCIAL PORTS LEASES

APRIL 7, 2006.—Referred to the House Calendar and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 718]

The Committee on Financial Services, to whom was referred the resolution (H. Res. 718) requesting the President and directing the Secretary of Homeland Security to provide to the House of Representatives certain documents in their possession relating to the Dubai Ports World acquisition of 6 United States commercial ports leases, having considered the same, report thereon with amendments and without recommendation.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 1, line 2, strike “is directed” and insert “and the Secretary of the Treasury are directed”.

Page 2, line 4, strike “6”.

Page 2, line 9, after “discussions” insert “, including discussions”.

Page 2, line 10, after “World” insert a comma.

Page 2, line 12, strike “and”.

Page 2, line 20, strike the period and insert “; and”.

Page 2, after line 20, insert the following:

(4) all documents in their possession, including notes from meetings, memos, telephone and electronic mail records, logs and calendars, and records of internal discussions, relating to the Committee on Foreign Investments in the United States review process for such acquisition.

Amend the title so as to read:

Resolution requesting the President and directing the Secretary of Homeland Security and the Secretary of the Treasury to provide to the House of Representatives certain documents in their possession relating to the Dubai Ports World acquisition of United States commercial ports leases.

PURPOSE AND SUMMARY

House Resolution 718, “requesting the President and directing the Secretary of Homeland Security to provide to the House of Representatives certain documents in their possession relating to the Dubai Ports World acquisition of 6 United States commercial ports leases,” was introduced March 9, 2006, by Mr. Kucinich for himself and Reps. Larson and Brady of Pennsylvania. It seeks to have the President and the Secretary of Homeland Security provide, within 14 days of adoption, a variety of documents relating to aspects of the proposed purchase by Dubai Ports World (DP World) of the U.S. ports operations of the Peninsular & Oriental Steam Navigation Co. (P&O). Additionally, it seeks information related to a December 16, 2005, memo from the Coast Guard outlining concerns it thought should be addressed as a review of the deal by the Committee on Foreign Investment in the United States (CFIUS) got underway. A portion of that memo has been made public. Finally, the legislation seeks a similar variety of documents from the President and Secretary covering “internal discussions” from October 1, 2005, to March 2, 2006, between the White House and the Carlyle Group related to the review of the proposed Dubai-P&O deal.

While the transaction in question now is complete, DP World has made an arrangement to leave the U.S. operations in the control of P&O until they are sold off. Even so, scrutiny of the CFIUS, both as related to this deal and to the underlying process in general, was intense. This legislation was introduced at the peak of the intensity of public interest in the transaction. However, although the deal itself is moot and thus the document request moot, the parliamentary nature of the legislation impelled consideration.

BACKGROUND AND NEED FOR LEGISLATION

H. Res. 718 is a resolution of inquiry, which pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, directs the Committee to act on the resolution within 14 legislative days or a privileged motion to discharge the Committee is in order.

Under the Rules and precedents of the House, a resolution of inquiry is one of the methods used by the House to obtain information from the executive branch. According to volume 7, chapter 24, section 8 of Deschler's Procedure, it is a "simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch."

On February 13, 2006, shareholders from P&O approved a \$6.85 billion acquisition proposal from DP World, a port terminal operations company owned by the government of the United Arab Emirates (UAE). The acquisition, for which negotiations began in October and on which a deal was struck and reported in the financial press in November, was completed in March, but not before a public outcry in the United States caused close scrutiny of the deal, a vote in Congress to repudiate it, and an agreement from DP World to sell off the U.S. operations as soon as practical.

A 30-day review by the inter-agency CFIUS—charged with determining if any such acquisition might cause a threat to national security—began in mid-December. CFIUS is said to have reached a multi-point agreement to mitigate certain security concerns that appear to have been raised about the proposed deal by CFIUS components. A 45-day investigation period that is indicated in CFIUS authorizing legislation for any acquisition by a state-owned company that triggers security concerns was not conducted, because, the administration has said, the security issues raised were successfully addressed.

While the transaction is complex, covering port operations around the world, it is pertinent that P&O operates at some 20 U.S. ports in the Gulf of Mexico and East Coast, including the major ports of New York, Baltimore, Miami and New Orleans. While critics of DP World have called for a closer examination of the implications of this transaction, it should be noted that the majority of large U.S. ports are operated by foreign-owned companies. Foreign-owned companies represent the four largest operators of ports in the world; Hong Kong's Hutchinson Ports is the market leader, followed by Denmark's APM Terminals.

Given all of the facts of this situation, the Committee is forwarding this report to the House without recommendation.

HEARINGS

The Committee held no hearings on H. Res. 718.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 5, 2006, and ordered H. Res 718, as amended, reported to the House without recommendation.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mrs. Biggert to report the resolution, as amended, to the House without recommendation was agreed to a record vote of 35 yeas and 32

nays (Record vote no. FC–18). The names of Members voting for and against follow:

RECORD VOTE NO. FC–18

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley	X	.....	.....	Mr. Frank (MA) .....	.....	X	.....
Mr. Leach .....	.....	.....	.....	Mr. Kanjorski .....	.....	X	.....
Mr. Baker	X	.....	.....	Ms. Waters .....	.....	X	.....
Ms. Pryce (OH)	X	.....	.....	Mr. Sanders .....	.....	X	.....
Mr. Bachus	X	.....	.....	Mrs. Maloney .....	.....	X	.....
Mr. Castle	X	.....	.....	Mr. Gutierrez .....	.....	X	.....
Mr. Royce	X	.....	.....	Ms. Velázquez .....	.....	X	.....
Mr. Lucas	X	.....	.....	Mr. Watt .....	.....	X	.....
Mr. Ney	X	.....	.....	Mr. Ackerman .....	.....	X	.....
Mrs. Kelly	X	.....	.....	Ms. Hooley .....	.....	X	.....
Mr. Paul	X	.....	.....	Ms. Carson .....	.....	X	.....
Mr. Gillmor	X	.....	.....	Mr. Sherman .....	.....	X	.....
Mr. Ryun (KS)	X	.....	.....	Mr. Meeks (NY) .....	.....	X	.....
Mr. LaTourette	X	.....	.....	Ms. Lee .....	.....	X	.....
Mr. Manzullo	X	.....	.....	Mr. Moore (KS) .....	.....	X	.....
Mr. Jones (NC)	X	.....	.....	Mr. Capuano .....	.....	X	.....
Mrs. Biggert	X	.....	.....	Mr. Ford .....	.....	X	.....
Mr. Shays	X	.....	.....	Mr. Hinojosa .....	.....	X	.....
Mr. Fossella	X	.....	.....	Mr. Crowley .....	.....	X	.....
Mr. Gary G. Miller (CA)	X	.....	.....	Mr. Clay .....	.....	X	.....
Mr. Tiberi	X	.....	.....	Mr. Israel .....	.....	X	.....
Mr. Kennedy (MN)	X	.....	.....	Mrs. McCarthy .....	.....	X	.....
Mr. Feeney	X	.....	.....	Mr. Baca .....	.....	.....	.....
Mr. Hensarling	X	.....	.....	Mr. Matheson .....	.....	X	.....
Mr. Garrett (NJ)	X	.....	.....	Mr. Lynch .....	.....	X	.....
Ms. Brown-Waite (FL)	X	.....	.....	Mr. Miller (NC) .....	.....	X	.....
Mr. Barrett (SC)	X	.....	.....	Mr. Scott (GA) .....	.....	X	.....
Ms. Harris	X	.....	.....	Mr. Davis (AL) .....	.....	X	.....
Mr. Renzi	X	.....	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Gerlach	X	.....	.....	Mr. Cleaver	X	.....	.....
Mr. Pearce	X	.....	.....	Ms. Bean .....	.....	X	.....
Mr. Neugebauer	X	.....	.....	Ms. Wasserman Schultz	X	.....	.....
Mr. Price (GA) .....	.....	.....	.....	Ms. Moore (WI) .....	.....	X	.....
Mr. Fitzpatrick (PA)	X	.....	.....		
Mr. Davis (KY)	X	.....	.....		
Mr. McHenry	X	.....	.....		
Mr. Campbell	X	.....	.....		

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The following other amendments were also considered by the Committee:

Amendments offered by Mrs. Maloney, No. 1, adding the Secretary of the Treasury, were AGREED TO by a voice vote.

An amendment offered by Mr. Price (GA), No. 2, adding the Secretary of the Treasury, was OFFERED AND A POINT OF ORDER WAS SUSTAINED against its consideration.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated into the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance related goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

FEDERAL MANDATES STATEMENT

H. Res. 718 contains no unfunded mandates.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

As amended by the Committee, the resolution requests the President and directs the Secretary of Homeland Security and the Secretary of Treasury to provide to the House of Representatives, not later than 14 days after adoption of the resolution—

(1) all documents in their possession, including notes from meetings, memos, telephone and electronic mail records, logs and calendars, and records of internal discussions relating to the December 13, 2005, document by the Coast Guard Intelligence Coordination Center relating to the Dubai Ports World acquisition of United States commercial ports leases;

(2) all documents in their possession, including notes from meetings, memos, telephone and electronic mail records, logs and calendars, and records of internal discussions, including discussions between the White House and Dubai Ports World relating to the Committee on Foreign Investment in the United States review process for such acquisition;

(3) all documents in their possession, including notes from meetings, memos, telephone and electronic mail records, logs and calendars, and records of internal discussions between the White House and the Carlyle Group during the period beginning October 1, 2005, and ending March 2, 2006, relating to the Committee on Foreign Investment in the United States review process for such acquisition; and

(4) all documents in their possession, including notes from meetings, memos, telephones and electronic mail records, logs and calendars, records of internal discussions, relating to the

Committee on Foreign Investment in the United States review
process for such acquisition.

DISSENTING VIEWS

H. Res. 718, sponsored by Mr. Kucinich (OH) and amended by Mrs. Maloney (NY), is an important effort to obtain information about what went wrong with the Bush Administration's handling of the Dubai Ports World transaction, which was reviewed by the interagency Committee on Foreign Investment in the United States (CFIUS). The resolution directs the Secretaries of Homeland Security and Treasury to provide to the House critical information and records on the Dubai Ports World transaction. Because foreign investment plays such a constructive role in our economy, it is important for us to look at the facts surrounding this transaction, so that we can take whatever steps are necessary to reduce the likelihood of a repetition. This request for information regarding the Dubai issue is important because we need to separate out the mishandling of this transaction from any problems surrounding the basic structure of the CFIUS process. To the extent that there is a flawed structure for dealing with these sorts of transactions, we may need to legislate. But to the extent that the structure was not deeply flawed, but the execution of the transaction was, then major changes may be unwarranted.

Although the Dubai Ports World case has been resolved with the company's agreement to divest its U.S. port assets, the case continues to play a central role in various CFIUS legislative reform initiatives currently underway in the House and Senate. There is some legitimate concern in the financial community that the reaction to the Bush Administration's mistakes in its handling of this transaction might lead to excessive restrictions in the area of foreign investment—which is why those who support a continued role for an open and constructive foreign investment policy should also support this resolution. The Democrats on the Financial Services Committee who unanimously voted to send the Kucinich resolution to the floor for action are sensitive to the need to preserve elements of the CFIUS process that adequately address national security concerns without restricting legitimate foreign investment. We believe that receiving the information requested by this resolution would help us in achieving that balance and we regret the partisan response of our Republican colleagues, which is keeping from us information which would help us legislate.

BARNEY FRANK.

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