

Public briefing session on
FOREIGN OWNERSHIP, CONTROL AND DOMINATION

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Distinguished Commissioners, I am honored to appear before you today to discuss the question of Foreign Ownership, Control and Domination. I have testified hundreds of times before the United States Congress as a former deputy secretary of defense, but this is my first experience to appear before any regulatory commission, and especially the Nuclear Regulatory Commission. At the outset, let me thank all of you for your important service to the country. Your work is exceptionally important, not only for America but for quality regulatory standards on a global basis.

I am flattered to be invited to participate today in this information briefing. I think it is an especially important topic. It is important for the Commissioners to know that for a period of six years, I served on an advisory committee to a commercial entity that was attempting to build new nuclear power plants in North America. This was a joint venture initially between Constellation Energy in Baltimore (now owned by Exelon) and the French nuclear power company, EDF. I was asked to serve on this advisory committee precisely because of the concerns Constellation Energy had about FOCD issues. For six years, I and my four other Advisory Board colleagues met quarterly with senior management to review the plans for new construction, the issues associated with the new development, and the operations of the existing CENG nuclear power plants. My role in this advisory capacity ended this spring and I have had no contact with the company since late spring.

During those six years, my colleagues and I wrestled with the FOCD question. What is foreign ownership, control and domination? What are the national security risks presented by foreign ownership? What is the difference between legitimate business interests and “control and domination?”

Let me state at the outset that during six years, there was only one instance that I can recall where the Advisory Board cautioned the owners about FOCD, and the owners corrected their actions immediately to avoid the concern. There were frequently different perspectives between the American owners and the French owners on specific business matters. We studied each of them, and concluded that in each instance, the dispute reflected legitimate and honest business concerns and never

represented an attempt by a foreign entity to exercise geopolitical control or introduce national security vulnerabilities.

While I was Deputy Secretary of Defense, I frequently wrestled with the question of risk posed to American national security interests posed by cooperating with commercial entities in other countries. The Defense Department has extensive interaction with “foreign” companies and entities as we build new weapon systems, maintain existing ones, deploy our forces and sustain operations overseas. All of these pose potential risks to our national security. In every instance, we study the risk and develop mitigation strategies.

This leads me to my first observation. When the original legislation was created that established a procedure for mitigating FOCD (In the Defense world, it is FOCI), the world was profoundly different. Sixty years ago we had a largely autonomous and autarchic industrial base. We had superior technology and needed to keep it away from hostile intelligence services. But today we live in a world of global supply chains, international consortia of producers and a world of global and instantaneous communications. Capital is global and complex projects are funded on an international basis. The rules appropriate for 1955 are completely inappropriate for 2015.

The Defense Department has a complex and sophisticated process for evaluating risk and developing mitigation strategies. We know that we have to work with international partners. Sometimes international vendors have the best technology to use in a new weapon system. For 30 years every Navy combat aircraft has had ejection seats supplied by a French company, for example. We have joint ventures with foreign companies manufacturing some of our most sophisticated weapon systems. Our most advanced new combat aircraft, the F-35, is manufactured on a global basis, with America depending on critical work done by a half-dozen companies in foreign countries. We depend on parts manufactured in Europe and in Japan for some of our most advanced satellites. We have had to develop sophisticated approaches to protecting national security interests and minimizing security risks.

We do not take a single dimension—like percentage of foreign ownership—and build security policies only around that dimension. That would be a huge mistake. We need foreign participation in most of our work these days. So we need to develop far more sophisticated ways to determine what constitutes genuine risk, and how to deal with that risk in an efficient and effective way. My colleague here today, Stan Sims, heads up the Defense Security Service that wrestles with this every day. DSS must design mitigation strategies that let Defense Department contractors get the best technology and support on an international basis, while still protecting core American security interests.

Second, I look at the world of commercial nuclear power and I am genuinely alarmed that America is a rapidly declining power in the world. We used to be the only western source of this technology and the hardware and supplies needed to build, sustain and operate nuclear reactors. This is no longer the case. The commercial nuclear industry is now a global industry. Supply chains are global. Technical expertise is spread around the world. You can't build a major new nuclear power plant today without extensive foreign components and expertise.

Worryingly, while America still is an important country concerning commercial nuclear power, we are becoming a declining power compared to the rest of the world. We no longer have American-only sources for all aspects of the nuclear commercial energy cycle. We have strong competitors in

other countries. We are not modernizing our existing nuclear infrastructure while the rest of the world is building rapidly.

Commissioners, I know it is not your immediate professional responsibility to deal with the broad deterioration of America's nuclear industry, but it must be a factor in your consideration as you assess the FOCD issue. In every instance that I know of, foreign involvement today in America's nuclear power industry is helping to sustain a shrinking industry, not introducing vulnerabilities into it. America needs foreign technology, foreign capital and foreign expertise to help us sustain our role as a nuclear power.

Commissioners, I would like to briefly review a third important observation. I strongly believe America needs to remain a nuclear power in the world. From the earliest days when President Eisenhower announced the famous "Atoms for Peace" policy, commercial nuclear energy was the cornerstone of our national security strategy. We knew that nuclear technology would spread around the world. Commercial nuclear power is the foundation for nuclear weapons. If we had any chance to slow the spread of nuclear weapons, we needed to establish a control regime concerning the spread of commercial nuclear technology. That control regime was embodied in the Non-Proliferation Treaty. Signatories to the NPT treaty committed to global public transparency as a condition for accepting nuclear technology. America was the global leader for non-proliferation because we were the dominant nuclear technology power. America could establish and enforce this technology control regime because we were the global leader in nuclear power and in commercial nuclear technology.

If America shrinks from the commercial nuclear energy field, we will lose the power to shape the global non-proliferation regime. Sadly, interest in acquiring nuclear weapons is growing every day in other countries. We must manage this risk, and sustaining American policy leadership depends on America remaining a technology and operating leader. Preventing the spread of nuclear weapons depends on America remaining a global leader on commercial nuclear energy. Foreign companies are now integral partners in our commercial nuclear enterprise.

Let me also say, that the regulatory environment governing the operation of commercial nuclear power in America—and the NRC is at the heart of this system—is the gold standard that most of the world emulates to insure nuclear power can be operated safely and effectively. Our high normative standards will be greatly diminished internationally if the world sees us adopt simplistic and irrelevant FOCD ground rules.

The rules on FOCD now must be updated to reflect this far-more-complex new world. The Commission needs to develop a sophisticated approach to determining real vulnerability and risk, and not rely on simplistic formulas of foreign ownership.

I have spent my entire professional career in different offices and positions worrying about the national risks we face and the choices we must make to strengthen our defenses. I feel the same way about FOCD and the commercial nuclear power industry. I am willing to help the Commission in any way I can, to develop a modern and sophisticated solution to this question.

Thank you for inviting me to appear before you today. And thank you for your service on the U.S. Nuclear Regulatory Commission.